

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

Lucknow this the 17th day of Sept. 1995

O.A. No. 77 of 1991

HON. MR. V.K. SETH, MEMBER(A)

HON. MR. D.C. VERMA, MEMBER(J)

Laxmi Prasad Gupta aged about 52 years son of late Sri Shiv Shankar Ram Gupta R/o 27 C Railway Colony Badshah Nagar, Lucknow.

Applicant

By Advocate Shri R.K. Yadav

versus

1. The Union of India through the Secretary Railway Board New Delhi.

2. The General Manager, N.E. Railway Gorakhpur, U.P.

3. The Chief Personnel officer, N.E R, Gorakhpur.

4. C.M.O., N.E. Railway, Gorakhpur.

Respondents.

By Advocate Shri R.B. Srivastava.

O R D E R

HON. MR. V.K. SETH, MEMBER(A)

By means of this O.A., the applicant has prayed that Annexure -1 to the O.A. which is an order upgrading certain group C posts in the family welfare establishment of N.E. Railway, be declared as illegal and void. He also prays for issuance of direction to the respondents to give him promotion on the basis of seniority treating the cadre of District Extension Educator/Statistical Assistant S.I.

2. The respondents have opposed the claim of the applicant and pleadings have been exchanged between the parties. We have also taken note of the rival contentions of the learned counsel made during the course of hearing.

3. As per averments in the O.A., the applicant had joined service on 4.2.1967 as an Extension Educator under C.M.O., N.E. Railways. 2 posts of Statistical Assistants/District Extension Educator were upgraded vide order dated 24.12.1986(Annexure -4) from the pay scale of Rs 1400-2000 to 1600 to 2660. The orders were to take effect from 1.4.1986. Vide further order dated November, 1989, Annexure -1, impugned in this O.A., one post of Statistical Assistant was further upgraded to the pay scale of Rs 2000-3200 and the benefit was to be given with effect from 1.4.1988. During the pendency of the O.A., the applicant has already been promoted to the higher level with effect from 26.2.1993 and it is now urged by him through Supplementary Affidavit as also during the course of hearing by his learned counsel that the applicant is entitled to back wages on the higher post from the date of availability i.e. from 1.4.1988.

4. The applicant's main contention is that he being the senior most in his cadre of District Extension Educator/Statistical Assistant, he was entitled to get promotion with effect from 1.4.1988.

5. The stand of the respondents is that 5 persons were shown in the seniority list of District Extension Educator and Shri R.A. Siddiqui who left for Railway Board and Shri Phool Chand, a Scheduled Caste candidate, underwent the selection process and was

promoted as Statistical Assistant. They also assert that the cadre of District Extension Educator and Statistical Assistant are separate and in this connection they have enclosed Annexure A.2 dt. 14.8.92 with the Counter Affidavit which shows separate seniority for District Extension Educator and Statistical Assistants even though in the identical pay scales. In this seniority list of District Extension Educator at serial Number one figures the name of one Jaishankar Prasad and the applicant at serial No.2. In the seniority list of Statistical Assistant, one Phool Chand is shown at serial No. 1. The applicant has, questioned the same in his rejoinder affidavit inasmuch as, the Statistical Assistant and District Extension Educator have been shown as two separate cadres.

6. We note that the Railway Board, vide its order of 3.5.1983 issued on the subject 'cadre of family welfare Organisation of Railways, under item 3 of column 1 titled 'name of the post' has mentioned as under:

Name of the post

1.xxxxxxxxxx

2.xxxxxxxxxx

3.Statistical Assistant/
District Extension Educator "

The above clearly shows that the Railway Board treated Statistical Assistant and District Extension Educator as a common cadre. Further, memo dated 19.1.1988 (.R.A-1 to the Rejoinder) issued by the North Eastern Railway states ".....the following staff of group C under Family Welfare Organisation are upgraded/promoted in order of seniority with effect from 1.4.86"

Name and Designation

S/Shri

1. J.S. Prasad E.E.
- 2.L.P. Gupta E.E.
- 3.K.K. Saxena E.E.
- 4.Phool Chand E.E.
- 5.R.A. Siddiqui S.A."

This again shows that the Extension Educator (.E.E) and Statistical Assistant(S.A.) were treated as a common cadre and further that the applicant ranked senior to Phool Chand. On 31.8.95 the learned counsel for the respondents has filed before us a letter dated 26.7.1991 addressed by the Railway Board to the Chief Personnel officer of North Eastern Railway, which is in reply to the reference made by the latter to the Railway Board. The first part of this letter which is material for the present O.A. is reproduced below:

Subject: Upgradation of Extension Educator and Statistical Assistant to grade Rs2000-3200.


Kindly refer to your Confidential D.O. letter No. E/205/10/FWO/Med/IX dated 4/6/91 on the above subject. You would recall that in terms of Board's letter No. PC/III/86/UPG/16 dated 24th December 1986, all the posts(emphasis supplied) in the existing grades(emphasis supplied) of Statistical Assistants (Rs 1400-2300) were en bloc placed in the higher grade (Rs1600-2660) and the existing regular incumbents thereof were to be ordered the higher grade automatically(emphasis supplied). The posts of Statistical Assistants upgraded to grade Rs 1600-2660 were to be upgraded further automatically to the scale of Rs 2000-3200 with effect from 1.4.1988. There ~~was~~ is no ambiguity in these orders that the posts of Statistical Assistants in grade Rs 2000-3200 initially upgraded as a result of restructuring have to be filled by automatic upgradation of the regular incumbent of the post of Statistical Assistant in grade Rs1600-2660."

From the above it is clear that all the posts in the existing grades in the cadre of Extension Educator /Statistical Assistant were to be first upgraded from

the scale of Rs 1400-2300 to Rs 1600-2660 and later on from 1.4.1988 the same were to be further upgrded to the level of Rs 2000-3200. However, for some reasons, only one post of Extension Educator and one of Statistical Assistant was upgraded. Nonetheless, the fact remains that the upgradation of the posts was to be accompanied by the upgradation of incumbents. In such a case, therefore, when all the posts are not being upgraded, seniority has to be respected and there is no scope for complying the rule of reservation. In fact, this is also supported by the action of the respondents themselves who promoted Jaishankar Prasad, the senior most District Extension Educator. Had the rule of reservation been complied with, according to the roster, the first point would have gone to a reserved category official. The mistake was committed by the respondents in making the second promotion erroneously treating Statistical Assistant as separate cadre, ~~the respondents promoted Phool Chand~~
W.S. ~~CHAND~~

6. In view of the foregoing discussions therefore, we find merit in the claim of the applicant. The impugned memo dated November, 1989 is therefore, hereby quashed. It is further ordered that the applicant shall be deemed to be in the pay scale of Rs 2000-3200 from the day his junior Phool Chand was promoted to that scale with all consequential benefits.

7. Parties shall bear their own costs.


MEMBER (J)

Shakeel/

W.S. 13/9/95
MEMBER (A)