

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

No. OA 508 of 97

Date of order : 20/6/02

Present : Hon'ble Mr.L.R.K.Prasad, Administrative Member

Hon'ble Ms.Meera Chibber, Judicial Member

BIMAL CH. DAS

VS

UNION OF INDIA & ORS.

For the applicant : Mr.R.K.Das, counsel
Mr.S.Bhattacharyya, counsel

For the respondents: Mr.S.R.Kar, counsel

O R D E R

Meera Chibber, J.M.

By this OA the applicant has sought following reliefs :

- a) declaration that the applicant's promotion as Station Master in Rs.455-700/- w.e.f. 1.1.82 was or deemed to be as per Alternative II of Estt.Srl.No.160/83 and that he is entitled to the restructuring benefits firstly as Dy. SS/SM in scale of Rs.550-750/- (RSP) w.e.f. 1.8.82 with arrears payment from 1.8.83 and then as SS II in scale of Rs.700-900/- (RSP) w.e.f. 1.8.82 and arrears payment from 1.8.83;
- b) orders directing the respondents to consider and issue orders giving restructuring benefits to the applicant firstly as Dy.SS/SM in scale of Rs.550-750/- w.e.f. 1.8.82 with arrears payment from 1.8.83 and then as SS II in the scale of Rs.700-900/- (RSP) w.e.f. 1.8.82 and arrears payment from 1.8.83 in both the cases of promotions.

2. In support of his claim the applicant has relied on the judgment given by Hon'ble Supreme Court in the case of S.B.Sarkar & Ors. -vs- Union of India & Ors reported in AIR 1991 SC page 27 wherein the Hon'ble Supreme Court had directed the authorities to grant promotional benefit to those 209 Station Masters who had exercised option before 1983 in the same manner as it would have been if option had not been abolished in accordance with earlier procedure. In this case the controversy related to restructuring of cadre comprised of ASM at the bottom and Station Superintendent at the top because ASM was initially appointed in the scale of Rs.360-540/- but next promotion was bifurcated in two --

ASM to ASM and ASM to SM both in scale of Rs.425-640 (non-selection) and then Rs.455-700(selection) and Rs.840-1040/- Station Superintendent (non-selection). For this upward channel every ASM was required to opt whether he would proceed on channel of ASM to SM in the scale of Rs.425-640/-. On restructuring two alternatives were framed one for continued cadre and another for separate cadres. The claim of SM was that since they were already working in the same scale they should be redesignated without any further process of selection.

3. The applicant has claimed that since he was also promoted as ASM in BDR on 12.7.61 and BDR was taken over by Central Govt. in July 1967 he formed part of the cadre of ASM in S.E.Rly. where he was posted after taking over therefore he was also entitled for benefit of restructuring given under circular of 160/83. He has stated that applicant was promoted as SM on 16.8.69 and he super-annuated as SM on 30.4.94. However, after his retirement he came to know that persons junior to him vis. Shri A.K.Dhua, Shri N.N.Bhattacharjee and Shri R.N.Roychoudhury had been given the benefit of restructuring and their promotion had been anti-dated vide order dated 4.4.95. To show that Shri A.K.Dhua was junior to him, applicant's counsel invited our attention to page 23 i.e. 1984 seniority list wherein the applicant was shown at Sl.No.2 while Shri A.K.Dhua was shown at Sl.No.6. Similarly at page 23 and 35 in the seniority list issued in December 1987, the applicant was shown at Sl.No.12 while Shri N.N.Bhattacharjee was shown at Sl.No.101 and Shri R.N. Roychoudhury at Sl.No.102. Thus his grievance was that since his juniors had been granted the benefit of restructuring the same could not have been denied to him. The applicant has stated that he had given representation to the respondents to grant him the same benefit (Annexure A/12) but since the respondents did not even respond to his representation he had no other option but to file the present case.

4. The respondents have opposed the applicant's claim



by stating that applicant cannot claim the benefits under circular of 160/83 as this restructuring was done for the directly recruited ASM in S.E.Railways whereas applicant belonged initially to BDR and had been promoted from ranks as he initially joined BDR as a Shed Khalasi and was promoted as Booking Clerk in December, 1959 and as ASM in July, 1961. Thus they have stated that the applicant is not entitled to the benefit of restructuring as Hon'ble Supreme Court had clarified in its subsequent judgment reported in 1993(24) ATC 761 wherein it was clarified that practice of exercising option related to ASMs who were recruited directly while applicant was not a directly recruited ASM in S.E.Railways as he belonged initially to BDR and at the time of takeover, it was made clear to the said employees that they would be treated as a separate unit for purpose of promotion upto the grade of Rs.210-380/- revised to Rs.455-700/-. He has invited our attention to Annexure R/1, letter dated 31.5.67 wherein para 4 reads as under :

"The staff working on the BDR Railway after absorption in Government service will count their seniority on the basis of length of service in the grade in which they are absorbed but it is the intention to treat the BDR Railway portion as a separate unit for purpose of promotion upto the grade of Rs.210-380/-"

They have submitted that the applicant cannot claim parity with the staff of S.E.Railways as they had accepted the term of taking over that upto the level of Rs.455-700/-. They would be kept separate and it only after he reached that stage that he could be brought in the main stream. They have stated that the applicant got promotion in the scale of Rs.425-640/- as SM on 1.1.73 and in the scale of Rs.455-700/- revised to Rs.1400-2300/- on 18.10.82 as per separate seniority list. Thereafter he was brought in the main stream by 1987 seniority list. It is stated that subsequently another circular 13/93 (page 27 of the rejoinder) was issued and since he came within the zone of giving him the benefit of this circular, he was given the promotion as Dy. S.S (Rs.1600-2660/-) w.e.f. 1.3.93 vide order dated 4.8.2000. They have stated there was a stay from Hon'ble High Court in TA No.370/87 and



.../-

therefore no promotion was given to any staff for the period from 1984-93.

5. They have thus stated that since circular 160/83 was not applicable to the applicant, no interference is called for and OA may be dismissed. As far as alleged juniors are concerned, the counsel for the respondents submitted that Shri A.K.Dhua was the employee of S.E.Railways which is evident from the seniority list itself as there is a remark in the seniority list which makes it clear that he belonged to S.E.Railways group which was relied by the applicant. It is further clarified by the respondents that vide order dated 18.6.93 the Tribunal had directed the respondents to review the cases of the applicants and to ascertain as to whether their seniority has been properly counted in terms of para 4 of the offer letter or not and CPO shall pass separate orders in case of each individual after hearing him and communicate the decision to them. (The said decision is annexed as Annexure R/II of the reply).

6. We have heard both the counsel and perused the pleadings and judgments referred to as well.

7. We have seen that the Tribunal has already directed (vide judgment dated 18.6.93) the respondents i.e. the Chief Personnel Officer, S.E.Railway to review the cases of applicants and to ascertain as to whether their seniorities have been properly counted in terms of para 4 of the letter dated 31.5.67 or not. If not done the same was required to be done and he was called upon to pass a speaking order. Even though the respondents have stated in their reply that subsequently circular 13/93 was issued and since the applicant came within the zone of considerations as per this circular he was given promotion after his retirement vide order dated 4.8.2000 w.e.f. 1.3.93 but none of the parties have been able to produce the speaking order that the CPO was directed to pass. We have been informed that the applicant was also a party in this OA. Therefore we would like to reiterate the direction to the respondents to pass the speaking order as already directed by the Tribunal in OA 96/89 along with OA 244/89



and OA 254/89, specially dealing with the question as to why it is stated by the respondents that applicant would not be entitled to the benefits of restructuring done in 1983 when he had admittedly been promoted to the grade of Rs.455-700/- in 1982, he should have been brought in the main stream in 1982 itself as per para 4 of taking over, because all that para 4 stated was that ~~they~~ would be treated as a separate unit till they reach the stage of Rs.455-700/-. Therefore once he was promoted to the grade of Rs.455-700/- in 1982, it is not clear why he was not brought in the main stream and why he would not be entitled to restructuring as the respondents' counsel has not been able to show us any bar in giving such benefit to the erstwhile BDR employees, except saying that he was not a directly recruited ASM. We would therefore like the respondents to examine this issue also and pass a speaking order thereon. There is yet another aspect of the matter which is required to be examined by the respondents. Though Shri A.K.Dhua's position has been explained by the respondents to show that the applicant could not have compared himself with ~~Shri A.K.Dhua~~ as he belonged to S.E.Railways initially while the applicant belonged to ~~a separate unit~~. Since he was taken over from BDR as per para 4, so definitely the applicant cannot have any grievance vis-a-vis Shri A.K.Dhua. But how Shri R.N.Rey Choudhury & Shri N.N.Bhattacharjee were given the benefit of restructuring vide order dated 4.4.95 w.e.f. 1.8.82 when in the seniority list of 1987 at page 23 & 35 they were shown juniors to applicant as applicant was shown at Sl.No. 12 while Shri R.N.Rey Choudhury was at Sl.No.102 and Shri N.N.Bhattacharjee at Sl.No.101 is also to be explained by the respondents. If juniors to applicant were given the benefit of restructuring and given promotion with an earlier date than that of applicant, he would definitely have a grievance. Till date the respondents have not disposed of his representation also and many aspects of the matter as explained above have not been clarified. Therefore it would be necessary that at first instance all these points should be examined by the respondents and a



detailed order should be passed by the competent authority dealing with all the points referred to above within a period of 3 months from the date of receipt of this order as the applicant is a retired person and in case the applicant is held to be entitled to any benefit he must be given national promotion w.e.f. the same date when his alleged juniors were promoted and on that basis his pensionary benefits should be re-calculated and benefits accruing thereof should be given to the applicant.

The second direction is being given at this stage to save the time and keeping in view the fact that the applicant is already retired, so that he is not dragged to the Court again for claiming pensionary benefits in case any favourable orders are passed in this case. We have used the expression 'in case' specifically as the issued are yet to be examined by the authorities and final orders would be passed on the basis of findings arrived at by the competent authorities.

8. With the above observations and directions the OA is disposed of with no order as to costs.

J
90/6/02
MEMBER (J)

in

✓
90/6/02
MEMBER (A)