

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Original Application No.289/2006

Alongwith

Original Application No.339/2006

Reserved on 11-02-2014.

Pronounced on 24.03.2014.

Hon'ble Mr. Navneet Kumar, Member (J)

Hon'ble Ms. Jayati Chandra, Member (A)

(Original Application No.289/2006)

Radhey Mohan Srivastava, aged about 45 years, son of Shri K.M. Srivastava, resident of C-45, Pawanpuri, Alambagh, Lucknow [presently working as Office Superintendent Grade II in the office of Senior Divisional Signal & Telecommunication Officer, North Eastern Railway, Lucknow].

-Applicant.

By Advocate: Sri Prashant Kumar Singh.

Versus.

1. Union of India, through the General Manager, North Eastern Railway, Gorakhpur.
2. Divisional Railway Manager, North Eastern Railway, Lucknow.
3. Divisional Railway Manager (Personnel) North Eastern Railway, Lucknow Division, Lucknow.
4. Shri Gokaran Singh, Office Superintendent Grade I.

-Respondents.

By Advocate: Sri S. Verma for Official respondents.

Sri Pankaj Awasthi for Resp.No.4.

(Original Application No.339/2006)

Gokaran Singh, aged about 45 years, son of Shri Uday Pratap Singh Resident of E-57-F, North Eastern Railway Colony Nehru Nagar, Aishgbagh, Lucknow, presently posted as Office Superintendent Grade-I, pay scale Rs.6500-10500/- in the office of Sr. Divisional Signal &

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Telecommunication Engineer, North Eastern Railway,
Lucknow Division, Lucknow.

-Applicant.

By Advocate: Sri Pankaj Awashi.

Versus.

1. Union of India, through the General Manager, North Eastern Railway, Headquarter Office, Gorakhpur.
2. The Divisional Railway Manager, North Eastern Railway, Lucknow Division, Lucknow.
3. The Sr. Divisional Personnel Officer, North Eastern Railway, Lucknow Division, Lucknow.
4. Radhey Mohan Srivastava, aged about 45 years, son of Shri K.M. Srivastava, resident of C-45, Pawanpuri, Alambagh, Lucknow, presently posted as Office Superintendent Grade II pay scale Rs.5500-9000 in the office of Sr. Divisional Signal & Telecommunication Engineer, North Eastern Railway, Lucknow Division, Lucknow.

-Respondents.

By Advocate: Sri S. Verma for Official Respondents.
Sri Prashant Kumar Singh for
Resp.No.4.

ORDER

Pre Ms. Jayati Chandra, Member (A).

The O.A.No.289/2006 filed by the applicant in which the applicant of O.A.No.339/2006 has been impleaded as Private Respondent No.4. Similarly, In O.A.No.339/2006, the applicant of O.A.No.289/2006 has been impleaded as Private Respondent No.4. Therefore, both the O.A.s are disposed of by a common order.

2. The applicant of O.A.No.289/2006 has filed this OA under Section 19 of Administrative Tribunals Act, seeking the following relief(s):-

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- (a). issuing/passing of an order or direction to the Respondent Nos. 1 to 3 setting aside the impugned order/letter dated 12.12.2005 and also the office order dated 07.03.2006 passed by the respondents No.3, , promoting the Respondent No.4 to the Post of Office Superintendent Grade I (Rs.6500-10000) (As contained in Annexure Nos. A-1 and A-2 to this Original Application), ignoring the claim of the applicant for promotion to the said by including his past service in the grade 5500-9000 on the post of Junior Engineer (Signals) Grade-I, after summoning the original records.
- (b). issuing /passing of an order or direction to the Respondent Nos.1 to 3 to consider the case of the applicant for promotion to the post of Office Superintendent Grade I (Rs.6500-10000) on the basis of his seniority in the grade of Rs.5500-9000 with effect from 01.05.2003, by including his past services in the said grade of Rs.5500-9000 on the post of Junior Engineer (Signals) Grade I prior to his adjustment against vacant post of Office Superintendent Grade II and issue necessary promotion order with retrospective effect with all consequential benefits within a specified period of two months.
- (c). issuing/passing of any other order of direction to the Respondents as the Hon'ble Tribunal considers appropriate in the circumstances of the case.
- (d). allowing this Original Application with costs."

3. Similarly, the applicant of O.A.No.339/2006 filed the present OA under Section 19 of Administrative Tribunals Act, seeking the following relief(s):-

- (i). to set aside the office or order dated 13.12.2004 and the representation rejection order dated 03.01.2005 & 01.06.2005 (Annexure No.1,2 & 3 to this Original Application).
- (ii). to issue a direction to repatriate/revert back the Respondent No.4 to the post of MCM/Signal Maintainer pay scale Rs.5000-8000 and not to give effect to the absorption order dated 13.12.2004 (Annexure No.1 to this Original Application).
- (iii). Any other relief which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case may also be granted in favour of the Applicant.
- (iv). Allow the Original Application with costs."

4. The brief facts of the case (O.A.No.289/2006) as disclosed are that the applicant has prayed for setting aside the order dated 12.12.2005 by which he has been

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informed against his representation dated. 09.09.2005 and 07.07.2005 that as per the provision of para-7 subparagraph (5) of Master Circular No.31, the provision for granting promotion is subject the completion of 2 years of service in the lower cadre. Hence, he shall be granted promotion to the grade of Office Superintendent Grade-I after the completion of 2 years in the post of Office Superintendent Grade II.

5. By the second impugned order dated 7.3.2006 by which the respondent no.4 of this case an applicant of O.A.No.339/2006 has been granted the benefit of promotion to the post of Office Superintendent Grade-I in the pay scale of Rs.6500-10000 from that of Office Superintendent Grade II.

6. The facts of the case as averred by the applicant in the leading case i.e. O.A.No.289/2006 are that the applicant was initially appointed as Electrical Signal Maintainer Grade-II w.e.f. 09.09.1983 and he was; promoted to the post of Electrical Signal Maintainer Grade -I in 1984. He was promoted as Junior Engineer (Signals) Grade-II in the year 2001. He was posted to the post of Junior Engineer (Signals) Grade-I in the pay scale of Rs.5500-9000 w.e.f. 01.05.2003. He was placed at Serial No.7 in the seniority list in the grade of Rs.5500-9000 as per letter No.N/Variyata/Sig & Elect./99 dated 29.07.2004 (Anneuxre-A-3). He was declared medically unfit in Medical Category A-3 and B-1 due to low vision on 24.09.2004 but was declared fit in medical category B-2 with spectacles. He was deputed to work on the post of Junior Engineer (Signals) Grade-I in Signal Control w.e.f. 05.10.2004. He had initially requested vice letter

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dated 19.11.2004 for adjustment in the Commercial Department on the equivalent post of EC.R.C./C.S./D.T.I etc., However, he came to know that his case was being considered for adjustment on the post of Office Superintendent Grade-II. Thereafter, he withdrew his earlier application dated 19.11.2004 by an application dated 10.12.2004 (Annexure-A-5). Consequently, he was adjusted against the vacant post of Office Superintendent Grade-II w.e.f. 13.12.2004. Thereafter, he submitted an application dated 09.09.2005 for promotion to the post of Office Superintendent Grade-I after taking into consideration his past service in the grade of Rs.5500-9000 but, he was informed by the impugned order No. E/II/210/Mini/Sig./2005 dated 12.12.2005 that as per the provision of Para-7 Sub-paragraph-5 of Master Circular No.31, he has to complete 2 years service in the cadre of Office Superintendent Grade-II for being eligible for consideration for promotion to the next higher promotion of Office Superintendent Grade-I. The applicant has submitted an application dated 20.12.2005 and mentioned that he has already completed 2 years service in the grade of Rs.5500-9000 which is the same as that of Office Superintendent Grade-II and as such he is eligible for promotion to the post of Office Superintendent Grade-I. However, by the second impugned order dated 7.3.2006, one Sri Gokaran Singh, Office Superintendent Grade-II (Respondent No.4 in O.A.No.289/2006 and applicant in O.A.No.339/2006) was promoted to the post of Office Superintendent Grade-I. It is pertinent to note that Sri Gokaran Singh (Respondent No.4 in O.A.No.289/2006 and applicant in O.A.No.339/2006) was granted the pay scale of Rs.5500-9000 w.e.f. 30.10.2003 whereas, he has been working in

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the same grade from 01.05.2003 thereby the Respondent No.4 in O.A.No.289/2006 is junior to the applicant of O.A.No.289/2006 in the same grade. The applicant is suffering from disability as defined in Section-2 (i) (ii), read with Section 2 (u) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as Act No.1 of 1995) there cannot be any discrimination against him nor he can be deprived of promotion on the said ground of disability. By virtue of the impugned order he stood superseded by Respondent No.4.

7. In O.A.No.339/2006 the applicant (Respondent No.4 of O.A.No.289/2006) has given the details of his service carrier as he has been joined as Junior Clerk in the pay scale of Rs.260-400 under the Divisional Railway Manager, Eastern Railway, Asansol, West Bangal w.e.f. 27.3.1984 after being selected by Railway Recruitment Board, Patna. The applicant was transferred from the office of Divisional Railway Manager, Eastern Railway, Asansol to the office of the Senior Divisional Signal & Telecommunication Engineer, North Eastern Railway, Lucknow Division, Lucknow on request and was joined on 02.01.1987. The applicant was promoted as Senior Clerk in the pay scale of Rs.1200-2040 w.e.f. 30.10.1989 and further promoted to the post of Head Clerk in the pay scale of Rs.5000-8000 w.e.f. 08.12.2000. The applicant was promoted as Office Superintendent Grade-II w.e.f. 30.10.2003. The applicant remained in the Ministerial Cadre of Signal & Telecommunication Department, North Eastern Railway, Lucknow Division, Lucknow from 02.01.1987 till date. Vide Railway Board Circular bearing No.177 of 2003 dated 09.10.2003

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restructuring of certain Group 'C' and 'D' cadre was made effective from 01.11.2003. As a consequence of restructuring as per Memorandum dated 12.05.2004, the number of posts of Office Superintendent Grade-I in the pay scale of Rs.6500-10500 was increased to two w.e.f. 01.11.2003 from one. The post of Office Superintendent Grade-I is a non -selection post which requires a minimum service period of two years in the lower grade of Office Superintendent Grade-II. As the applicant was promoted as Office Superintendent Grade-II w.e.f. 30.10.2003 as such, he became eligible for promotion w.e.f. 30.10.2005 against the vacancies which were created due to restructuring w.e.f. 01.11.2003. He preferred a representation dated 17.11.2005 on being eligible for the post of Office Superintendent Grade-I and he was promoted as Office Superintendent Grade-I vide order dated 7.3.2006, which has been impugned in O.A.No.289/2006. The Respondent No.4 in this OA and the applicant in O.A.No.289/2006 were initially appointed as Electric Signal Maintainer Grade-II in the pay scale of Rs.330-480 w.e.f. 09.09.1983 after training of two years. The Respondent No.4 was promoted as Electric Signal Maintainer Grade-I w.e.f. 01.11.2084. The Respondent No.4 was further promoted as MCM/Signal Maintainer in the pay scale of Rs.5000-8000 w.e.f. 08.12.1995 and further as Junior Engineer Signal Grade-II in the pay scale of Rs.5000-8000 w.e.f. 30.04.2001 whereas, Respondent No.5 was promoted as Junior Engineer/Signal Grade-I in the pay scale pf Rs.5000-9000 w.e.f. 01.05.2003, which falls under safety category post. As per rules, periodical medical examination is required to be held for persons working in safety cadres every four year upto the age of 45 years and thereafter

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every two years upto the age of 55 years and thereafter every year. The Respondent No.4 was never medically examined as per Railway Board Circular. The basis for his medical de-categorization is said to be colour blindness. Under the provision of paragraph-1304 of IREM Vol.I, 1989 it is provided that persons after declaration of medical unfitness for A-3 and B-2 category posts have to be considered for absorption on alternative posts by a Standing Committee comprising of three JAG officers and one Medical Officer. In total violation of Administrative orders of General Manager, North Eastern Railway, Headquarters, Gorakhpur through letter dated 05/06.11.2004, whereby ban was imposed for filling of any vacancy since the (Radhey Mohan Srivastava) was absorbed as Office Superintendent Grade-II and without the order of the Standing Committee. The applicant had given a representation dated 13.12.2004 challenging the induction of Respondent No.4 in the grade of Office Superintendent Grade-II as the same was on account of not holding of required periodical medical examination. Had the same been done regularly his case of medical de-categorization would have been settled. The reason for such medical conditions i.e. colour blindness which is a condition from birth. ON this ground, even the initial appointment to the safety post is dubious much earlier. His representation was turned-down by an order dated 03.1.2005 (Annexure-2).

8. The official respondents have filed their Counter replies in both the O.As. which they have admitted all the facts of the case with regard to dates of promotions of two applicants in the two different OAs and the date of medical de-categorization etc. The respondents have

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stated that the Restructuring Scheme of Group 'C' and 'D' employees came into effect from 09.10.2003. As per the same there were two posts of Office Superintendent Grade-I in the pay scale of Rs.6500-10,500 and five posts of Office Superintendent Grade-II in the pay scale of Rs.5500-9000 (Annexure-CR-2). This restructuring scheme was to be filled in from the cadre. The Respondent No.4 in the OA No.289/2006 was given the benefit of promotion as Office Superintendent Grade-II w.e.f. 30.10.2003. The applicant of O.A.No.289/2006 is not in the cadre of ministerial staff at that time. He joined the cadre only on 13.12.2004. His case for promotion to the next higher grade will come up only after the Respondent No.4 was promoted in Office Superintendent Grade-I after completing of 2 years. One of the conditions of restructuring was that the benefit of restructuring would be granted to only such persons, who were in the cadre prior to 31.10.2003. Moreover, as per the provision envisaged in Master Circular No.31, which lays-down the selection process reads as follows:-

“7. Two years service condition in the immediate lower grade is also applicable to local officiating/ad-hoc promotions against short term vacancies.”

9. The respective private respondent in both the OAs have filed their Counter Affidavits as per their averments made in their respective OAs to controvert the rival claim of the applicants in both the OAs.

10. The applicant of both these OAs have filed their Rejoinder Affidavit stating more or less same things as earlier stated by him in their OAs.

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11. We have heard the learned counsel for both the parties and perused the entire material available on record.

12. The applicant in O.A.No.339/2006 has challenged for quashing an order dated 13.12.2004 by which Respondent No.4 in this O.A. and applicant of O.A.No.289/2006 has been absorbed in the Ministerial cadre. Section-19 of Administrative Tribunal Act, 1985 provides that a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance. Though, while challenging the same, the applicant has not made out a case as to how he is aggrieved by such absorption. It is very clear that he has filed this cross case on an apprehension that in the event the O.A. is allowed, he may be adversely affected. The applicant cannot act on apprehension and in the absence of any specific order he cannot demonstrate that he would be adversely affected if the O.A. is allowed.

13. The basic issue for consideration is that the applicant of O.A.No.289/2006 considers himself as being eligible of grounds of counting of his past service by which he was placed in the pay scale of Rs.5500-9000 w.e.f. 01.05.2003 and Respondent No.4 on 30.10.2003, although in a different cadres. Therefore, he prays for the benefits of his longer service in the feeder grade for promotion to the higher scale of Office Superintendent Grade-I in the pay scale of Rs.6500-10000. The case of the applicant in the second OA is that he has been in the Ministerial cadre from the inception of his service and he

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was the senior most person in the feeder cadre. He should not be deprived the benefits by someone else parachuting into his cadre. The various allegations and counter allegations do not help us in determining the issue. Neither the initially appointment of the applicant in O.A.289/2006 nor his subsequent placement in the ministerial cadre due to medical de-categorization is under challenge nor has any specific relief sought against this. These are mere red hangings resorted to the Respondent NO.4 (applicant in the second OA). The official respondents have started with beyond that the promotion rules as circulated by Master Circular No.31 requires two years service in the feeder cadre. The perusal of the Master Circular No.31 reveals that this is governing circular for promotion of non-gazetted staff to selection post wherein, two years service is the normal eligibility condition for promotion. It does not throw any light on a situation which involves inter-cadre transfer of an employee. Para-5 of the Master Circular No.31 states as follows:-

"If a person is selected for and appointed in another cadre to a post in the same grade as that held by him in his parent cadre and he has to seek further promotion in the new cadre, he has to render two years service in the new cadre before being promoted therein."

14. This provision also not answer the issue raised in the present OA as this is a provision covers the case arising out of selection process. In this particular case the applicant of O.A.No.289/2006 has been medically de-categorized from his earlier post. Although the Disability Act has been relied upon by the applicant in the first O.A., it is of no held to him as he has not produce any certificate which is required to under Section-2 (i) (ii), read with Section 2 (u) of the Persons with Disabilities

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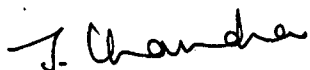
(Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.


15. However, the case is to covered by the Para-1309 of Chapter-XIII of I.R.E.M. Vol.-I, which reads as under:-

“Benefit of past service to be allowed:-

A disabled/medically de-categorized Railway servant absorbed in alternative post, will for all purposes, **have his past service treated as continuous with that in the alternative post.**”

16. In this case, the applicant, who was admittedly, given the eligibility grade of Rs.5500-9000 on 01.05.2003 prior to the applicant of O.A.No.339/2006 the benefit of the above provision of IREM must be extended to him. Hence, O.A.No.289/2006 is allowed. The impugned order/letter dated 12.12.2005 and also the office order dated 07.03.2006 are hereby quashed and the respondents are directed to grant the benefit of promotion to the applicant on the date of his eligibility of having completed 2 years service from 01.05.2003. Hence, the O.A.No.289/2006 is allowed and O.A.No.339/2006 is dismissed has having no merits. No order as to costs.


(Ms. Jayati Chandra)
Member-A


(Navneet Kumar)
Member-J

Amit/-