

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
O.A. No. 429/2006**

Date of Order: 20th March 2012

C O R A M

**HON'BLE MR. NARESH GUPTA, MEMBER[A]
HON'BLE MRS. URMITA DATTA [SEN], MEMBER[J]**

G.R. Mahto, Son of Late Sundar Mahto, Junior Engineer Grade-I, Diesel Shed, E.C. Railway, Samastipur, Resident of Railway Quarter No. DSL/306, Road No. 18, G.F. Colony, E.C. Railway, Samastipur.

..... Applicant.

By Advocate: - Shri M.P. Dixit

-Versus-

1. The Union of India through the General Manager, E.C. Railway, Hajipur.
2. The Divisional Railway Manager, E.C. Railway, Samastipur.
3. The Senior Divisional Personnel Officer, E.C. Railway, Samastipur.
4. The Sr. D.M.E (Diesel), E.C. Railway, Samastipur.

..... Respondents.

By Advocate: -Shri A.K. Singh

O R D E R

Naresh Gupta, Member [Administrative] :- This OA has been filed by one G.P. Mahto for a direction to the respondents to grant to the applicant promotion to the post of Section Engineer [Diesel] in the scale of Rs. 6,500- 10,500 under restructuring in the chain/ resultant vacancies which had arisen on account of promotions given to the Section Engineers [SEs, in short] [Diesel] to the next higher grade of Senior Section Engineer [SSE, in short] with all consequential benefits. The case of the applicant as presented in the OA is as follows:

2. The applicant who was appointed through the Railway Recruitment Board, Mumbai on 27.01.1994 as JE-II in the pay-scale of Rs. 5,000-8,000 was promoted as JE-I in the scale of Rs. 5,500 9,000 w.e.f. 01.05.1998. He was transferred to Diesel Shed, Samastipur on administrative grounds and since then he had been working in Samastipur Division. A combined seniority list as on 15.01.2004 was issued in which the name of the

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applicant was placed below one Shri Ghanshyam Singh in JE- I in the scale Rs. 5,500- 9,000 [Annexure A/1 of OA]. In the meanwhile, the Railway Board implemented the restructuring scheme w.e.f. 01.11.2003 whereby the persons in the zone of consideration were promoted on the basis of seniority and record of service and accordingly 3 SEs [D], namely G.S. Roy, S. Datta and M.P. Yadav, in the scale of Rs. 6500 – 10,500 whose names appear at Sl. Nos. 2, 3 & 4 of the aforesaid seniority list [Annexure A/1 of OA] were promoted as SSEs [D] w.e.f. 01.11.2003 vide order dated 07.09.2005 [Annexure A/2 of OA]. The moment the 3 SEs [D] were promoted, 3 resultant/ chain vacancies occurred and as such the applicant and another person, Shri Ghanshyam Singh ought to have been promoted under restructuring w.e.f. 01.11.2003 as per the Railway Board's letter dated 23/26.07.2004 [Annexure A/3 of OA]. Instead, 3 out of 4 vacancies of SE [D] were filled up by direct recruitment by Shri Mandap Kumar, Shri Prem Nath and Shri Rajiv Ranjan Jha against which the applicant submitted a representation dated 02.05.2005 [Annexure A/4 of OA] pointing out that direct recruitment cannot be done beyond 20%. Meanwhile, Shri Ghanshyam Singh, senior to the applicant, was promoted to the post of SE [D] and the applicant is the only left out person to be promoted. Thereafter, the applicant submitted representations dated 17.04.2006, 15.05.2006 and 26.06.2006 regarding the matter, but no reply has been given by the respondents till date and two posts of S.E. [D] were lying vacant. Out of the two posts, one post was the resultant/ chain vacancy which was filled up by Shri Mandap Kumar, a direct quota candidate, but he has subsequently been absorbed in another post vide order dated 21.10.2005 [Annexure A/6 of OA] and as such the applicant was liable to be promoted w.e.f. 01.11.2003 in accordance with the Railway Board's letter dated 23/26.07.2004 [Annexure A/3 of OA].

3. The respondents have, in their written statement [WS], submitted that the post of SSE is a Headquarter controlled post and the seniority and vacancies of this post are maintained by the Headquarters at zonal level. This post is filled up by selection through inter-se seniority at zonal level of SEs in the scale of Rs. 6,500- 10,500. When three SEs [in the pay-scale of Rs. 6,500- 10,000] of the Samastipur Division were promoted by Headquarters to SSEs [Rs. 7,450-11,500] under restructuring, no chain/ resultant vacancy arose [in

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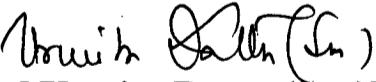
the Division] as the sanctioned posts remained the same. The total number of posts remain the same after restructuring. Three [3] persons were recruited in the scale of Rs. 6,500 -10,500 under the 20% direct recruitment [DR] quota. This did not disturb the promotion quota. As regards Shri Ghanshyam Singh, he is senior to the applicant and he was promoted after due selection. The post of SE is a selection post.

4. In the rejoinder, the applicant has pointed out that the respondents have themselves said in their WS that the applicant was entitled to get promotion as SE [Rs. 6,500- 10,500] under restructuring as per extant rules and that the competent authority had decided to give him the benefit of promotion under restructuring. The statement of the respondents that no chain/ resultant vacancy arose due to restructuring on the promotion of 3 SEs to SSEs under restructuring was incorrect. The applicant had since been granted promotion but this was given effect from 22.01.2007 vide order dated 22.01.2007 [Annexure P/2 of rejoinder] instead of from 01.11.2003. The Railway Board had ordered in RBE No. 43/ 2004 dated 22.01.2007 [Annexure P/1 of rejoinder] that the benefit of restructuring has to be given effect from 01.11.2003 on the basis of CR and SR and also without holding any written test/ viva-voce, but the respondents have deviated from this order as well as the order in Annexure A/3 of OA.

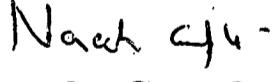
5. Heard the learned counsels of the applicant and the respondents on 14.02.2012 and perused the entire record. It is seen that in the letter dated 23/26.07.2004 [Annexure A/3 of OA], the Railway Board had clarified that the vacancies arising out of restructuring would include chain/ resultant vacancies as well. In RBE No. 43/2004 [Annexure P/1 of Rejoinder], it was indicated that all vacancies arising out of restructuring should be filled up by senior employees who should be given the benefit of promotion w.e.f. 1.11.2003 on proforma basis with actual payment w.e.f. 04.12.2003 whereas for the normal vacancies existing on 01.11.2003, junior employees should be posted by modified selection procedure but they would get promotion and higher pay from the date of taking over the posts as per normal rules. The applicant has based his claim on the above two letters of the Railway Board. On the other hand, the respondents have submitted that the post of SSE is filled up by selection through inter-se seniority at zonal level of SEs in the scale of Rs.

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6,500- 10,500 and that when three SEs [in the pay-scale of Rs. 6,500-10,000] of the Samastipur Division were promoted by Headquarters to SSE [Rs. 7,450- 11,500] under restructuring, no chain/ resultant vacancy arose [in the Division] as the sanctioned posts remained the same. The total number of posts remain the same after restructuring. Three [3] persons were recruited in the scale of Rs. 6,500 -10,500 under the 20% direct recruitment [DR] quota. However, it is indicated in the WS that that the applicant was entitled to get promotion as SE [Rs. 6,500- 10,500] under restructuring as per extant rules and that the competent authority had decided to give him the benefit of promotion under restructuring. The applicant had, in fact been granted promotion but this was given effect from 22.01.2007 vide order dated 22.01.2007 [Annexure P/2 of rejoinder] instead of from 01.11.2003. Thus there is an apparent inconsistency and lack of clarity in the stand of the authorities. In the circumstances, the respondents are directed to reexamine the case of the applicant for his promotion w.e.f. 01.11.2003 to the post of Section Engineer [Diesel] in the scale of Rs. 6,500- 10,500 in the chain/ resultant vacancies which had arisen on account of promotions given to the Section Engineers [SEs, in short] [Diesel] to the next higher grade of Senior Section Engineer [SSE, in short] with all consequential benefits, in accordance with the rules/ instructions of the Railway Board on the subject, the exact scope of the expression "chain/ resultant vacancies" and the eligibility of the applicant for the benefit w.e.f. 01.11.2003, as claimed by him, and pass a speaking order within a reasonable time from the date of receipt/ production of a copy of this order. With this the OA stands disposed of. No costs.


[Urmita Datta (Sen)]
Member[J]

srk.


[Naresh Gupta]
Member[A]