

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 12th day of JANUARY 2005.

Original Application no. 631 of 1999.

Hon'ble Mr. Justice S.R. Singh, Vice-Chairman
Hon'ble Mr. S.C. Chaube, Administrative Member.

Prem Chandra, S/o Sri P.D. Gupta,
R/o Indian Cancer Research Institute,
Radiology Department, Varanasi.

... Applicant

By Adv : Sri D.P. Singh
Sri S. Kumar

V E R S U S

1. Union of India through General Manager,
Railway Administration, N.E. Railway,
Gorakhpur.
2. General Manager (Personnel),
N.E. Railway,
Gorakhpur.
3. Chief Medical Director, N.E. Railway,
Gorakhpur.

... Respondents

By Adv : Sri D.C. Saxena

O R D E R

By Justice S.R. Singh, VC.

Heard Sri S. Kumar, learned counsel for the applicant
and Sri D.C. Saxena, learned counsel for the respondents.

2. The applicant, Assistant Radiographer/Assistant X-Ray Technician in the Railway ^{has} ~~have~~ instituted this OA, challenging the legality of the order dated 07.07.1998 passed by respondent no. 2, thereby rejecting the applicant's claim for being placed in the pay scale of Rs. 1350-2200/4500-7000 w.e.f. 01.03.1993. The applicant, it is not disputed, has been given notional

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promotion in the grade of Rs. 1350-2200/4500-7000 w.e.f. 14.2.1994 vide order dated 14.7.2000 (Ann CA5). The grievance of the applicant is that he was entitled to be placed in the grade of Rs. 1350-2200/4500-7000 as a result of restructuring the benefit of which was made available w.e.f. 01.03.1993.

3. The respondents case is that the applicant has been given notional promotion from 14.2.1994, the date on which his junior was promoted in the pay scale of Rs. 1350-2200 and he was not entitled to the said scale w.e.f. 1.3.1993 in view of the fact that vacancy, as a result of restructuring, was not available on 01.03.1993 in the said scale.

4. It is alleged in para 6 of the counter affidavit that initially 7 posts in the scale of Rs. 1350-2200 were in existence prior to 1.3.1993 and as a result of restructuring number of posts in the said scale came to be reduced to five. However, in para 7 of the counter affidavit, it is stated that due to inclusion of three temporary posts in X-ray Tech's cadre a revised memo was issued according to which number of posts in the scale of Rs. 1350-2200 as stood revised from 1.3.1993 came to be seven and only five persons were working including one promoted from 1.3.1993 and one from 14.2.1994. The official who was promoted on 14.2.1994 was admittedly junior to the applicant. The scheme providing for restructuring, as contained in ^{Annexure 1} para 2 of the OA clearly provides that the restructuring of the cadre will be ^{with reference to} that reserved to the ^{the staff who} sanctioned cadre strength on 1.3.1993 and would be placed in the higher grade as a result of implementation of these orders would draw ^{the} pay in the higher grade w.e.f. 1.3.1993

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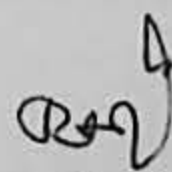
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The only ground on which the applicant was denied the benefit of restructuring w.e.f. 01.03.1993, as stated in the counter affidavit, was that the post was not available on 01.03.1993 in the concerned scale, but as stated *supra*, it stands now established, as per para 7 of the counter affidavit, that vacancy was very much available and the applicant could have been promoted to the grade of Rs. 1350-2200 w.e.f. 01.03.1993. The impugned order dated 22.07.1998 rejecting the applicant's claim for the benefit of restructuring w.e.f. 01.03.1993 is, therefore, not sustainable.

5. Accordingly, the OA succeeds and is allowed. The impugned order dated 22.07.1998 (Ann A1) is set aside. The respondents are directed to give benefit of restructuring to the applicant w.e.f. 01.03.1993.

6. There shall be no order as to costs.


Member A


Vice-Chairman

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