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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of order : 7.12.2001

O.A. No. 287/99

Laxman Singh Shirra son of Shri Moharpal Singh aged about 48 years, resident of 285-A, New Railway Colony, Lalgarh, Bikaner. Official address : Office Superintendent Mechanical, Dy. C.M.E. (W), Northern Railway Workshop, Bikaner.

... Applicant.

versus

1. The Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Dy. Chief Mechanical Engineer (W) Workshop, Northern Railway, Bikaner.
3. The Assistant Personnel Officer, Workshop, Northern Railway, Bikaner.

... Respondents.

Mr. Kuldeep Mathur, Counsel for the applicant.

Mr. Vinit Mathur, Counsel for the respondents.

CORAM :

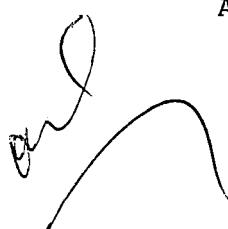
Hon'ble Mr. Justice O.P. Garg, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member

: O R D E R :

(Per Hon'ble Mr. Justice O.P. Garg)

By means of this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has claimed the benefit of cadre restructuring with effect from 01.01.1984 with all consequential benefits, including arrears of salary after taking into account the date of promotion as Assistant Superintendent with interest. It is also prayed that the order dated 03.05.1999, Annexure A/1 to the application, be set aside.



2. Put briefly, the facts of the case are that the applicant, who is presently working as Office Superintendent-I (W) in the office of Dy. C.M.E. (W), Northern Railway Workshop, Bikaner, was initially appointed as Junior Clerk on 28.10.1975. He was promoted to the post of Senior Clerk on 25.01.1977 and in course of time came to be promoted as Head Clerk with effect from 07.01.1983. In November, 1985, he was further promoted on officiating basis as Assistant Superintendent. A panel for the post of Assistant Superintendent on the basis of seniority against the upgraded post from 01.01.1984 in furtherance of the scheme of cadre restructuring was prepared, which was effective from 01.01.1984 pursuant to the Railway Board's letter dated 16.11.1984. The applicant claimed the salary and seniority on the upgraded post of Assistant Superintendent with effect from 01.01.1984. Since no heed was paid to his request made in the form of representations, he was compelled to approach this Tribunal by filing O.A. No. 336/98, which was finally decided by order dated 12.01.1999, a copy of which is Annexure A/3. It was directed that the respondent No. 2, i.e., the Deputy Chief Mechanical Engineer (W), Workshop, Northern Railway, Bikaner, shall decide the applicant's representation dated 29.09.1998 through a detailed speaking order on merits within a period of three months from the date of receipt of a copy of that order. In compliance with the directions of this Tribunal, the competent authority passed an order on 01.05.1999, communicated to the applicant through letter dated 03.05.1999, copy of which is at Annexure A/1 to the application. The representation of the applicant was rejected primarily on the ground that since he was junior to two other employees, namely S/Shri K.L. Rathi and Chagan Lal, his claim for benefit of upgradation from 01.01.1984 was untenable. Aggrieved, the applicant has again approached this Tribunal to challenge the order dated 03.05.1999 Annexure A/1, rejecting his representation. It is maintained that the applicant

was placed in the panel of selected incumbents for the post of Assistant Superintendent by way of modified selection after upgradation of the post with effect from 01.01.1984, but the same has not been allowed in an arbitrary and discriminatory manner; that the competent authority has already accepted the applicant's right to claim benefit of upgradation with effect from 01.01.1984 as would appear from various documents on the departmental file. According to the applicant, the benefit of cadre restructuring is always extended from the date of its applicability, which in the present case is 01.01.1984.

3. The claim of the applicant has been repelled by the respondents in their reply in which it is asserted that the O.A. is clearly barred by time as the applicant has approached the Tribunal after the lapse of a long period of 16 years to claim the benefits for the period 01.01.1984 onwards; that the applicant was not entitled to the benefit of upgradation of the post as there were two more persons who were senior to him and since there was only one upgraded post of Office Superintendent, the applicant who was at serial No. 3 in the seniority list could not get the benefit from 01.01.1984. It is further stated that Shri K.L. Rathi, who was the seniormost employee, was allowed the benefit of upgradation for the period 01.01.1984 to 31.10.1984 and Shri Chagan Lal, who was above the applicant in seniority, was granted the benefit of upgradation with effect from 01.11.1984 onwards. The case of the respondents, therefore, is that two persons cannot be promoted against one upgraded post, particularly when a senior person had already been promoted on the said post; that the mere empanelment does not create a vested right in an employee for getting the benefit of upgradation.

4. We have heard Shri Kuldeep Mathur, learned counsel for the applicant and Shri Vinit Mathur, learned counsel for the

respondents.

5. It would be proper to first deal with the primary legal objection with regard to limitation. Undoubtedly, the applicant has claimed benefit of upgradation with effect from 01.01.1984 in the present application, which was filed on 29.09.99. Prior to the filing of present application, the applicant had made a representation dated 19.01.1996. He made another representation dated 29.09.1998. On the failure of the department to pass appropriate orders on the pending representations, the applicant had to approach this Tribunal by filing O.A. No. 336/98. The O.A., as said above, was decided on 12.01.1999. The competent authority passed the impugned order dated 01.05.99. It is this order, which has been challenged in the present application. In view of the above facts, it cannot be said that the applicant has not been diligent in getting his grievances vindicated. Shri Kuldeep Mathur placed reliance on a decision of Hon'ble the Supreme Court in the case of Santokh Singh vs. State of Punjab and others, reported in 1987 (5) SLR page 571, to support his contention that in the similar circumstances, the Apex Court permitted the hearing of writ petition on merits and did not approve the order of the High Court, dismissing the petition on the ground of laches. The impugned order in the present case has been passed on 01.05.1999 and communicated to the applicant on 03.05.1999 (Annexure A/1). The present O.A. was filed within five months of the communication of the impugned order. The application, therefore, cannot be treated to be suffering from any laches. The plea of the respondents that the application is barred by limitation cannot, therefore, be accepted.

6. We now proceed to decide the case on merits. The scheme of restructuring/upgradation was undoubtedly effective from 01.01.1984. The moot point for determination is whether the applicant is entitled

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to the benefit of the said Scheme from the aforesaid date. There was only one post of Office Superintendent. The applicant though the seniormost Scheduled Tribe employee was not the seniormost Head Clerk. S/Shri K.L Rathi and Chagan Lal were admittedly senior to the applicant. Unless both these officials had been given the benefit in view of the restructuring scheme, the applicant had no occasion of promotion to the upgraded post with effect from 01.01.1984. The empanelment of the applicant provisionally in the upgradation scheme did not confer any right upon him to stage a march over his seniors. Of necessity, he was required to wait for his turn to come. Since the applicant was not seniormost Head Clerk on the relevant date, i.e. 01.01.1984, he was rightly not given the benefit of upgradation as granting of such benefit would have been to the serious detriment of his two seniors. This is precisely the most potent reason why the applicant was denied benefit of upgradation of post from 01.01.1984. Shri K.L. Rathi, who was the seniormost Head Clerk was given the benefit of upgradation for the period 01.01.1984 to 31.10.1984 and, thereafter, the next seniormost Head Clerk, Shri Chagan Lal, was granted the said benefit with effect from 01.11.1984 onwards. The applicant becomes entitled to the benefit of upgradation as a result of restructuring after the exit of Shri Chagan Lal. In the impugned order dated 03.05.99 (Annexure A/1), the competent authority has rightly come to the conclusion that the claim of the applicant was ignored for upgradation with effect from 01.01.1984 on the ground that upgradation could not be given to two persons for one post. It further observed that the case of the applicant shall be subject to review after the relevant file is located and the facts are ascertained. The impugned order, therefore, itself indicates that the case of the applicant for upgradation is yet to be considered and reviewed and the exact date from which he was entitled to such a benefit could not be reckoned as the relevant file was not available.

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7. In the result, we come to the conclusion that the applicant was not entitled to the benefit of upgradation with effect from 01.01.1984 as claimed by him. His right to claim such a benefit was to accrue, all things remaining the same, after the exit of Shri Chagan Lal. The impugned order rejecting the representation of the applicant cannot be faulted on any ground. Nevertheless, the claim of the applicant for upgradation cannot be forestalled for all times to come.

8. In the light of the above facts, this O.A. is finally disposed of with a direction that the competent authority shall determine the date from which the applicant shall be entitled to the benefit of upgradation as a result of restructuring after wading through the departmental records and pass appropriate speaking orders within a period of four months from the date of this order. No order as to costs.

(Gopal Singh)

(GOPAL SINGH)
Adm. Member

(Signature)
(JUSTICE O.P. GARG)
Vice Chairman

cvr.

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Part II and III destroyed
in my presence on 28-5-07
under the supervision of
section officer (1) as per
order dated 13-12-02

MGRM
Section officer (Record)

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RPHV