

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Dated : This the 2nd day of May 2002

Original Application no. 587 of 1994.

Hon'ble Mr. Justice R.R.K. Trivedi, Vice-Chairman
Hon'ble Maj Gen K.K. Srivastava, Member (A).

Roshan Lal, S/o Sri Mangal Singh,
R/o 121-A.B. Evenue Smith Road,
Allahabad.

... Applicant

By Adv : Sri K.K. Mishra
Sri G.C. Gehrana

Versus

1. Union of India through General Manager,
Northern Railway Baroda House,
New Delhi.
2. Divisional Rail Manager,
Northern Railway, Allahabad.
3. Senior Divisional Personnel Officer,
Northern Railway, Allahabad.
4. Senior Divisional Operating Manager,
Northern Railway, Allahabad.
5. Sri Nathu Ram. A.O.M. II
Allahabad.
6. Sri R.S. Chauhan, Station Supdt.,
Allahabad Jn.
7. Sri D.C. Mishra, Station Supdt.,
Tundla.
8. Sri S.K. Mishra, Station Supdt.,
Allahabad.
9. Sr. D.K. Pandey, Station Supdt., Naini,
Allahabad.

By : Adv Sri A.K. Gaur

... Respondents

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O R D E R

Hon'ble Maj Gen K.K. Srivastava, Member (A).

In this OA filed under section 19 of A.T. Act, 1985, the applicant has prayed for direction to respondents to allow the applicant the benefit of grade 700-900 from 1.8.1981 on enforcement of restructuring scheme and also pay the salary in grade of Rs. 2375-3500 from April 1989. He has also prayed that direction be given to respondents to treat the applicant as senior to respondents no. 5 to 9 with all consequential benefits.

2. The facts, in short, giving rise to this OA are that the applicant was appointed as Assistant Station Master (in short ASM) scale Rs. 130-240 on 30.10.1962 in Lucknow Division of Northern Railway. He was promoted to the grade of Traffic Inspector vide letter dated 4.6.1980. In combined list of selection issued by Headquarter i.e. office of General Manager, Northern Railway, New Delhi in January 1980 for the post of SS/TI/CYM in the grade of Rs. 700-900 the names of respondents nos 5 to 9 did not appear and the list included the names of employees working in grade Rs. 455-700 and Rs. 550-750, ^{In 1981-82 restructuring scheme was implemented and} were given the grade of Rs. 700-900. The benefit of restructuring was accorded to respondents nos 5 to 9 ignoring the claim of the applicant. Applicant represented. His representation remained undisposed and he was given the grade of Rs. 700-900 w.e.f. 11.6.1985 as against respondents nos 5 to 9 who were given the said scale on different dates during 1981 and 1982. Respondents nos 5 to 9 were further promoted to the higher grade of Rs. 840-1040 (revised Rs. 2375-3500) from April 1989. Applicant made several representations but to no avail. However, by letter of Divisional Railway Manager dated 20.5.1992 he was informed that in the seniority list of 1990

in persons working in the grade of Rs 550-750

the applicant's name does not find place. The seniority list of March 1990 was challenged and another seniority list of Allahabad Division was issued on 30.11.1990 showing the applicant at sl no. 1. Applicant made a representation on 8.8.1992 challenging the contents of letter dated 20.5.1992. When the applicant ^{failed to seek} filed to seek interview of General Manager on 17.10.1992 and 6.1.1993 he made another representation on 10.1.1993. Having failed to get relief from the respondents the applicant filed this OA on 8.4.1994 which has been contested by the respondents by filing counter reply.

3. Sri K.K. Mishra, learned counsel for the applicant submitted that gross injustice has been done to the applicant by respondents. Applicant was appointed as Assistant Station Master (in short ASM) on 30.10.1962 whereas respondents nos 5 to 9 have been appointed during 1963, 1973 and 1979 and are therefore junior to the applicant. Applicant was promoted on 21.12.1976 to grade of Rs. 455-700 and again on 18-12-1979 to the grade of Rs. 550-750 as Traffic Inspector. In the list of selection for the post of SS/TI/CYM in grade of Rs. 700-900 issued in January 1980 by Headquarter Delhi, none of the respondents nos 5 to 9 find place which clearly shows that ^{none} of them was working in the grade of Rs. 550-750 till 1980. Therefore, when the restructuring scheme was ^{implemented} the persons working in the grade of Rs. 550-750 were given the grade of Rs. 700-900 the applicant ought to have ^{been} given the grade of Rs. 700-900 in 1980 but it was denied to the applicant whereas the respondents no. 5 to 9 were given the benefit of restructuring during 1981 and 1982. It was only on representation that the applicant was given the grade of Rs. 700-900 w.e.f.

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4. Sri K.K. Mishra further submitted that in the list dated 30.6.1983 issued by Allahabad Division for selection to the grade of Rs. 700-900 the respondents no. 5 to 9 have been shown much junior as their names are at sl no. 18, 19, 20, 21, & 22 respectively whereas the name of the applicant is at sl no. 16. Therefore, granting further promotion to respondents no. 5 to 9 (Ann A-II) to the grade of Rs. 840-1040 (revised Rs. 2375-3500) and not giving the same grade to applicant is illegal and discriminatory. The learned counsel submitted that inspite of representation dated 25.9.1990, 7.2.1992 and 18.2.1992 the respondents did not settle the controversy. Respondent no. 2 while forwarding the representation of the applicant to General Manager, Northern Railway, Delhi, has specifically mentioned that though the applicant is senior to respondents no. 4 to 9 in grade of Rs. 550-750, his name does not find place in the list of March 1990 i.e. combined list of SS/TI/CYM inspite of the fact that he was working in grade of Rs. 2000-3200. The applicant challenged this omission and in the seniority list of Allahabad Division dated 30.11.1990, ^hApplicant ^h is shown as sl. no. 1.

5. Sri K.K. Mishra, also argued that the benefit of restructuring was not based on empanelment and, therefore, it should have been automatically given to the applicant during 1981 as has been done in cases of respondents nos 5 to 9 subsequently.

6. The learned counsel for the applicant submitted that his case was taken up by one ^hM.P. Smt. Saroj Dubey with General Manager and General Manager granted the interview for 28. or 29 or 30 September 1992 vide letter dated 23.9.1992

but since he was not spared on the dates fixed by General Manager, he could not appear for the interview and subsequently when he could manage to reach office of General Manager on 17.10.1992 and 6.1.1993 for interview, General Manager refused to grant an interview. He made a representation on 10.1.1993 which remained undecided. The applicant was regularised in grade Rs. 2000-3200 vide letter dated 16.11.1993 (Ann X). In fact since the applicant is senior to respondent no. 5 to 9 he had to be given the higher grades earlier. The learned counsel has placed reliance on the judgment of Hon'ble Supreme Court in Badrinath Vs. Govt. of Tamil Nadu and Ors, Administrative Total Juggment 2000 (1) page 173 in which it has been laid down that right to be considered for promotion is a fundamental right and consideration must be fair according to the established principle or service jurisprudence. The learned counsel has also placed reliance on the judgment of this Tribunal Calcutta Bench in DR Jagiya Vs. Union of India & Others, Administrative Total Judgments 2001 (1) Page 59.

7. Resisting the claim of the applicant Sri A.K. Gaur learned counsel for the respondents submitted that the applicant was not found fit for promotion in grade Rs. 700-900 against restructuring of post w.e.f. 1.8.1982/1.8.1983 as the applicant's annual confidential report for period ending 31.3.1983 was not upto mark. In subsequent selection initiated on 27.6.1984, the applicant opted for station Supdt. but withdrew his option later on. The next selection was held in 1987-88 and General Manager (P) after examining the case of applicant instructed to interpolate the name of applicant in the panel issued on 26.7.1988 and accordingly he has been assigned seniority in grade of Rs. 2000-3200.

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8. The learned counsel for respondents submitted that the applicant, was awarded 9 punishments during the period from 9.8.1976 to 29.5.1995. Besides the applicant was appointed as ASM in old grade of Rs. 330-560 where as respondents no. 5 to 9 were directly appointed as Assistant Yard Master (in short AYM) grade of Rs. 455-700 against 15% recruitment quota and the seniority of ASM and AYM are maintained separately. The petitioner was promoted to grade of Rs. 455-700 on 21.12.1997 whereas the respondents no. 5 to 9 got their further promotion in Yard Cadre.

9. The learned counsel for the respondents further submitted that the applicant was working as Traffic Inspector (in short TI) grade Rs. 550-750 and was also entitled for consideration in grade Rs. 700-900 as per his seniority position ~~if~~ otherwise eligible in all other respects on 1.8.1983 as per General Manager (P) order dated 9.3.1984 (Ann A-II). Since the confidential report of the applicant was not upto mark, he was not selected. Besides upgrading was done in the cadre of ~~yard~~ staff from 1.1.1979 and the respondents 5 to 9 were allowed the benefit of promotion in higher grades ~~from~~ 1.1.1979 whereas there was no upgrading in the cadre of SM/TI from 1.1.1979. The applicant was given adhoc promotion in grade of Rs. 700-900 from 11.6.1985 on expiry of the punishment of WIT for ~~one~~/^{one} imposed from 1.6.1984 to 31.5.1985. Therefore, the applicant is junior to respondents no. 5 to 9 and thus was not eligible for consideration for promotion to higher grade of Rs. 2375-3500.

10. Heard Sri K.K. Mishra, learned counsel for the applicant and Sri A.K. Gaur, learned counsel for the respondents and have perused records and pleadings of the

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parties. The main controversy in the present case is that as per applicant he is senior to respondents no. 5 to 9 and therefore, he could not have been ignored for the selection to the higher grades of Rs. 2000-3200 (revised) and Rs. 2375-3500 (Revised). The respondent's contention is that the applicant is not entitled for promotion even on restructuring during 1981-82 because of his performance and having earned adverse entries in the confidential report for period ending 31.3.1983. Admittedly the applicant joined Respondent's establishment earlier than respondent no. 5 to 9 and he was promoted on 21.12.1976 to grade of Rs. 455-700 and again on 18.12.1979 to the grade of Rs. 550-750 as TI. It has also not been denied specifically in para 9 of the counter in reply to Para 4.8 of the OA that none of the respondents were included in the list issued by Headquarters in January 1980 for selection to the post of SS/TI/CYM and in fact an evasive reply has been given. Therefore, we have no doubt that the applicant was senior to respondent no. 5 to 9 till 1980, though the respondents in para 14 of the counter have stated that the respondents no. 5 to 9 were placed in the scale of Rs. 550-750 from 1.1.1979, 19.6.1979, 2.1.1979, 1.9.1980 and 25.9.1979 respectively.

11. The restructuring was implemented during 1981-82 and the crucial date for implementing the cadre restructuring of Traffic Staff was fixed as 1.8.1983. As argued by respondents the applicant was not given the benefit of the same as his confidential report for period ending 1.8.1983 was having adverse remarks. The applicant's increment was withheld for one year on 30.6.1983. He was ^{also} ~~also~~ warned on 12.8.1983 and, therefore, could not get the benefit of restructuring. The grade of Rs. 700-900 (RPS Rs. 2000-3200)

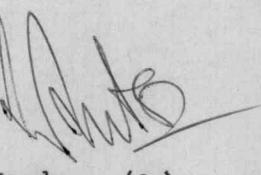
being a selection post, could not be given to the applicant because his confidential report and performance were not upto the mark. The applicant has submitted that he sent representation to General Manager, Northern Railway, New Delhi through D.R.M. Northern Railway, Allahabad on 1.9.1983 and requested for expunction of adverse remarks given by Sr. D.S.O. malafidely. On 6.3.2002 we asked the learned counsel for the respondents about the fate of the representation and the learned counsel sought for one week time to file an affidavit disclosing about the order passed, if any on the representation. On 18.3.2002 the learned counsel for the respondents intimated that the records are not available. We do not accept this plea. The representation had to be decided by the respondents. Therefore, we are of the view that in absence of any decision on the representation of the applicant against adverse remarks recorded in confidential report for 1982-83, the adverse entries have to be ignored and the applicant is entitled for relief. The applicant has to be given the benefit of higher grade from the date respondents no. 5 Sri Nathu Ram was promoted. It would be a futile exercise if we direct the applicant to file a fresh representation as the respondents in absence of records will not be able to decide the same.

12. In the light of our aforesaid discussion the OA is allowed. The benefit of grade 700-900 (ie2000-3200) be given to the applicant from the date it has been given to the respondent no. 5. The pay of the applicant will be

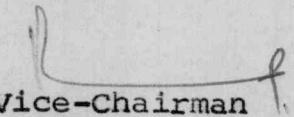
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fixed notionally and he will not be entitled for arrears but will be entitled for other consequential benefits of seniority and promotion as per rules.

13. There shall be no order as to costs.



Member (A)



Vice-Chairman

Dated 6/05/2002

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