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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
ADDITIONAL BENCH AT ALLAHABAD

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Allahabad : Dated this 10th day of July, 1997
Original Application No. 140 of 1993

District : Allahabad

CORAM:-

Hon'ble Mr. S. Das Gupta, A.M.

Hon'ble Mr. T.L. Verma, J.M.

Ram Yad Ram
Resident of C-757, Kareli, GTB Nagar,
Allahabad.

(By Sri KS Saxena, Advocate)

. Applicant

Versus

1. The Union of India
Through General Manager, Northern Rly,
Baroda House, New Delhi.
2. Divisional Railway Manager,
Northern Railway, DRM Office, Allahabad.
3. The Divisional Personnel Officer,
Northern Railway, DRM Office, Allahabad.

(By Sri VK Goel, Advocate)

. Respondents

ORDER

By Hon'ble Mr. S. Das Gupta, A.M.

Through this application filed under Section 19 of the Central Administrative Tribunals Act, 1985, the applicant seeks relief of notional promotion to the grade of Rs. 2,000/- 3200 retrospectively e.f. 1-1-1984 with proforma fixation of pay. He also seeks relief of payment of arrears of pay arising out of the proforma fixation as well as arrears of retirement benefits. On call revision of pay from Rs. 1950 in the grade of Rs. 1600-2660 to Rs. 2525 in the grade of Rs. 2000-3200 at the time of retirement. He also has prayed for interest on the arrears.

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2. The applicant was promoted to the post of JIT retrospectively w.e.f. 1-1-1984 as a result of restructuring of ^{the} cadre of Ticket Checking Staff. This promotion was notified by an order dated 24-7-1984. Since then, the applicant had been working on this post in the grade of Rs.550-750 (pre-revised), until his retirement on 30-6-1990. After his retirement by an order dated ^{10.12.1991} ~~19.12.1991~~ (Annexure-A-1) stated to be in compliance with Headquarters Office letter dated 5-9-1991, 17 persons were placed on the panel of CIT in the grade of Rs.700-900 retrospectively w.e.f 1-1-1984. The applicant has alleged that all these 17 persons were promoted after they were subjected to a suitability test held after the applicant had retired from the service and, therefore, the applicant could not participate in the same. It is stated that all these 17 persons except the one at Serial No.1 are junior to the applicant and, therefore, the applicant should have been given promotion retrospectively w.e.f. 1-1-1984. The applicant is stated to have submitted a representation to D.R.M. Allahabad which was received in his office on 11-3-1992, but having failed to obtain any relief, he approached this Tribunal seeking the reliefs aforementioned.

3. The respondents have contested this case by filing a counter reply in which it has been stated that the applicant was working as JIT in the grade of Rs.1600-2660 (revised) until his retirement. It has also been stated that he was not in service at the time of consideration of his erstwhile juniors for promotion to the higher grade of Rs.700-900 (pre-revised scale) w.e.f 1-1-1984 in terms of the Headquarters letter dated 5-9-1991. There was, thus, no question of promoting the applicant to the grade of Rs.700-900.

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Explaining position of the vacancies, the respondents have stated that prior to 1-1-1984 there were three posts of CIT in the grade of Rs. 700-900 / 2000-3200. One of these posts was already filled and, therefore, only two vacancies remained on 1-1-1984 when 38 more posts of CIT were made available as a result of the restructuring of the cadre. Thus, there were 40 posts which were to be filled by promotion of six persons, who were already working as CIT, were empanelled and promoted as CIT vide order dated 24-7-1984. For the remaining 34 post, a formula of 3 times the number of vacancies was adopted and 102 persons were invited to appear for selection. However, before the selection could be held, a case was filed in the High Court of Judicature at Allahabad, which stayed these selection proceedings. The court case was finally decided in August, 1990 and in the meantime a number of staff members including the applicant had retired from service. When faced with this situation, it was decided by the competent authority that 13 of the seniormost staff, who were still in service being called for selection and promoted. They were actually promoted as CIT vide order dated 26-12-1990. For filling up of the remaining 21 posts, the matter was referred to the Headquarters for clarification and the Headquarters vide their letter dated 5-9-1991 directed that the remaining 21 posts be filled up from the members of staff still in service. Accordingly, the remaining persons in the original list of 102 persons who were still in service were called for selection and viva voce test and thus the aforesaid vacancies were filled up by the order dated 10-12-1991. As the applicant had already retired from service by that time, he was not considered for such promotion.

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4. The applicant has filed a rejoinder reply in which he has stated that although the actual promotion of his juniors was implemented after the retirement of the applicant, it was given retrospective effect from 1-1-1984, when the applicant was in service, ^{so} he should also be given the benefit of such promotion. In this regard, he has sought reliance on the decision in OA No. 1127 of 1991- RK Narela and Ors Vs. UOI & Ors.

5. We have heard learned counsel for the parties and perused the pleadings on record carefully.

6. Admittedly, the juniors to the applicant were given promotion as CIT retrospectively w.e.f. 1-1-1984 when the applicant was ~~pro~~ still in service. However, the actual promotion order was issued after the applicant had already retired. The question, therefore, arises whether in such a situation, the benefit of retrospective promotion could be granted to the applicant also.

7. In this connection we have seen a copy of the Railway Board letter dated 23-9-1993 by which the restructuring of the cadre was ordered. Para 4.2 of this letter reads as follows :-

"4.2. In case, however, as a result of these restructuring orders, an individual railway servant becomes due for promotion to a grade more than one grade above that of that held by him at present on a regular basis, the benefit of modified procedure of selection as aforesaid will be applicable only to the first such promotion (if that post happen to be a 'Selection' post the second and subsequent promotions, if any, will be based only on the normal rules relating to filling in of 'Selection' or 'Non-selection' posts (as the case may be)."

8. Admittedly the applicant was given promotion to one higher grade w.e.f. 1-1-1984 on the basis of modified selection procedure, when he was promoted ~~from~~ to the post of JIT in the grade of Rs. 550-750. ~~are concerned~~ So far as the vacancies of CIT, ^{are concerned} it is clear that the

same being a promotion to more than one grade above the one which was held by the applicant, such promotion could have been given only after following the normal rules or of selection.

9. There is no dispute that the post of CIT is a selection post and, therefore, promotion to this post required a written test and/or viva voce test. Obviously, the applicant could not have been subjected to such a test after he had retired from service. However, the fact also remains that had such selection been held prior to the applicant's retirement, he would have got an opportunity of qualifying in the test and getting promoted to the post of CIT. This, however, did not happen since the court case was filed and the stay order passed by which selection proceedings were stayed.

10. It is clear from the averments of the respondents that in this peculiar situation they had adopted a procedure for filling up of the vacancies of CIT, which is not strictly in accordance with the provisions contained in Para 4.2 of the Railway Board's letter dated 20-12-1983. It is clear that while promoting the persons in the original eligibility list, who were still in service, they have not been subjected to rigours of written test and viva voce test. In this regard we have also seen a copy of the Northern Railway HQs Office letter dated 5-9-1991 on the basis of which the remaining posts of CIT were filled. The advice given in the aforesaid letter is quoted below:-

"In reference to the above, the case has been examined at appropriate level and it has been decided that in terms of PS No. 9033, the persons, who are on roll on date, may only be empanelled against the upgraded posts in Grade Rs. 700-900 (RS) by modified procedure and the persons, who have since been retired during the period from 1-1-1984 till date, may only be given proforma benefit in terms of PS No. 9033.

Action may please be taken accordingly."

11. From the aforesaid advice, it would be clear that the Headquarters office of the Northern Railway adopted a procedure, in the peculiar circumstances of the case, which is not in conformity with the instructions contained in Para 4.2 of the Railway Board letter regarding restructuring of cadre.

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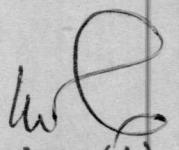
Such action on the part of the respondents is fully in accordance with legal adage ^{that} for every right there is a remedy. The applicant also had a right to be considered for promotion for several years prior to his retirement. He could not be considered for promotion merely because stay order was ⁱⁿ operation. To enforce his right to be considered for promotion there should also be a remedy available. In fact, we find that the advice in the letter dated 5-1-1991 itself states that those who had since been retired during the period 1-1-1984 till ~~date~~ of issue of the letter may only be given proforma benefit of promotion. The applicant should, therefore, have also been given a notional promotion to the grade of CIT w.e.f. 1-1-1984 and his pay at the time of retirement should have been fixed on proforma basis. This is also in line with the decision of the Bench of the Tribunal in the case RK Narela in which the respondents were directed to consider the applicant in that case who had retired from service and could not be subjected to suitability test, for promotion to the grade of CIT on the basis of record of his service. However, it is to be noted that the facts of the case of Narela are somewhat different from the facts in the case before us, inasmuch as, the applicant in the case RK Narela was wrongly placed as junior and therefore, did not figure in the eligibility list. In the instant case the reason why the applicant could not be subjected to selection test was wholly different.

12. In view of the foregoing, we dispose of the application with a direction to the respondents to consider the applicant for promotion to the post of CIT on the basis of record of his service and

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in case he is found fit for consideration for promotion, he shall be granted notional promotion as C.I.T. with effect from 1.1.1984 and his pay shall be fixed on proforma basis in the higher grade. The applicant shall not be entitled to any back wages on such notional promotion but ~~he~~ shall be entitled to terminal benefits as well as ~~penion~~ ^{penion} on the basis of the pay to be fixed notionally on the basis of such promotion to grade of C.I.T. retrospectively with effect from 1.1.1984. Let this direction be complied with within a period of three months from the date of communication of this order. The parties shall bear their own costs.


Member (J)


Member (A)