

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD**

Dated: This the 11th day of November 2016

**HON'BLE DR. MURTAZA ALI, MEMBER - J
HON'BLE MS. NITA CHOWDHURY, MEMBER - A**

**Original Application No.1072 of 2005
With
Original Application No. 1114 of 2006**

Original Application No.1072 of 2005

Ram Krishna Das S/o Sri Shiv Jagat Ram, working as Library Information Assistant in Scale of Rs.5500-9000 in Central Library N.E. Railway, Gorakhpur.

..... Applicant

By Adv: Mr. M.K. Upadhyaya

VERSUS

1. Union of India through the General Manager, N.E. Railway, Gorakhpur.
2. Chief Personnel Officer, N.E. Railway, Gorakhpur.

..... Respondents

By Adv: Mr. S. K Anwar.

WITH

Original Application No. 1114 of 2006

Om Prakash Tyagi son of Sri Ram Surat Ram Tyagi, Resident of Village Kurkhala, P.O Mughalsarai, District Chandauli, presently posted as Library and Information Assistant in scale of Rs.5500-9000, North East Railway Gorakhpur.

..... Applicant

By Adv. Shri M.K Upadhyaya



Versus

1. Union of India through the General Manager, North Eastern Railway, Gorakhpur.
2. Chief Personnel Officer, N.E. Railway, Gorakhpur.

By Adv. Shri K.P Singh

ORDER

BY HON'BLE DR. MURTAZA ALI, MEMBER - J

On the request of learned counsels for the parties, OA No. 1072/2005 and O.A. No. 1114/2006 are being decided by a common order as the controversy involved in both the O.As are similar and identical. O.A No. 1072/05 is taken as leading case.

2. The applicant has filed this O.A. seeking to quash the impugned order dated 5.8.2005 issued by Chief Personnel Officer, N.E.R. Gorakhpur by which the pay of applicant has been fixed in the pay scale of Rs.5500-9000 on the post of Library Information Assistant w.e.f. 23.11.2003 and he has also sought a direction for respondents to fix his pay in the scale of Rs.5500-9000 w.e.f. 1.1.1996 with all consequential benefits. It has also been prayed that the Railway Board letters dated 3.7.2003 and 8.7.2003 be declared as illegal and ultra virus being contrary to the earlier Railway Board letters dated 12.10.1992 and 14.6.2004.

3. The brief facts of the case are that the applicant was initially appointed on the post of Junior Library Assistant in the pay scale of Rs. 975-1540 on 22.11.1990. As no channel of

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promotion for the Library Information Assistant was provided, the General Manager (P), NER, Gorakhpur had issued A.V.C dated 1.9.1993 (Annexure A-3). The Railway Board also revised the pay scale of Rs. 825-1200 and Rs. 975-1540 to Rs. 950-1500 and pay scale of Rs.1200-2040 and Rs. 1400-2300 to Rs. 1400-2600 respectively but the pay scale of applicant was not revised from Rs. 975-1540 to Rs.950-1500 for which he was entitled under Railway Board letter dated 12.10.1992. He requested the General Manager (P) N.E.R. Gorakhpur to promote him on the post of Library Information Assistant in the pay scale of Rs.1400-2600 but no action was taken. The applicant filed O.A No. 1885 of 1993, which was decided on 27.2.2001, and the Tribunal directed the Railway Administration to consider his claim for promotion on the post of Library Information Assistant. The Railway Administration promoted him in the scale of Rs. 1400-2600 w.e.f. 21.11.1992 vide order dated 18.6.2001 (Annexure A-4).

4. The Railway Board has issued orders dated 3.7.2003, 8.7.2003, 27.11.2003 as well as 14.6.2006 for promotion of Library Information Assistant in the grade Rs. 5000-8000/Rs.5500-9000 but this benefit was not given to the applicant. The applicant along with Om Prakash Tyagi (Applicant of O.A. No. 1114/2006) had filed representations for extending the benefit of above orders of Railway Board, but the

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respondents did not extend the said benefit to them. The applicant and Sri Om Prakash Tyagi had earlier filed O.A No. 286 of 2005 which was decided vide order dated 22.3.2005 directing the respondents to decide their representation.

5. It has been alleged that the respondents did not implement the order dated 22.3.2005 passed by this Tribunal in O.A. No. 286 of 2005 and issued impugned order dated 5.8.2005 (Annexure A-1) by which the pay of 08 persons including applicant was revised in the pay scale of Rs. 5500-9000 w.e.f. 23.11.2003. It is stated that the pay scale of Rs.975-1540 was merged with the pay scale of Rs.950-1540 w.e.f. 24.7.2009 and this pay scale was further revised to the pay scale of Rs. 3050-4900 w.e.f. 1.1.1996. In the Railway Board letter dated 3.7.2003 (Annexure A-2), a condition of 13 years service in the pay scale of Rs.3050-4900 has been imposed for promotion in the pay scale of Rs. 5000-8000. It has been contended that as the applicant had already been promoted in the pay scale of Rs.5000-8000 vide order dated 18.6.2001 in pursuance of Tribunal's order dated 27.2.2001 passed in O.A NO. 1885 of 1993, the condition of 13 years of service in the pay scale of Rs. 3050-4900 should not be applicable in his case.

6. In the counter reply filed on behalf of respondents, it has been submitted that the applicant was not eligible for upgradation/promotion as per A.V.C. enforced at the relevant time and, therefore, his case was not considered for promotion. It is also stated that in compliance of order dated 22.3.2005 passed in OA NO. 286 of 2005, the applicant has been given the benefit of revised pay scale of Rs.5500-9000 along with 7 other employees vide order dated 5.8.2005 w.e.f. 23.11.2003. It is also submitted that the date of entry of applicant in the grade of Rs.5000-8000 has been determined as 23.11.2003 as per instructions contained in Railway Board Circular dated 8.7.2003 (Annexure A-5) and accordingly the pay scale of Rs. 5000-8000 was upgraded to the pay scale of Rs.5500-9000 as per instructions contained in the Railway Board Circular dated 27.11.2003 (Annexure A-6) w.e.f. 23.11.2003. It has further been stated that the Railway Board letters dated 3.7.2003 and 8.7.2003 have never become redundant and they are not liable to be quashed.

7. Heard Shri M.K. Upadhyay, counsel for the applicants, Shri S.K. Anwar counsel for the respondents in O.A. No. 1072/05 and Shri K.P Singh, counsel for the respondents in O.A. No. 1114/06

8. Learned counsel for the applicant has contended that the applicant was entitled to get his pay fixed in the pay scale of Rs.5500-9000 w.e.f. 1.1.1996 while his pay has wrongly been fixed w.e.f. 23.11.2003. It has further been argued that in view of order dated 27.2.2001 passed by this Tribunal in O.A. No. 1885 of 1993, the respondents had already promoted him to the post of Library Information Assistant in the pay scale of Rs.1400-2600/Rs.5000-8000 w.e.f. 21.11.1992 vide order dated 18.6.2001.

9. Learned counsel for the respondents submitted that the applicant was initially appointed on 22.11.1990 as Junior Library Assistant and in view of Railway Boards letters dated 8.7.2003 and 17.11.2003 he was entitled to be placed in the grade of Rs.5500-9000 after completing 13 years service and accordingly his pay has been fixed w.e.f 23.11.2003 as he was not entitled for the benefit of upgraded scale without completing 13 years of service in that grade on the basis of erroneous retrospective promotion.

10. The sole ground of applicant for claiming merged pay scale of Rs.5500-9000 w.e.f. 23.11.2003 rests upon the order of promotion dated 18.6.2001 which was issued in pursuance of order dated 27.2.2001 passed by the Tribunal in O.A No. 1885 of 1993. The validity of promotion order dated 18.6.2001 was examined in O.A. No. 1450 of 2001 along with O.A. NO. 22 of

2002 by the Tribunal and it was observed that the respondents wrongly proceeded to promote the applicant as well as those who were senior to him consequent to the order dated 27.2.2011 passed in O.A. No. 1885 of 1993. It was noted that the respondents were simply directed to consider the claim of applicant and also claim of others found eligible for promotion to the post of Library Information Assistant in accordance with relevant Rules but the respondents promoted applicant as well as seniors to him in contravention of extant rules. The order of said promotion was never approved by the Railway Board. It has clearly been observed that the applicant as well as other seniors were wrongly promoted as Library Information Assistants in the scale of Rs.1400-2600 vide order dated 18.6.2011 in contravention of Railway Board Circulars. The promotion order dated 18.6.2011 and the subsequent corrigendum dated 26.7.2001 have been quashed by the Tribunal vide order dated 9.4.2014 passed in O.A. NO. 1450 of 2001 along with O.A No. 22 of 2002 and the respondents were directed to rework the promotion and pay fixation of pay of applicant as well as other respondents in the light of extant Rules and directions on the subject issued by the Railway Board from time to time. In compliance of said order, the respondents have already quashed the earlier promotion order dated 18.6.2011 and subsequent corrigendum dated 26.7.2011 vide order dated 14.8.2014 and revised the pay scale accordingly vide letter dated 16.2.2015 and

further issued revised seniority list vide letter dated 16.2.2015.

Aggrieved by the said orders, the applicant has already filed O.A No. 124 of 2015, which is pending for disposal.

11. In view of the fact that the promotion order dated 18.6.2001 issued in pursuance of order dated 27.2.2001 passed in O.A No.

1885 of 1993, has already been quashed by the Tribunal vide order dated 9.4.2014 passed in O.A NO. 1450 of 2001 along with

O.A NO. 22 of 2002, the instant O.As have become infructuous.

The impugned order dated 5.8.2005 has been issued in compliance of order dated 9.4.2014 passed in O.A. NO. 1450 of

2001 along with O.A No. 22 of 2002 and in accordance with

Railway Board Circular dated 3.7.2003 and 8.7.2003. There is no

valid ground to declare these circulars as illegal as the validity

of these circulars were earlier challenged by the applicant in

O.A. No.1450 of 2001 along with O.A. No. 22 of 2002 but the

Tribunal did not declare them as illegal and relying on said

Circulars passed the order on 9.4.2014. Thus, the said circulars

containing policy decisions of Railway Board cannot be

challenged in subsequent O.As by the applicants.

12. As the impugned order dated 5.8.2005 has been issued in

accordance with Railway Board letters dated 3.7.2003 and

8.7.2003 and the promotion order of applicant and others dated

18.6.2001 has already been quashed by this Tribunal in O.A. NO.

O.A. NO. 1450 of 2001 along with O.A No. 22 of 2002, the instant O.A. is devoid of any merit and is liable to be dismissed.

13. Accordingly, O.As. No.1072 of 2005 and 1114 of 2006 are dismissed. There is no order as to costs. A copy of order be also kept in O.A. No. 1114/2005.