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RESERVED ON 5.12.2012

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

(ALLAHABAD THIS THE /3rd DAY OF DECEMBER, 2012)

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

Original Application No.535 OF 2006
(U/S 19, Administrative Tribunal Act, 1985)

1. Sudhir Kumar Srivastava aged about 54 years, Son of Late J.S. Lal Srivastava, Presently Posted as Assistant Operating Manager, Jhansi R/o 595 D Navab Yusuf Road, Railway Coloney, Civil Lines, Allahabad.
2. R.M. Gupta aged about 55 years, Son of Vrindaban Gupta, Presently Posted as Assistant Operating Manager, (IRPMU) Tundla, Allahabad, R/o 2/59 Vibhav Nagar, Firozabad.
3. Basant Lal aged about 55 years, Son of Sri Bal Krishna, Presently posted as Assistant Operating Manager, Agra, R/o 66 A.B. 6th Avenue Navab Yusuf Road, Allahabad.

.....Applicants

V E R S U S

1. Union of India through Chairman Railway Board, New Delhi.
2. General Manager, Northern Railway, Baroda House, New Delhi.
3. General Manager, North Central Railway, Allahabad.

..... Respondents

Advocates for the Applicant:- Shri Ashish Srivastava

Advocate for the Respondents:- Shri Anil Kumar

O R D E R

DELIVERED:-

BY HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

By means of the present Original Application filed under section 19 of the Administrative Tribunals Act, 1985 the applicant seeks following reliefs:-

- “(i) This Tribunal may be pleased to direct the respondents to promote the applicants in Group-B cadre w.e.f. 1995 from the date Sri Rakesh Kumar Puri have been promoted and further the seniority of the applicants may be corrected and assigned accordingly with all consequential benefits.
- (ii) This Tribunal may be pleased to consider the applicant for further promotion with all consequential benefits, alternatively quash the panel of selection for the year 1995 and 1998 in terms of the judgment.
- (iii) Any other relief, which this Tribunal may deem fit and proper in the circumstances of the case may be given in favour of the applicants.]
- (iv) Award the costs of the original application in favour of the applicants.”

2. The facts are to be noted first:-

All the applicants were initially appointed as Assistant Station Master in the respondents' organization. On 29.07.1983/20.12.1983 the Railway Board introduced the restructuring scheme for non-gazetted staff of Group-C & D cadre.

In view of the aforesaid letter the applicants were given up-gradation w.e.f. 01.08.1983. Subsequently, by another letter dated 20.12.1983 the Railway Board issued Part-II letter for cadre review and restructuring of non-gazetted staff for upgrading respective categories. Aggrieved against the aforesaid action some of the employees belonging to control cadre filed O.A. No.450/1990 U.S.

Sharma and Ors. Vs. Union of India & Ors. decided on 16.01.1997 declaring the action of the respondents for assignment two different dates discriminatory and without logic. On the basis

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of the above judgment the applicants represented the department for extending the same benefit which was extended to the applicants of above mentioned O.A.. In the case of the applicants the benefit of promotion in Group 'B' post has not been extended and their request were rejected, hence the present Original Application.

3. Pursuant to notice respondents represented through Shri Anil Kumar, Advocate who filed detailed Counter Affidavit contradicting the averments made in the Original Application. He emphasized on paragraph Nos.16 & 18 which reads as under:-

"16. That the averments made in paragraph No.4.13 of the original application is replied in the way that changes in date of promotion by making one similar date of promotion of all staff in same seniority unit does not effect in seniority position in the same seniority group. However, it effect the seniority position when a post is filled by considering staff of different seniority units. For selection of AOM staff of different seniority units are considered as such change in date of promotion can effect the seniority position while preparing the combined seniority of different categories.

After 1999 first seniority list for holding selection to group 'B' Traffic service was issued in the year 2003 in which the seniority of controllers was assigned taking their date of promotion as 1.8.1983 in grade Rs.6500-10500 instead of 1.1.1984.

18. That the averments made in paragraph no.4.15 and 4.16 of the original application are denied in the manner stated. It is hereby submitted that the Central Administrative Tribunal at Allahabad in judgment in OA No.583 of 1997 has directed that in case applicant no.1 and 2 prefer a representation for redressal of such grievances of their as has not been redressed the competent authority shall look into the matter and extend all consequential benefit flowing from the judgment of the Tribunal in the case aforesaid and re-determined their seniority in group "B" case vis-à-vis their junior and consider them for promotion to higher grade.

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The applicant Nos. 1 and 2 of the original application No.583 of 1997 were Sri Mansoor Ahmad and Sri R.S. Pandey. They appeared in the selection of AOM held in the year 2003 alongwith applicants of this Original Application. The applicants of this OA could not qualify the written test, hence could not be promoted. Sri Mansoor Ahmad and Sri R.S. Pandey qualified the selection and promoted as AOM in the first attempt and their names have been interpolated in the panel of 1992 above the names of their juniors. Since the applicant of this O.A. could not qualify the selection of AOM, they have no claim for promotion as AOM."

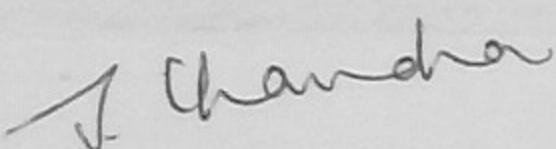
4. Applicant has filed Rejoinder Affidavit.
5. We have heard Shri Ashish Srivastava, learned counsel for applicant and Shri Anil Kumar, learned counsel representing the respondents.
6. We have considered the rival submissions and have gone through the pleadings and the documents on record with their able assistance.
7. It is not disputed by the learned counsel for respective parties that the judgment relied upon by the applicants have already been applied in the case of the applicant to the extent that applicants have been given the benefit of restructuring of cadre w.e.f. 01.08.1983. The subsequent promotion was denied to the applicants for the reasons that the applicants did not clear the examination for Group-'B' post which is a selection post. The applicants failed in the examination which was conducted in the

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year 2003, therefore, they were not promoted. The submission of the learned counsel for applicant that applicants be also given the benefit in terms of O.A. No.583/1997 dehors the service rules, which cannot be accepted, because the post for which the applicants are seeking promotion is a selection post, admittedly, applicants failed in the examination, therefore they cannot be promoted. Accordingly, the claim of the applicants has rightly been rejected. Averments to this effect has been made in paragraph No. 18 of the Counter Affidavit which is reproduced above.

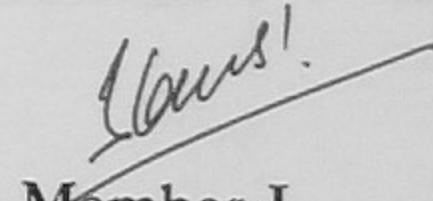
8. Considering the above we find no reason to direct the respondents to give promotion to the applicant dehorsing the service rules. Accordingly, O.A. fails and the same is dismissed.

No costs.



Member-A

LDev/



Member-J