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O.A.No. 523 of 2008

G.Shankar RaoApplicant

Versus

Union of India & Ors.Respondents

Order dated: 14th January, 2009.

Heard Learned Counsel for the Respondents and Mr. S.K.Ojha, Learned Standing Counsel for the Railways; on whom a copy of this OA has been served and perused the materials placed on record.

2. Challenging his non-promotion in the year 2005 due to restructuring of the cadre, Applicant had earlier approached this Tribunal in OA No. 469 of 2007. On 04.01.2008 the said OA was disposed of by this Tribunal by calling upon the Respondents to consider the case of the applicant for promotion to the post of Senior Assistant Loco Pilot in accordance with Railway Board's Establishment Serial No.5/2004 and 165/2004 along with any other such Board's instructions and executive orders within three months from communication of this order. By filing MA No. 218/08, Respondent-Department sought withdrawal of the order dated 04.01.2008 of this Tribunal passed in OA No. 469 of 2007. Alleging non-compliance of the aforesaid order, the Applicant also preferred CP No.74 of 2008 There being no provision under the AT Act, 1985 permitting the Respondents to seek withdrawal of an order finally disposing of the OA, in order dated 2.9.2008, MA No. 218/2008 was dismissed being misconceived. However, while the CP was pending the

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Respondents vide order under Annexure-A/12 dated 07.11.2008 rejected the claim of the Applicant. The relevant portions of the order of rejection are extracted herein below:

“(iii) Keeping in view of the above instructions, the restructuring in the category of Sr.ALPO in scale Rs.4000-6000/-(RSRP Vth CPC) was processed. There were 18 restructured posts in existing category and 16 more chain/resultant vacancies were available as on 01.11.2003. As per the extant rules, modified suitability test was conducted on 04.10.2004 by the competent authority and result published vide this office order No. 196/2004 dated 25.10.2004 wherein your name has been placed at Srl.No.37. In this connection it is further stated that as there were $18 + 16 = 34$ upgraded/restructured posts were available, 34 senior most ALPs in scale Rs.3050-4590/-(RSRP Vth CPC) were given the restructuring benefit w.e.f. 01.11.2003 and remaining suitable candidates have been extended promotional benefit in the category of Sr.ALPO in scale Rs.4000-6000/-(RSRPO Vth CPC) from the date taking independent charges in the higher grade. Since you were not coming within 34 vacancies as per seniority position; your case could not be considered w.e.f. 01.11.2003. However you could have been considered for promotion to the said post against the existing vacancies, which were supposed to be effected from the date of taking independent charges, for which promotion order was issued vide this office order No. 196/2004 dated 25.10.2004. As the promotion order was issued after your medical de-categorization from 23.3.2004, there was no chance of taking over independent charge of the post of Sr.ALPO, for which your name was not inserted in the office order issued on 25.10.2004. Thus, in view of your medical de-categorization you

(Signature)

have lost your eligibility to be considered for such post.

(iv) In addition, as per RBE No. 18/2006, the pro forma fixation of pay from 01.11.2003, with actual payments from the date of actually taking charge of the higher grade post, may be allowed in favour of those promoted against the normal vacancies existing on the above date viz. 01.11.2003 subject to the following stipulations:-

“The benefit would be available only to those who were selected and actually posted against the existing vacancies. This will not be made available to those who had already retired/resigned/volunteer retired/expired/quit service etc. And did not physically take charge of the higher grade post as also to those promoted against anticipated vacancies occurring on or after 02.11.2003.”

Since you have been medically de-categorized w.e.f. 23.3.2004 and your service in the running cadre has ceased and also could not take independent charge in the said post, the benefit of proforma fixation of pay from 01.11.2003 cannot be extended to you as per extant rules.

In view of the facts mentioned above your claim for promotion for the post of Sr. ALP in scale Rs.4000-6000/- (RSRP Vth CPC) deserves no merit and the question of fixation pay in the grade Rs.5000-8000/- as per Estt.Srl.No. 141/2000 does not arise.”

3. The main contention of the applicant is that though he was at Sl.No.37, there were 39 vacancies. The Department promoted only 34

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persons. Hence he ought to have been promoted to the scale of Sr.ALP carrying the scale of pay of Rs.4000-6000/-(RSRP Vth CPC). But the fact of the matter is that he was medically de-categorized from A1 to B1 w.e.f. 23.03.2004 and he was found suitable for the post of Jr. Clerk in the scale of Rs.3050-4590/- and posted as such w.e.f. 28.10.2004. Hence he was not in the feeder category for promotion to the post of Sr.ALP by the cut off date. As such even if he was senior enough to be considered since promotion order was issued after his medical de-categorization from 23.3.2004, he could not have been promoted as he was not eligible to be promoted for such post.

4. For the reasons stated above, *prima facie* we find no irregularity or illegality in the order of rejection so as to direct notice to the Respondents. Hence, this OA stands dismissed at the admission stage.

5. Copy of this order be made available to the learned counsel for both sides and sent to the Respondents along with copies of the OA.

Thankappan

(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

Chakrabarty

(C.R. MOHAPATRA)
MEMBER (ADMN.)