

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA.

O.A. No 280 of 2006

Date of order : 02.08.2012

C O R A M

Hon'ble Mr. Naresh Gupta, Member [A]
Hon'ble Mrs. Bidisha Banerjee, Member [J]

1. Bhikho Mandal, S/o Late Chaman Mandal, Permanent resident of village - Fetehpur, P.S. Jhajha, Jamuai, presently posted as Filter Plant Operator and working under Section Engineer [Works] East Central Railway, Jhajha which comes within Divisional Office, Danapur.

.....Applicant.

By Advocate : Shri M.P. Dixit.

Vs.

1. The Union of India through the the General Manager, East Central Railway, Hajipur.
2. The Chief Personnel Officer, East Central Railway, Hajipur
3. The Divisional Railway Manager, East Central Railway, Danapur.
4. The Senior Divisional Personnel Officer, East Central Railway, Danapur.
5. The Section Engineer [Works] E.C. Railway, Jhajha within Danapur Division.

.....Respondents.

By Advocate : None

O R D E R

Naresh Gupta, M [A] - This OA has been filed by one Bhikho Mandal seeking a direction to the respondents to provide promotion due to the applicant as has been done for several persons of the same category who had been provided promotional benefits, either monetary or higher post / category of Gr. I and further the post of Master Craftsman in the pay scale of Rs. 5000-8000/- with arrears and interest thereon. The case of the applicant is as follows:

2. The applicant was appointed on compassionate grounds as Khalasi [Group 'D' - Class IV category] on 05.02.1969. He was assigned the job of Chainman, an equivalent post with effect from 31.05.1979 in the same scale of pay [Rs. 196-232] and continued as such till he got the

Naresh Gupta

upgraded scale under the restructuring as recommended by the 3rd CPC. The applicant was promoted to the post of Filter Plant Operator, Group 'C', Class III in the pay scale of Rs. 260-400/- with effect from 09.04.1983 and was given with effect from 20.01.1988 the pay scale of Rs. 1200-1800/- pf Grade II Filter Plant Operator. He was to superannuate from service on 30.04.2006 on completion of 60 years of service, his date of birth being 24.04.1946.

3. It is contended that the applicant was entitled to get promotional scale of pay for Grade I, that is, Rs 4500-7000/- and subsequently the post of Master Crafts Man in the pay scale of Rs. 5000-8000/-. The similarly situated employees of Danapur Division, even juniors to the applicant, had been provided higher pay scales. The employees of Railways posted, apart from Danapur, at Gomo, Paterdih and Barkakana, had got the benefits. The applicant was entitled for two successive promotions in the pay scale of Rs. 4500-7000/- applicable for Gr. I and further Rs. 5000-8000/- for Master Crafts Man. The orders passed by the respondents in compliance with the order of this Tribunal dated 08.08.2005 in OA No. 480 of 2005 were not justified in the eye of law.

4. In their written statement, the respondents have submitted that the applicant was appointed as Khalasi in the scale of Rs. 70-85/- with effect from 05.02.1969, then promoted as Khalasi Helper in the scale of Rs. 210-290 with effect from 01.08.1978, and again promoted as Filter Plant Operator in the scale of Rs. 260-400/- with effect from 09.08.1983 and lastly as Filter Plant Operator Gr. II in the scale of Rs. 1200-1800/- with effect from 20.01.1988. Thus, the applicant got promotions in 1978, 1983 and lastly in 1988. The applicant had availed himself of three promotions during his service tenure and he was not entitled for further promotion under the Assured Career Progression Scheme [ACP]. No one junior to the applicant in Filter Plant was ever considered for or given promotion in the post of Crafts Man in scale of Rs. 5000-8000/-. In regard to the examples of Satya Narayan and Ramrup given by the applicant, the respondents have submitted that

Nach 44-

they were of different cadre.

5. In his rejoinder, the applicant has cited examples of some juniors like Aloke Deo Bharti and Hari Mahto who though appointed after the applicant were promoted to the post of Technician / Filter Plant Operator Gr. I in the pay scale of Rs. 4500-7000/- and Sr. Technician /Crafts Man in the pay scale of Rs. 5000-8000/- while the applicant retired in the post of Technician / Plant Operator Gr. II in the pay scale of Rs. 4000-6000/- on 30.04.2006. The dates of appointment as Filter Operator / Technician - Gr. III, Gr. II, Gr. I and Master Crafts Man / Sr. Technician are as follows:

1	2	3	4	5
Sr.No.	Name of Post	Applicant	Alok Deo Bharti	Hari Mahto
1	Filter Operator / Technician/Gr.III Group 'C' [3050-4590]	09/06/83	05/09/90	18.02.2000
2	Filter Operator / Tec.Gr.II [4000-6000]	20.01.88	27.08.96	01/03/02
3	Filter Operator /Tec. Gr.I [4500-7000]	Not promoted	13.05.2000	07/08/04
4	Master Crafts Man/Sr. Tec.[5000-8000]	Not promoted	23.03.2005	

Many junior persons in the E.C. Railway had been promoted to the post of Filter Gr. I and Master Crafts Man Gr. I and this was apparent from the seniority list of Sr. Technician [Filter Operator], Filter Operator / Technician Gr. I, Gr.II and Gr. III up to the year 2005 provided by the respondents under the RTI Act on 12.02.2009 [Annexure A/4 to A/7 of Rejoinder]. These posts are non-selection posts and promotions are granted as per seniority. The applicant ought to have been promoted to the post of Sr. Technician [Filter Operator] and Filter Operator /Technician Gr. I from the date his junior was promoted, that is 23.03.2005 and 13.05.2000.

6. Heard the learned counsel for the applicant on 10.07.2012. There was none present on behalf of the respondents. Earlier when the case came up on 08.02.2010, both sides were heard. The learned counsel for the respondents [Shri Mukund Jee] was directed to ascertain by the next date why the applicant was not promoted when his juniors [Hari Mahto and Alo

Nach 4,6-

Deo Bharati] were promoted to the higher grades, but this information had not been provided till 10.07.2012 when the case came up for hearing. As it is a long pending matter, it was not possible to grant any further adjournment. Perused the entire record.

7. It is seen that in the OA bearing No. 480 of 2005 filed earlier by the applicant, this Tribunal had directed, vide order dated 08.08.2005, the respondents to treat the OA with its Annexures as a representation and dispose of the same in accordance with extant rules and law by a speaking order. In pursuance of this order, the Chief Personnel Officer, E.C. Railway, Hajipur [respondent No. 2] had passed a speaking order indicating that the applicant had got three promotions from the date of his appointment on 05.02.1969 as Khalasi- he was promoted as Khalasi Helper with effect from 01.08.1978 , Filter Plant Operator with effect from 09.04.1983 and as Filter Plant Operator Gr. II with effect from 20.01.1988, and thus, the case of the applicant did not come under the purview of ACP scheme. The said scheme was introduced by the Railways to extend the benefit of higher grade pay to those employees who have never been promoted in the first 12 years of their service and the second spell of 24 years from the beginning. There had been no discrimination against the applicant.

Nach 458. In the aforesaid speaking order, it is indicated as to how the applicant was not eligible for promotion when two of his juniors, Alok Deo Bharti and Hari Mahto, had got promotion as indicated in paras 5 and 6 above, if they were in the same stream. It appears that the respondents have examined the case on the basis of the ACP scheme whereas the applicant's claim is on the basis that his juniors had got two promotions but he was left out. It is necessary to look into how the applicant got left out. The matter has, therefore, perforce to be remitted to the respondents the second time. The applicant is directed to furnish a copy of the OA with its Annexures and a copy of this order to respondent No. 1 or 2 within 15 days of the receipt of this order by him. The respondent No. 1 or 2 is directed to decide

Nach 46-

and pass orders expeditiously on the claim of the applicant, preferably within four months of the receipt of the above documents.

9. With the above directions, the OA stands disposed of. No order

Naresh Gupta-
as to costs.

B. Banerjee.
[Bidisha Banerjee] M [J]

/cbs/

Naresh Gupta-
[Naresh Gupta] M [A]