

CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH
CHANDIGARH

18

Filed on:23.12.2014
Reserved on:09.05.2016
Pronounced on: 13.5.2016

OA No. 060/01167/2014
MA No. 060/01648/2014

Coram: Hon'ble Mr. Justice L.N. Mittal, Member(J).
Hon'ble Mrs. Rajwant Sandhu, Member(A).

Amarjit Kaur w/o Late Sh. Karam Singh, R/o # 349, Colony No. 1, Diesel Loco Modernization Works, Patiala.

.....Applicant

By Advocate : Sh. Karnail Singh

Versus

1. Union of India through Chief Administrative Officer (R), Diesel Modernization Works Patiala, Punjab.
2. Chief Personnel Officer Diesel Modernization Works, Patiala, Punjab.
3. Financial Adviser and Chief Accounts Officer, Diesel Modernization Works, Patiala.

.....Respondents

By Advocate : Sh. G.S. Sathi

ORDER

By Hon'ble Mrs. Rajwant Sandhu, Member(A):-

1. This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:-
 - (i) Quash and set aside the impugned orders dated 19.09.2012 & 12.12.2014 showing the rejection of claim of DPC of the husband of the applicant in scale of Rs. 8000-13500 (Annexure A-1).
 - (ii) Order the respondents to grant the scale of Rs. 8000-13500 w.e.f. 10.11.2000 on completion of 3 year qualifying service as per policy of the respondent department (Annexure A-3).
 - (iii) Grant Rs. 25,000 as costs of this case in favour of the applicant against the respondents.

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2. MA No. 060/01648/2014 has been filed seeking condonation of delay in filing the OA. It has been stated therein that the claim in the OA is a matter of recurring nature and hence not barred by limitation. It is also mentioned that the applicant is a housewife who was not aware of the policies of the respondents with regard to the upgradation and on coming to know of the entitlement of the husband of the applicant, the deceased employee, she had initially issued legal notice to the respondents. Since she did not get any relief in the matter, she has filed this OA.

3. It is stated in the OA that the husband of the applicant was working as Assistant Accounts Officer (AAO) in the scale of Rs. 7500-13500 since 10.11.1997 when he was promoted as such. On completion of three years service, the husband of the applicant was entitled to the scale of Rs. 8000-13500 without any higher responsibility/qualification/eligibility service w.e.f. 10.11.2000 against 80% quota of Group 'B' officers but unfortunately, he expired on 28.11.2000. The applicant submitted representations dated 10.11.2010, 21.4.2011 and 3.1.2012 relating to the claim of her husband for getting higher scale of Rs. 8000-13500 from the date when he completed three years service as AAO. The matter was referred to the Railway Board by the respondents and the Railway Board in turn advised the respondents to settle the issue in the light of the extant instructions. The respondents ultimately issued reply to the legal notice dated 12.11.2014 vide letter dated 12.12.2014 (Annexure A-1) rejecting the claim. Hence this OA.

4. In the grounds for relief, it has, interalia, been stated as follows:-

(i) The husband of the applicant completed the requisite qualifying service of three years on 09.11.2000 for his selection/DPC for the scale of Rs. 8000-13500 without any higher responsibility/qualification/higher eligibility service against 80% quota

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20

of Group B Officer under the rules. But it was not granted well in time before the death of the employee on 28.11.2000 (Annexure A-3).

(ii) Para 2.3.3 of the RBE No. 278/1998 states that the Committee may assess the fitness of the officer based upon his performance as reflected in the confidential reports for the preceding five years period. It is nowhere mentioned in the procedure defined under this rule that the personal appearance/interview of the applicant is necessary. Also, as per the Railway Board order No. RBE-70/2001, the retirees are also eligible for such upgradation from the due date as applicable.

(iii) The respondents were duty bound to initiate and hold the DPC well before the due date from which the husband of the applicant was entitled to such benefit whereas the respondents failed to perform their mandatory duties (Annexure A-2). In violation of the orders of DOPT dated 01.09.1999 (Annexure A-2), the matter was delayed on account of the respondents without any justified reasons and in an illegal manner contrary to the rules of the respondent department and another representation dated 3.1.2012, the matter was referred to Railway Board without sufficient reasons adopting delaying tactics. A model calendar for DPC etc. issued by DOPT for non-ACC category is appended as Annexure A-2 by which the process of DPC was to be completed on 30.03.2000.

5. In the written statement filed on behalf of the respondents, the facts of the matter have not been disputed. It has been stated that the Railway Board vide letter No. E(GP)/98/2/82 dated 9.12.1998 (Annexure R-1) had laid down the procedure for upgradation of 80% of posts of Assistant Accounts Officer (AAO) whereby AAOs with minimum of three years regular service in scale of Rs. 7500-12000 would be eligible for consideration for placement in the higher scale of Rs. 8000-13500. As per para 2.4 of Railway Board's letter dated 9.12.1998 (Annexure R-1), the placement in higher scale of Rs. 8000-13500 would be effective from 01.01.1996. Further clarification was issued by the Railway Board vide letter No. E(GP)/98/2/82 dated 01.07.1999 (Annexure R-2) whereby the posts to be upgraded in higher grade of Rs. 8000-13500 should be 80% of the Group 'B' officers on Roll (instead of 80% of Group 'B' posts of AAOs).

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21

6. Further, as per Railway Board's letter No. PC-V/97/1/EC/1 (pt-I) dated 07.03.2001 (Annexure R-3), in case of Group 'B' Accounts Officers, the revised scale of Rs. 7500-12000 would be operated to the extent of 20% of the total number of Group 'B' Accounts Officers on Roll including the Group 'B' Accounts Officers already officiating in Senior Scale of Rs. 10,000-15200 on ad hoc basis w.e.f. 01.01.1996. The revised scale of Rs. 8000-13500 would be operated to the extent of 80% of Group 'B' Accounts Officers on Roll as on 01.01.1996 including the Group 'B' Accounts Officers officiating in Senior Scale on ad hoc basis. The posts in the grade of Rs. 8000-13500 would be filled from amongst Group 'B' Accounts Officers in Grade Rs. 7500-12000 with a minimum of three years of regular service in Group 'B' as on 01.01.1996. For subsequent years, the number of posts to be operated in the revised scale of Rs. 8000-13500 would be determined in reference to the number of Group 'B' officers on Roll including the Group 'B' Accounts Officers in Senior Scale on ad hoc basis as on the 1st day of January of each such year and the posts would be filled from amongst Group 'B' Accounts Officers in Grade Rs. 7500-12000 with a minimum of three years regular service in Group 'B' as on first day of January of each such subsequent year. The Railway Board vide letter No. E(GP)/98/2/82 dated 23.04.2001 (Annexure R-4) clarified that AAOs in service on the crucial dates viz. 01.01.1996 and first day of January of subsequent years would be considered for placement in higher scale with reference to the number of posts in higher scale determined as on first January each year. If found suitable for placement with reference to the number of posts in higher scale as on the crucial date, they may be granted higher scale and fixation from the crucial date with payment of arrears. Regarding applicant's husband, late Sh. Karam Singh, it is stated that he was promoted from

11 —

22

Group 'C' to Group 'B' as AAO on 10.11.1997 and he had completed three years as an AAO on 09.11.2000. He expired on 28.11.2000. He was not on Roll/in service as on 01.01.2001 i.e. the next date of assessment of posts to be operated in higher grade. The percentage of distribution of posts between 20 : 80 were to be worked out on 01.01.2001 on the basis of "on Roll" officers only in which late Sh. Karam Singh could not be included being ~~not~~ on Roll/in service on the crucial date.

7. It is also stated that this OA has been filed in the year 2014 claiming reliefs w.e.f. 10.11.2000 and the facts and reasons given by the applicant while seeking condonation of delay in filing the OA do not constitute sufficient cause for condonation of inordinate delay of more than 14 years. As such, the OA deserves to be dismissed on the ground of delay and laches.

8. Arguments advanced by learned counsel for the parties were heard when learned counsel for the applicant reiterated the content of the OA and the rejoinder. He stated that the husband of the applicant Sh. Karam Singh expired before the DPC met to consider eligible AAOs for the upgradation against 80% quota in the scale of Rs. 8000-13500. The respondents had delayed holding of the DPC as the same was not held in accordance with model calendar prescribed in this regard by the DOPT. The applicant's husband was entitled to be considered for upgradation in the year 2000 while the DPC was held in 2001 and now the respondents were taking the ground that since Sh. Karam Singh had expired on 28.11.2000, he was not on Roll on 1.1.2001 and hence he was not granted the scale of Rs. 8000-13500 for which he was eligible on the date when he completed three years of service as AAO. Learned counsel also referred to the notings in File No. DMW/AC/ADMN/04/Pt-IV/GAZ wherein it was clear

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23

that though there were three vacancies available for AAOs to be upgraded in the scale of Rs. 8000-13500, but only one person had actually been upgraded at that time and hence, a post was available for considering Sh. Karam Singh's case for upgradation.

9. Learned counsel for the respondents stated that the Railway Board issued clarification regarding upgradation of AAOs in the scale of Rs. 8000-13500 on 23.4.2001 (Annexure R-4) wherein points No. 1 and 3 read as follows:-

No.	Point Raised	Clarification
1.	Whether the benefit of higher scale is applicable to AAOs who have retired from service before DPC?	As per Gazetted Notification dated 24.1.2001, the number of posts to be operated in the scale Rs. 8000-13500 will be determined as on 1.1.1996 and as on 1 st day of January of each of the subsequent years and the posts shall be filled from amongst Group 'B' officers in scale Rs. 7500-12000 with minimum of three years non-fortuitous service in Group B as on 1.1.1996 and as on 1 st January of each of the subsequent years will be considered for placement in higher scale with reference to the number of posts in higher scale determined, as on the crucial date, as per provisions of Gazetted Notification dated 24.1.2001. If found suitable for placement with reference to the number of posts in higher scale as on the crucial date, they may be granted the higher scale and fixation from the crucial date, with payment of arrears.
3.	Whether retired officers may be straightaway placed in the higher grade without going through procedure of selection exactly on completion of three years regular service as AAO?	The procedure for placement in the higher grade as detailed in para 2 of Board's letter No. E(GP)/98/2/82, dated 9.12.1998 (Bahri's 278/98, p. 304) shall be applicable in the case of all Group 'B' officers, whether retired or serving.

This clarification was issued regarding RBE No. 278/98 on the subject of "Upgradation of 80% of posts of Assistant Accounts Officers – Group B – Procedure for allotment of the higher scale." The learned counsel stated that since Sh. Karam Singh unfortunately expired on 28.11.2000, while the AAOs who had completed three years service as on 1.1.2001, had to be

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considered by the DPC for financial upgradation by the DPC that met in the year 2001, the case of the husband of the applicant could not be considered as he was not on Roll on that date.

10. We have carefully considered the matter. The guidelines issued by DOPT regarding model calendar for DPCs have also been seen and the relevant entries are as follows:-

Events	Financial Year Based	Calendar Year Based
(i) Vacancy year	2000-2001	2000
(ii) Crucial date for determining eligibility	January 1, 2000	January 1, 2000

The husband of the applicant completed three years service as AAO on 10.11.2000 and hence he could only be considered for the vacancy year 2001-2002 (financial year based) or the vacancy year 2001 (calendar year based). In both cases, the crucial date for determining the eligibility was January 1, 2001. The DPC met in 2001 to consider the eligible AAOs for upgradation to the scale of Rs. 8000-13500. The crucial date for upgradation of the AAOs as per the clarification dated 23.4.2001 RBE No.

70/2001 was 1.1.2001 and the upgraded scale was also to be allowed from the crucial date and not from the date when the individual completed three years service as AAO. Since Sh. Karam Singh unfortunately expired on 28.11.2000, he could not be considered by the DPC that met in 2001 since he was not on the Roll on 1.1.2001. The claim of the counsel for the applicant that Sh. Karam Singh's case for upgradation in the scale of Rs. 8000-13500 should have been considered in 2000 as per the Model Calendar is without basis since Sh. Karam Singh only completed the eligibility period of three years as AAO in November 2000 and the DPC for

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25

vacancy year 2000-2001 (FY) or 2000 (Calendar Year) held in the early part of this year as per the Model Calendar could not consider an 'ineligible' for upgradation. Hence, the claim of the applicant that her husband was entitled to the scale of Rs. 8000-13500 w.e.f. 10.11.2000 when he completed three year service as AAO is without merit. Even the argument advanced by learned counsel for the applicant that there were three vacancies available for upgradation to the scale of Rs. 8000-13500 and Sh. Karam Singh was deliberately not considered for the upgradation is not borne out by the note sheet relating to file No. DMW/AC/ADMN/04/Pt-IV/GAZ. While at some stage, it was assessed that three vacancies were available, but it was concluded in November, 2000 itself and thereafter that there was only one vacancy and the same had to go to an SC candidate while Sh. Karam Singh belonged to the General Category.

11. Hence, in view of the discussion above, we conclude that there is no merit in the claim of the applicant in the OA and the same is rejected. MA No. 060/01648/2014 also stands disposed of accordingly. No costs.

**(RAJWANT SANDHU
MEMBER(A))**

**(JUSTICE L.N. MITTAL
MEMBER(J))**

Dated: / 3. 5. 2016

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