

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 731/93

Date of Decision: 22/2/99

B.G.Jaswani

Applicant.

Shri G.K.Masand

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri S.C.Dhawan

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri. D.S.Bawej, Member (A)

- (1) To be referred to the Reporter or not? ✓
- (2) Whether it needs to be circulated to P
other Benches of the Tribunal?

D.S. Bawej
(D.S. BAWEJA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

DA. NO. 731/93

Dated this the 22nd day of July 1999

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri D.S.Bawej, Member (A)

B.G.Jaswani,
Retired Train Conductor,
Central Railway,
R/o. 12, Chandra Niwas,
Plot No. 786, 3rd Floor,
Khar, Bombay.

... Applicant

By Advocate Shri G.K.Masand

V/S.

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

2. Senior Divisional Personnel
Officer, Central Railway,
Bombay V.T., Bombay.

... Respondents

By Advocate Shri S.C.Dhawan

O R D E R

(Per: Shri D.S.Bawej, Member (A))

This application has been filed seeking the relief of benefits of cadre restructuring for promotion to the grade of Rs.550-750 from 1.1.1984 when his juniors were promoted with a further prayer that applicant be paid arrears of pay and terminal benefits accordingly.

(V)

.. 2/-

2. The applicant while working as Train Conductor in the scale of Rs.425-640 from 5.9.1983 on Central Railway retired from service from 30.4.1984. As per order dated 20.12.1983 the Railway Board issued a notification with regard to cadre restructuring of Group 'C' and 'D' staff which also included the Ticket Checking Cadre to which the applicant belonged. Based on the cadre restructuring ordered by the Railway Board, there was a substantial increase in the higher grade posts in the Ticket Checking cadre in the scale of Rs.550-750 and Rs.700-900 effective from 1.1.1984 as detailed below :-

	<u>Scale</u> <u>Grade</u>	<u>Posts as on</u> <u>31.12.1983</u>	<u>Posts as on</u> <u>1.1.1984</u>
(1)	425-640	179	355
(2)	550-750	13	110
(3)	700-900	6	64

Further, on account of cadre restructuring, the cadre of Train Conductor, Train Ticket Examiner and Head Ticket Collector in the scale of Rs.550-750 were also merged. The applicant has further stated that though the order for cadre restructuring was issued in 1983, but the actual effect took place in 1985 only retrospectively from 1.1.1984. The case of the applicant is that based on the number of posts available as on 1.1.1984, the applicant

was entitled to be promoted to the grade of Rs.550-750 from 1.1.1984 before his retirement. Promotion orders to the grade of Rs.550-750 effective from 1.1.1984 were issued on 19.8.85 by the respondents in which the name of the applicant was not included though his juniors S/Shri N.P. Ghosh and A.M.Khan had been included. The applicant made a representation for the same but his representation was rejected as per letter dated 19.9.1985 on 3 grounds, (a) the applicant did not come in the zone of consideration for promotion from 1.1.1984. (b) since the applicant was promoted as Conductor based on his option from 1.10.1983 in the grade of Rs.425-645, his seniority is to be reckoned from this date and as per the same he is to be placed junior to S/Shri N.P.Ghosh and A.M.Khan. (c) The applicant was not in service on the date of issue of order dated 19.8.1985. The applicant submits that since in this order number of juniors have been promoted from 1.1.1984 in the grade of Rs.550-750, ignoring his case for promotion from 1.1.1984 on the ground that he had already retired from service was illegal. Further, he has submitted that Shri N.P.Ghosh was not senior to him as both of them were promoted by the same order dated 5.9.1983 and Shri Ghosh was junior to him in the feeder cadre. The applicant has further submitted that Railway Board as per letter

has dated 27.6.1985 clarified that the benefit of cadre restructuring from 1.1.1984 is not only to be given for the vacancies arising on 1.1.1984 but for the resultant vacancies also. Based on these directions of the Railway Board, the respondents issued a further promotion order as per order dated 9.4.1986 and the applicant's name appeared at Sr.No. 24 indicating promotion from 1.1.1984. However, this order was subsequently held in abeyance. Thereafter, the applicant made a further representation on 18.12.1986. In reply to this representation, the respondents as per letter dated 23.12.1986 advised the applicant that the last person who was given the benefit from 1.1.1984 was Shri A.K.Biswas. However, the respondents did not indicate the reasons as to why he was ignored since the juniors had been promoted from 1.1.1984. Thereafter, the applicant made several representations and also received replies to the same. His last representation was dated 27.11.1992 which was replied by respondents as per letter dated 1.12.1992. Since the grievance of the applicant was not redressed by the respondents, the applicant was compelled to seek legal remedy by filing the present OA. on 21.7.1993 praying the reliefs as detailed above.

3. The respondents have opposed the application through the written statement. The respondents have taken a plea at the outset that the application is barred by limitation as the representation of the

applicant had been rejected on 31.12.1991. On merits, the respondents have submitted that the applicant was promoted as Conductor as per order dated 5.9.1983 and he joined on promotion from 1.10.1983 in the grade of Rs.425-640 and therefore his seniority is to be reckoned from this date. The respondents submit that from 1.1.1984, the posts of conductors are to be operated 50% in the grade of Rs.425-640 while the balance 50% are to be operated in the grade of Rs.550-750. Prior to 1.1.1984, there were 31 posts of Conductor in the grade of Rs.425-640 and after 1.1.1984, 15 posts were upgraded to the scale of Rs.550-750. The respondents contend that the applicant did not come within the zone of consideration as per the number of vacancies available and therefore was not given promotion from 1.1.1984. The respondents refute the contention of the applicant with regard to S/Shri N.P.Ghosh and A.K.Biswas promotion from 1.1.1984 as per order dated 19.8.1985. The respondents submit that it is clearly mentioned in this order that only employees at Sr.No. 1 to 16 will get benefit from 1.1.1984 while Sr.No. 17 to 56 which include S/Shri N.P.Ghosh and A.M.Khan were to get benefit of promotion from the date of taking over the charge. The respondents, therefore, maintain that no junior to the applicant had been given benefit of promotion from 1.1.1984.

The respondents further add that in the integrated seniority list published on 29.8.1983 for the scale of Rs.425-640 for the Travelling Ticket Examiner, Head Ticket Collector and Conductor, the applicant was at Sr.No. 180 and the last person to be promoted with benefits from 1.1.1984 is Shri A.K.Biswas at Sr.No.169. The respondents admit that letter dated 9.4.1986 covering 57 employees was issued giving promotion from 1.1.1984 to the grade of Rs.550-750 which included the name of the applicant. However, this order was held in abeyance as per order dated 9.6.1986. Thereafter, the position was reviewed and the final order was issued on 8.7.1986 as per which only the employees at Sr.No. 1 to 13 of the letter dated 9.4.1986 were given promotion from 1.1.1984 and the order in respect of others cancelled as they did not come within the zone of consideration against the vacancies arising out of cadre restructuring. In view of these facts brought out by the respondents in the written statement, the respondents plead that no case is made out by the applicant for grant of reliefs and OA. therefore deserves to be dismissed both on merits as well as being barred by limitation.

4. The applicant has not filed any rejoinder reply to the written statement.

5. Heard the arguments of Shri G.K.Masand, learned counsel for the applicant and Shri S.C.Dhawan, learned counsel for the respondents. The respondents

have made available the file containing the concerned seniority lists as well as the file dealing with the promotions under cadre restructuring from 1.1.1984. These files have been carefully gone into.

6. The issue of application being barred by limitation raised by the respondents in opposing the OA. will be gone into first before considering the application on merits for the reliefs prayed for. The applicant has contested the stand of the respondents with regard to application being barred by limitation stating that since the OA. had been admitted, it is to be taken that the delay in filing the OA. had been condoned. Keeping this submission of the applicant in focus, as well as the facts of the case, we are inclined to subscribe to the stand of the respondents. The limitation is a legal issue which has to be gone into by the Tribunal even if the OA. had been admitted as it is closely related with the merits prayed for of the relief/particularly so when it is concerned with the question of promotion. In the present case, the applicant is claiming promotion from 1.1.1984 under the scheme of cadre restructuring. It is noted from the material brought on record by the applicant that first time his representation had been rejected on 23.12.1986. The subsequent representation was also rejected by order dated 15.1.1987. The applicant has filed the present OA. on 21.7.1993. The applicant

has not filed any application for condonation of delay. However, in Para 3 of the OA, under the heading "Limitation" the applicant has explained that cause of action under challenge in the present OA, is of continuous nature and even otherwise also the applicant had been repeatedly making representations to the respondents. It is noted from the averments made in the OA, as well brought as documentary evidence/on record that the applicant had been making several representations even after his rejection of representation on 23.12.1986. As held by Hon'ble Supreme Court, the repeated representations cannot extend the limitation. The delay has to be explained from the date of first rejection of the/representation. In this connection, we refer to the judgement of Hon'ble Supreme Court in the case of Administration of Union Territory of Daman & Diu & Ors. vs. R.D.Valand, 1996 SCC (L&S) 205. The contention of the applicant that the matter under challenge is a continuous cause of action is also not tenable as the issue involved is in respect of promotion and not of pay fixation. If the juniors of the applicant had been promoted by an order, then that order gives a cause of action and the employee if as aggrieved by the same, is required to seek legal remedy within the limitation period/laid down in the Administrative Tribunals Act. Keeping this fact-situation in view, we have no hesitation to hold that the present OA, is hit by limitation.

7. Now coming to the merits, a few basic facts involved in the controversy are first stated. As per the Railway Board's order dated 20.12.1983, the Railway Board ordered cadre restructuring of the various categories of the staff including the Ticket Checking staff. As per this order, revised percentages for the cadre of Ticket Checking staff in the various grades had been laid down. As a result of this, there was substantial increase in the number of posts in the Grade of Rs.550-750 and 700-900. The applicant at the relevant time was working in the grade of Rs.425-640. The applicant in Para 2 has given the details of the increased posts under cadre restructuring which has been confirmed by the respondents in the written statement. It is further noted that the applicant was working as Conductor in the scale of Rs.425-640 at the time when the order for cadre restructuring was issued by the Railway Board. It is also noted that as per the Railway Board's order dated 12.6.1984 it was laid down that for the category of Train Conductor which has been allowed scale of Rs.425-640, 50% of the posts in the grade of Rs.425-640 will be operated in the higher scale of Rs.550-750 to prevent the anomalous situation of Train Conductor being junior to the Ticket Checking staff manning the sleeper coaches. These posts in the scale of Rs.550-750 were to be adjusted out of the posts to be upgraded for the cadre of Ticket Checking staff.

Further the applicant has brought out that as per the Railway Board's order dated 27.6.1985, not only the upgraded posts under cadre restructuring but even the resultant vacancies arising out of cadre restructuring are to be filled up with the benefit being allowed from 1.1.1984. With these facts, the first question which the counsel for the applicant raised during the oral arguments is that the respondents have not operated all the upgraded posts including the resultant vacancies from 1.1.1984 and if this was done, the applicant would have been covered for promotion in the scale of Rs.550-750 from 1.1.1984. As indicated earlier, the respondents have made available the file dealing with the cadre restructuring as well as the file containing the seniority lists of the relevant grades involved in the controversy. We note that the respondents in reply to the applicant as per letter dated 13.12.1991 Exhibit-'A-1' have already given the details of the promotion orders issued under cadre restructuring in the grades of Rs.700-900 and Rs.550-750. It is also noted that the resultant vacancies in the scale of Rs.550-750 will arise on account of promotion in the grade of Rs.700-900. The main apprehension on which the applicant has raised this issue is that in para 4.2 of the Railway Board's order dated 20.12.1983,

only first promotion is to be given by following the modified selection procedure while if the employee becomes due for second promotion also, then the normal rules for filling up the posts depending on being non-selection and selection have to be followed.

The contention of the applicant is that there were only 13 existing posts in the grade of Rs.550-750 and therefore only 13 employees could get promotion with the modified selection procedure as a first promotion. To fill up the balance posts in the grade of Rs.700-900, the normal selection rules were to apply and the respondents in respect of such promotions have not given the benefit from 1.1.1984 as laid down in the Railway Boards order dated 27.6.1985 even for the linked vacancies. This in action has deprived the applicant of promotion from 1.1.1984. We have gone through the various orders listed in the reply to the applicant at Annexure-1 on the file made available by the respondents and find that the contention of the applicant is not correct. The first promotion order in the grade of Rs.700-900 was issued as per letter dated 5.7.1984 covering 17 employees and subsequently another order was issued on 1.5.1985 which covered 39 employees. Subsequently, another order was issued on 8.7.1986 which covered 3 more employees with the benefit from 1.1.1984. With these orders which had been given effect from 1.1.1984, it is quite clear that the respondents have filled up all the vacancies in 700-900 from 1.1.1984

the seniority list had been circulated to the various sections and as ^a token of the same the signatures of various sections had been taken. The applicant questioned this seniority list on the plea that in the lower grade of Rs.330-560 as per the seniority list dated 29.8.1983/4.10.1983 (copy of which was made available by the applicant during hearing) the applicant is at Sr.No. 42 while Shri A.K.Biswas is at Sr.No. 77. With this position of the seniority list in the lower grade from which the promotion is to be made for higher grade of Rs.425-640, the counsel for the applicant made a strong plea stating as to how Shri A.K.Biswas could become senior to the applicant in the grade of Rs.425-640 when the seniority in the lower grade would be determining factor for the promotion to the next grade. The issue with regard to seniority is not under challenge through this OA, and therefore we will not go into merits of the submission of the applicant questioning the seniority allowed to Shri A.K.Biswas. We will confine ourselves only to the seniority position as obtaining on the record based on which the respondents have issued promotion orders. On going through the seniority lists file, we find that seniority list of the Ticket Checking staff in the grade of Rs.425-640 was issued on 3.3.1984. In this seniority list the name of Shri A.K.Biswas is shown at Sr.No. 135 with date of promotion as 8.7.1983. It is further

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noted from the dealing file as well as the submission of the respondents that before cadre restructuring, the promotion to the post of Conductor was made by seniority-cum-suitability based on the options while for Ticket Checking staff, the promotion to the grade of Rs.425-640 was by way of selection. We note that the applicant himself has brought out that he had earlier refused promotion in the Ticket Checking cadre and subsequently opted for Conductor cadre and was promoted as per order dated 5.9.1983. On the same file, we find a separate seniority list of the Train Conductor available and the same also has been brought out by the applicant in his representation dated 5.12.1990 at Ex. 'L'. In this seniority list, the date of promotion of the applicant as per order dated 5.9.1983 has been shown as 1.10.1983. The respondents have contended that this is the date on which he has taken charge on promotion and will be the reference for seniority. With this date of promotion as a Conductor in the grade of Rs.425-640, it is quite clear that Shri A.K.Biswas is senior to the applicant in the grade of Rs.425-640. Except questioning the seniority of Shri A.K.Biswas in oral submission, the applicant has not challenged the seniority position allowed to Shri A.K.Biswas as per the seniority list issued on 3.3.1984. As already stated, we cannot go

into the seniority position allowed to Shri A.K.Biswas. However, for the limited purpose of considering the plea of the applicant that he has been over-looked for promotion by promoting juniors, we find that Shri A.K.Biswas is senior to the applicant as per the available material. In respect of promotions to grade of Rs.550-750, the details of the various orders issued have also been given in the reply to the applicant in Annexure 'A-1'. We have gone through the orders and find that not only for the posts available under cadre restructuring but even those arising as link vacancies on account of promotion in the grade of Rs.700-900, promotions in the grade of Rs.550-750 have been given from 1.1.1984. With these observations, we find that statement of the respondents that Shri A.K.Biswas was the last person to be promoted from 1.1.1984 as per seniority, applicant's contention that he was over-looked for promotion under restructuring from 1.1.1984 on account of the fact that he had retired from service has no merit.

9. The third plea made by the applicant is with regard to the fact that Shri N.P.Ghosh who is also in the cadre of Conductor and is junior to the applicant has been given promotion from 1.1.1984. The respondents have denied this and have stated that Shri Ghosh was given promotion not from 1.1.1984 but from the date of taking over the charge against the subsequent vacancy. The applicant has made this contention on the ground that Shri Ghosh was junior to the applicant in the lower grade

and if they have been promoted by the same order and taken over charge on the same date, applicant should have been shown higher than Shri Ghosh in the seniority list. We find that in the relevant seniority list Shri Ghosh has been shown senior to the applicant. The respondents also have admitted this fact. However, even if the applicant is taken as senior to Shri Ghosh by virtue of his seniority in the lower grade, we find that this is not material and applicant has no case for his promotion by citing the promotion of Shri N.P.Ghosh. The applicant has submitted that Shri Ghosh has been promoted with the benefit from 1.1.1984 as per order dated 19.8.1985, copy of this order has been brought on record by the applicant himself as Annexure-'D'. On perusal of this order, we note that only the employees at Sr.No. 1 to 16 have been given benefit of promotion from 1.1.1984 while Shri Ghosh is at Sr.No. 30 in this order. It is clear from this order that Shri Ghosh has been given promotion only from the date of taking over as mentioned in the order. Keeping these facts in view, we find it difficult to comprehend as to how the applicant claims promotion from 1.1.1984 citing promotion of Shri N.P.Ghosh.

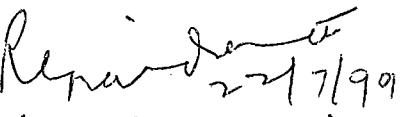
10. The last plea raised by the applicant is that the order of promotion of the applicant was issued as per order dated 9.4.1986 brought on record at Ex.'F' but the same has not been given effect.

We have gone through the correspondence on the file as well as the pleadings in the written statement and find that this order was held in abeyance as per order dated 9.6.1986 as there was some discrepancy in the number of persons to be given benefit from 1.1.1984. As per the review, the respondents have allowed benefit of promotion from 1.1.1984 only for the persons at Sr.No. 1 to 30. The applicant in this order was at Sr.No. 34 and therefore not entitled for promotion. The contention of the applicant with regard to his promotion held in abeyance as per order dated 9.4.1986 ^{therefore} also does not carry any weight.

11. In the result of the above, the OA. is not only barred by limitation but is also devoid of merits and the same is accordingly dismissed. No order as to costs.


(D.S. BAWEJA)

MEMBER (A)


R.G. Vaidyanatha
(R.G. VAIDYANATHA)

VICE CHAIRMAN

mrj.