

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH
ALLAHABAD

ORIGINAL APPLICATION NO. 1434/2006

ALLAHABAD this the 8th day **December, 2011**

Present:

HON'BLE MR. JUSTICE S.C. SHARMA, MEMBER- J
HON'BLE MR. SHASHI PRAKASH, MEMBER -A

1. Mr. Suresh Chandra Srivastava, S/o Late J.N Lal, R/o 23 B Shubhanjali Apartment, Jawahar Lal Nehru Road, Taigore Town, Allahabad.
2. Aizaz Ahmad Usmani S/o Late Riyazat Husain, R/o 177/211, Gayasuddinpur, Post Begum Sarai, District Allahabad.

.....Applicants.

V E R S U S

1. Union of India through General Manager, Northern Railway Barauda House, New Delhi.
2. General Manager, Central Railway, Allahabad.
3. S.K. Msihra, presently posted as Sr. Traffic Manager (General), Allahabad.
4. D.K. Pandey, Divisional Operating Manger (General), presently posted in D.R.M Office, Allahabad.
5. M.P. Singh AOM (Planning) presently posted in N.C. Railway, Allahabad.
6. P.N. Bose, AOM (Planning) presently posted in D.R.M Office, Allahabad.

.....Respondents

Present for the Applicant: Shri Ashish Srivastava

Present for the Respondents: Sri Anil Kumar

Sudhakar

O R D E R

(Delivered by Hon'ble Mr. Justice S.C. Sharma, J.M.)

The instant O.A. has been instituted for the following relief:

- (i) "This Hon'ble Court prayed that the respondents may be directed to promote the applicants in Group 'B' cadre in terms of the judgment in O.A. No. 450 of 1990 w.e.f. 1995 and their names may be interpolated in the seniority list of Group 'B' officers over and above to the juniors and may be given all consequential benefits.
- (ii) This Hon'ble Court may be pleased to direct the respondents to quash the proceedings of selection of Group 'B' cadre held in year 1995 and 1998 and in terms of the judgment in O.A. NO. 450/90.
- (iii) Any other relief, which this Hon'ble Court may deem fit and proper in the facts and circumstances of present case.
- (iv) Award cost of the original application in favour of the applicants".

2. Pleadings of the parties may be summarized as follows. It has been alleged by the applicants that the instant O.A. has been instituted for seeking direction for the respondents to extend the benefit of judgment given by this Tribunal in O.A. 450/90 "U.S. Sharma vs. Union of India and others" decided on 16th January 1997.

In that O.A. direction was given to the respondents to extend the benefit of restructuring w.e.f. 1.8.1982 instead of 1.1.1984 re-determining their seniority in group C cadre and in case after correction of the seniority if the applicants fall within the zone of consideration, for further promotion in Group B cadre and the seniority of the applicants be fixed in group B cadre also from the date their juniors have been promoted in Group B cadre.

S.C. Sharma

The O.A. 583/97 "R.S. Pandey and others vs. Union of India and others" was also instituted before the Tribunal for extending the benefit of judgment to the applicants being similarly situated employees, which was finally decided on 17.11.2004 and direction was given to the respondents to promote the applicants in Group B cadre and re-determine their seniority accordingly. That since in view of the judgment in the U.S. Sharma case the benefit of restructuring of their cadre was extended to the applicants w.e.f. 1.8.82, and their seniority was also re-determined, but the benefits as stated in the decision of U.S. Sharma could not be granted to the applicants, to which they are entitled for promotion in group B cadre w.e.f. the date when the juniors were promoted alongwith all consequential benefits. The applicant No. 1 was initially appointed as Guard grade C on 14.9.68 and subsequently promoted as Chief Controller after completion of successful service career and continued till the date of superannuation on 31st August, 2001. That applicant No. 2 was inducted in the service as Guard grade C on 16th October, 1961 and superannuated from the post of Chief Controller on 29th February, 1996. During the employment of the applicants, a circular was issued by the Railway for restructuring scheme on 29th July, 1983. There was some anomaly regarding the date of implementation of circular dated 29th July, 1983 and 1.8.1982. The circular was applicable w.e.f. 1.1.1984 and as a consequence of this discrepancy, the employees of group C in Traffic Scheme were given higher grade and became senior to group C employees of the Control

R.S. Pandey

Scheme. And it was highly discriminatory and violative of Articles 14 and 16 of the Constitution. Aggrieved employees belonging to control cadre filed O.A. No. 450/1990 and it was allowed by the Tribunal on 16.1.1997 and it was decided firstly that the employees of the control scheme have been discriminated as against other streams and the Tribunal declared this unreasonable to fix different dates to those employees who were brought at the same stage. The Tribunal was of the opinion that by assigning two different dates there was discrimination which was not logical and reasonable. Secondly, the Tribunal decided that the discrimination may be removed by giving a common date of restructuring of the cadre and the date may be as was prescribed in the circular dated 29.7.83 and the result will be that the seniority of the employees of Group C of control Scheme will be affected adversely if the applicants 1 and 2 and other employees whose seniority is re-fixed, to get any benefit in promotions. Similarly situated persons filed another O.A. No. 583/97 for similar benefits as has been made available to the applicants in O.A. No. 450/90. Against the order passed by the Tribunal in O.A. 450/90, the Railway Administration preferred SLP before the Hon. Apex court and the SLP was dismissed by the apex court, but the scope of the order was enlarged to all the affected employees and as a result of this, partial benefit of judgment was given to the applicants and seniority of the applicants was re-fixed giving the benefit of restructuring w.e.f. 1.8.1982. Since the partial benefit of the judgment of O.A. 450/90 was extended partially, hence O.A. 583/97

Subray

was filed for surviving grievance of the applicants that they are also entitled for re-determination of their seniority in Group B cadre. A finding was recorded in O.A. 450/90 that either to promote the applicants in group B cadre or undo all the selections held on the basis of un-amended seniority. All the benefits ought to have been extended to all the similarly situated persons, but the respondents failed to give all benefits to these applicants during the course of employment and they retired on attaining the age of superannuation. Hence the panel of selection for the years 1995-1998 is liable to be quashed. Misc. application was filed in O.A. 583/97 by Shri R.P. Srivastava and R.K.S. Rathore for extending similar benefits of the judgment and M.A. was allowed. Annexure A-3 is the copy of the order passed by the Tribunal. That the applicants are entitled for promotion in Group B w.e.f. 1995 and their names deserve to be interpolated in the select list. That as the respondents have not extended similar benefits, hence the O.A.

3. The respondents contested the case and filed the Counter reply and denied all the allegations of the petition. It has further been alleged that the applicants had sought relief for their promotion in Group B cadre in terms of the judgment of O.A. No. 450/90 decided on 16th January, 1997 w.e.f. 1995. Instant O.A. has been instituted after considerable delay in the year 2006. Both the applicants had already retired on 31st August, 2001 and 29th February, 1996 respectively, hence the O.A. is highly time barred and is liable to be dismissed on this ground. O.A. 450/90 was instituted by

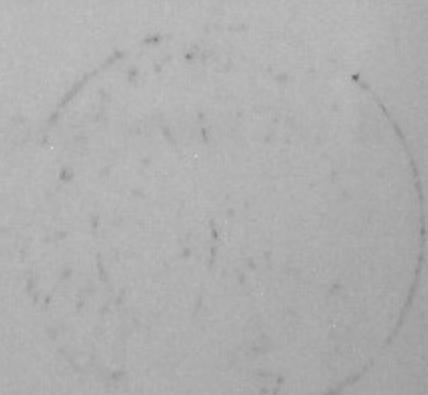
S. J. Khan

U.S..Sharma and three other employees of the Central Railway. In terms of Railway Board letter dated 13.5.99 the respondents allowed the benefit of promotion to the Controllers w.e.f. 1.8.82 on pro-forma basis and w.e.f. 1.8.83 on actual basis instead of 1.1.84 under the cadre restructuring. The Controllers who were promoted w.e.f. 1.1.84 under restructuring were allowed promotion w.e.f. 1.8.82/1.8.83. The first combined seniority of Group C traffic staff for selection to Group B post was issued in 2003. The applicants No. 1 and 2 had already retired from railway on the above dates and their names were not included in the provisional seniority list indicating the names of eligible candidates for selection from group C to Group B written examination, 2003. The employees who were in service in the year 2003 had been called to appear in the selection in Group B as per combined seniority of Group C. The seniority of controllers who had been given the benefit of promotions w.e.f. 1.8.82 on pro-forma basis and w.e.f. 1.8.83 on actual basis were given seniority from 1.8.83 in terms of Railway Board letter dated 13.5.99. The discrepancy had been removed by allowing seniority and promotion to the controller w.e.f. 1.8.83. The staff who were given promotion in terms of Railway Board circular dated 29.7.83 were also given seniority with effect from 1.8.83 and not from 1.8.82. The controllers have also been granted benefit of promotion and seniority with effect from 1.8.83. It has also been alleged that O.A. No. 583/97 was dismissed relating to the applicants 3 to 12 and was allowed relating to applicants No. 1 and 2. The applicants in this

Surendra

O.A. were applicants No. 10 and 9 in O.A. 583/97 and the O.A. was dismissed so far as it relates to the applicants. The applicants No. 1 and 2 in the O.A. 583/97 passed out their selection for Group B in 1st attempt in the year 2003, hence their seniority was fixed in Group B vis-à-vis their juniors. The applicants of the present O.A. are not the applicants in O.A. No. 450/90 and that they were also staff of the Central Railway. Hence, the order passed in O.A. is not applicable to the staff of the Northern Railway and moreover, the applicant had already retired from service and in view of para 228 of IREM, Volume I, 1989 Edition, there is no administrative error in not giving promotion. Hence, in view of this provision the applicants are not entitled for similar benefits. That the promotion of controllers was allowed w.e.f. 1.8.82/1.8.83 instead of 1st August, 1984 and this order was issued in the year 2003 and the selection was also held in 2003 on the basis of revised seniority and applicants had also retired from service hence they were not eligible to appear in the written examination, hence they cannot claim promotion in Group B service without passing selection as per rules. Similar benefits could have been extended to the applicants like that of R.K.S. Rathore who moved the M.A. in O.A. 583/97, had they been in service in 2003 and found place in the panel of AOM in the first attempt, but as they were not in service, hence they were not entitled. The O.A. lacks merit and is liable to be dismissed.

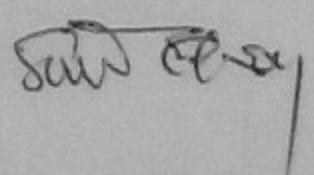
sunil ch



4. In response to the Counter reply of the respondents, the applicant filed R.A. and reiterated the facts which have been alleged in the O.A.

5. We have heard Shri Ashish Srivastava Advocate for the applicant and Shri Anil Kumar, advocate for the respondents and perused the entire facts of the case.

6. From the perusal of the relief clause it is evident that parity has been claimed by the applicants in terms of the judgment in O.A. 450/90 w.e.f. 1995 and their names may be interpolated in the seniority list of Group B officers. It is undisputed fact that both the applicants had retired on 31st August, 2001 and 29th February, 1996 respectively. Annexure -1 is the copy of order passed by this Tribunal in O.A. 450/90 dated 16th January, 1997. The O.A. was decided on 26th August 1991, but it was challenged before the hon. Apex court in Civil appeal No. 2382/1993 and the Civil Appeal was decided on 23.4.93 with the direction to the Tribunal to consider whether there was discrimination in the dates assigned to the two streams and then to consider whether the promotion was given in accordance with the rules. In pursuance of the direction of the Hon. Apex court, the O.A. was decided afresh on 16.1.1997 and certain directions were given. It was also decided that the employees who belong~~to~~^{to} control stream have been discriminated against the employees of Traffic stream. No doubt, it has been pointed out on behalf of the respondents that because a large number of employees were involved in different categories and negotiations went on to



formulate the scheme, but this argument is fallacious. The conclusions of all those negotiations were that the re-structuring of cadre of railway employees was to be done. It is, therefore, unreasonable to fix different dates of these employees who are to be brought at the same stage in one integrated seniority. The dispute in that O.A. was regarding promotion in Group B consequent to restructuring the candidates from two different streams who were eligible to participate in the selection, the applicant belong to control stream and other employees belong to Traffic stream and it was held by the Tribunal that there was discrimination in between two streams i.e. of Traffic as well as control streams and accordingly, the order was passed to give benefit of restructuring from due date. It was also provided that there are numerous persons who are to be benefited.

7. After the judgment of O.A. 450/90 dated 16th January, 1997, as many as 12 applicants filed O.A 583/97 and it was decided on 17th November, 2004. This O.A. was instituted for giving direction to the respondents to provide the benefit of restructuring to cadres under circulars dated 29.7.1983 and 20.12.1983 from one common date for both the streams for the purposes of promotional benefits including monetary and seniority and to revise the inter-se list on the basis of a common date of promotion under restructuring benefits and hold the selection for Group B on Northern Railway after revising the impugned seniority list considering the applicants' claim for promotion to Group B. The O.A. was decided by giving direction to the respondents that in case the applicants No. 1 and 2 preferred a

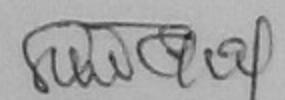
sunjay

representation for redressal of such grievances of theirs as has not been redressed, the competent authority shall look into the matter and extend all consequential benefits flowing from the judgment of the Tribunal in the case aforesaid and re-determine their seniority in Group B case vis-à-vis their juniors and consider them for promotion to higher grade. The O.A. was allowed only in respect of applicant No.1 and 2 R.S. Pandey and Mansoor Ahmad, but for the rest of the respondents no order was passed by the Tribunal, and moreover, these applicants were the applicants in that O.A. as applicants No. 10 and 9 respectively. It was provided that identical benefits may be provided to these employees vis-à-vis their juniors. Later on some of the applicants moved Misc. Application No. 471/05 in O.A. 583/97 to grant identical benefits to them also and it was decided on 2nd September, 2005 and the Tribunal passed the order that "M.A. No. 471/05 is allowed. The applicant may make a suitable representation to the respondents and on so making, the benefits as made available to applicants No. 1 and 2 in the O.A. would also be extended to the applicants in this Misc. Petition." Reliance was placed by the Tribunal on the judgment of the Hon. Apex court in 1991 Supp. (2) SCC 497. It has been held by the Hon. Apex court: "In the light of the command of Articles 14 and 16 of the Constitution of India the same treatment is required to be accorded to the petitioners regardless of the fact that they are serving in Eastern Railway unless it is shown that there is some

Sunday

distinguishing feature, for according a different treatment." Hence, identical benefits were granted to other applicants.

8. The learned counsel for the applicants argued that these applicants are also entitled to identical benefits like the applicants of M.A No. 471/2005 and that the applicants are also entitled to identical benefits as provided to the applicants of O.A. 450/90. On behalf of the respondents, there is no denial of this fact that the applicants are not similarly situated persons. Applicants belong to the Control stream of Group C and promotion has been claimed in Group B. Hence it is not required to be decided whether the applicants are similarly situated persons or not. Respondents further allege that the applicants had claimed for promotion in Group B cadre in terms of the judgment in O.A. 450/90 decided on 16th January, 1997 w.e.f. 1995. That the present O.A. was filed after great delay in the year 2006 and the applicants had already retired on 31.8.2001 and 29.2.96 respectively and the O.A. is barred by limitation and is liable to be dismissed. It is also an admitted fact that in terms of the Railway Board letter dated 13th May, 1999 the respondents had decided to allow the benefit of promotion to the Controllers w.e.f. 1.8.82 on pro-forma basis and w.e.f. 1.8.83 on actual basis instead of 1.1.84 under cadre restructuring. Controllers who were promoted w.e.f. 1.1.84 under cadre restructuring, were allowed promotion w.e.f. 1.8.82/1.8.83 and in the year 1999 the first combined seniority list of Group C Traffic staff for selection to Group B post was issued in 2003. But the applicants had already



retired from railway service, hence their names were not included in the provisional seniority list indicating the names of eligible candidates for selection from Group C to Group B in the year 2003 whereas the benefit of restructuring was provided w.e.f. 1.8.82 on proforma basis and on actual basis w.e.f. 1.8.83. As the applicants were no more in the service, hence they could have not appeared in the written examination for selection from Group C to Group B which was a must and that is why their names were not included in the eligible candidates. In accordance with the Railway Board's letter dated 13.5.99 benefits of seniority were given from 1.8.83.

9. It has also been argued by the learned counsel for the respondents that the applicants of the present O.A. were the applicants in O.A. 450/90 and moreover, they were the staff of the Central Railwy, but the main contention of the respondents is that the applicants are not entitled for the identical benefits of promotion in Group B as they were not in service in the year 2003 when the written examination was conducted for promotion to Group B. That the selection in the year 2003 was held on the basis of revised seniority and the applicants who had retired earlier to 2003 were not included in the seniority list issued in the year 2003. It is a fact that Shri R.P. Srivastava and others moved Misc. Application in O.A. 583/97. Shri R.P. Srivastava had passed selection in the year 2003 against 70% quota and R.K.S. Rathore in the year 1994 against 30% quota in which no weight-age is given to the seniority. If the applicants remained in service in 2003, then they would have found

Sunday

place in the panel of AMO in the first attempt and at that time they had claimed for interpolation in the earlier panel as per their revised seniority. The post of A.O.M. is a selection post and filled up by positive act of selection. Without qualifying the selection, no one can be promoted as AOM against 70% and 30% quota and due to this reason the applicants are not entitled. Nothing has been argued on behalf of these applicants that irrespective of the fact that they were not in service in the year 2003, were also entitled for identical benefits of promotion in Group B. Noting has also been argued by the learned counsel for the applicant that the post of Group B is not a selection post. Because the post of Group B was selection post, hence the eligible candidates were required to appear in the selection and in the year 2003 a selection was conducted as per direction of the Tribunal and the seniority was given w.e.f. 1.8.82/1.8.83.

10. It has also been argued by the learned counsel for the respondents that in view of Rule 228 of IREM, Volume, 1989 Edition, if there was delay in promotion due to administrative error, then the person is entitled for the same identical benefit from the date when he became eligible for the post. But in the present case, there was no administrative error, rather the judgment of the Tribunal as well as of the Hon. Apex court, came later on. It has been provided in rule 228 that where a person has not been promoted at all because of administrative error, but where a person has been promoted but not on the date from which he would have been promoted but for administrative error. And in that case the employee is entitled for

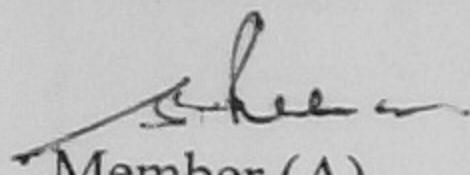
SWQ9

enhanced pay on pro-forma basis and actual from the date of actual promotion. But in the present case, the applicant is not entitled to the monetary benefits as he did not shoulder the duties and responsibilities of the higher post. Moreover, they had also not appeared in the selection of Group B because they had already retired from service earlier to 2003. Due to this reason, the applicants are not entitled to identical benefits. If a post is selection post, written examination is required and if on the specific date a person is not in service, then it will not be possible for him to appear in the selection and he will not be given promotion. But in the present case, there is no administrative error, but it was on the basis of the judgment of the Tribunal in O.A. 450/90 dated 16.1.97 and O.A. 583/97 dated 17.11.2004 and M.A. 471/05 decided on 2nd September, 2005. We agree with the arguments of the learned counsel for the applicants that the applicants are similarly situated persons and they are also entitled for promotion and promotional benefits w.e.f. the date when their juniors were granted the same benefits but as the selection was conducted for these posts and the applicants were not in the service, hence they are not entitled. Their names cannot be interpolated.

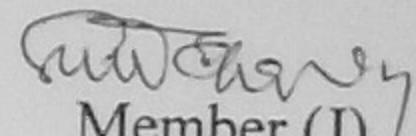
11. For the reasons mentioned above, we are of the opinion that the applicants were not in service in the year 2003 when the selection for the post of Group B was conducted, they were not in service because they had already retired. Hence promotional benefits cannot be granted to the applicants w.e.f. 1995 and their names also cannot

Atulya

be interpolated in the seniority list of Group B officers because for the Group B officers selection is a must and written examination is also to be conducted and the applicants did not appear in the written examination as they were not in service on that date whereas the other applicants to whom identical benefits were granted, were in service. In our opinion the O.A. lacks merit and is liable to be dismissed. The O.A. is dismissed. No order as to costs.


Member (A)

s.a


Member (J)