

Central Administrative Tribunal, Lucknow Bench, Lucknow
Original Application No.1 of 2008

This the ¹⁴20th day of December, 2013

Hon'ble Sri Navneet Kumar , Member (J)
Hon'ble Ms. Jayati Chandra, Member (A)

Md. Syed Hakim Ali aged about adult, son of late Sri Faiyaz Ali,
resident of 5 Rakabganj, Faizabad Road, Gonda.

Applicant

By Advocate: Sri Praveen Kumar

Versus

1. Union of India, through the General Manager, North Eastern Railway, Gorakhpur.
2. The Divisional Railway Manager, North Eastern Railway, Ashok Marg, Lucknow.

Respondents

By Advocate: Sri D.K. Mishra

(Reserved on 11.12.2013)

ORDER

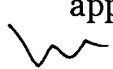
BY HON'BLE SRI NAVNEET KUMAR, MEMBER (J)

The present Original Application is preferred by the applicant
u/s 19 of the AT Act, with the following reliefs:-

1. To quash the impugned order dated 8.10.2007 annexed as Annexure No.A-1A, to this O.A.with all consequential benefits.
 2. To revise the pensionary benefits treating his pay Rs. 2420/- at the time of retirement and fix his promotion at par with his erstwhile juniors.
 3. To release arrears of pensionary benefits along with interest @ 12% p.a. from the date of retirement and till the actual payment.
 4. Any other relief, which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case may also be passed.
 5. Cost of the present case.
2. The brief facts of the case as per the applicant is that the applicant is initially appointed as Engine Cleaner in 1956 in pay scale of Rs. 70-85 and superannuated from the post of Driver 'A' on 30.11.1993. The applicant claims that he was senior to two persons

namely P.N.Srivastava and Thakur Prasad. Not only this, the learned counsel for applicant has also pointed out that on the post of Shunter-A, the applicant was placed at Sl. No. 304 whereas the aforesaid two persons namely P.N.Srivastava and Sri Thakur Prasad were at Sl.No. 308 and 310 and further after being qualified for selection for the post of Driver A, the name of the applicant was placed at Sl.No. 17 in the panel and the name of the said two persons were not figured as they never participated in the selection. In terms of Railway Board Circular, the authorities provided the benefit of aforesaid up-gradation to Sri P.N.Srivastava and Sri Thankur Prasad ignoring the applicant's claim whereas the applicant was much senior to them but he was superseded by his juniors. Learned counsel for the applicant has also submitted this fact that he has submitted number of representations but when nothing was heard, he preferred O.A.No. 98/2007 and after the directions passed by the Tribunal, the respondents have passed the impugned order dated 8.10.2007. It is also argued by the learned counsel for the applicant that despite reversion from the grade Rs. 1640-2900 to the grade of Rs. 1600-2660, the juniors referred above were allowed higher pay than the applicant and the applicant's pension has been fixed while taking into consideration his pay at Rs. 1950/- whereas the juniors were granted pensionary benefits while taking their pay as Rs. 2470/- .Feeling aggrieved by the illegal and arbitrary approach of the respondents, the applicant preferred the present O.A.

3. Learned counsel appearing on behalf of the respondents filed their reply and through reply, it is pointed out that earlier the applicant filed an O.A. on the similar grounds and facts for the similar relief in which this Tribunal vide order dated 18.7.2007, directed the respondents to decide the representation of the applicant. Accordingly, the same was decided by the Divisional



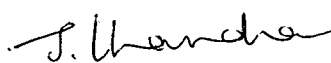
Railway Manager by means of order dated 8.10.2007. It is also pointed out by the learned counsel for respondents that by mistake, the promotion orders were passed in respect of Mohd. Siddiqui, P.N. Srivastava and Thakur Prasad Mishra by giving them the benefit of restructuring which was subsequently corrected by means of order dated 22.2.1994. As such, it cannot be said that if by mistake, some body was allowed the benefit, which was subsequently withdrawn, the applicant may also be given the same benefit. Not only this, the learned counsel for respondents has also placed the order dated 22.2.1994, by virtue of which the mistake was corrected whereby three persons were given promotion on the basis of restructuring. The applicant's case was also considered in the Pension Adalat and at that point of time in 1996, the pension Adalat has informed the applicant about the status and the benefit as claimed by him cannot be granted to him. The main contention of the respondents is that if any wrong has been committed in respect of an employee which was subsequently rectified, the same benefit of the said mistake cannot be given to another employee.

4. The learned counsel appearing on behalf of the applicant has filed Rejoinder reply and through rejoinder reply, the averments made in the O.A. are reiterated. It is also pointed out by the learned counsel for the applicant that action of the respondents is arbitrary by not granting the benefit as granted to similarly placed persons.

5. Heard the learned counsel for the parties and perused the record.


6. The applicant was initially appointed in the respondents organisation and promoted to the post of Driver 'A' and subsequently superannuated. The main contention of the applicant is that since the benefit of restructuring was given to two similarly situated persons, namely, Sri P.N. Srivastava and Sri Thakur Prashad Mishra, as such, same benefit be also given to him and his

pension may accordingly be fixed. The learned counsel for the applicant has also pointed out the seniority position of other two persons vis-à-vis his own seniority position in different grades. It is also to be seen that the applicant has failed to annex any pay slip which may indicate that what the pay the applicant was drawing and applicant has also failed to annex any PPO which may indicate that on what pay he was superannuated. The contention of the respondents also cannot be disbelieved to the extent that benefit of restructuring which was granted to three persons namely Mohd. Siddiqui, P.N. Srivastava and Thakur Prasad Mishra was found incorrect and subsequently withdrawn by means of order dated 22.2.1994. The learned counsel for the respondents also annexed the said order which clearly provides that in terms of an order dated 7.5.1993, the benefit of restructuring given to three drivers were withdrawn and they were reverted in the pay scale of Rs. 1600-2660 w.e.f. 1.3.1993 and accordingly their pay was fixed. Not only this, it is also mentioned in the aforesaid letter which is annexed as Annexure CR-1 that four persons namely Kishan Lal, Kundan Lal, Shyam Nath Singh and Ram Haran were upgraded w.e.f. 1.3.1993 from Pay scale Rs. 1600-2660 to 1640-2900/- It is undisputed fact that due to mistake committed by the respondents, the benefit of restructuring was granted to three persons wrongly which was withdrawn, as such, the applicant cannot claim the said benefit at par with those persons. There appears no justified reason to interfere in the present O.A. As such, the O.A. is fit to be dismissed. Accordingly, O.A. is dismissed. No order as to costs.



(Jayati Chandra)
Member (A)

HLS/-


(Navneet Kumar)
Member (J)