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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1055/2002

New Delhi this the 1st day of May, 2003.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Shri S.K. Arya,
Retd. Senior Commercial Inspector (C),
Northern Railway Claim Office,
NDCR Building,
New Delhi.

-Applicant

(By Advocate Shri B.S. Mainee)

-Versus-

Union of India through:

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. The Chief Claims Officer,
Northern Railway,
Baroda House,
New Delhi.

-Respondents

(By Advocate Shri R.L. Dhawan)

O R D E R (Oral)

By Mr. Shanker Raju, Member (J):

Applicant impugns respondents' order dated 30.1.2001 as well as 12.10.2001 wherein he has been allowed benefit of proforma fixation of pay from the date of promotion of his junior belatedly and the arrears have been denied. He has sought quashment of the aforesaid orders alongwith arrears of pay.

2. Applicant was promoted as Senior Commercial Inspector on 31.5.95. He was served with a chargesheet and during its pendency w.e.f. 31.5.96 his immediate junior Sh. P.C. Sharma was promoted on the post of Senior Commercial Inspector.

3. Disciplinary proceedings culminated by an

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order dated 3.11.95 by imposition of minor penalty and stoppage of three sets of privilege passes and three sets of PTOS. As per rules when a minor penalty is imposed the promotion relates back to date of promotion of his junior i.e. 31.5.95 with fixation of pay. By a notice dated 10.5.96 applicant was promoted as CMI in the grade of Rs.2375-3500 w.e.f. 10.5.96 and accordingly his pay was fixed by an order dated 21.5.96.

4. Applicant protested against the aforesaid action by preferring a representation and ultimately by an order dated 22.11.2000 he was allowed benefit of proforma fixation of pay from the date of his junior w.e.f. 31.5.95 but the pay was fixed on proforma basis and arrears have been denied. Applicant preferred a representation stating that had the mistake not committed by respondents applicant would have started getting proper pay from 1996 itself which stood rectified on 22.11.2000 and 31.1.2001.

5. Applicant retired from service on superannuation on 31.10.2001 and his claim for arrears has been rejected, giving rise to the present OA.

6. Learned counsel for applicant Sh. B.S. Mainee contended that as the minor penalty was imposed in November, 1995 applicant ought to have been promoted from 31.5.95 i.e. from the date when his junior was promoted but instead of promoting him he was promoted by letter dated 10.5.96 against the rules and as on his application not suo moto the mistake was rectified in January, 2001 applicant is entitled for fixation of pay from back date with arrears and consequent revision of the pensionary

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benefits. In this backdrop it is contended that para 228 of IREM-I has been declared ultra vires by the Full Bench of this Tribunal in Devi Lal v. Union of India, ATJ 2002 (1) 485.

7. It is also stated that FR 17 would not apply to the facts and circumstances of the present case, as the rectification was not suo moto but on representation of applicant and if the correct pay was fixed in 1995 he would have drawn higher pay and this is denied on account of mistake on the part of respondents. It is further stated that paras 3.5 and 3.6 of PS 10738 would not apply to the facts of the present case as it relates to only fixation of pay and not arrears of salary.

8. In so far as effect of declaration of para 228 of IREM-I the same is set aside from inception and the issue regarding retrospectivity would not arise. Further placing reliance on a decision of the Division Bench in OA-1702/2001 decided on 29.1.2003 in Kapoor Chand Verma v. Union of India wherein after discussing the decision of Apex Court in Virendra Kumar v. Avinash Chander Chadha, JT 1990 (3) SC 503 laying down principle of no work no pay, placing reliance on a decision of the Apex Court in State of A.P. v. K.V. Narasimha Rao and Others, JT 1999 (8) SC 205 High Court of Delhi in CWP No.5952/2002 in Union of India & Anr. v. Shri C.N. Sahai & Ors. allowed the claim which placed reliance to accord benefit of actual benefits to applicants therein. By resorting to the aforesaid decision as well as decision of another Division Bench in OA-714/2002 in Anil Kumar Sharma v. Union of

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India decided on 23.1.2003 it is stated that similar claim is allowed and in all fours his case is covered by the aforesaid decision and cannot be treated differently.

9. On the other hand, respondents' counsel Sh. R.L. Dhawan vehemently opposed the contentions and stated that as per paras 3.5 and 3.6 of PS 10738 pay is fixed under normal rules in case of minor penalty and as no challenge has been put to the aforesaid rule case of applicant would not be covered by the decision of Full Bench in Devi Lal's case (supra). As applicant has not performed duties and shouldered higher responsibilities para 228 of IREM-I which has been subsequently set aside would not apply retrospectively to applicant and he cannot be allowed back wages on the principle of no work no pay. Learned counsel relied on the following decisions to substantiate his aforesaid plea:

- i) G.M. Railway v. Avinash Chandra Chadha, 1990 (3) SCC 472.
- ii) B.S. Bedharak v. Union of India, SLJ 2002 (3) CAT 239.

10. It is further stated that even in a minor penalty proforma fixation is not allowed. Applicant has already been paid in excess. Relying upon FR 17 it is stated that the decision in B.S. Tyagi, copy annexed at Annexure R-4 would apply to the facts and circumstances of the case. As applicant was not fully exonerated he is not entitled for payment of arrears from back date.

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11. I have carefully considered the rival contentions of parties and perused the material on record. The resort of the respondents to the decision of B.S. Tyagi and to FR 17 as well as principle of no work no pay cannot be countenanced. PS 10738 in paras 3.5 and 3.6 stipulate action after completion of disciplinary proceedings and provide fixation of pay on promotion under normal rules. Whereas in the case of applicant a minor penalty as per rules would not affect promotion. Accordingly by an order dated 21.10.96 applicant was promoted to the higher post and his pay was fixed but subsequently on his representation respondents not acting *suo moto* rectified their mistake on promotion of applicant from the date of his junior Sh. P.C. Sharma w.e.f. 31.5.95 and later on fixed his pay.

12. High Court of Delhi in CWP-5952/2002 (supra) observed as under:

14. Moreover, High Court of Delhi in CWP No.5952/2002 in Union of India & Anr. v. Shri C.N.Sahai & Ors. supra, held as follows

"We have considered the submissions of learned counsel of the petitioner. We regret our inability to accede to the submissions of learned counsel for the petitioners. The Tribunal in O.A.No.2899/1991 came to the conclusion that the petitioners were bound to count the continuous period of officiation of the respondents for the purpose of fixing their seniority as Assistant Signal Inspectors/Block Inspectors. This order of the Tribunal was not challenged by the petitioners and therefore, the order attained finality and the rights of the respondents were crystallised. Thus, petitioners cannot be allowed to argue contrary to the judgment of the Tribunal. The petitioners were bound to count the period of service of the respondents as Assistant Block

Inspectors/Signal Inspectors on ad-hoc/officiating basis for assigning seniority to the respondents. In compliance with the decision of the Tribunal, the respondents were assigned higher seniority as a consequence of which respondents were given retrospective promotions which were due to them. Once having conceded the promotion in accordance with the judgment of the Tribunal which remains unchallenged, the petitioners cannot now turn back and deny the claim of the respondents based on continuous officiation in the past of Assistant Block Inspectors/Signal Inspectors. In somewhat similar situation the Supreme Court in State of Andhra Pradesh Vs. K.V.Narasimha Rao and others, JT 1999(8) SC 205 held as follows:

"In normal circumstances when retrospective promotion are effected, all benefits flowing therefrom, including monetary benefits, must be extended to an officer who has been denied promotion earlier."

In the circumstances, therefore, we do not find any merit in the writ petition and accordingly, the same is dismissed. OA 10149/2002 also stands disposed of."

13. If one has regard to the aforesaid ratio, deprivation of consequential benefits, including pay and allowances on the principle of no work no pay would not apply as it is on account of mistake of respondents which later on was rectified.⁴ Applicant had been prevented from joining on higher post though available, accordingly he cannot be denied the benefits.

14. In the result, for the foregoing reasons, OA is allowed. Impugned orders are quashed and set aside. Respondents are directed to pay arrears to applicant on the basis of pay fixed in the higher grade from 31.5.95 and also accordingly revise his pension. This exercise shall be undertaken and completed within a period of three months from the date of receipt of a copy of this order.

S.Raju
(Shanker Raju)
M (J)