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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CIRCUIT SITTINGS AT NAGPUR

1. Tr.Application No. 10/1986
2. Tr.Application No.137/1987
3. Original Application No.339/1987

Shri R.D.Joshi,
"Shardha Steel Centre,
Station Area,
Post: Taluq. Murtizapur,
Dist: Akola(M.S.)

.. Applicant in
T.A.No.10/86
T.A.No.137/87 &
O.A.No.339/87

v/s.

1. The General Manager,
South Central Railway,
Secunderabad.

2. The General Manager,
Central Railway,
Bombay V.T.
Bombay.

3. Senior D O S M(M.G.)
Secunderabad

.. Respondents in
Tr.Application
No.10/1986

1. The General Manager,
South Central Railway,
Railway Nilayam,
Secunderabad
(Andhra Pradesh)

2. The General Manager,
Central Railway,
Bombay V.T.
Bombay.

3. Mohan Ronald,
Area Officer,
South Central Railway,
Central Office, Near Railway
Hospital,
AT & POST: Akola,
Dist: Akola.

4. The Union of India,
through the General Manager,
Central Railway,
Bombay V.T.

.. Respondents in
Tr.Application
No.137/1987.

1. Union of India
through General Manager,
South Central Railway,
Secunderabad.
2. General Manager,
South Central Railway,
Rail Nilayam,
Secunderabad.

.. Respondents in
D.A.No.339/1987

Coram: Hon'ble Vice-Chairman, Shri B.C. Gadgil
Hon'ble Member(A), Shri P.Srinivasan

Appearance:

1. Shri N.K.Kaloo
Advocate
for the applicant
2. Shri P.N.Chandurkar
and Smt. Shinde
Advocates
for the respondents.

JUDGMENT:-

Date: 30.6.1988

(PER: Shri P.Srinivasan, Member(A))

Tr.Application No.10/86 originated as Regular Civil Suit No.201/84 before the Civil Judge, Senior Division, Washim before it was transferred to this Tribunal. Transferred Application No.137/87 has been received on transfer from the High Court of Bombay where it was initially filed as Writ Petition No.2062/84. Original Application No.339/87 was filed before this Tribunal after its constitution. All these applications are by the same individual and were therefore, heard together.

2. The applicant who joined service in the

Central Railway in 1948 was working as Station Master in the grade of Rs. 425-640 at Kanergaon Naka Railway Station on the Purna Khandwa Metre Gauge Station of that Railway in 1981. The Purna Khandwa Metre section was transferred to the Hyderabad (Metre Gauge) division of the South Central Railway w.e.f. 1.4.1981. Persons working in the Khandwa Purna section were allowed to exercise an option either to remain the Hyderabad Division of the South Central Railway or to go back to the Bhusaval Division of the Central Railway to which they belonged prior to 1.4.1981. Those who did not exercise any option were deemed to have opted to the Central Railway and were to be repatriated to the Central Railway "in due course on a phased programme when staff position permits on (Metre Gauge) division of the South Central Railway". The applicant did not exercise option either way, but continued to work in the Khandwa Purna Metre Gauge section after 1.4.1981. There is some dispute between the parties as to whether the applicant should have been treated as on deputation with the South Central Railway from Central Railway after 1.4.1981 but this need not detain us here. There is also a dispute as to whether the case of the applicant for promotion should have been processed in the Central Railway or in the South Central Railway because his seniority in the cadre in which he was working could have been different, depending on whether he was borne on the establishment of one or the other of the two Railways. This also need not be gone into here because the claim of the applicant that his

promotion to higher posts should have been considered along with those of two other persons viz., Shri D.R.Vani and Shri R.M.Choudhari, both officials borne on the establishment of the Central Railway, can be dealt with without determining the particular Railway to which the applicant should have been allotted, as we shall presently show.

3. The Senior Divisional Personnel Officer (DPO) South Central Railway, Secunderabad by order dt.

14.5.1982 transferred applicant from Kanergaon Naka Station to Basmat Nagar Station on the scale of Rs. 455-700 but this order was modified by a subsequent order dtd. 17.9.1982 by which he was posted to Washim Railway Station as Station Master. Both the first transfer order dtd. 14.5.1982 and the subsequent order dtd. 17.9.1982 purported to promote the applicant to the grade of Rs. 455-700. The applicant's version is that it was a regular promotion, but according to the authorities of the South Central Railway, who are the Respondents in all the applications, it was an ad hoc appointment. Smt. Shinde who appeared for the South Central Railway also stated that since there was no sanction of a post at Basmat Nagar Station in the grade of Rs. 455-700, the earlier order dtd. 14.5.1982 transferring the applicant to Basmat Nagar was modified by the subsequent order of 17.9.1982 by which he was posted to Washim Railway Station where there was a sanctioned post in that grade. From the narration in the application (Tr.Application No.10/86) it is seen

that since the grade of Rs. 455-700 was not available at Basmat Nagar Station, it was only on his joining duty at Washim on 29.5.1982 that the applicant started drawing pay in that grade. At this stage it may be mentioned that posts in the grade of Rs. 455-700 in the Railways are selection posts. It is, however, common ground that the applicant was appointed to that grade on 14.5.1982 without undergoing any selection test. That is why the DPO, South Central Railway, in his reply to Tr. Application No.10/86, states that the applicant was initially promoted to that grade purely on an ad hoc basis, but later in pursuance of orders of the Railway Board, employees "promoted on ad hoc basis in the grade of Rs. 455-700 (Revised Scale) on or after 1.4.1981, but upto 31.7.1983 were regarded as one time dispensation without conducting regular selection vide Office Order No.76/ET/III/83 dt. 29.9.1983 (Ann-II)". The said office order was, in turn, a sequel to a letter of the Railway Board dtd. 29.7.1983. At this point it would be useful to turn to the said letter of the Railway Board as its fall out on the applicant forms the main centre of controversy in this case.

4. The Railway Board's letter dtd. 29.7.1983 sought to restructure the various cadres in the Railways. Broadly speaking, the result of the restructuring, was that Station Masters working before restructuring in the grade of Rs. 425-640 would become immediately eligible for promotion to the next higher grade of Rs. 455-700

and the seniormost Station Masters in the Grade of Rs. 425-640 would become eligible for two promotions, first to the grade of Rs. 455-700 and then to the next higher grade of Rs. 550-700. Similarly persons working in any other grade would become eligible for promotion to the next immediate higher grade or to one grade still higher depending on their seniority in the original grade. The promotions so contemplated were with reference to the grade in which a person was actually working on 1.8.1983. The restructuring of the cadres would become effective from 1st August, 1983 but officials receiving one or two promotions under the scheme as the case may be would draw pay in the grade to which they are so promoted from 1.8.1983 with proforma fixation from 1.8.1982. For example, if a person was working in the grade of Rs.455-700 on 1.8.83 on regular basis, he would be eligible for promotion to the next higher grade of Rs. 550-700 or depending on his seniority in the grade of Rs. 455-700, even to the next higher grade of Rs.700-900 with effect from 1.8.1982 but would be allowed to draw pay in the promoted grade only from 1.8.1983. "However", the letter goes on to say in 3.1, " in a case where, as a result of this restructuring, an individual railway servant becomes due for promotion to more than one grade above his present grade, and if promotion to posts in any of these grades calls for selection than promotion to that grades(s) will be governed by the normal rules for promotion." This is further clarified in sub-clause(b) of clause(ii) of

para 3.1 in relation to promotions to Group 'C' post with which we are here concerned "wherever the vacancy to be filled in is in a post now classified as 'Selection' as per the enclosed Annexure, the existing regular incumbents in the next lower grade/grades shall be considered for promotion on the basis of the modified selection procedure prescribed in para 3.2. infra."

The said para 3.2 reads: "For the purpose of promotion in terms of the proceeding sub-paragraph the existing selection procedure will stand modified to the extent that the selection will be based only on scrutiny of service records without holding any written and/or viva-voce tests. Naturally, under this procedure, the category of "outstanding" will not arise. This modified selection procedure has been decided upon by the Ministry of Railways as a one-time exception by way of a special dispensation in view of the numbers involved, with the objective of expediting the implementation of these orders. It is reiterated that the normal rules governing promotion to selection and non-selection posts will apply to vacancies in the aforesaid categories arising after 1st August, 1983."

5. Railway Board's Circular dtd. 29.7.1983, from which we have extracted passages above, was modified by a subsequent Circular dtd. 12.8.1983 also issued by the Ministry of Railways. At this stage, we may mention that Learned counsel for the applicant expressed a doubt whether the said circular of 12.8.1983 was issued by

the Ministry of Railways or whether the modifications were sought to be made by the Divisional Railway Manager, Bhusaval to Board's letter of 29.7.1983, in the latter event, the DRM was not competent to modify the circular issued by the Board. Shri Chandurkar for the Central Railway produced the original file from a perusal of which we are satisfied that letter dtd. 12.8.1983 was indeed issued by the Ministry of Railways and not by the DRM, Bhusavan. The main change brought about by the Board's letter dtd. 12.8.1983 which concerns us here is at para 6 "The intention behind the instructions contained in para 3.1 of Board's letter of 29.7.1983 is that in cases where a railway employee becomes eligible for more than one promotion in terms of the restructuring orders, the modified selection procedures outlined vide para 3.2 will not apply to any of these promotions. In cases of more than one promotion the normal selection procedure as per existing orders will apply to all the promotions." Much of the controversy in this case centres round the interpretation of the original letter of 29.7.1983 and its modification by the letter of 12.8.1983.

6. While the applicant was working as Station Master at Washim, he was transferred on promotion to Khandwa Station in the grade of Rs. 550-750. The applicant says that he received the said order on 8.12.1983 but thereafter sent a representation claiming that he should have been given two promotions under the

restructuring scheme to the grade of Rs.700-900. It appears that in that letter, the applicant also informed the authorities that he was not well. The respondents say that repeated messages were conveyed to the applicant to hand over charge at Washim and join at Khandwa but the applicant did not do so. Ultimately, according to the Divisional Personnel Officer, South Central Railway in his reply to Tr. Application No.10/86, the Area Officer of the Railway at Akola went to Washim and issued a Memo to the applicant to hand over charge on 12.8.1984 and the applicant voluntarily handed over the charge to the Area Officer on 13.8.1984. According to the applicant's counsel, since the transfer to Khandwa was illegal the applicant did not accept the transfer and after 13.8.1984 he did not join anywhere till he retired from service. According to the reply of the DPO, South Central Railway the applicant was not eligible for the second promotion to the grade of Rs. 700-900 as claimed by him because he was too junior in the grade of Rs. 455-700 as also in the grade of Rs. 550-750 to which he was promoted in November, 1983. The reply goes on to say that posts in the grade of Rs. 700-900 were selection posts to which a person can be promoted only after passing a test. The applicant was given an opportunity to take the written examination for such promotion which was held on 30.7.1984 but he did not take that examination and so he could not be promoted to that post. From 13.8.1984 till the date of his retirement on 31.10.1984 the applicant was not paid any salary or allowances,

because he did not report for duty anywhere.

7. To complete the statement of facts, we may also refer to a contention raised on behalf of the applicant that while two others viz., Shri D.R.Vani and Shri R.M.Choudhary who were Station Masters in the grade of Rs. 425-700 like the applicant were given two promotions upto the grade of Rs. 700-900, the applicant was denied the second promotion. The Divisional Railway Manager(P), Central Railway has clarified that so far as Shri Choudhary was concerned he passed the selection test for promotion to the grade of Rs. 455-700 on 28.10.1979 and was duly promoted to that grade on 11.8.1980 i.e. long before the scheme of restructuring came into effect (i.e. before 1.8.1982). He was eligible for two promotion to still higher grades on restructuring. He was promoted to the grade of Rs. 550-700 which was not a selection post and again to the grade of Rs.700-900 which was a selection post on his passing the requisite test on 2.11.1983. So far as Shri Vani is concerned, he passed the selection test for appointment to the grade of Rs. 455-700 held on 5.4.1981 and he was thereupon promoted to that grade on 4.3.1982, which again was before the scheme of restructuring was made effective (i.e. before 1.8.1982). As a result of restructuring which took effect from 1.8.1982 Shri Vani was given one promotion to the non-selection grade of Rs.550-750 on 22.2.1984. He was not given the second promotion to the grade of Rs. 700-900 as part of the restructuring

scheme because he did not pass the requisite test. He was, however, in the normal course promoted to the grade of Rs. 700-900 on 24.6.1986 after he passed the selection test held on 18.12.1985 and was empanelled on 16.6.1986. It is further stated that the applicant also took the test for promotion to the grade of Rs. 455-700 held on 5.4.1981 along with Shri Vani but failed. We have already referred above to the statement of the respondents that the applicant was promoted to the grade of Rs. 455-700 on a purely ad hoc basis by order dtd. 14.5.1982 and transferred to Basmat Nagar which was later changed to Washim by another order dtd. 17.9.1982. According to the respondents, this ad hoc promotion was due to the fact that the applicant did not pass the selection test for regular promotion. According to the respondents therefore, the applicant's regular appointment as on 1.8.1982, the date from which restructuring came into effect was only in the grade of Rs. 425-640 and not in the grade of Rs. 455-700 in which he was officiating at the time purely on ad hoc basis.

8. Regular Civil Suit No.201/84 was filed in the Court of the Civil Judge Senior Division, Washim on 27.6.1984. This Civil Suit on transfer to this Tribunal has been re-numbered as Tr.Application No.10/86. The prayer of the applicant in this application is for a declaration that he is entitled to a post in the grade of Rs. 700-900 in accordance with the scheme of restructuring and to pay in that grade from 1.8.1983. The second prayer is that the respondents be restrained

from directing him to hand over charge as Station Master at Washim and posting him to some other place. The second prayer has now become academic as the applicant has retired from service and did not join at any place other than Washim till his retirement.

9. Writ Petition No.2062 of 1984 was filed in the High Court of Bombay on 15.9.1984 which on transfer to this Tribunal has been re-numbered as Tr.Application No.137 of 1987. By this application the applicant has sought a direction quashing order dtd. 11.11.1983 by which he was promoted to the grade of Rs. 550-750 and posted to Kanergaon Naka on the ground that he should have been promoted to next higher grade of Rs. 700-900 which is more or less the same prayer as in the Civil Suit. He also wanted a direction that he be repatriated to the Central Railway for the purpose of getting him benefits under the restructuring scheme. In Original Application No.339/87, filed before this Tribunal on 5.5.1986, the applicant wants a direction from this Tribunal to the respondents to pay him arrears of salary and allowances amounting to Rs. 31,200/- and interest thereon. He has averred that he had protested against his promotion to the grade of Rs. 550-750 by order dtd. 11.11.1983 and his consequent transfer from Washim to Itwari, but in spite of his he was struck off the muster roll at Washim from July, 1984, the result of which was that he did not get any salary or allowances from July, 1984 to October, 1984. He quantified this amount at Rs. 31,200/- and prayed that

the respondents be directed to pay this amount to him with interest.

10. For the sake of convenience we may first dispose of the prayer in O.A.No.339/87 for arrears of pay for the period July, 1984 to the date of the applicant's retirement on 31.10.1985. From the narration of facts given above, it will be clear that on his transfer from Washim to Kanergaon Naka the applicant was relieved from his post at Washim on 13.8.1984 and thereafter the applicant did not join anywhere. The applicant does not say that he proceeded on any kind of leave from that date till the date of his retirement. Since the applicant was neither on duty nor on leave from 13.8.1984 till the date of his retirement, the respondents obviously cannot pay any salary and allowances for this period i.e. from 13.8.1984 to 31.10.1985. The only course open to the applicant now is to apply for leave of any kind to which he was eligible as on 13.8.1984 and when the applicant makes such application we direct the respondents to grant such leave as was available to him as on 13.8.1984 including Earned Leave and Half Pay Leave and the remaining period, if any, may be treated as EOL without pay. Pay and allowances due to the applicant may be worked out accordingly and paid to him. The applicant should send his application in this regard to the authorities concerned within 15 days of the date of receipt of this order and thereupon the respondents will pay the amount due to him in accordance with our direction given above, within two months thereof.

11. The main question that remains to be settled in this case is whether the applicant was entitled to automatic promotion to the grade of Rs. 700-900 as a result of the restructuring scheme announced in the letter of the Railway Board dtd. 29.7.1982. Shri Kaloo submitted that since the applicant was working at Washim in the grade of Rs. 455-700 on 1.8.1982, on which date the restructuring became effective he was entitled to two promotions on the basis of his seniority in that post. The next grade of Rs. 550-750 was not a selection post and so one time promotion to that grade could have been given to the applicant without passing any selection test. Moreover, by virtue of his seniority, the applicant was entitled for a second promotion to the grade of Rs. 700-900 under the restructuring scheme. Referring to para 3.2 of the letter dtd. 29.7.1982, Shri Kaloo submitted that the applicant should have been promoted to the grade of Rs. 700-900 without being required to pass the selection test. He should have been given notional fixation of pay in the grade of Rs. 700-900 w.e.f. 1.8.1982 and actual financial benefit from 1.8.1983. If the applicant had continued in Central Railway, as he should have, because he did not exercise any option he would rank immediately below Shri Choudhary and above Shri Vani, both of whom had been given two promotions to the grade of Rs. 700-900. As already stated, Shri Kaloo submitted that the applicant's promotion to the grade of Rs. 455-700 and consequent posting to Basmat Nagar

by order dtd. 14.5.1982 was not ad hoc and since he was in that grade on 1.8.1982 he was entitled to two promotions under the restructuring scheme.

12. Shri Chandurkar and Smt. Shinde appeared for the Central Railway and South Central Railway respectively. They opposed the contentions of Shri Kaloo. As on 1.8.1982 the applicant held regular appointment only in the grade of Rs.425, his posting in the grade of Rs. 455-700 being purely on ad hoc basis. In fact, though he was promoted to that grade on ad hoc basis by order dtd. 14.5.1982 and posted to Basmat Nagar, since no post in that grade was available at Basmat Nagar, the place of posting was changed to Washim where he joined in September, 1982. Therefore, even on an ad hoc basis the applicant did not hold a post in the grade of Rs. 455-700 on 1.8.1982. Since he held a regular post only in the grade of Rs. 425-640, he was entitled, at best, to two promotions from that grade under the restructuring scheme and he was given these promotions when he was promoted to the grade of Rs. 550-750 and posted to Khandwa, but since he did not join at Khandwa he did not draw pay in the grade till he retired. We have already referred to the explanation of the respondents in regard to the case of Shri Choudhary and Shri Vani. Shri Choudhary was regularly working in the grade of Rs. 455-700 on 1.8.1982 having been promoted to that grade on regular basis w.e.f. 11.8.1980 on passing the requisite selection test. He was, therefore, eligible to two promotions from that grade under the

restructuring scheme. He was promoted to the grade of Rs. 550-750 which was not a selection post automatically. But for the second promotion he was required to pass the selection test prescribed for the grade of Rs.700-900 in view of para 6 of Board's letter dtd. 12.8.1983 explaining para 3.2 of the earlier letter dtd. 29.7.1983. Under the restructuring scheme a second promotion to a post which was classified as a selection post was not automatic but depending on the official passing the requisite selection test and Shri Chouchary fulfilled this requirement. Shri Vani was also in the grade of Rs. 455-700 on a regular basis from 1.8.1982 having been promoted to that post w.e.f. 4.3.1982 on passing the requisite selection test, which the applicant had not passed. He was also entitled to two promotions from that grade on restructuring. He was promoted to the grade of Rs. 550-750 which was a non-selection post but could not be given the second promotion to the grade of Rs. 700-900 because he did not pass the requisite selection test. It was only later when he passed the selection test on 18.12.1985 that he was empanelled and promoted to that grade from 24.6.1986. Even if the applicant's contention that he was working in the grade of Rs. 455-700 on a regular basis on 1.8.1982 was correct and that he was entitled to two promotions from that grade, he had to pass the selection test prescribed for the grade of Rs. 700-900 to be promoted to it as a second promotion, but since he failed to do so he was not in any case eligible to such promotion.

13. We have given the matter careful thought. So far as the applicant's claim vis-a-vis Shri Choudhari and Shri Vani are concerned, the respondents have given an adequate reply as explained above and we need not repeat it. We need not also settle the controversy whether the applicant was regularly working in the grade of Rs. 455-750 or in the grade of Rs. 425-640 on 1.8.1982 for resolving the present controversy as we shall presently show. Even if the applicant's case that he was working in the grade of Rs. 455-700 on 1.8.1982 is accepted as well as his claim that he was senior enough in that grade to be entitled to two promotions, under the restructuring scheme, what is the position? Railway Board's letter dtd. 29.7.1983 at para 3.2 no doubt says that selection procedure for posts classified as selection posts would stand modified for the purpose of the restructuring scheme to the extent that selection would be based only on scrutiny of service records without holding any written or viva voce test. But the subsequent letter of the Board dtd. 12.8.1983 clarifies the position in para 6 to say that where under the restructuring scheme, an employee becomes eligible for more than one promotion, the simplified selection procedure outlined in para 3.2 of the earlier letter of 29.7.1983 would not apply to the second promotion. The letter further stated "in case of more than one promotion the normal selection procedure as per existing orders will apply to all the persons." We have already stated that there is no room for doubt that the letter dtd. 12.8.1983 was indeed issued by the Ministry of Railways. Since the Ministry of Railways itself had issued the earlier letter dtd. 29.7.1983

setting out the scheme of restructuring, it was surely competent to explain what it had said in that earlier letter by its subsequent letter dtd. 12.8.1983. It is common ground that the restructuring was ordered to relieve stagnation. That is why for one promotion the selection procedure was simplified. To say that depriving persons of a second promotion if they do not pass the selection test amounts to defeating the object of restructuring as urged by Shri Kaloo is going too far. After all, while relieving stagnation of its officials, the Railways have also to ensure that only persons who are competent and pass the selection test are promoted to higher posts. We see nothing wrong in the provision in para 6 of Board's letter of 12.8.1983 which requires the passing of the selection test for the second promotion. The applicant did not take the test for promotion to the grade of Rs. 700-900 to which according to him he was eligible and as such his claim that he should have been automatically promoted to that grade under the restructuring scheme has to fail. Thus even if we eschew the controversy as to the grade in which the applicant was working on a regular basis on 1.8.1982 and accept the version put forward by the applicant, he was not eligible for promotion to the grade of Rs. 700-900 under the scheme of restructuring because he did not pass the requisite selection test for the purpose.

14. We, therefore, pass the following orders in respect of the three applications taken together.

O R D E R

1. Since the applicant was on duty till 13.8.1984, if any salary and allowances due to him upto that date have not been paid to him, the respondents will immediately calculate the amount due and pay it to the applicant within one month of receipt of this order.
2. The applicant will within one month of receipt of this order apply for all kinds of leave to which he was eligible as on 13.8.1984 to cover the period from 13.8.1984 to 31.10.1985. The respondents will thereupon grant him all such leave as was due to him as on 13.8.1984, including Earned Leave, Half Pay Leave and if there is still any period left uncovered treat the same as EOL without pay. Salary and allowances due to the applicant for the period of such leave as may be granted to him for the period commencing from 13.8.1984 till the date of his retirement should be calculated and paid to the applicant within two months of the date on which he makes an application for such leave.

3. The applicant's claim that he should have been given promotion to the grade of Rs. 700-900 under the scheme of restructuring with notional fixation of pay in that grade from 1.8.1982 and actual benefit from 1.8.1983 is rejected.
4. All the three applications are disposed of accordingly. Parties to bear their own costs.