

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 01/5/05 day of April, 2005.

Original Application No. 799 of 1999

Hon'ble Mr. D.R. Tiwari, Member (A)
Hon'ble Mr. K.B.S. Rajan, Member (J)

1. Phool Chand, S/o Sri Narain
2. Sadiq, S/o Sri Abdul
3. Maqbool, S/o Sri Hakimullah
4. Mohd. Hanid, S/o Mohd. Amir
5. Kandhai Lal, S/o Sri Baboo Lal
6. Kalloo, S/o Mohd Amir
7. Nizamuddin, S/o Qamaaruddin
8. Mohd. Aslam, S/o Mohd Shahid
9. Mohd. Nain, S/o Mohd Shahid
10. Mohd. Yasin, S/o Sri Sadiq
11. Irshad Ahmad, S/o Shri Kalloo Mia
12. Mohd Naseem S/o Abdul Salam
13. Kasim Ali, S/o Niyamat Ali
14. Mohd Yaquto, S/o Sadiq
15. Mumeshwar Prasad, S/o Jia Lal
16. Mohd Mahboob, S/o Nasir Ahmad
17. Aslam Khan, S/o Sri Babban Khan.

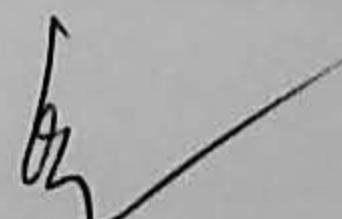
All are working as Bhisties under the Chief Health Inspector/Station, Allahabad Station in Commercial Department of Allahabad.

... Applicants

By Adv: Sri S.S. Sharma

V E R S U S

1. Union of India Owing & representing Northern Railway,
Notice to be served to the General Manager,
Northern Railway Baroda House,
NEW DELHI.
2. The Divisional Railway Manager,
Northern Railway, D.R.M. Office,
Nawab Yusuf Road,
ALLAHABAD.



3. The Senior Divisional Commercial Manager,
Northern Railway, D.R.M., Office,
Nawab Yusuf Road,
ALLAHABAD.
4. The Station Superintendent,
Allahabad Railway Station,
Northern Railway,
ALLAHABAD.
5. The Chief Health Inspector,
Allahabad Railway Station,
Northern Railway,
ALLAHABAD.

...Respondents

By Adv : Sri P. Mathur

ORDER

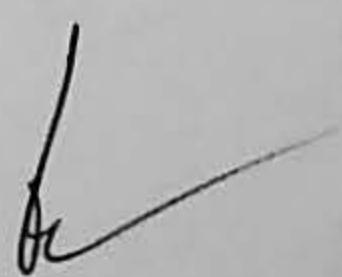
By K.B.S. Rajan, JM

The applicants, 17 in number, who are working as Bhisties under the Chief Health Inspector, Allahabad Railway Station in the Commercial Department of Allahabad Division have prayed inter alia the following relief(s):

- a. Implementation of the Railway Board's order dated 27.1.1993 (Ann A1) by promoting the applicants 1 to 5 in the pay scale of Rs. 800-1150 and applicants 6 to 15 in the pay scale of Rs. 775-1025 w.e.f. 1.3.1993
- b. Further promotion to applicants 1 to 3 in the post of Jamadar in the pay scale of Rs. 825-1200 and promotion of applicants No. 16 & 17 in the resultant vacancies in the pay scale of Rs. 750-1025.
- c. Payment of arrears with regard to above promotion with interest thereon.
- d. Further consequential benefits.

2. The facts of the case as spelt out in the OA are capsulated as under :-

- a. All the applicants are permanent and regular Group 'C' employees and hold their lien on the post of Bhisty in the Commercial Branch of Allahabad Division.
- b. A scheme of restructuring was conceived and brought into effect by the Railways vide order dated 27.1.1993 according to which the restructuring would be with reference to the sanctioned cadre strength as of 1.3.1993 and those who would be placed in the higher grade in



the wake of implementation of restructuring would draw their pay in the higher grade w.e.f 1.3.1993. For purposes of promotion there would not be any written or oral test and the ACRs/service records would be the basis for such promotion. This scheme is applicable even in respects of Bhisties.

c. As per the restructure scheme, the upgradation of Bhisties was to be in the following ratio :

Grade	Existing percentage	Revised Percentage	No of Posts
750-940	50	35	5
775-1025	50	45	10
800-1150	-	20	8

d. Initially, the respondents did not extend the restructuring scheme to Bhisties and after strenuous efforts by the Unions etc., as late as in June 1997 the restructuring scheme was implemented for Bhisties.

e. The D.R.M. Northern Railway while implementing the restructuring deviated from the correct procedure and issued some promotion orders in which the name of some of the applicants were omitted and names of rank juniors were included.

f. Many representations from February 1998 onwards were preferred to the D.R.M. and the illegalities in the promotion pointed out to him. The D.R.M. has brought out a seniority list (Ann A2) which revealed some of the juniors were shown as seniors. Against this irregularity the applicants preferred a representation. Instead of rectifying the errors in the promotion orders issued in the wake up of seniority list, the promotion was discontinued even without issuing any order in this regard. This has resulted in a great monetary loss to the applicants.

g. According to the applicants three posts of Zamadar in the pay scale of Rs.825-1200 were lying vacant against which applicant no. 1 to 3 could be accommodated. And in the resultant vacancy applicants No. 15 & 17 could be promoted in the grade of Rs. 775-1025.

h. The applicants had raised a number of grounds in the OA to substantiate their contention that they are entitled to promotion as per the Railway Board Circular dated 27.1.1993.

3. The version of the respondents about the case of the applicants is as under:



- a. The claim of the applicants is based on hypothetical presumption. The Railway Board Circular is not applicable to Bhisties and the post of Bhisty falls under Misc. Grade Group 'D'. For Bhisties, Misc. Grade Group 'D' the ratio is 35% in the scale of Rs. 750-940 and 65% in 775-1025.
- b. The further contention of the respondents is that the services of the applicants were regularized w.e.f. 6.2.1996 only whereas the restructuring was effective from 1.3.1993 and it was on account of the same the necessity arose to cancel the earlier promotion order erroneously granted to them.

4. Rejoinder was filed by the applicants reiterating the contention of the OA. The applicants have vehemently denied the contentions made in para 13 of the counter affidavit wherein it was stated that the applicants were regularized only in 1996 and as such the benefit of restructuring is not available to them.

5. Arguments were advanced by the learned counsel for the parties and on the date of hearing the respondents were directed to produce relevant records to the effect that Bhisties are included in Group 'D' and they are not entitled to the benefit as a result of restructuring. Time up to 7.3.2005 was given for production of records and order was reserved.

6. The respondents have chosen not to produce the relevant records even by end March, 2005 and as such the pleadings were ^{perused by} ~~produced~~ to ascertain the exact status of Bhisties and whether they are entitled to the benefit of restructuring. Vide annexure A3, a letter by D.R.M. Allahabad, restructuring of cadre of Bhisti w.e.f. 1.3.1993 has been ordered in the pay scale of Rs. 800-1150, 775-1025 & 750-940. In respect of Commercial (Sanitation) wing at Allahabad Railway Station, the revised sanction strength of Bhisties has been reflected as Five (Rs. 800-1150), Ten (Rs. 775-1025) & Eight (Rs. 750-940). The existence of this annexure A3 has not been controverted by the respondents. Thus it is clear that Bhisties are entitled to the benefit of restructuring w.e.f. 1.3.1993.

7. The next aspect for consideration is whether the applicants were regularized prior or posterior to the date of restructuring. The respondents contend vide para 13 that the applicants were regularized w.e.f. 6.2.1996. They have relied upon annexure CA 1 dated 6.2.1996 the subject matter of

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which is "विषय: सफाईवाले/भिस्टियो, वाणिज्य विभाग अधीन स्वा, निरी/स्टेशन, इलाहाबाद कानपुर, टुण्डला एवं अलीगढ़ की स्कीनिंग" This, however, does not in any way relate to the issue. What is relevant is the seniority list of Bhisties. The seniority list of Bhisties as contained in annexure 2 indicates the date of appointment which ranges between 1960 to 1987 vide annexure A 2. The existence of this seniority list has not been denied in the counter though the contents of para 4.14 of the OA wherein reference to this seniority list has been made, have been denied on an entirely different ground that there is no grade of Rs. 800-1150 in the cadre of Bhisti and as such the seniority list would not be of any help to the applicant. From the seniority list it is clear that as averred in paragraph 4.3 and 4.4, all the applicants were appointed much earlier than January 1993 and since their initial date of appointment figures in the seniority list, there is no question of they being made regular as late as 6.2.1996 as contended by the respondents. Again the promotion order issued vide annexure A4 which has been dated 16.10.1997 could not have been issued had the date of regularization of the applicants been 6.12.1996 as contended by the respondents. However, the contention of the applicants is that there were some errors in the said seniority list inasmuch as certain persons junior to the applicants had been shown as seniors for the rectification of which necessary representations have been made by the applicants and it is after such representation that the promotion order dated 110-1997 had been cancelled instead of modifying the seniority list and revise the promotion order. Cancellation of the order dated 16.10.1997 in October 1998 though in one way is correct, as the same contained certain errors according to the applicants, the respondents ought to have modified the said order of promotion by strictly following the seniority of Bhisties. As such, taking into account the seniority list it is clear that the applicants are entitled to be considered for the benefit of the Restructuring Scheme w.e.f. 01-03-1993.

8. In view of the above, the OA succeeds. The applicants are entitled to the benefit of the restructuring w.e.f. 1.3.1993 in the three grades specified in the letter dated 24.6.1997 (Ann 3). The respondents are, therefore, directed as under :

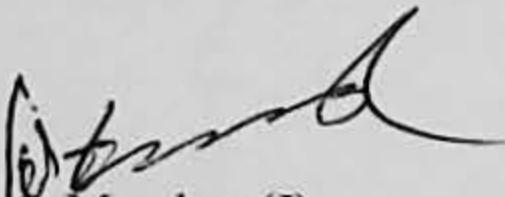
a. *The applicants whose pay scale as of 28.2.1993 was in the grade of Rs. 77.5-1025 be placed, after following the requisite procedure as contained in the notification dated 27-01-1993 in the scale of pay of Rs 800-1150; similarly, those whose scale of pay as of 28.2.1993 was Rs. 750-940, their pay be fixed in the scale of pay of Rs. 775-1025.*



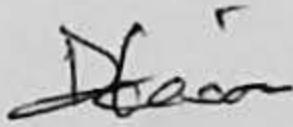
- b. *The pay of the applicants in the aforesaid pay scale, shall be fixed in accordance with the provision of pay fixation as contained in para 3 of the Railway Board notification dated 27.1.1993 read with relevant Rule 1316 R-2 referred to therein.*
- c. *The applicants' pay scale as above be further revised w.e.f. 1.1.1996 in the corresponding replacement scale in accordance with the revised Rules framed in the wake of acceptance of 5th CPC by the Government.*
- d. *The difference in pay from 1.1.1993 onwards be worked out and arrears thereof paid to the applicants.*
- e. *If any of the applicants is further eligible for higher promotion (Jamadar), from any date, the same be also considered and promotion if found fit be made to such of the applicants with other consequential benefit thereof.*

9. The aforesaid order shall be complied with within a period of six months from the date of receipt of certified copy of this order.

10. There is however no order as to costs.



Member (J)



Member (A)

/pc/