

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 222/2009

Reserved on 27.3.2014

Pronounced on 10-04-2014.

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

Naveen Kumar aged about 39 years son of Sri V.P.Srivastava resident of c/o 549/172 Kha, Bara Barha, Alambagh, Lucknow.

By Advocate: Sri Praveen Kumar Applicant

Versus

Union of India through,

1. The General Manager, Northern Railway, Baroda House , New Delhi.
2. The Deputy Chief Electrical Engineer (W) C&W Workshop, Northern Railway, Alambagh, Lucknow.

By Advocate: Sri B.B. Tripathi Respondents

ORDER

BY Hon'ble Sri Navneet Kumar,Member (J)

The present O.A. is preferred by the applicant under Section 19 of the AT Act with the following reliefs:-

- i) To quash the impugned order dated 13.1.2009 contained as Annexure No. A-1A to this O.A.
- ii) To upgrade the applicant on the post of Technician Grade III in grade Rs. 4000-6000 with effect from 1.1.2003 in terms of aforesaid restructuring scheme dated 9.10.2003 read with clarification issued by Railway Board on 23.7.2004 with all consequential benefits.
- iii) To fill up the chain/ resultant vacancies as per directions issued vide clarification order dated 23.7.2004 with effect from 1.11.2003 with all consequential benefits.
- iv) to grant arrears of pay etc. fixation and seniority etc. on account of release of aforesaid benefits as prayed for in prayer No.1 and 2.
- v) Any other relief, which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case, may also be passed.

vi. Cost of the present case.

2. The brief facts of the case are that the applicant was initially appointed in the respondents organization and was working as WTL in the Electrical shop of C&W as Wireman grade III in pay scale of Rs. 3050-4590. In 2002, the matter regarding assignment of seniority to the Mechanical staff in the electrical wing was taken up. The said proposed action was vehemently opposed by the affected staff and the unions and when the applicant came to know that the respondents were planning to merge the seniority of the machinist trade with the AC staff, they submitted a joint representation against merger of those persons who had come from the Machinist trade and requested the respondents not to merge the seniority of the Machinist trade with the AC staff. The respondents overlooking the objections submitted by the applicant, combined seniority list dated 31.7.2003 was circulated on behalf of the respondent No. 2. Immediately, thereafter, the applicant submitted an objection to respondent No. 2 aggrieved against the wrong fixation of the seniority and the merger of Mechanical staff with the Electrical staff and thereafter, the applicant approached the Tribunal by filing O.A. No. 517/2003. The representation of the applicant was directed to be disposed of. Thereafter, the respondents rejected the representation of the applicant. Against the said rejection, the applicant again preferred an O.A. No. 173 of 2004 before this Tribunal. The Tribunal finally passed an order on 30.8.2004 and quashed the seniority dated 31.7.2003 as well as the rejection order dated 24.3.2004 and the respondents subsequently issued a modified seniority list dated 6.7.2007 by virtue of which the mechanical staff have been assigned seniority below to the electrical wing in compliance of the judgment passed by the Tribunal. The learned counsel for the applicant pointed out that since the applicant was due for promotion in terms of his seniority in view of modified seniority list and also in pursuance of the restructuring scheme dated 9.10.2003,

therefore, they should have been granted promotion w.e.f. 1.11.2003 along with arrears of pay etc. Not only this, it is also indicated by the learned counsel for the applicant that the applicant has been granted promotion to the post of Technician Grade II without applying restructuring scheme introduced on 9.10.2003. It is also argued by the learned counsel for the applicant that the competent authority cannot denied the benefit of restructuring scheme when the said scheme has been implemented in the entire Railway. Sri Praveen Kumar, learned counsel for the applicant has also relied upon a decision of this Tribunal passed in O.A. No. 106/2009 and pointed out that the impugned order dated 13.1.2009 as in the case of the present applicant is challenged by means of O.A. No. 106/2009 and the Tribunal quashed the order dated 13.1.2009 and directed the respondents to give effect to the restructuring in the case of the applicant, as prayed for, in the O.A. But this should be done subject to final outcome of the writ petition No. 400(SB) of 2005 pending before the Hon'ble High Court.

3. Learned counsel appearing on behalf of the respondents filed their reply and through reply, the respondents denied the averments made in the O.A. and pointed out that the order dated 13.1.2009 is passed by the respondents in compliance of an order dated 15.9.2008 passed by the Tribunal in O.A.No. 327 /2008. It is also pointed out by the respondents that the respondent preferred Writ Petition No. 400(SB) of 2005 before the Hon'ble High Court where the judgment and order dated 30.8.2004 passed in O.A. No. 173 of 2004 , in which the Tribunal quashed the seniority list dated 31.7.2003 and also quashed the rejection order dated 24.3.2004 is under challenge. Not only this, it is also submitted by the learned counsel for the respondents that the case of the applicant cannot be considered for non availability of sufficient number of vacancies and as and when the

vacancies will be available, the case of the applicant will be considered and the benefit of restructuring scheme will be given to the applicant.

4. Learned counsel for applicant has filed Rejoinder reply and through Rejoinder reply, mostly the averments made in the O.A. are reiterated.

5. Learned counsel for respondents have also filed Supplementary CA and through Supplementary CA, respondents are denied the averments made in the R.A. and reiterated the averments made in the CA.

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

7. Admittedly, the applicant is working in the respondents organization and aggrieved by the action of the respondents .He preferred O.A. No. 517/2003 which was disposed of with a direction to decide the representation of the applicant. After that respondents rejected the representation of the applicant vide order dated 24.3.2004 and has also issued a seniority list dated 31.7.2003. Another O.A. was preferred vide of O.A. No. 173 of 2004 which was allowed by the Tribunal and the seniority list dated 31.7.2003 and rejection order dated 24.3.2004 were quashed by the Tribunal . The respondents feeling aggrieved by the said order, preferred the writ petition No. 400 (SB) of 2005 in which no stay has been granted by the Hon'ble High Court. It is also undisputed that the applicant claimed the benefit of restructuring w.e.f. 1.11.2003 in the cadre of Technician Grade II. Learned counsel for applicant relied upon a decision passed in O.A. No. 106/2009, in which the Tribunal allowed the O.A. while quashing the impugned order dated 13.1.2009 and directed the respondents to give effect to the restructuring in the case of the applicant as prayed for in the O.A. subject to the final outcome of writ petition No. 400 (SB) of

2005.

8. We find no reason to defer with the orders passed by the Tribunal in O.A. No. 106/2009 dated 17th March, 2009. Accordingly, the O.A. is partly allowed. The order dated 13.1.2009 is quashed and the respondents are directed to give effect to the restructuring in the case of the applicant subject to final outcome of writ petition No. 400 (SB)/2005. The same may be complied with within a period of two months from the date of certified copy of order is produced .No order as to costs.

J. Chandra

**(Jayati Chandra)
Member (A)**

Navneet Kumar

**(Navneet Kumar)
Member (J)**

HLS/-