

Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD.

Original Application No. 15 of 1999.

Allahabad this the 30th day of April, 2003.

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

Virendra Singh
S/o Shri Siya Ram
R/o Village Nagla Marah,
Post Tindauli, District Mainpuri.

.....Applicant.

(By Advocates: Sri Anand Kumar/ Sri C.P. Gupta)

Versus.

1. Union of India
through General Manager
Northern Railway,
Baroda House
New Delhi.
2. Divisional Railway Manager
Northern Railway
Allahabad.
3. Divisional Superintending Engineer-III,
Northern Railway
Allahabad.

.....Respondents.

(By Advocate: Sri P Mathur)

O R D E R

BY HON'BLE MAJ GEN KK SRIVASTAVA, A.M.

In this O.A., filed under section 19 of Administrative Tribunals Act 1985, the applicant has prayed that the respondents be directed to make correct fixation of pay @ Rs.1200/-^{W.M.} w.e.f. 1.3.93 to 28.2.97 and the applicant be paid the arrears of salary with compound interest @ 10%. He has also prayed for direction to respondents to pay the

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arrears of all pensionary benefits i.e. D.C.R.G.,
commutation of pension, leave encashment etc. after
correct fixation of pay on the revised rate of pay ^{on implementation of}
Vth Pay Commission ^{recommendations}

2. The facts, in short, are that the applicant was appointed as Gangman on 3.1.1963. He retired ⁱⁿ from service on 28.2.1997. The grievance of the applicant, ^{that} several persons junior to the applicant namely Saket Singh, Ratan Singh, Sut Ram, Omkar etc. ~~who were junior to the applicant~~ ^{he} were given benefit of restructuring of pay w.e.f. 1.3.1993 but it was denied to the applicant. He was working as a Mate but was not given the salary of Mate. As per applicant one Sri Shyam Lal, junior to the applicant was promoted and regularised as Mate ignoring the claim of the applicant. However, the qualifying service period of the applicant has wrongly been worked out resulting into difference in pay. He sent representation to Divisional Railway Manager, Northern Railway, Allahabad on 23.12.1997 followed by another representation dated 16.3.1998. The applicant on not getting any decision on his representation, filed this O.A. on 7.1.1999 which has been contested by the respondents. They have filed counter reply.

3. Heard Sri Anand Kumar, learned counsel for the applicant and Sri Prashant Mathur, for the respondents.

4. Sri Anand Kumar, learned counsel for the applicant submitted that total qualifying service of the applicant should be 28 years 7 months and not 28 years 1 months 27 days as calculated by the respondents. He invited our

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attention to para 4.5 in which the calculation has been given. The learned counsel submitted that the mistake in calculation has occurred because the respondents have not counted the service of the applicant as Substitute Khalasi correctly.

5. Sri Prashant Mathur resisting the claim of the applicant submitted that the calculation of qualifying service has correctly been done. The applicant was terminated from service w.e.f. 14.3.1969 to 20.7.1969 and therefore he became junior to the persons mentioned in para 4.2 of the O.A. Besides he had been extended the benefit of restructuring on 1.08.1983, as such he was not entitled for the benefit of restructuring w.e.f. 1.3.1993. As regards the claim of the applicant vis-a-vis Sri Shyam Lal for the post of Mate, the learned counsel submitted that Sri Shyam Lal is a literate person whereas the applicant is only class 2 pass.

6. We have given careful consideration to the submissions of counsel for parties and perused records. The respondents have stated that the services of the applicant were terminated w.e.f. 14.3.1969 to 20.7.1969 whereas the applicant maintains^{he} as stated in para 7 of the R.A. that he was retrenched. In any case, in our opinion, admittedly the applicant was out of service w.e.f. 14.3.1969 to 20.7.1969 and he cannot claim any benefit of the same at this stage. The applicant has also not challenged the same in this O.A. Learned counsel for the respondents produced the Service Book of the applicant which we have closely examined. Having perused Service Book and records we do not find that the respondents have committed any error in calculating the qualifying service of the applicant. However two points arise before us which are-

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[Circular stamp]

- (a) Whether the claim of the applicant that his regular service should be counted from the date of empanelment i.e. 4.5.1973 or from the date of regularisation i.e. 1.1.1975, is correct or not ?.
- (b) Whether restructuring from 1.3.1993 is allowable or not ?.

7. As regards first point, the rule position is well ^{settled} established. The date of regularisation i.e. 1.1.1975 and not the date of empanelment i.e. 4.5.1973 is to be taken into account for treating the regular service. Therefore, there is no substance in the submission of the applicant that date of empanelment i.e. 4.5.1973 is to be taken for treating applicant's service as regular.

8. We now come to the second point i.e. whether the applicant is entitled to the benefit of restructuring w.e.f. 1.3.1993 or not. The respondents have argued that the applicant is not entitled for the benefit of restructuring as it had been extended to him in 1983 when the restructuring was done. The respondents have not filed any circular in this regard. In absence of the Restructuring Scheme of 1993 on record, it is difficult to establish whether the action of respondents in not extending the benefit of restructuring w.e.f. 1.3.1993 to the applicant is correct or not. In our opinion the ends of justice shall better be served if the applicant files a fresh representation in regard to grant of benefit of restructuring w.e.f. 1.3.1993 to applicant and the same is decided by the respondents by a reasoned order as per rules within a specified time. However we would like to observe that without restructuring benefit, the fixation of pay made is correct.

9. For the reasons recorded above, the O.A. is finally decided with direction to respondent No.2 i.e. Divisional

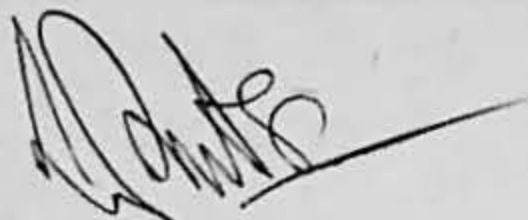
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Railway Manager, Northern Railway, Allahabad to decide the representation of the applicant so filed within three months from the date the representation and the order of this Tribunal is filed before him by a reasoned order as per rules. The applicant is allowed four weeks time to file the representation alongwith copy of this order. We further provide that in case it is found that the applicant is entitled for restructuring w.e.f. 1.3.93 and resultantly refixation of pay, the arrears of salary and post retiral benefits shall be paid to the applicant with simple interest @ 10% within three months from 7.1.1999 i.e the date of filing of this O.A. to the date of payment.

10. There shall be no order as to costs.


Member-A.


Vice-Chairman.

Manish/-