

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the 14th day of October, 2004.

Original Application No. 413 of 2003.

Hon'ble Mrs. Meera Chhibber, Member- J.  
Hon'ble Mrs. Roli Srivastava, Member- A.

Suresh Chandra Chaudhary S/o Late Laxman Singh Chaudhary  
a/a 54 years, R/o 296-A, New Colony (Railway, Tundla

.....Applicant

Counsel for the applicant :- Sri S.S. Sharma

V E R S U S

1. Union of India through the General Manager,  
Headquarters Office, North Central Railway,  
Allahabad.
2. The General Manager, Headquarters Office,  
North Central Railway, Allahabad.
3. The Divisional Railway Manager,  
North Central Railway, DRM office,  
Nawab Yusuf Road, Allahabad.

.....Respondents

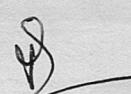
Counsel for the respondents :- Sri S.N. Gaur

O R D E R

By Hon'ble Mrs. Meera Chhibber, JM.

By this O.A the applicant has sought the following  
reliefs :-

- 8.1. The Tribunal may graciously be pleased to set aside/quash the impugned order dated 21.03.2003 issued by the O.S.D/NER, Allahabad.
- 8.2. The Tribunal may graciously be pleased to direct the respondents to issue promotion order of the applicant on the post of Hd. Clerk in grade Rs. 425-700 against an upgraded post in restructuring of cadre w.e.f 01.01.1984 and fixation of seniority and pay with the benefit of payment of arrears of pay in this grade w.e.f 01.01.1984.



8.3 The Tribunal may graciously be pleased to direct the respondents to promote the applicant on the post of Office Supdt. Gr. II in pay scale of Rs. 1600-2660 w.e.f 01.03.1993 against the upgraded post in restructuring cadre w.e.f 01.03.1993 on the basis of modification selection as per Railway Board's order dt. 27.01.1993 and fixation of seniority and pay with benefit of payment of arrear of pay in this grade with effect from 01.03.1993.

8.4 The Tribunal may graciously be pleased to direct the respondents to promote the applicant on the post of Office Supdt. Gr. I in the grade Rs. 6500-10500 w.e.f 12.03.1996 with fixation of seniority and pay and payment of arrear in this grade w.e.f 12.03.1996.

8.5. The Tribunal may graciously be pleased to allow all consequential benefits in this case.

8.6. The Tribunal may graciously be pleased to allow payment of interest @ 18% per annum compounded annually w.e.f. 01.01.1984.

8.7. The Tribunal may graciously be pleased to direct the respondents to pay damages to the applicant as may deem fit and proper in the facts and circumstances of the case.

8.8 The Tribunal may graciously be pleased to allow the heavy cost in favour of the applicant.

8.9 The Tribunal may graciously be pleased to pass any other order or direction as may deem fit and proper in the facts and circumstances of the case.

2. Though the facts are rather long but controversy is very small. In order to appreciate the controversy few relevant will be facts have to be narrated.

3. The applicant was promoted as Senior Clerk on 02.08.1980 and he was senior most eligible person for promotion under the restructuring w.e.f 01.01.1984. As per applicant's case, restructuring was ordered on 16.11.1984 which was to be made effective from 01.01.1984. Vide order dated 19.05.1988, two persons who were junior to the applicant namely Sri Jagdish Kumar and Sri R.D. Ram, both SC candidates, were promoted as



Head Clerk w.e.f 01.01.1984 with full arrears. However, the applicant was promoted as Head Clerk w.e.f 01.08.1987 on provisional basis (Pg. 42). It is submitted by the applicant that in the seniority list which annexed at Pg.43, the applicant was shown at Sl. No. 17 while Sri Hukum Singh Pal was at Sl. 32 and both Sri Jagdish Kumar as well as Sri R.D. Ram were at Sl. 48 and 43 respectively. The applicant gave a representation when he was informed that he could not be given benefit of restructuring w.e.f 01.01.1984 due to adverse remarks given to him in the year 1982-83 and penalty of W.I.T was given to him in the year 1984. The matter was taken up through the Union and after P.N.M meeting was held, it was decided that the applicant will be given promotion as Head Clerk w.e.f 01.01.1984 which is evident from letter dated 23.12.1997 (Pg. 56). As a result of this decision, applicant was promoted as Head Clerk on proforma basis w.e.f 01.01.1984 and actual benefit was given to him w.e.f 10.05.1992 vide order dated 11.08.1998 (Pg.64). In the meantime second restructuring came in to existence w.e.f 01.03.1993 vide letter dated 27.01.1993 (Pg.57). As a result of second restructuring Sri R.D. Ram and Sri Jagdish Kumar were empanelled for the post of O.S Gr. II on 17.10.1997 and their names figured at Sl. No. 9 and 10 respectively (Pg.63). From seniority list issued on May, 2002 (Pg. 65-66), it is clear that Sri R.D. Ram promoted as O.S Gr. I on 12.03.1996 while Sri Jagdish Kumar was promoted to O.S Gr.I on 13.05.1997. Sri Hukum Singh Pal was promoted as O.S Gr.I w.e.f 24.09.2002 (Pg. 69).

4. Since applicant's juniors were given further promotion as O.S Gr. II and O.S Gr.I pursuant to restructuring, the applicant also gave representation on 10.03.2001 for claiming actual arrears w.e.f 01.01.1984 in the post of Head Clerk, his seniority to be refixed etc. and further promotions as O.S Gr.II w.e.f 30.07.1993 and O.S. Gr.I w.e.f 12.03.1996 i.e the date when Sri R.D. Ram, his junior, was given further promotions as O.S Gr.II and O.S Gr.I.

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5. Learned counsel for the applicant invited our attention to a letter written by respondents dated 11.05.2000 wherein this fact was admitted that the applicant was due further promotion with effect from the same dates when his junior was promoted but since no vacancy of restructuring was available and it would involve reversion of some other person, the matter was referred to the O.S.D(Personnel), NCR, Allahabad for taking further action in the matter. However, inspite of this letter since the applicant was not given any of the benefits as stated above, he filed O.A No. 871/2002 which was ultimately decided on 21.11.2002 by giving direction to the respondents to decide his representation by a speaking and reasoned order (Pg.78). It was pursuant to this direction that respondents passed speaking order on 21.03.2003 (Pg.36) whereby the applicant was informed that those who were promoted under restructuring in normal course against restructured post have already been paid arrears from 01.01.1984 and those persons had shouldered higher responsibility actually after restructuring, therefore, applicant's case cannot be compared with them. As such he cannot be given arrears w.e.f 01.01.1984 in the post of Head Clerk. As far as his further promotions are concerned it was stated that after the applicant was assigned proforma promotion as Head Clerk w.e.f 01.01.1984, he was called to appear in selection for O.S Gr.II vide Division's notice dated 11.07.2002 for empanelment of O.S Gr.II but he did not appear in the selection and gave his refusal dated 09.08.2002 whereas Sri R.D. Ram and Sri Jagdish Kumar were found suitable and placed in the panel of O.S Gr.II under restructuring of the year 1993 according to modified selection panel as they came within the zone of consideration at that time whereas the applicant was not promoted because he did not come within the zone of consideration. The respondents have further explained that Sri Hukum Singh Pal was given promotion in compliance of court's order in SLP No. 16030/93 as name of two Head Clerks i.e. Sri A.J. Balfour and Sri J.K. Bhattacharya were deleted due to withdrawal of their prevailing seniority

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position and thus two released vacancies were filled up by interpolating next two senior persons i.e. Sri S.C. Murtaza and Sri Hukum Singh Pal coming within the zone of consideration at the time of restructuring by way of modified selection procedures. They relied on para 228 of I.R.E.M for denying the arrears on account of erroneous promotions given to a person due to mistake of administration. They have thus submitted that the reversion was ~~reversed~~ as a follow-up <sup>done B</sup> ~~of orders~~ <sup>Y</sup> by the Hon'ble Supreme Court. In the same order respondents have admitted that the entry of punishment was erroneously ~~done~~ in the applicant's service record due to confusion in names of Sri Suresh Chandra Chaudhary and Sri S.C. Chaudhary but as soon as it came to notice of the administration, the mistake was rectified with proper entry in service record. They have further submitted that the applicant was called to appear for selection of O.S Gr.II as per approved seniority list on several occasions but he could not be selected on merits or he refused to appear. Thus they have submitted that the applicant cannot be considered for promotion due to revision of seniority in the year 1997 retrospectively as all the posts upgraded under restructuring w.e.f 01.03.1993 have already been filled in by the eligible staff who came within the zone of consideration by way of modified selection procedures in panel. They have thus submitted that the applicant is not entitled to either arrears w.e.f 01.01.1984 or promotion as O.S Gr. II or O.S Gr.I.

6. It is this letter which has been challenged by the applicant. Respondents have mainly stated in the CA that the applicant could not be promoted as Head Clerk w.e.f 01.01.1984 as there was adverse entry in his CRS and have repeated <sup>4</sup> whatsoever stated in the impugned order. They have stated that the applicant can get promotion as O.S. Gr.II and O.S. Gr.I only after he ~~is~~ clear in the examination held for the post of O.S. Gr.II and O.S Gr. I for which he was already given opportunity in which he did not appear and submitted that the

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present original application may be dismissed.

7. We have heard both counsel for parties and perused the pleadings as well. Admittedly the adverse remarks given to the applicant for the year 1982-83 were expunged in the year 1986 which is evident from the order dated 23.12.1997 issued by Officer on Special Duty(P) (pg.56). So far as the penalty of WIT is concerned that has been clarified by the respondents themselves in the impugned order (para 7) that it was wrongly entered in the applicant's folder even though the punishment was given to some other Sri S.C. Chaudhary. Therefore, the clear position which emerges out from above fact is that in the year 1986 neither the applicant had adverse remarks as those were expunged nor there was any penalty of WIT against the applicant in existence. In this background it would be relevant to see that Sri R.D. Ram and Sri Jagdish Kumar were given promotion as Head Clerk w.e.f 01.01.1984 retrospectively vide order dated 19.05.1988 and since these two persons were also given promotions retrospectively even though they had not shouldered the higher responsibility of the post of Head Clerk. Therefore, we do not see any reason why in 1988 when the promotion order was issued in favour of the applicant he could not be given promotion w.e.f 01.01.1984 alongwith whereas arrears when the persons junior to him were given promotions w.e.f 01.01.1984 alongwith arrears. (Page 42 of the O.A would be relevant for this purpose) In the impugned order the respondents have stated that the applicant's case cannot be compared with Sri R.D. Ram and Sri Jagdish Kumar as they had actually shouldered the higher responsibility but a perusal of order dated 19.05.1988 would show that Sri Jagdish Kumar, Senior Clerk in the grade of Rs. 330-560/1200-2040 (RPS) of 'T' Branch was appointed to officiate as Head Clerk in grade Rs. 425-700/1400-2300 (RPS) against one of the upgraded post w.e.f 01.01.1984 retrospectively and allowed to draw arrears of the same also. The very fact that Sri R.D. Ram was given promotion from the retrospective date would show that he was

not indeed shouldering the higher responsibility of the post of Head Clerk on 19.05.1988. In this order even though the applicant was given promotion as Head Clerk w.e.f 01.08.1987 initially but subsequently after intervention of P.N.M. the applicant was given proforma promotion as Head Clerk w.e.f 01.01.1984 vide order dated 11.08.1998 (Pg.64 of OA). Once he was given promotion as Head Clerk w.e.f 01.01.1984 he ~~was~~ also became entitled for consequential benefits as well. Infact respondents have themselves put up a note dated 11.05.2000 wherein it was stated categorically that the applicant would be entitled to be promoted as O.S Gr.II and O.S. Gr. I and placed above Sri R.D. Ram but due to non-availability of vacancy under the restructuring and since it would involve reversion, further action, to be taken up in the matter and may be informed. Ultimately in the impugned order once again respondents have denied the benefit of further promotion as O.S Gr.II and O.S Gr.I to the applicant only on this ground that at this stage no vacancy is available under the restructuring, therefore, he cannot be given promotion with effect from the same date when his junior was promoted. They have stated that the applicant was given opportunity to appear in the written test and viva voce for being empanelled as O.S Gr.II as per his provisional seniority but he refused to appear in the examination and unless he is empanelled as O.S Gr.II, he cannot be given the promotion to the post of O.S Gr.II or O.S Gr.I.

8. At this juncture it would be relevant to note that under the restructuring ~~the~~ Scheme B promotions were given to the candidates as per the modified procedure without calling the persons to appear in the written test or holding the viva voce but simply on the basis of assessment of their service record and CRs. If due to mistake of respondents the applicant could not be promoted as Head Clerk in due time and if he was given the said promotion only on a subsequent date, according to us, he cannot be deprived

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of the consequential benefits which would flow from the said promotion. As we have noted above since Sri R.D. Ram had also not shouldered higher responsibility in post of Head Clerk, yet he was given the arrears in the year 1988 w.e.f 01.01.1984. We see no reason why applicant should also not be given the arrears w.e.f 01.01.1984 in the post of Head Clerk.

9. Since applicant had already been promoted as Head Clerk by the respondents w.e.f 01.01.1984, it was incumbent on the part of the respondents to refix his seniority also as Head Clerk w.e.f 01.01.1984 and then to have considered him for the post of O.S Gr.II as per modified selection procedure which was prescribed under the restructuring scheme dated 27.01.1993. We see no reason why applicant should be made to appear in the written test and viva voce like normal promotions. After all, if the respondents had entered wrong penalty in his service record due to their mistake, the applicant cannot be made suffer for the fault of respondents. Similarly once the adverse remarks were expunged the net result would be as if those remarks never existed in the service record of the applicant, therefore, this was a case where applicant's case should have been reviewed by respondents on their own. Whereas it was only after PNM meeting was held that applicant was given his due promotion w.e.f 01.01.1984 as Head Clerk but he was not been considered for O.S Gr.II as per modified selection method. on the ground that no vacancy is available. This reasoning cannot be sustained in law as applicant cannot be made to suffer for the fault of respondents. Therefore, to this extent we find the impugned order is bad in law. Accordingly the order dated 21.03.2003 is quashed and set aside. The O.A is allowed in part with following direction to the respondents :-

- (i) To give difference of arrears to the applicant in the post of Head Clerk with effect from 01.01.1984 till it was actually paid.



(II) His seniority should be fixed at the level of Head Clerk.

(iii) Applicant's case should be considered for the post of O.S Gr.II under the modified selection procedure as was required to be done under the restructuring dated 27.01.1993 by assessing his service record and CRs for the post of O.S Gr.II. In case, on the basis of CRs and service record, applicant is not found fit, the same shall be communicated to the applicant by a reasoned order.

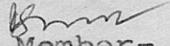
(iv) In case applicant is found fit on the basis of service record and CRs, he shall be given promotion as O.S Gr.II with effect from the same date when Sri R.D. Ram was promoted as O.S Gr.II by fixing his pay notionally from the same date and giving him benefit of dry increments. In other words he shall not be entitled for actual difference of arrears for this period as some other person had already been promoted and paid the salary also for the said period.

(v) His seniority as O.S Gr.II shall be re-fixed.

(vi) As far as promotion to O.S Gr.I is concerned, he shall be considered for same in accordance with rules and instructions on the subject.

This exercise shall be completed within a period of three months from the date of receipt of a copy of this order under intimation to the applicant.

10. There will be no order as to costs.

  
Member- A.

  
Member- J.

/Anand/