

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Application No. 492 of 2004

this the ~~22nd~~ day of November 2005

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

Suresh Chand Gupta, S/o. Shri Shyamlal Gupta,
Aged about 54 years, working as Pharmacist,
(under the scale of Rs. 4500-7000/- which is
corresponding scale of Rs. 1350-2200/-) in the
Health Unit, Karkhana, Sitholi, District-Gwalior. Applicant

(By Advocate – Kum. M. Dadariya)

V e r s u s

1. Union of India, Ministry of Railway,
Railway Board, through : Its Executive
Director, Pay Commission, Railway Board,
Rail Bhawan, New Delhi.
2. General Manager (P), Central Railway,
CST, Mumbai.
3. Deputy CAO (G), FA & CAO's Office,
NA Building, DN Road, Mumbai.
4. DRM (P), Jabalpur, West Central Railway,
Jabalpur (MP).
5. Divisional Railway Manager (P),
North Central Railway, Jhansi (UP). Respondents

(By Advocate – Shri H.B. Shrivastava)

O R D E R

By Madan Mohan, Judicial Member –

By filing this Original Application the applicant has claimed the
following main reliefs :



"I. to set aside and quash the impugned order dated 6.5.2004 (Annexure A-1) issued by the DRM (P), North Central Railway, Jhansi Division,

II. to direct the respondents to place the applicant under the higher grade of Pharmacist under the scale of pay Rs. 1400-2600/- w.e.f. 1.3.1993 making proper fixation under the revised scale of pay revised time to time by the Pay Commission giving its corresponding scale. Further the respondents may also be directed to make the payment of arrears of salary to the applicant w.e.f. 1st March, 1993, after making due fixation under various scale of pay revised along with interest at the rate of 12% thereon,

III. consequently, the respondents be also directed to assign the seniority of the applicant under Grade Pharmacist-II below Krishna Kant Gupta."

2. The brief facts of the case are that the applicant was initially appointed as a Substitute Pharmacist on 13.4.1979. He became regular Pharmacist on 28.3.1985. Total 22 Pharmacists were working in Jabalpur Division. Out of these 22 Pharmacists 21 posts were sanctioned as permanent and one is temporary. The sole temporary post of Pharmacist in Jabalpur Division has become permanent in 1997. The Railway Board issued circular dated 27.1.1993 relating to restructuring of certain Group C and Group D cadres. Pharmacist is a Group -C cadre. According to the Railway Board Circular the temporary post should be declared permanent if there is requirement to be continued it for a period of more than two years. This temporary post was sanctioned in Jabalpur Division some time prior to 1989. In the seniority list of 1989 the temporary post has been shown as temporary. While implementing the aforesaid Railway board Circular the respondents have committed gross error in restructuring of Pharmacist cadre which is objected by the applicant praying therein that while restructuring the cadre out of total 22 posts of Pharmacists, 9 posts should have been upgraded under the scale of pay of Rs. 1640-2900/-, 7 posts under the scale of pay of Rs. 1400-2600/- and 6 posts under the scale of pay of Rs. 1350-2200/-. Instead of restructuring the cadre of Pharmacist in this manner the respondents have done it as 8 posts in



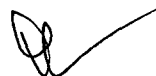
Grade 1640-2900/-, 7 posts in the grade of Rs. 1400-2600/- and 7 retained in the grade of Rs. 1350-2200/-. The contention of the respondents is that while restructuring the cadre, only the permanent posts shall be taken into account and temporary posts shall be excluded from the restructuring. The applicant's contention is that after restructuring the applicant has been placed at Serial No. 1 in the grade of Rs. 1350-2200/- and if the restructuring is done on total 22 posts, there shall be 9 posts in the Grade of Rs. 1640-2900/-, 7 posts in the grade of Rs. 1400-2600/- and if posts are included in the grade of Rs. 1640-2900, Mr. J.L. Samre, Pharmacist would be upgraded from the grade of Rs. 1400-2600/- to Rs. 1640-2900/- and consequent to this the applicant whose name appears at serial No. 1 under the grade of Rs. 1350-2200/- shall also be upgraded to the grade of Rs. 1400-2600/-. The applicant has been deprived to be upgraded under the restructuring of the cadre, the applicant made a request to DRM for his upgradation praying therein for restructuring on the total cadre strength i.e. 22 posts but the DRM had informed him that restructuring was done on 21 posts and not on 22 posts. He filed a representation on 15.9.1993 before the DRM, Jabalpur. But there was no response from the respondents. The Headquarter, Mumbai vide order dated 29.9.1998 has made it clear that restructuring should be done on total strength of the cadre and not individually temporary and permanent posts. The representation of the applicant was decided by the DRM(P), Jhansi, whereas the matter does not relate to Jhansi Division. Hence, the Jhansi Division has no competence to decide the matter of restructuring of the cadre of Jabalpur Division. The applicant's lien is still maintained in Jabalpur Division and he has been temporarily transferred with post to Jhansi Division. Hence, the impugned order which is passed is totally without jurisdiction and not sustainable in the eye of law. The action of the respondents is illegal and arbitrary. Hence, this OA is filed.

3. Heard the learned counsel for the parties and carefully perused the pleadings and records.



4. It is argued on behalf of the applicant that as per the Railway Board Circular dated 27.1.1993 the temporary post should be declared permanent, if there is requirement to be continued it for a period of more than two years. This temporary post was sanctioned in Jabalpur Division some time prior to 1989. In the seniority list of 1989 one post has been shown as temporary. It means that if it is declared permanent, it is deemed to have been agreed for a permanent retention of this post by the Divisional Accounts Officer, Jabalpur. He further argued that the Headquarter, Mumbai by order dated 29.9.1998 has made it clear that restructuring should be done on total strength of the cadre and not individually temporary and permanent posts. He further argued that under the Central Railway, there are 6 divisions and out of these 6 divisions only in Jabalpur Division restructuring has been done excluding temporary posts where in other divisions including Mumbai Division, restructuring has been done on total strength of posts including temporary posts. He also argued that the Court has directed the DRM (P), Jabalpur to decide the representation of the applicant vide order dated 30.9.2003 in OA No. 628/2003, whereas the impugned order dated 6.5.2004 (Annexure A-1) is passed by the DRM (P), Jhansi. He further submitted that if Mr. J.L. Samre, Pharmacist would be upgraded from the grade of Rs. 1400-2600/- to Rs. 1640-2900/- then the applicant whose name appears at serial No. 1 under the grade of Rs. 1350-2200/- shall also be upgraded to the grade of Rs. 1400-2600/-. Hence, the applicant is legally entitled for the reliefs claimed by him.

5. In reply the learned counsel for the respondents argued that by order dated 30.9.2003 passed in OA No. 628/2003 the Tribunal has directed the DRM (P), Jabalpur to decide the matter. Subsequently in RA No. 42/2003 in OA No. 628/2003, the Tribunal has amended the aforesaid order vide order dated 19.1.2004, to the extent that such representation can be filed before the DRM(P), Jhansi and it can also be decided by the DRM(P), Jhansi. He further argued that the proposal for 21 regular post was sent to the associate accounts for vetting and after verification and



vetting, the promotion orders were issued in respect of four persons from Grade 1400-2300/- to Rs. 1640-2900/-. One post was temporary on 1.3.1993 and its currency was being extended from time to time on the basis of requirement and as such the same was not taken into account for the purpose of upgradation. Since the number of posts in lower grades of Rs. 1350-2200/- and 1400-2300/- were reduced by two posts in each grade only two incumbents from Rs. 1350-2200/- were promoted. The applicant was not in the zone of consideration and also no junior to him has been promoted. There is no cause of grievance for the applicant as none was promoted from Rs. 1350-2200/- to next higher grade there being reduction in the number of posts in Rs. 1400-2300/-. Subsequently, the applicant was transferred to Jhansi Division and now under the territorial jurisdiction of North Central Railway on 19.10.200 and in the interest of administration he is presently borne on the strength of Jhansi Division and no on Jabalpur Division. The alleged temporary post of 1.3.1993 was declared permanent in the year 1997. This fact is also admitted by the applicant in his OA. In Jhansi division a selection for promotion to the grade of Rs. 5000-8000/- was held in the year 2003 and the applicant was called for consideration in such a selection on Jhansi Division but he could not qualify in the selection and hence was not promoted. Since the applicant has accepted the position assigned to him on 1.3.1993 on Jabalpur Division and transferred in the same capacity on Jhansi Division, taken a chance to negotiate the selection for promotion in higher grade but declared unsuitable, cannot claim to have his lien in Jabalpur Division and Jhansi Division as well. The applicant having lost his chance of promotion in 2003 having been found unsuitable is trying to dig out old grades to get promotion from 1.3.1993. So far as the case of J.L. Samre is concerned, the applicant cannot take the benefit by praying for the same. Hence, the action of the respondents is perfectly legal and justified and this OA deserves to be dismissed.



6. After hearing the learned counsel for the parties and on careful perusal of the pleadings and records, we find that so far as the impugned order passed by the DRM (P) Jhansi, Annexure A-1 is concerned, we have perused the order passed by the Tribunal in RA No. 42/2003 dated 19.1.2004, whereby the order passed by the Tribunal in OA No. 628/2003 dated 30th September, 2003 is amended to the effect that the representation can be filed by the applicant before the DRM (P), Jhansi and the DRM (P), Jhansi can decide it as the applicant is serving under him. Hence, now there remains no question of competency and jurisdiction of DRM (P), Jhansi while passing the impugned order dated 6.5.2004 (Annexure A-1). According to the applicant himself one post of Pharmacist in Jabalpur Division was temporary as on 1.3.1993 and later on it was declared permanent in the year 1997. The argument advanced on behalf of the applicant that in other divisions of the Central Railway the restructuring has been done on total strength of posts including temporary posts, seems to be not correct because the applicant is concerned only with the Jabalpur Division. We have perused the Railway Board letter dated 27.1.1993 (Annexure A-3) and in its paragraph 2 it is clearly mentioned that these orders will be applicable on the regular cadres of the open line establishments including workshops and production units and will include rest giver and leave reserve posts. This letter of the Railway Board does not include the temporary post. The respondents have acted upon on the basis of the aforesaid letter of the Railway Board dated 27.1.1993 (Annexure A-3). We have also perused the impugned order dated 6.5.2005 (Annexure A-1) which is passed by the DRM(P), Jhansi and find that the DRM (P), Jhansi has considered all the contentions raised by the applicant. Thus, this order seems to be a speaking, detailed and reasoned order.

7. After considering all the facts and circumstances of the case we are of the considered view that this Original Application is liable to be



dismissed as having no merits. Accordingly, the same is dismissed. No costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

पृष्ठकन सं भो/ज्या.....

पति/वि.

(1) राजीव, उज्ज -

(2) आर्यभट्ट, श्री -

(3) प्रसन्न, श्री -

(4) योगेश, श्री -

सूचना एवं अन्य कार्य

रजिस्ट्रार

M. G. Daviye
H.B. Prave Narva

Togel
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29.11.05