

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH
LUCKNOW**

Original Application No. 373 of 2011

Reserved on 08.12.2015.

Pronounced on 17th December, 2015

Hon'ble Mr. Navneet Kumar, Member - J

Hon'ble Ms. Jayati Chandra, Member - A

R.P. Dwivedi, aged about 56 years Son of Shri R.S. Dwivedi
Resident of House No. EA-7, Nehru Nagar, New Para Colony,
Saint Marry School Road, Rajajipuram, Lucknow.

..... Applicant

By Advocate: Sri J.P. Pandey

VERSUS

1. Union of India through its Secretary, Ministry of
Railways, New Delhi.

2. General Manager, Northern Railways, Baroda House,
New Delhi.

3. Divisional Railway Manager, Divisional Office, 32
Hazratganj, Lucknow.

4. Anil Kumar, presently posted as Assistant Operations
Manager Coaching, Ferozepur, Divisional Manager Office,
Northern Railway, Ferozepur.

..... Respondents

By Advocate: Sri M.K. Singh

ORDER

Delivered by: **Hon'ble Ms. Jayati Chandra, Member - A**

By means of this O.A filed under Section 19 of the
Administrative Tribunals Act, the applicant has prayed for
the following reliefs:

- (i) This Hon'ble Tribunal may kindly be
pleased to direct the respondent No. 2 to promote

the applicant on next higher post and provide him all consequential benefits giving the benefit of order dated 13.05.1996 pursuant to which the persons junior to the applicant including respondent No. 4 and one Ravish Kumar Srivastava (now retired) have been given the said benefits w.e.f. 11.10.1985.

(ii) Any other relief which this Hon'ble Tribunal deems fit and proper in the interest of justice, may also kindly be passed in favour of the applicants.

(iii) That cost of the claim petition be awarded to the applicants.

2. The applicant was appointed as Assistant Station Master (ASM) (Rs. 330-560/-) on 03.10.1979. He qualified to the next level of promotion as Assistant Yard Master (AYM) under the 10% graduate quota and after undergoing training joined as AYM on 19.07.1985.

3. The respondent No. 4 and another (Ravish Kumar Srivastava (now retired) were initially posted as TNC in the grade of Rs. 260-400/-. They were empanelled as AYM (Rs. 455-750/-) through letter dated 07.09.1982. The channel of promotion for TNC is in three categories (i) AYM (ii) Guard and (iii) Section Controller. Although they were empanelled as AYM, the Respondent No. 4 and R.K. Srivastava opted for the post of guard on 03.03.1983 and started working as

guard. Having given an option once, they were not entitled to another option. But through letter dated 11.10.1985, they were given proforma promotion as AYM (Rs. 455-700/-) w.e.f. 01.08.1982 and actual promotion w.e.f. 01.08.1983 and were simultaneously allowed to officiate as Yard Master (Y.M) grade (550-750/-) w.e.f. 01.08.1982 (proforma) and 01.08.1983 (actual) (Annexure-3). Thus, the Respondent No. 4 and R.K. Srivastava were directly given one grade higher than the applicant whereas they should have been junior to him as AYM if they were allowed only one promotion/ step up. Such a selection directly to Y.M. from the post of Senior TNC/Guard is against the R.B. letters dated .07.04.1976, 15.05.1987 and 22.07.1988.

4. The respondent No. 4 and another were again promoted to the next higher grade of Rs. 700-900/- (Revised 2000-3200) through letter dated 10.03.1987 and 09.04.1987 (respectively) while the applicant was not called for the selection. He filed O.A No. 87 of 1996 challenging the letter dated 08.09.1995 by which Respondent No. 4 and R.K. Srivastava were called for selection in the grade of Rs. 2375-3500/- as well as the earlier promotion granted through letter dated 10.03.1987 and 09.04.1987. The O.A was dismissed on ground of delay and later on 03.12.2008 he filed a Writ Petition No. 669(SB) of 2009 which was allowed vide order dated 07.05.2009. The O.A No. 87 of 1996 was restored and again dismissed by order dated 09.08.2011 (Annexure-1) on the ground of non challenging of order dated

13.05.1996. The same was not challenged by means of an amendment due to unavoidable circumstances and is not being brought on record and seeking similar benefits as have been given to the Respondent No. 4 and another w.e.f. 11.10.1985.

5. The respondents have raised objection as to the maintainability of this O.A on the ground of constructive res-judicata as the earlier O.A No. 87/1996 through which a prayer of grant of grade of Rs. 2775-3500/- was made, was dismissed as the applicant had failed to assail the final selection order dated 13.05.1996. Further, the applicant cannot be granted the benefits which have been granted to Respondent No. 4 without qualifying in the Trade Test. Further, the case is barred by limitation as relief is claimed w.e.f. 1996.

6. We have heard the learned counsel for the parties and also seen the records on the file. The applicant has in effect sought similar relief as those granted to Respondent No. 4 and R.K. Srivastava w.e.f. 11.10.1985. From the facts enumerated above, Respondent No. 4 and another were given proforma promotion to AYM grade of Rs. 455-700/- (Revised 1400-2300) w.e.f. 01.08.1992 and actual promotion w.e.f. 01.08.1983 and also allowed to officiate as YM in the grade of Rs. 550-750/- (revised 1600-2000/-) w.e.f 01.08.1982 proforma and actual w.e.f. 01.08.1983 as per letter dated

11.10.1985. They were given 700-900 (revised 2000-3200) in 10.03.1987 and 09.04.1987. These promotions were challenged in O.A No. 87/1996 alongwith selection process for grant of next higher scale of Rs. 2375-3500/-. This O.A was dismissed initially on the ground of delay.

7. The Writ Petition No. 669(SB) of 2009 remanded the matter only for adjudication of one relief i.e. selection to the grade of 2375-3500/-. This effectively means, in the matter of parity in pay scale upto the year 1996, has already been legally dismissed on ground of delay and the same as been affirmed in the Writ by the High Court. The relevant position is included in Para 2 of the order passed in O.A No. 87/1996 on 09.08.2011 in the following terms:

“After hearing the matter, this Tribunal dismissed the O.A on 03.12.2008 on the ground that it suffers from delay and laches and is bard by limitation. At the time of passing of this order, no body was present on behalf of the respondents No. 4 and 5 as mentioned in the order of the Hon’ble High Court, which is being referred hereinafter. After dismissal of this O.A, the applicant filed a writ petition No. 669/2009 (SB). The Hon’ble High Court allowed the writ petition partially on 07.05.2009 saying that prima facie the claim in respect of prayer No. 1 appears to be in time but at the same, it was held that in respect of prayers made in

relief No. (ii) (2A) (iii), the decision of the Tribunal appears to be correct."

8. Coming to the relief of parity in the matter participation and in the selection process as initiated by letters dated 08.09.1995 the same was not granted in view of the applicant's failure to challenge the final selection order dated 13.05.1996. Now the applicant is trying to rectify his act of omission by filing the present O.A. To our mind this O.A is thus barred by the principles of Res-judicata as the applicant had already made a prayer of parity and the same has been denied in O.A No. 87/1996 dated 09.08.2011. This order has not been challenged by means of Writ Petition or appeal and has this become final. Coming further to the merits of the case, the applicant position vis-a-vis that of the Respondent No. 4 and another in the matter of pay scale has become final (appeal O.A No. 87/1996) upto the selection of 1985 made for promotion to the scale of Rs. 2000-3200/-. The applicant was holding the post of Deputy Station Superintendent w.e.f. 01.03.1993. He has not disclosed what was the scale for the said post nor produced any service rules to demonstrate that he was eligible to be included in the eligibility field for promotion to the grade of Rs. 2375-3500/- at par with respondent No. 4. He has claimed his parity with the respondent No. 4 and another on the basis of actions that happened in 1985 which is already a closed chapter.

9. Hence, on the basis of discussions above, the O.A is liable to be dismissed both on grounds of Res-judicata and on merits and is so dismissed. No costs.

J. Chandra

(Ms. Jayati Chandra)
Member (A)

Navneet Kumar

(Navneet Kumar)
Member (J)

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