

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 15th day of March, 2004.

QUORUM : HON. MR. JUSTICE S.R. SINGH, V.C.  
HON. MR. D. R. TIWARI, A.M.

O.A. No. 440 of 2003

K.N. Gupta S/O Murlidhar Gupta, aged about 62 years R/O  
269, Jatepur North, District Gorakhpur.... ....Applicant.  
Counsel for applicant : Sri O.P. Gupta.

Versus

1. General Manager (P) N.E. Railway, Gorakhpur.  
2. Union of India through G.M., N.E. Railway, Gorakhpur.  
..... .... Respondents.

Counsel for respondents : Sri S.K. Anwar.

ORDER (ORAL)

BY HON. MR. JUSTICE S.R. SINGH, V.C.

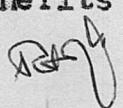
Heard Sri O.P. Gupta, learned counsel for applicant Sri S.K. Anwar, learned counsel for respondents and perused the pleadings.

2. The applicant was reverted from the post of Janiter to the post of Work Mistry vide order dated 16/17.7.96. The legality of the order was challenged in the O.A. No.786/96 in which apart from the prayer of quashing of the said order the applicant had also prayed for issuance of a direction to the respondents not to interfere in the applicant's services as Inspector of Works (In short IOW) (General) in the pay scale of Rs.1600-2660/-. He had also made a prayer for grant of benefit of Railway Board restructuring scheme dated 27.1.1993 w.e.f. 1.3.1993 in the next higher scale. The Tribunal found that the applicant had been discriminated in that while retaining the juniors he was illegally reverted vide order impugned in the said O.A. The applicant, it would appear, claimed parity with his juniors Sri K.P. Tiwari and Sri S.K. Gupta, who were working on the post of A.En. and IOW Grade I respectively whereas the applicant was ordered

(P.S.V)

to be reverted illegally. The Tribunal partly allowed the O.A. quashing the order dated 16/17.7.96 and directed the respondents to treat the applicant as IOW (General) in the scale of Rs.1600-2660 'till his superannuation' and settle his post retiral benefits accordingly. In compliance of the direction given by the Tribunal, the applicant was given the pay scale of IOW (General) i.e. Rs.1600-2660/- vide order dated 22.7.2002. The applicant preferred representation (Annexure A-5) regarding promotion at par with his junior S.K. Gupta (Chief IOW) and K.P. Tiwari (Assistant Engineer). By impugned order dated 9.10.02, the applicant was informed that he had already been given the scale of Rs.1600-2660 admissible to the post of IOW (General) and his claim for proforma promotion at par with his junior Sri S.K. Gupta was not accepted by the Tribunal and hence it was not possible to grant proforma promotion to him at par with his junior Sri S.K. Gupta.

3. Having heard counsel for the parties we are of the view that no exception can be taken <sup>6-2</sup> in the impugned order whereby the applicant's claim for proforma promotion at par with his junior Sri S.K. Gupta has been rejected. The promotion to the post of IOW was given to Sri S.K. Gupta during the pendency of the O.A. by order dated 20.9.96 while the O.A. was decided on 2.5.2002. No relief was claimed in the said O.A. for direction to promote applicant at par with his junior Sri S.K. Gupta. The applicant could have claimed that relief by suitably amending his O.A. and it is settled law that the plea, which could have been taken but not taken, cannot be taken in a subsequent O.A. in view of the bar of constructive res-judicata. That apart the Tribunal in its operative order only directed the respondent to treat the applicant as IOW (General) in the scale of Rs.1600-2660 "till his superannuation" and to settle his post retiral benefits accordingly. Any direction to the



respondents to give proforma promotion to the applicant would run counter to the direction given by the Tribunal in the earlier O.A. Accordingly no such direction can be issued. That apart the applicant in his first attempt had failed in 1994 examination as stated in the impugned order and for that reason also the applicant will not be entitled for the relief.

4. In view of the above discussion, the O.A. fails and dismissed with no order as to costs.

*Dhaw*  
A.M.

*Ran*  
V.C.

Asthana/