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**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

O.A No. 22/2007

, this the 30th day of November, 2012.

CORAM

HON'BLE Dr K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE MR SHASHI PRAKASH, ADMINISTRATIVE MEMBER

Akbar Ali, S/o late Shri S. Ali, R/o 91, Nainagarh, Sipri Bazar, Jhansi -
Retired Junior Draftsman, Signal & Telecommunication, North Central
Railway, Jhansi Division, Jhansi.

... Applicant

By Advocate : Shri R. Verma

V E R S U S

1. Union of India through General Manager (P), North Central Railway, Nawab Yusuf Road, Allahabad.
2. The Divisional Railway Manager, North Central Railway, Jhansi Division Jhansi.
3. The Senior Divisional Signal & Telecommunication Engineer (Const.) North Central Railway, Jhansi Division, Jhansi.
4. Shri S.K. Soni, S/o Pyare Lal, working as Junior Engineer - I O/o the Senior Divisional Signal & Telecommunication Engineer (Const.) North Central Railway, Jhansi Division, Jhansi, R/o H. No. 372 - Masihaganj P.S. Sipri Bazar, District Jhansi - 284003.

... Respondents

By Advocate : Shri S.K. Anwar

ORDER

HONBLE Dr K.B.S. RAJAN, JUDICIAL MEMBER

The career graph of the applicant is that he entered the service of
the respondents as a Tracer in the pay scale of Rs 975 - 1540 and is

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promoted as Junior Draughtsman in the pay scale of Rs 1200 - 2040. His attempt to qualify in the departmental examination for higher promotion to the post of Senior Draughtsman on three occasions could not be successful and when he was given one more chance, he did not ^{avail} ~~aware~~ of that opportunity. In view of his not qualifying in the promotional tests, he made himself disentitled to either promotion or financial upgradation in lieu thereof under the Assured Career Progression Scheme. The claim of the applicant [✓] now is that he should've been afforded the post of Senior Draughtsman under the provisions of the restructuring scheme effective from 01-11-2003. The contention of the respondents is that as on that date no vacant post of Senior Draughtsman was lying and therefore the applicant could not be promoted. In turn the contention of the applicant is that the respondents are wrong in saying so, as one of the applicant's juniors stood promoted to the said scale as on 01-11-2003 and in fact he was further promoted later on to the next higher post also. The applicant superannuated on 31st of May 2006. The following is the claim of the applicant vide para 8 of the OA.

- (i) To issue a writ, order or direction in the nature of mandamus directing the respondents herein to allow second financial upgradation under the Assured Career Progression (ACP) Scheme (Annexure A-VI to Compilation No.II of this petition) by placing him in the pay scale of Rs.5000-150-8000 or in any some other lesser pay scale as may be deemed fit by this Hon'ble Tribunal with arrears thereof with a further direction tot he respondents to make refixation of pay of the petitioner accordingly and to revise the pension and other pensionary benefits/settlement dues of the petitioner on the basis of the last pay drawn so arrived and to pay the arrears thereof, within a

period as may be fixed by this Hon'ble Tribunal. OR

(ii) Alternatively to issue a writ, order or direction in the nature of mandamus directing the respondents herein to allow promotion under the restructuring scheme as formulated vide Railway Board's circular dated 9.10.2003, as partially modified vide another Railway Board's circular dated 6.1.2004 (Annexure A-VII & A-VIII respectively to the Compilation No. II of the petition) in the pay scale of Rs.5000-150-8000 with effect from 1.11.2003 with arrears thereof and further to make refixation of pay accordingly in the above pay scale and to pay/revise the pension and other pensionary benefits/settlement dues on the basis of the last pay drawn so arrived and to pay the arrears thereof, within a period as may be fixed by this Hon'ble Tribunal.

(ii)(a) To issue a writ, order or direction in the nature of certiorari quashing the impugned promotion orders 19.12.2006 and 2.2.2007 by which the official respondents have promoted newly impleaded Co-respondent No.4 Shri S.K.Soni to the post of Junior Engineer Grade-II (Senior Draftsman) in the pay scale of Rs.5000-8000 under the restructuring scheme with effect from 1.11.2003 and to the post of Junior Engineer Grade-I in the pay scale of Rs.5500-9000 with effect from 2.2.2007 (Annexure A-XII & A-XIII respectively to the petition).

2. Counsel for the applicant submitted that the applicant's claim is only for his accommodation as Sr. Draughtsman on the basis of restructuring scheme, where the selection is one of modified selection procedure, i.e. on the basis of the service records. And, there did remain vacancies to accommodate applicants as Senior Draughtsman. He has

further submitted that since his junior got promoted, he had also

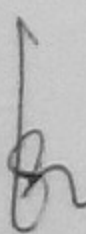
~~impleaded~~ ^{impleaded} the said junior by amending the application. The counsel

invited the attention of the Tribunal to Annexure RA I whereby the said

junior Shri Soni was promoted to the post of Sr. Draughtsman in the pay scale of Rs 5000 - 8000 under the Restructuring Scheme effective from 01-11-2003. To substantiate that the said Soni is junior the counsel referred to the seniority list at Annexure RA-III.

3. Counsel for the respondent submitted that there was no vacant post of Senior Draughtsmen to accommodate the applicant. He had also touched the legal aspect of limitation.

4. Arguments were heard and documents perused. First, as to the limitation. In Para 3, the applicant had stated that the application has been filed within the limitation period as contained in Sec. 21 of the A.T. Act. In their counter, the respondents have stated that the contents of para 1 to 3 need no comments being matter of records. However, a latitude has been retained by them when they have further stated that they have reserved their right to raise the legal arguments against the averments in the said paragraphs at the time of arguments and accordingly, at the time of hearing, the question of limitation has been raised. The applicant has indicated in para 6 of the OA that he had filed representations in 2004 and then 2006 and the later representation had been duly forwarded by by respondent No. 2 to Respondent No. 3 vide Annexure A-11. There has been no rebuttal in this regard. The forwarding letter of Respondent No. 3 is dated 19-04-2006 and the OA has been filed on 04-01-2007. Thus, the OA is within time.



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5. Now on merits. An attempt has been made relating to the consideration of the applicant under the Restructuring scheme. Vide para 6 the applicant had stated that he was granted/placed in the scale of Rs 330 - 560, effective from 01-01-1984 vide Annexure A-IV. The respondents have in reply thereof has stated that the promotion granted to the applicant is under the restructuring scheme, vide para 6 of the reply. The upgradation in 1984 cannot be linked with the upgradation of 2003.

6. The applicant, as contended by the respondents did not qualify himself for promotion under the normal course to the post of Sr. Draughtsman in view of his not qualifying in the departmental examination. However, under the restructuring scheme, the rigour of qualifying in the promotional examination does not exist and ^{by} the modified selection procedure of verification of service records, one could be considered for promotion and the same should be on the basis of seniority. This is the stipulated rule. When the applicant claimed promotion under the restructuring scheme, the respondents resisted the same on the ground of non availability of vacancies, whereas, by documentary evidence the applicant could establish that there did remain a vacancy against which the junior Soni stood promoted. There has been no additional counter rebutting the contention of the applicant in his rejoinder nor denying the existence of Annexure RA I and RA III. Nor could the respondents establish against the contention of the applicant at the time of hearing. Thus, we have no reasons to disbelieve the existence

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of Annexure RA I and RA III. This means, that the applicant had been superseded and his junior stood promoted. The applicant does not seem to have been considered for promotion to the post of Sr. Draughtsman at the time of restructuring. This is against the law laid down by the Apex Court in the case of **Bal Kishan v. Delhi Admn., 1989 Supp (2) SCC 351** wherein the Apex Court has held as under:-

"9. In service, there could be only one norm for confirmation or promotion of persons belonging to the same cadre. No junior shall be confirmed or promoted without considering the case of his senior. Any deviation from this principle will have demoralising effect in service apart from being contrary to Article 16(1) of the Constitution."

7. To right the wrong, the respondents shall have to hold a review of the promotions made under the 2003 restructuring scheme and see whether the applicant fulfilled the conditions for promotion under the Restructuring Scheme and if so, he should be afforded the same. However, as to the question of consequential relief, it is to be seen whether the applicant is entitled to grant of arrears right from 01-11-2003 (in the event of his having found fit for promotion under the modified selection procedure) or the promotion should be notional for the period prior to three years of filing the application and actual only thereafter, in view of the law laid down by the Apex Court in the case of **Jai Dev Gupta vs Jai Dev Gupta v. State of H.P., (1997) 11 SCC 13** wherein the Apex Court has held as under:-

"Learned counsel appearing for the appellant submitted that before approaching the Tribunal the appellant was

making a number of representations to the appropriate authorities claiming the relief and that was the reason for not approaching the Tribunal earlier than May 1989. We do not think that such an excuse can be advanced to claim the difference in back wages from the year 1971. In *Administrator of Union Territory of Daman and Diu v. R.D. Valand* this Court while setting aside an order of the Central Administrative Tribunal has observed that the Tribunal was not justified in putting the clock back by more than 15 years and the Tribunal fell into patent error in brushing aside the question of limitation by observing that the respondent has been making representations from time to time and as such the limitation would not come in his way. In the light of the above decision, we cannot entertain the arguments of the learned counsel for the appellant that the difference in back wages should be paid right from the year 1971. At the same time we do not think that the Tribunal was right in invoking Section 21 of the Administrative Tribunals Act for restricting the difference in back wages by one year.

3. In the facts and circumstances of the case, we hold that the appellant is entitled to get the difference in back wages from May 1986. The appeal is disposed of accordingly with no order as to costs."

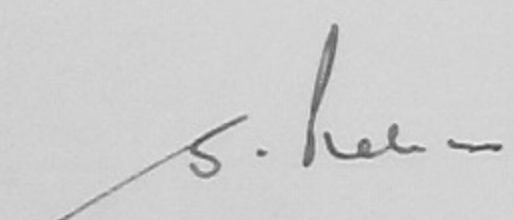
8. In the instant case, the arrears of pay and allowance could well be granted from January, 2004, as the application stood filed on 04-01-2007.

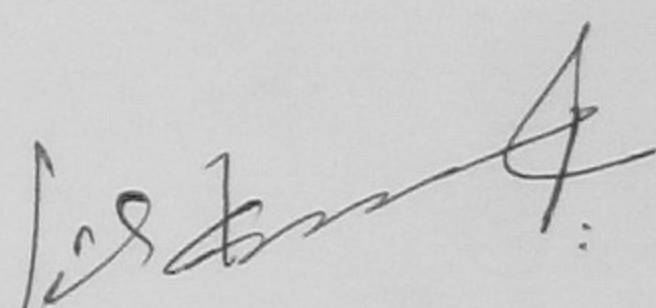
9. Thus, **OA succeeds**. It is declared that the applicant is entitled to be considered for promotion under the Restructuring Scheme for the post of Sr. Draughtsman in the scale of Rs 5000 - 8000 under the Modified Selection Procedure and if found fit, he shall be afforded notional promotion from 01-11-2003 to 03-01-2004 and actual from 04-01-2004²⁰⁰⁴ onwards. His pension shall also be revised on the basis of the last pay drawn in the higher post of Sr. Draughtsman and terminal benefits also

shall be recalculated and the amount due in this regard be paid to the applicant. Though the private respondent has been impleaded and notice issued, there was no representation. Yet, since the said respondent had been promoted further to the post carrying the higher pay scale of Rs 5500 - 9000, it may not be appropriate to revert him. The best course is that the respondents may regularize the promotion of the said private respondent by creating supernumerary post for a limited period.

10. This order shall be complied with, within a period of five months from the date of communication of the order.

11. No costs.


SHASHI PRAKASH
ADMINISTRATIVE MEMBER


Dr K.B.S. RAJAN
JUDICIAL MEMBER

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