

(OPEN COURT)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH  
ALLAHABAD

Original Application Number. 766 OF 2006.

ALLAHABAD this the 09<sup>th</sup> day of *January, 2012*.

HON'BLE MR. JUSTICE SHIV CHARAN SHARMA, MEMBER (J).  
HON'BLE MR. SHASHI PRAKASH, MEMBER (A)

S.P. Saxena, aged about 60 years, son of Sri Munshi Lal Saxena, resident of 67/3, Prem Nagar, Police Station Road, Jhansi.

.....Applicant.

VERSUS

1. Union of India through the General Manager, North Central Railway, Allahabad.
2. Chief Material Manager, North Central Railway, Allahabad.
3. Dy. Chief Material Manager, North Central Railway, Jhansi.

.....Respondents

Advocate for the applicant: Sri R.K. Nigam

Advocate for the Respondents: Sri A. Tripathi

ORDER

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

Instant original application has been instituted for the following main relief/s: -

- i. to issue a writ, order or direction in the nature of mandamus thereby commanding the respondents to release the benefit of promotion as Office Superintendent Grade II (Rs. 5500-9000) with effect from 22.1.1994 and as Office Superintendent Grade I (Rs. 6500-10500) from 1.11.2003 from which dates the junior counterparts were so promoted and given arrears, with all consequential benefits for which a time bound order is fervently prayed;
- ii. to issue any other suitable order in favour of the humble petitioner as deemed fit by this Tribunal in the facts and circumstances of the case".

*S.C.Sharma*

2. It has been alleged by the applicant that by virtue of seniority and merit he was promoted as Senior Clerk w.e.f 01.01.1979 and finally as Head Clerk w.e.f. 01.01.1984. Thereafter the applicant became entitled for promotion as Office Superintendent Gr. II in pay scale of Rs. 1600-2660/5500-9000 under the Cadre Restructuring Scheme introduced by the Railway Board on 27.01.1993. In the process of restructuring of the cadre juniors were considered and promoted as Office Superintendent Gr. II but the applicant was not considered and accordingly he preferred a representation dated 27.01.1994. Since the respondents did not reply to the representation the applicant filed O.A No. 1258/1995, which was decided vide order dated 17.01.2001 and the respondents were directed to promote the applicant as Office Superintendent Gr. II from 01.03.1993 giving him consequential benefits equal to his juniors. Review application was also moved by the respondents but the same was dismissed on 03.06.2002. An order dated 02.01.2000 of this Tribunal in O.A No. 1260/1995 – Damodar Das Vs. U.O.I, which was identical to the case of the applicant, was placed by the applicant in O.A No. 1258/1995 and he was held entitled for the identical benefits but the benefits have not been given to the applicant w.e.f. 01.03.1993.

3. Respondents have contested the case of the applicant and filed Counter Reply and have denied the allegations made in the O.A. It has further been alleged that in O.A No. 1258/95 decided on 17.01.2001 respondents were directed to promoted the applicant from the date when juniors were promoted under Cadre Restructuring Scheme. The order was challenged before Hon'ble High Court in Writ Petition and stay was granted. The Writ Petition was dismissed in default on 11.05.2004. The restoration application was also moved before the Hon'ble Court in February 2007. Vide Railway Boards Letter dated

*awtay*

27.01.1993 the existing selection process stands modified in such cases to the extent that the selection will be based only on scrutiny of service records and confidential reports without holding any written and vive-voce test. The selection committee vide its recommendation dated 13.01.1994 after considering all aspect of the case recommended the employees for promotion according to their performance. The D.P.C categorized the certain persons 'not found fit' or 'not yet fit' for promotion on the basis of service record and confidential report etc. The applicant was appointed as Junior Clerk through Railway Service Commission on 13.06.1996 and joined in the Store Department. Thereafter he was transferred on request from Manmad to B.S.L Unit Jhansi and hence his seniority in the present unit is w.e.f. 15.03.1971. Since the applicant failed in the written examination and had cleared his efficiency bar on 16.10.1974 therefore, he was promoted as Senior Clerk w.e.f. 01.01.1979. The applicant has challenged the selection process and claimed his promotion. It is further alleged that all the matters, as has been raised in the present, have already been decided hence the instant O.A is barred by principle of resjudicata and deserves to be dismissed. The O.A also deserves to be dismissed being devoid of merits.

4. R.A has been filed by the applicant in response to the Counter Reply filed by the respondents and in the RA the applicant has reiterated the facts which have been alleged in the O.A.

5. We have heard Sri S.K. Pandey, holding brief of Sri R.K. Nigam, Advocate for the applicant and Sri A. Tripathi, Advocate for the respondents and perused the entire facts of the case.

*R.W.D.S*

6. The order dated 17.01.2001 in O.A No. 1258/95 is on record and from perusal of the contents of the order of previous O.A, it is evident that the earlier O.A filed by the applicant for the identical relief and the O.A was decided to the following extent: -

"The Respondents are directed to promote the applicant with effect from the date his juniors have been promoted under Restructuring Scheme within the period of 2(two) months from the date of receipt of copy of this order. The applicant may be allowed benefits on notional basis because he was not in the post."

7. Hence the relief was granted to the applicant in the previous O.A and the respondents were directed to promote the applicant with effect from the date when the juniors were promoted under the Cadre Restructuring Scheme within two months. It has also been provided that the applicant shall be allowed the benefit on notional basis because he was not in the post. The matter was finally adjudicated in the earlier O.A. In the present case also identical relief has been claimed with difference that in the present O.A, the relief has been claimed to the effect that to give direction to the respondents to release the benefit of promotion as Office Superintendent Grade II (Rs. 5500-9000) with effect from 22.1.1994 and as Office Superintendent Grade I (Rs. 6500-10500) from 1.11.2003 from which dates the junior counterparts were so promoted. The matter stands finalized so far as regards promotion as Office Superintendent Gr. II and Office Superintendent Gr. I. Now this matter is re-agitated even on behalf of applicant as well as on behalf of respondents. It is also a fact that the order passed by the Tribunal on 17.01.2001 was challenged before Hon'ble High Court in Writ Petition No. 19516/2001. Annexure A-V is the copy of order passed by the Hon'ble High Court in writ petition and from perusal of the order it is evident that

*Am Jeyan*

the writ petition was dismissed on 11.05.2004. Although the argument has been advanced on behalf of respondents that an application for restoration has been moved and same is still pending but no document has been filed on behalf of respondents that the Restoration Application is still pending. Under these circumstances we will have to presume that writ petition filed on behalf of respondents had already been dismissed in default on 11.05.2004 and the matter stands finalized. It is also a fact that the matter has finally been decided by the judicial forum and cannot be reopened <sup>again</sup> ~~upon~~ and subsequent proceeding is barred by principle of resjudicata. Whatever has been decided in the earlier round of litigation cannot be re-opened.

8. Much has been argued by the learned counsel for the applicant regarding admissibility of actual payment w.e.f. 22.01.1994 as Office Superintendent Gr. II and thereafter w.e.f. 01.11.2003 as Office Superintendent Gr. I and the basis of arguments is mainly the order in the case of one Sri Damodar Das (Supra). Learned counsel for the applicant argued that Sri Damodar Das was similarly situated person to the applicant. He was also promoted as Office Superintendent Gr. II as a consequence of Cadre Restructuring Scheme and actual benefits have been given to Sri Damodar Das hence a fresh cause of action accrued in favour of the applicant. The copy of order dated 02.11.2004 passed in O.A No. 1260/95 –Damodar Das Vs. U.O.I & Ors is on record as Annexure A-IV. We have perused the order delivered in the case of Damodar Das and from perusal of the contents of the said order we are of the opinion that Damodar Das was similarly situated person. It is also the fact that the order passed in favour of the applicant to the effect that “.....contents of letter dated 09.11.95 as impugned in the O.A, is quashed. The respondents are directed to promote the applicant from the date when his juniors were promoted in the scale of Rs. 1600-2600/- with benefits of

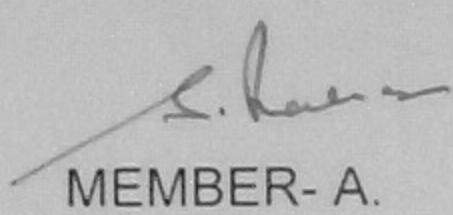
Q.Way

pay and allowances and seniority as admissible as per rules of retrospective promotion.". The order passed in the case of Damodar Das was for payment as per rules. The Tribunal passed the order for payment of benefits to Sri Damodar Das specifically. But we are concerned whether the identical order can be passed in favour of the applicant considering the case of Sri Damodar Das as he is similarly situated person but if a plea has been raised and the comments has been made in that connection in the O.A then it cannot be reagitated before the same forum. We have perused the operative portion of order passed in O.A No. 1258/95 filed by Sri S.P. Saxena/ the applicant. In this order specific direction was given by the Tribunal in the operative portion to the effect "... the applicant may be allowed the benefit on notional basis because he was not in the post...". From perusal of this part of the order it is evident that only notional benefit was granted to the applicant and actual payment was not granted as he was not in the post. If notional benefits have not been given to the applicant or promotion as per direction of the Tribunal then other options were available to the applicant as he had liberty to move application under contempt of Court's Act for non-compliance of the order of the Tribunal. Since the matter has already been finalized in the earlier O.A and cannot be reconsidered again because specific order was passed in that case hence on the basis of order in the case of Damodar Das, the benefit cannot be granted to the applicant. Moreover the case of Damodar Das was decided on 02.11.2000 whereas, the case of the applicant was decided on 17.01.2001 thus his case was decided subsequent to the case of Damodar Das and the judgment of Damodar Das was very well in the knowledge of the applicant.

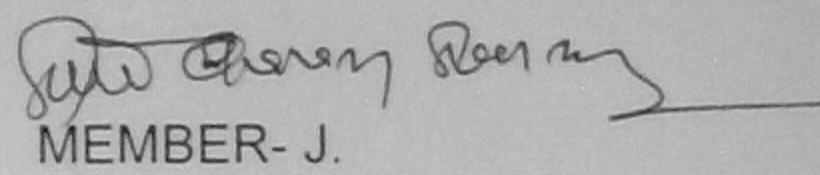
9. In the facts and circumstances the O.A is misconceived and is liable to be dismissed. The O.A is accordingly dismissed. At this stage, learned counsel for

*Swamy*

the applicant argued that principle of res-judicata shall not be applicable as the applicant had retired on 28.02.2006 and he was paid less than his entitlement and the pension has not been fixed. Although we have not specifically mentioned these points but these points are not necessary to be mentioned in the above part of the order. Moreover after dictating the order in open court it is unjustified to make subsequent submissions and the principle of res-judicata is applicable.



MEMBER- A.



Justice Chandra Shekhar

MEMBER- J.

/Anand/