

(Reserved on 10.09.2012)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

ALLAHABAD this the 26th day of Sept , 2012

Present:

**HON'BLE MR. SANJEEV KAUSHIK, MEMBER- J
HON'BLE MS. JAYATI CHANDRA, MEMBER-A**

ORIGINAL APPLICATION NO. 49 of 2006

1. S.K. Moitra, aged about 37 years, S/o Shri V.N. Moitra, R/o Railway Station, Ghazipur City.
2. K.N. Tewari, aged about 39 years, S/o Baldeo Nath, R/o Gopalpur (E), presently at Mau Junction, N.R. Railway.
3. A.K. Srivastava, aged about 40 years, S/o Shri K. Lal, C/o Dr. Alok Kumar, N 9/90-1, Bari Patia (Lalji Katra Janjki Nagar), Bazardiha, Varanasi.

.....Applicants.

V E R S U S

1. Union of India through General Manager, N.E. Railway, Gorakhpur, U.P.
2. Divisional Railway Manager, N.E. Railway, Varanasi.

..... Respondents

Present for the Applicants: Shri S.K. Om
Shri Upendra Nath

Present for the Respondents: Shri Anil Kumar

O R D E R

By Hon'ble Mr. Sanjeev Kaushik, JM

By means of the instant original application filed under section 19 of Administrative Tribunals Act 1985, the applicants seek for a direction to the respondents to promote the applicants in the grade of Rs. 6500-10500/- as per Railway

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Board's Circular dated 06.01.2004 without holding regular process of selection w.e.f. 01.11.2003. Further prayer has also been made for a direction to the respondents to decide the pending representation of the applicants dated 14.11.2004 and 09.01.2006 by a reasoned and speaking order.

2. At this stage the second prayer of the applicants to direct the respondents to decide their representation does not sound good because the case is pending since 2006, therefore, we proceed to decide the matter on merits.

3. The facts are not disputed. The only controversy involved in the instant original application are that the applicant are those persons, who are immediately next below to the person to whom the pay scale of Rs. 6500-10500 was given on restructuring of cadre and those were on deputation when their cases were considered for grant of the said pay scale. It is the case of the applicants that all those five persons to whom the pay scale of Rs. 6500-10500 was given pursuant to Railway Board's Circular dated 09.10.2003 (Annexure S.A-3) were on deputation at that time and they did not even return to join their respective place despite the letter written by the respondents to either join the post otherwise the persons next below to them will be considered.

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1. The respondents, who contested the case of the applicants, submitted that after restructuring of cadre the persons, who were eligible in terms of the Railway Board's Circular, were considered and given the pay scale of Rs. 6500-10500. Therefore, the claim of the applicants cannot be accepted in terms of Railway Board's Circular dated 06.01.2004. Averments to this effect have been made in para 8, 11, 12 and 13 of the Counter Reply, which reads as under:-

“8.as per Rly. Board circular dated 6.1.2004 (Annexure A-2 of the O.A), the post were restructured on the basis of percentage of different post of group 'C' and group 'D' on 1.11.2003. Post were restructured on the basis of substantive post available on 1.11.2003.

11.as per Rly. Board letter dated 6.1.2004, the post available in the engineering department on 1.11.2003 has been restructured by notification No. Ks/59/5/restructuring/office/P/IX dated 23/28.04.2004 of G.M(P), Gorakhpur.

12.as per restructuring record on 1.11.2003 there was eight post available on the post of sectional engineer/works in the pay scale of 6500-10500, two post was available with immediate effect, total 10 posts were available for promotion due to restructuring.



13.as per restructuring ten post of section engineer / works (6500-10500) was to be filled by promotion among the J.E (I) (5500-9000), the said promotion was to be granted to eight employees with effect from 1.11.2003 and two employees from immediate effect from 1.11.2003 and two employees from immediate effect. Among these ten posts, seven posts were of general category, two post were of schedule cast and one post was reserved for schedule tribe. Modified selection has taken place on 27.4.2004 in which panel of nine candidates was declared for promotion as sectional engineer/works (6500-10500). Due to non-availability of schedule tribes one post was remain vacant. The said panel notification No. Ka/W/283/Ka ni/89 dated 4.10.2004 was issued.

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5. It is not disputed by the respondents that the persons to whom the benefit has been given did not join their parent cadre and they remain on deputation.

6. We have considered the rival submissions and have gone through the record with the able assistance of respective parties.

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7. The sole question which is to be decided in the instant original application is that whether the persons, who were on deputation did not join the parent department for a particular relief, can a person next below to him be given the said benefit till the person on deputation joins the parent department i.e. 'principle of next below rule'. In the instant case, the letter has been written on 12.01.2005 by the respondents to the persons senior to the applicants and to whom the benefit of pay scale of Rs. 6500-10500 was given on restructuring of cadre, to join the parent cadre. The relevant extract of the letter dated 12.01.2005 reads as under :-

"अतः इस संदर्भ मे पुनः अनुरोध है कि उक्त कर्मचारियों को इस मंडल मे दिनांक 02.02.2005 तक अवश्य ही इस कार्यालय मे उपस्थित होने के लिए विरामेत करने की व्यवस्था करे अन्यथा यह मान लिया जायेगा कि ये इस मंडल मे जाने के इच्छुक नहीं हैं एवं तत्पश्चात उपलब्ध रिक्तियों को पुनर्गठन के तहत पदोन्नति सम्बन्धी आगे की कार्यवाही प्रारम्भ कर दी जायेगी।"

8. It is not informed by the respondents whether they have joined the department or not. Rather attention has also been drawn to Railways Board's Circular dated 09.10.2003 regarding restructuring of certain Group 'C' and 'D' cadre. Clause 1 of this circular deals with the date of effect. Relevant extract of Clause 1 reads as under :-

".....The benefit of restructuring will be restricted to the persons who are working in a particular cadre on the cut off date."

On the basis of this counsel for the applicants submitted that since the persons to whom the benefit was given, were not in

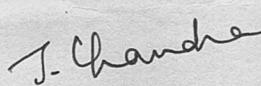
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the parent department on that date, therefore, benefit cannot be extended to them.

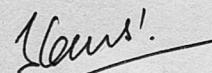
9. Without considering the above arguments and following the principle of 'Next Below Rule' we are of the considered view that if a person , who was on deputation, cannot join the parent cadre to get the benefit then the other persons , who are next below, be given the benefit and the person, who are on deputation, will get actual benefit when he joins the parent cadre. Our view finds support by the judgment of Hon'ble Apex Court in the case of **P.S. Mahal and Ors Vs. Union of India & Ors – 1984 (4) SCC 545.**

10. In view of the above we direct the respondents to look into the matter afresh in terms of what has been stated above and pass orders within a period of two months from the date of receipt of certified copy of the order.

11. In view of the observations made above, the O.A is disposed off. No costs.



(Ms. Jayati Chandra)
Member-A



(Sanjeev Kaushik)
Member-J

/Anand/