

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Reserved on 28.04.2014.

Pronounced on 21st May, 2014.

Original Application No.182/2011

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

Hon'ble Dr. Murtaza Ali, Member (J)

Ateesh Babu, aged about 51 years, s/o Shri Sahab Lal, Resident of -C/O-Ticket No.J, Deputy Chief Electrical Engineer (W), C&W Workshop, Northern Railway, Alambagh, Lucknow.

-Applicant.

By Advocate: Sri Praveen Kumar.

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.

-Respondents.

By Advocate: Sri B.K. Singh for Sri M.K. Singh.

ORDER

By Dr. Murtaza Ali, Member (J) .

Through this OA, filed under Section 19 of the Administrative Tribunals Act, 1985 the applicant seeks following reliefs:

- "1.To quash the impugned order dated 26.05.2010 contained as Annexure No.A-1 to this OA.*
- 2. To upgrade the applicant on the post of Technician Grade-II in grade Rs.4000-6000 with effect from 01.11.2003 in terms of aforesaid Restructuring Scheme dated n09.10.2003 read with clarification issued by Railway Board on 23.7.2004 with all*

consequential benefits while extending the judgment rendered in the matter of Shambhoo Prasad versus Union of India.

- 3. To fill up the chain/ resultant vacancies as per directions issued vide clarification order dated 23.07.2004 with effect from 01.11.2003 with all consequential benefits.*
- 4. To grant arrears of pay etc., fixation and seniority etc. on account of release of aforesaid benefits as prayed for in prayer no.1,2 and 3.*
- 5. Any other relief, which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case, any also be passed.*
- 6. Cost of the present case."*

2. The brief facts of the case are that the applicant is working in Train Lighting-I on the post of Technician-II in the Electrical Shop of C&W Shop in pay band Rs.5200-20200/- at Grade Pay Rs.2400/-. It has been stated that by means of an order dated 17.11.2000 certain staff of the Machinist Trade [Mechanical Technician Grade III] in the pay scale of Rs.3050-4590 was sought to be sent to the Electric Shop against vacant posts on being declare surplus. It was specifically stated that Mechanical staff would continue to have their seniority in their original trade i.e. the Machinist Trade and in future they will continue to receive promotions in their original trade only. It is further been stated that seniority list of both the wings are separate and distinct, but a combined seniority list of Technical Grade-III dated 31.7.2003 was circulated wherein, it has been specifically indicated that re-deployed surplus Mechanic Trade Grade-III already working in the Electrical Shop have also been merged with the Train Lighting-I. The said seniority list was challenged by effected staff of Electrical side by filing an O.A.No.173/2004 and this Tribunal allowed the OA vide

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order dated 30.08.2004 and quashed the seniority list dated 31.07.2003 and the rejection order dated 24.3.2004. The respondents issued a revised seniority list dated 6.7.2007 by which the Mechanical staff was assigned seniority below the Electrical wing in compliance of the judgment passed by this Tribunal. This Tribunal also allowed O.A.No.128/2005 relating to the seniority group to which the applicant belongs vide order dated 10.11.2008. The respondents file a Writ Petition No.421 (SB) of 2009 against the order of this Tribunal but no interim order was granted by the Hon'ble High Court, the respondents issued a modified seniority list dated 25.6.2009 and also proceeded to comply with Tribunal's order dated 10.11.2008 passed in O.A.NO.128/2005.

3. In the meantime, the administration introduced a restructuring scheme on 09.10.2003, in order to provide for upgradation without holding any selection. Consequently, certain posts of Technician Grade-III were to be upgraded to the post of Technician Grade-II in scale of Rs.4000-6000. It is stated that under the Restructuring Scheme, the incumbents are to be given the benefits of simple upgradation strictly in accordance with seniority order. As the applicant was due for promotion in view of modified seniority list dated 25.06.2009 and in pursuance of restructuring scheme dated 09.10.2003, he should have been granted promotion with effect from 01.11.2003, but he was granted promotion vide order dated 30.10.2009 to the post of Technician Grade-II in normal course without granting him the benefit of the restructuring scheme. The

applicant preferred his representation dated 18.5.2010, which was rejected by an impugned order dated 26.5.2010 on the ground of pendency of writ petition. It has been stated that the representation of Naveen Kumar was also rejected. He approached the Tribunal by filing O.A.No.109/2009 and the Tribunal has quashed the rejection order and directed the respondents to extend the benefit to him. The respondents have also implemented the order passed by this Tribunal in O.A.No.106/2009 Shambhoo Prasad Vs. Union of India but, the applicant is being discriminated in the matter as he has not yet been granted the benefit of restructuring scheme. It has been stated that the respondents are under obligation to fill up not only the restructured post but also the posts which had fallen vacant w.e.f. 01.11.2003 read with clarification issued by the Railway Board on 23.07.2004.

4. In the Counter Affidavit filed on behalf of the respondents, it has been submitted that due to shortage of work, the mechanical staffs were redeployed in the Electrical Unit and they were accorded seniority in the new Unit as per rules. It has been further submitted that O.A.No.173/2004 Naveen Kumar Vs. Union of India was related to TL Group and it has been conceded that the similar controversy was involved in the said case as well. It has been submitted that the seniority list was issued strictly in accordance with the rules. An O.A. was filed by the Mechanical Staff namely Sri Ram Bharti, who sought relief against the seniority list and stayed the promotions. But, after issuance of the seniority list dated 31.7.2003, the applicant withdrew his case as the same OA had

become infructuous. It has been submitted that the applicant alongwith others assailed the said seniority list, which was set-aside by this Tribunal. The respondents preferred a Writ Petition (SB) No.421 of 2009 challenging the order dated 10.11.2008 passed by this Tribunal in O.A.No.128/2005 and in the meantime, the respondents decided to implement the judgment passed by this Tribunal subject to the outcome of the writ petition. The applicant and others were given revised seniority and also granted one promotion but they were not granted the benefit of restructuring scheme, which is effective from 01.11.2003 as a writ petition is still pending for consideration. It has been submitted that the representation of the applicant has rightly been rejected on account of pendency of the writ petition and since the applicant was not party to the case filed by Shambhoo Prasad therefore, he cannot be granted the same benefit.

5. Heard Shri Praveen Kumar, learned counsel for the applicant and Shri B.K. Singh holding brief for Sri M.K. Singh, learned counsel for the respondents and perused the record.

6. It is evident from impugned order dated 25.5.2010 that the applicant as well as other Technical Grade II employees were denied benefit of restructuring scheme due to pendency of W.P.No.241 (S/B) of 2009 filed by the Respondents against the order of this Tribunal dated 10.11.2008 passed in O.A.No.128/2005 P.C. Vishwakarma & Ors. Vs. Union of India.

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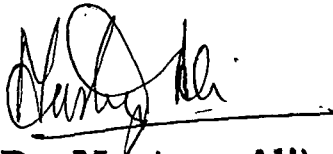
7. It has been contended on behalf of the applicant that the order of Tribunal dated 10.11.2008 has not been stayed by Hon'ble High Court and this Tribunal has quashed the seniority list dated 31.7.2003 and the respondents have granted the benefit of promotion after modifying the seniority list in compliance of Tribunal's order dated 10.11.2008. It has been submitted that the applicant is entitled for promotion w.e.f. 1.11.2003 in terms of modified seniority list dated 25.8.2009 and restructuring scheme dated 9.10.2003 but he was denied promotion w.e.f. 1.11.2003 on the pretext that a W.P.No.241 (S/B) of 2009 is pending against the order of Tribunal dated 10.11.2008, which is not justified.

8. It has further been submitted that the applicant is similarly situated employee and he is entitled to the same benefit which has been granted to the applicant of O.A.No.106 of 2009 Shambhoo Prasad Vs. Union of India decided on 17.3.2009. He also relied upon a decision of this Tribunal in O.A.No.481/2005 Vishnnu Kumar Vs. Union of India decided on 3.2.2006 in which the respondents were directed to give effect the benefit of restructuring scheme in the case of applicant subject to the final outcome of writ petition.

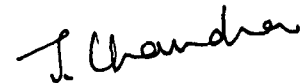
9. We find no reason to defer with the orders passed by the Tribunal in O.A.No.106 of 2009 Shambhoo Prasad Vs. Union of India decided on 17.03.2009 and in O.A.No.222/2009 Naveen Kumar Versus Union of India decided on 27.3.2014. Accordingly, the O.A. is partly allowed and impugned order dated 26.5.2010 is quashed and the respondents are directed to give effect to the

benefit of restructuring scheme dated 9.10.2003 in the case of applicant subject to the final outcome of writ petition No.241 (S/B) of 2009 within a period of two months from the date of receipt of certified copy of order.

10. No order as to costs.



(Dr. Murtaza Ali)
Member (J)



(Ms. Jayati Chandra)
Member (A)

Amit/-