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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.1361/2002
with
O.A. NO.2324/2002

This the 3rd day of July, 2003

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

1) O.A. NO.1361/2002

Kirori Ram,
Enquiry-cum-Reservation Clerk,
Old Delhi Railway Station,
Delhi.

... Applicant

-versus-

1. Union of India through
General Manager, Northern Railway,
Baroda House, New Delhi.
2. Divisional Railway Manager,
Northern Railway, State Entry Road,
New Delhi.

... Respondents

2) O.A. NO.2324/2002

Kirori Ram,
Enquiry-cum-Reservation Clerk,
Old Delhi Railway Station,
Delhi.

... Applicant

-versus-

1. Union of India through
General Manager, Northern Railway,
Baroda House, New Delhi.
2. Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi.

... Respondents

Advocates : Shri D.S.Mahendru, for Applicant

Shri Rajender Khatter, for Respondents

O R D E R (ORAL)

Hon'ble Shri V.K.Majotra, Member (A) :

Both these OAs are being disposed of by this common order as they involve similar facts and issues.

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2. In OA-1361/2002 applicant has assailed Annexure A-1 dated 17.2.2000 vide which he has been granted notional fixation of pay in grade Rs.425-640 (RS) w.e.f. 22.7.1983 instead of grade Rs.455-700 (RS) w.e.f. 30.3.1984 and in grade Rs.550-750 (RS)/Rs.1600-2660 (RPS) w.e.f. May, 1986, i.e., the date of promotion of his junior, S.C. candidate Smt. Narinder Kumari. His claim for grant of monetary benefits was rejected in terms of para 228 of Indian Railway Establishment Manual (IREM) Volume-I. He has sought setting aside of Annexure A-1 as also declaration of paragraph 228 of IREM Vol.-I as ultra vires, with consequential benefits of arrears of pay and allowances along with interest thereon.

3. In OA-2324/2002 applicant has challenged the action of respondents in not promoting him to the post of Chief Enquiry and Reservation Supervisor (CE&RS) in the scale of Rs.2000-3200 (pre-revised) although his immediate junior had been promoted as such w.e.f. 1.3.1993. Applicant has sought actual monetary benefits, i.e., arrears of pay on claimed promotion.

4. Applicant was initially appointed as Train Clerk w.e.f. 3.8.1976. He was promoted to the post of Sr. T&C w.e.f. 5.3.1978. He met with an accident and was medically de-categorised on 5.2.1982. He was provided alternative employment in the post of Enquiry & Reservation Clerk (E&RC) in grade Rs.330-560 w.e.f. 23.2.1983. He was accorded seniority in the said grade from the date of his joining which is alleged to be in violation of the provisions of paragraph

313(a)(ii) of the IREM. He was promoted to the next higher grade of Rs.1400-2300 (RPS) w.e.f. 31.7.1991. His seniority was corrected vide respondents' letter dated 19.7.1996. His name as such was placed above Smt. Indira Kumari, another SC candidate. It is further alleged that respondents again promoted applicant's juniors on 25.3.1994 in the grade of Rs.1400-2300 w.e.f. 1984, in the grade of Rs.1600-2660 w.e.f. 1.1.1986 and in the grade of Rs.2000-3200 w.e.f. 13.2.1993. However, applicant was completely ignored. Juniors had been promoted to the grade of Rs.2000-3200 on account of restructuring of the cadre of E&RCs. On 29.3.1995, respondents held selection for the post of CE&RS in grade Rs.2000-3200. Applicant was not considered for the same. His seniority was revised in the grade of Rs.1400-2300 w.e.f. 1.1.1984 instead of 1991, but he was not granted promotions in the grade of Rs.1600-2660 and Rs.2000-3200 as given to his juniors. On representation, applicant was appointed to officiate as E&RS in grade Rs.1600-2660 but no arrears of pay were allowed from 1.3.1993 to 18.5.1994. It has been brought out that applicant was not promoted to the next higher grade of Rs.2000-3200 from the date of promotion of his junior. He was asked to appear in the selection held for the post of CE&RS. Applicant had earlier filed OA No.592/2001 which was dismissed as withdrawn with liberty to re-agitate the same reliefs along with challenge to the vires of paragraph 228 IREM.

5. The learned counsel of applicant has contended that provisions of paragraph 228 IREM Vol.-I have been

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declared invalid by courts' decisions. While applicant's seniority has been corrected by respondents, they have granted only pro forma promotion to him and not accorded the actual benefits. The learned counsel has pointed out that applicant is entitled to actual monetary benefits in view of the correct ^{-ed} seniority of applicant.
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6. On the other hand, the learned counsel of respondents stated that whereas applicant has already been accorded correct seniority and even though provisions of paragraph 228 may not be applicable to applicant, the authorities are competent to apply provisions of FR 17(1) which is the basic law to deny an employee salary on the promoted post. He has relied on **B.S.Tyagi v. S.P.Mehta & Ors.** which is a Full Bench judgment of CAT, Principal Bench in CP No.154/2001 in OA No.2066/1997 dated 21.1.2002 (Administrative Total Judgments 2002 (3) 34). The learned counsel of applicants stated that applicant was not to be blamed for assignment of wrong seniority. If applicant had been accorded correct seniority at the proper time, he would have availed of all the benefits flowing therefrom. The learned counsel relied on decision of the High Court of Delhi in CWP No.7762/2001 : **Union of India & Anr. v. S.K.Mandal**, decided on 13.8.2002.

7. In the case of **B.S.Tyagi** it was held that provisions of paragraph 228 of IREM Vol.-I having been declared invalid by courts, authorities can rely on FR 17(1) being the basic rule to deny grant of arrears of difference of pay in the promoted post in a case where

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earlier wrong action of the respondents was involved in not promoting the employee. Such an action can be taken when the respondents rectify the erroneous order suo motu.

5. In the present case, respondents have not rectified the seniority of applicant suo motu. Applicant had undergone a long wait and harassment and action to rectify the seniority vis-a-vis his juniors was taken when applicant made several representations. The ratios of the following cases are applicable to the present matter :

- (1) Union of India v. K.V.Jankiraman : 1991 (2) SCALE SC 423 = AIR 1991 SC 2010;
- (2) State of A.P. v. K.V.L.Narasimha Rao & Ors. : (1994) 4 SCC 181;
- (3) Union of India & Anr. v. S.K.Mandal : CWP No.7762/2001 decided on 13.8.2002 (Delhi High Court).

In the case of Jankiraman (supra) it was held as under :

"When an employee is completely exonerated in criminal/disciplinary proceedings and is not visited with the penalty even of censure indicating thereby that he was not blame worthy in the least, he should not be deprived of any benefits including the salary of the promotional post. The normal rule of "no work no pay" is not applicable to such cases where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that FR 17(1) will also be inapplicable to such cases."

6. While the present case is not a disciplinary matter, applicant was not to be blamed for according

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wrong seniority to him. As such, the benefit of deprivation of benefits on wrong assignment must be compensated. In the case of **S.K.Mandal** (supra), in a similar case respondents were directed to include the name of petitioner in the earlier panels of promoted posts in which the names of his juniors had already been included. Respondents were further directed to fix the pay of applicant giving him benefit of annual increments. Respondents were also directed to pay arrears to applicant from the date he ought to have been promoted. In the case of **K.V.L.Narasimha Rao** (supra) it was held that backwages have normally to be allowed in case of retrospective promotion.

7. The ratios in the cases of **K.V.Jankiraman**, **K.V.L.Narasimha Rao** and **S.K.Mandal** (supra) will have overriding effect on the Full Bench decision of the Tribunal in **B.S.Tyagi** (supra).

8. Having regard to the above discussion, Annexure A-1 dated 17.2.2000 in OA No.1361/2002 is quashed and set aside insofar as the same gives notional pay fixation to applicant. Respondents are directed to pay to applicant actual monetary benefits, i.e., arrears of pay and allowances.

9. As regards OA No.2324/2002, it has been alleged that while applicant's junior was promoted by giving her the benefit of modified procedure of selection on restructuring, applicant was denied the benefit of selection in terms of the modified procedure. He was

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subjected to appear in the selection held for the post of CE&RS instead of granting benefit under the modified procedure of selection. Annexure A-4 dated 25.3.1994 clearly states that ad hoc CE&RS including applicant's junior Smt. Narinder Kumari wee regularised as CE&RS grade Rs.2000-3200 w.e.f. 1.3.1993 as a result of restructuring of Enquiry and Reservation cadre in terms of instructions contained in the Northern Railway's letter dated 27.1.1993 consequent upon selection under the provisions of modified procedure of selection. While applicant's junior Smt. Narinder Kumari was not subjected to a viva voce test under the modified procedure of selection as a result of restructuring of Enquiry and Reservation cadre, applicant was discriminated against and subjected to viva voce. Applicant has also to be meted out a similar treatment as to his junior. Admittedly, he has cleared the written test and he cannot be subjected to a viva voce test under the modified procedure of selection. As such he has to be regularised as CE&RS in grade Rs.2000-3200 (RPS) w.e.f. 1.3.1993, when applicant's junior was regularised as CE&RS in terms of Annexure A-4 dated 25.3.1994. Respondents' contention that applicant has been promoted later on as E&RC w.e.f. 1.3.1993 and he has been granted pro forma fixation of pay cannot be sustained in the light of the facts and circumstances of the case when applicant has been accorded a different treatment than his junior and has been denied promotion at the appropriate time on the basis of allocation of wrong seniority by respondents. Seniority having been corrected, applicant must be accorded all benefits such

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as promotion and fixation of pay in terms of the rules and instructions. In the present case, applicant has to be promoted w.e.f. 1.3.1993 as CE&RS in terms of the modified procedure adopted as a result of restructuring of Enquiry and Reservation cadre. consequently, respondents are directed to consider applicant for promotion as CE&RS in grade Rs.2000-3200 w.e.f. 1.3.1993, i.e., the date of promotion of his immediate junior Smt. Narinder Kumari, with consequential benefits.

10. Both the OAs are allowed in the above terms.
No costs.

S. Raju

(Shanker Raju)
Member (J)

V. K. Majotra

(V. K. Majotra)
Member (A)

/as/

Attested

19/07/83