

RESERVED
on 05.03.2014

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH ALLAHABAD**

(ALLAHABAD THIS THE 21st DAY OF March 2014)

PRESENT:

**HON'BLE MR. JUSTICE S.S TIWARI, MEMBER - J
HON'BLE MR. U.K. BANSAL, MEMBER - A**

ORIGINAL APPLICATION NO. 1427 OF 2002.
(U/s, 19 Administrative Tribunal Act.1985)

1. Chandra Prakash Lal S/o Shri Bishambhar Lal, 622-B, Smith Road, Railway Colony, Allahabad.
2. Jai Prakash Kushwaha S/o Shri Shiv Nath Singh Kushwaha, 3FG Railway Colony, Mirzapur.

.....Applicants
By Advocate: Shri S.S Sharma

Versus

1. Union of India through the General Manager, Northern Railway, Headquarters Office, Baroda House, New Delhi.
2. The Secretary, Ministry of Railway, Rail Bhawan, New Delhi.
3. The Divisional Railway Manager, Northern Railway, D.R.M Office, Nawab Yusuf Road, Allahabad.
4. Shri Om Prakash Singh, Horticulture Inspector, under the Divisional Railway Manager, Northern Railway, D.R.M Office, New Delhi.

.....Respondents

By Advocate : Shri Pradeep Chandra

ORDER

BY HON'BLE MR. U.K. BANSAL, MEMBER - A

The applicants in this O.A. namely Chandra Prakash Lal and Jai Prakash Kushwaha seek the following relief(s):-

"(i) That the Hon'ble Tribunal may graciously be pleased to set aside/quash impugned order dated 10.10.2001 issued by the General

*Manager, Northern Railway, New Delhi
respondent NO.2 (Annexure A-1) (Compilation
No.1) to this application.*

- (ii) That the Hon'ble Tribunal may graciously be pleased to direct the respondents to promote applicants on the post of Junior Engineer (Horticulture) Grade I in the pay scale Rs.5500-9000 (RSRP) since 1998 or from the date junior to them have been promoted.*
- (iii) That the Hon'ble Tribunal may graciously be pleased to direct the General Manager, Northern Railway, New Delhi, respondent No.2 to consider case of the applicants and also to issue promotion order on the post of Section Engineer (Horticulture) Gr. Rs.6500-10500/- from the date junior to applicants Shri O.P. Singh has been promoted.*
- (iv) That the Hon'ble Tribunal may graciously be pleased to allow all consequential benefits to the applicants in this case with arrear of pay in grade Rs.5500-9000 and grade Rs.6500-10500 from the date juniors to them have been promoted".*

2. The applicants are working as Junior Engineer (Horticulture) Gr. II in the grade of Rs.5000-8000 in Allahabad Division since 1996. The Horticulture cadre is part of Civil Engineering Department of respective Divisions, which has the following cadres:-

- (i) Permanent Way
- (ii) Civil Engineering/Works
- (iii) Civil Engineering/Horticulture.

4. It is the contention of the learned counsel for the applicants that they were recruited directly in the scale of

Rs.1400-2300/- and were promoted from the rank of Sub Overseer Mistry (Horticulture) to the rank of Inspector of Works Grade III on 19.06.1996, both being in the same pay scale i.e. Rs.1400-2300/- revised as Rs.5000-8000/-. They were due for promotion to the next scale of Rs.1600-2660/- (revised scale Rs.5500-9000) and when this matter was referred to General Manager, Northern Railway from the divisional level, it was informed that this higher grade of Rs.5500-9000/- has been merged in the grade of Rs.5000-8000/- in respect of Horticulture cadre of the Civil Engineering Department while no such merger has been done in the other two cadres namely Permanent Way and Works. According to the learned counsel for the applicants this is a wrong interpretation of Railway Services Revised Pay Rules 1997 issued vide R.B.E. No. 138/1997 dated 16.10.1997. Following this direction issued by the General Manager, Northern Railway, the sanctioned posts in the pay scale of Rs.5500-9000/- were kept vacant and applicants were denied promotion to this grade.

5. The learned counsel for the applicants has argued that it is wrong to say that the grade of Rs.5500-9000/- does not exist in the category of Horticulture Supervisor. Further, S-9 of the Railway Services Revised Pay Rules 1997 merges different pay scales of 4th Pay Commission but does not merge the grade of Rs.1400-2300/- and Rs.1600-2660/- in the cadre of Horticulture Supervisor. The merger which is depicted in S-9 (mentioned above) might be applicable to

lmy

some other cadre of Staff and not to the Civil Engineering Department. It has been alleged that in different Divisions of Northern Railways, Horticulture Inspectors Grade II (now Junior Engineering Grade I) are working in the grade of Rs.5500-9000/- and this grade has not been merged in any of the Divisions under the control of General Manager, Northern Railway. It has also been mentioned that similar merger of scales has not been done in the other two cadres of Civil Engineering Department namely Permanent Way and Works, and that the 5th Pay Commission has not recommended that the pay scale of Rs.5500-9000 in the Horticulture cadre alone should be merged in the lower grade of Rs.5000-8000. Such an interpretation of the 5th Pay Commissions would imply that the staff of Horticulture cadre will now be directly promoted from the grade of Rs.5000-8000/- to the grade of Rs.6500-10500/- without promotion to the intermediate grade of Rs.5500-9000. Such an interpretation by the General Manager, Northern Railway is totally incorrect.

6. The learned counsel for the applicants has also pointed out that Shri Pramod Kumar Dwivedi, Shri O.P. Singh and Shri Harindra Singh, who were similarly situated as the applicants, were promoted to the scale of Rs.5500-9000/- in other Divisions of the Northern Railway, which amounts to discrimination. The learned counsel for the applicants has further pointed out that the applicants have not only been deprived of their promotion to intermediate grades but have also been ignored for due promotion to the post of Section

[Handwritten signature]

Engineer in the pay scale of Rs.6500-10500/-, which is a selection/appointment made by the Headquarters. One Shri O.P. Singh, junior to the applicants, has been promoted by the General Manager, Northern Railway vide his order dated 21.11.2000 to the scale of Rs.6500-10500/-. It has been further pointed out that the services of Shri O.P. Singh were regularized as Horticulture Inspector in the scale of Rs.5000-8000/- by D.R.M Northern Railway, New Delhi vide order dated 26.05.1999 whereas the applicants have been working in that grade since 1996, and hence Shri O.P. Singh was junior to them.

7. Lastly it has been argued that even if the grade of Rs.5500-9000/- has actually been abolished and merged with the scale of Rs.5000-8000 since 01.01.1996 then the applicants are entitled for promotion in the next higher scale i.e. Rs.6500-10500/- since 23.11.2000 i.e. the date from which their junior (Sh. O.P. Singh) was promoted by General Manager, Northern Railway.

8. The learned counsel for the respondents has stated that after the implementation of the 5th Pay Commission, the Horticulture cadre in Civil Engineering was left with only two grades namely Rs.5000-8000/- and Rs.6500-10500/- and the intermediate grade of Rs.5500-9000/- does not exist in the Horticulture cadre. He has drawn our attention to the first schedule of the Railway Services (Revised Pay) Rules, 1997, which were circulated vide R.B.E. No. 138/97 dated

Ans

16.10.1997. At S-9 of the first schedule, the pre-revised scale of Rs.1600-2660/- has been subsumed in the revised scale of Rs.5000-8000/-. It has been further clarified that the applicants were recruited as S.O.M Horticulture in the scale of Rs.1400-2300/- which has been revised as Rs.4500-7000/-. By their own admission, the applicants were promoted as Inspector Horticulture in the grade of Rs.1400-2300 in the year 1996. This scale has also been revised by the 5th Pay Commission as Rs.5000-8000/-. It has, therefore, been argued that the applicants remained in the same revised scale of Rs.5000-8000/- after 1996. Hence, it is clear that with the implementation of the 5th Pay Commission recommendations, the applicants were working in the revised pay scale of Rs.5000-8000/-. The next higher pay grade in the earlier pay scales was Rs.1600-2660/- and according to the applicants, they were due for promotion to this higher grade since June 1998. However, it is the contention of the learned counsel for the respondents that vide Railway Board Letter No. PC-III/96 standardization/1 dated 21.01.1997, the pre-revised pay scale of Rs.1600-2660/- ceased to exist in the category of Horticulture Supervisor. This communication was issued to D.R.M Northern Railway vide letter No. 221E/4-VI/Hort.Insp./EIIB-1 dated 12.2.1998 (Annexure CA-2 of the counter affidavit). Hence, the question of promotion of the applicants to this intermediate scale did not arise.

Ans

9. The learned counsel for the respondents further informed that in the Horticulture Cadre, there are only two

grades of pay namely Rs.5000-8000/- and Rs.6500-10500/-.

The position here is different from that existing in the other two cadres of Civil Engineering namely Permanent Way and Works where three grades are in existence. Hence, the promotions in the Horticulture cadre are not comparable to those in the Permanent Way and Works cadres of the Civil Engineering Department. It was further clarified that the applicants worked up to 31.12.1995 in the grade of Rs.1400-2300/- and from 1.1.1996 to 18.6.1996 in the grade of Rs.4500-7000/-. On 19.06.1996 they were promoted as J.E - II/Horticulture in the grade of Rs.5000-8000/-.

10. The learned counsel for the respondents also controverted the issue regarding promotion of similarly placed members of the staff in the Horticulture Department in the grade of Rs.5500-9000/- and clarified that this was done in some other Unit and not in the Northern Railway. This was borne out on examination of Annexure 14 of the O.A. where this order pertains to another Unit of Varanasi. It was further clarified that as regards Shri O.P. Singh (respondent No.4) and Shri Harindra Singh, they were promoted from the revised pay scale of Rs.5000-8000/- to Rs.6500-10500/- by conducting and holding a selection process by the headquarter office and hence their cases cannot be compared with the matter relating to the applicants. It was further contended that all promotions procedures have been followed as per instructions of the Selection Board/Railway Board.

Mur

11. A rejoinder affidavit has also been filed by the learned counsel for the applicants where largely the arguments given in the O.A. have been reiterated. In their rejoinder affidavit, it has been argued that the applicants are entitled for promotion in the scale of Rs.6500-10500/- since 1998. It has been said that due to merger of grades, the fact remains that the applicants have been working in the same grade since the date of their appointment. It has been reiterated that the applicants were not promoted in 1998 even though sanctioned posts were available in the higher grades. Through this rejoinder affidavit, the applicants have shifted their emphasis to their perceived entitlement for promotion to the grade of Rs.6500-10500/-. At para 17 of the rejoinder affidavit, it has been stated as follows:-

"17. It is submitted that the applicants have not challenged any promotion procedure for higher grade but they have requested for consideration of their names for promotion in higher grade Rs.6500-10500/- from the date junior to them Shri O.P. Singh has been promoted vide order dated 21/23.11.2000".

12. The issue regarding promotion of Shri O.P. Singh, who is said to be junior to the applicants, has been clarified in the counter affidavit that he was promoted as a consequence of selection process held by the Headquarter Office. It is an admitted fact that when posts in the Horticulture cadre were decentralized by the General Manager, Northern Railway vide

lunf

his letter dated 11.01.1996, this promotion post was retained under the control of the headquarters.

13. From an examination of the pleadings and arguments on both sides, it is amply established that the Horticulture cadre in which the applicants are working did not have the intermediate higher grade of pay at the time when the applicants are claiming that they were due for promotion into that grade. The Revised Pay Rules as applicable to the Horticulture cadre allowed promotion of the applicants only to the next available grade of pay viz. Rs.6500-10500/-. The anguish of the applicants that they have been working for many years and till the time of filing the O.A. in 2002, in the same grade of pay in which they had joined initially is quite understandable. However, the constraints of there being no other intermediate grade for their promotion limits the opportunities before the applicants. Their promotion to the next higher grade of Rs.6500-10500/- (post 5th Pay Commission) is admittedly possible only through a process of selection. The respondents should ensure in the interest of good administrative practices that the applicants are considered for this promotion whenever they are due for the same and suitable vacancies exist. The O.A. is, therefore, dismissed with the remarks noted above. No order on costs.

Manish
Member (A)

BIV
Member (J)

Manish/-