

8

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA No. 378/2002

NEW DELHI, THIS THE 30TH DAY OF SEPTEMBER, 2002.

HON'BLE MR.JUSTICE V.S.AGGARWAL, CHAIRMAN

HON'BLE MR. M.P.SINGH, MEMBER (A)

Shri Jai Pal Singh  
Retired Accounts Assistant  
under FA& CAO/Const.  
Northern Railway  
Kashmiri Gate, Delhi.

....Applicant

(BY SHRI M.L.SHARMA, ADVOCATE)

vs.

Union of India through

1. General Manager  
Northern Railway  
Headquarters Office  
Baroda House  
New Delhi.

2. FA & CAO  
Northern Railway  
Headquarters Office  
Baroda House  
New Delhi.

3. FA & CAO/Const.  
Northern Railway  
Kashmere Gate, Delhi.

....Respondents

(BY SHRI V.S.R.KRISHNA, ADVOCATE)

ORDER (ORAL)

JUSTICE V.S.AGGARWAL:-

The applicant was originally appointed as a Class-IV employee on 14.12.1961. He was granted promotion as C.Gr.II in 1971 and as Junior Accounts Assistant in the scale of Rs.330-560/- with effect from 19.10.1989. In the gradation list published in 1995, he was shown at Sl.No.478 and in the gradation list of 2000, he was shown at Sl.No.356. The grievance of the applicant is that he was promoted with effect from 19.10.1992 but his promotion to the

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the next higher grade of Rs.1400-2300/- was not actually ordered while his juniors have been so promoted. When this fact came to his notice that his juniors have been given the scale of Rs.1400-2300 (Rs.5000-8000) (revised), he made a representation to the concerned authorities. He had been granted promotion as Accounts Assistant in the said scale retrospectively from 19.10.1992 but had not been granted the arrears. By virtue of the present application, he seeks quashing of the order by virtue of which the arrears had not been granted to him and for a direction to the respondents to pay the arrears from 19.10.1992 to 30.11.2001 in the grade of Rs.1400-2300/-(Rs.5000-8000) (revised) with interest.

2. In the reply filed, the application has been contested. It has been asserted that the applicant for the first time represented his case for the post of Accounts Assistant after 9 years. He was given proforma promotion but denied the arrears. As per rules, while fixing the pay from Junior Accounts Assistant to Accounts Assistant, benefit of FR 22 C is to be extended where assumption of higher responsibility is involved. The respondents' version is that when the applicant had not performed the duties of the higher post, he is not entitled to the arrears of salary.

3. During the course of submissions on behalf of the respondents, it was asserted that the applicant seeks arrears from 19.10.1992 and that claims barred by time. Therefore, this Tribunal should not interfere in this regard. The impugned order by virtue of which the arrears have been denied is dated 12.6.2001 and reads:-

"The competent authority has approved the promotion of Sh.Jaipal Singh,Junior Accounts Assistant working under FA&CAO/C/KGT from Junior Accounts Assistant Grade 4000-6000 to Accounts Assistant Grade 5000-

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8000 on proforma basis w.e.f.  
19.10.92.

Note:-

1. The above promotion is subject to D&AR & Vigilance and clearance to be obtained by FA&CAO/C/KGT.

2. No arrear w.e.f. 19.10.92 to 11.6.2001, are admissible as the Promotion is on proforma basis.

3. The pay may be fixed as per extant rules and the option for fixation of pay in terms of Rule 1313, FR 22I(a) R-II and in terms of Railway Board's letter No.E(P&A) II81/pp-4.Dt.13.11.81

Authority: Dy CAO/Gen.Approval at PP-37 of file No.:2000/Adm./c/24/11/RAS."

It is by virtue of this order that the case of the applicant was approved in the pay scale of Rs.5000-8000 on proforma basis promotion as Accounts Assistant but it was held that he will not be entitled to arrears. Once the decision has only been taken on 12.6.2001, the cause of action to the applicant would arise from the said date. The plea, therefore, that the application is barred by time must fail.

4. Confronting with this position, on behalf of the respondents, reliance was placed on Para 228 of the Indian Railway Establishment Manual to contend that in such a situation, the arrears are not permissible. The said paragraph reads:-

"Each such case should be dealt with on its merits. The staff who have lost promotion on account of administrative error should on promotion be assigned correct seniority vis-a-vis their

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juniors already promoted, irrespective of the date of promotion. Pay in higher grade on promotion may be fixed proforma at proper time. The enhanced pay may be allowed from the date of actual promotion. No arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher post."

It was further contended that the Supreme Court has upheld the validity of the said Manual and reliance is being placed on a decision of the Supreme Court in the case of Union of India & Ors. vs. P.O. Abraham & Ors. in Civil Appeal No.8904 of 1994 decided on 13.8.1997. The short order passed by the Apex Court reads:-

"By the order under appeal, the Tribunal has allowed the application which challenged the Railway Board Circular dated 15/17September, 1964. The said Circular inter alia, contains the following clause:-

"No arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher post."

Consequent to the deletion of the above clause, further directions were given. Learned counsel submits that the clause, which has been directed to be removed, is in accordance with the judgement of this Court in Virender Kumar, General Manager, Northern Railways, New Delhi Vs. Avinash Chandra Chadha & Ors. - (1990) 2 SCR 769. This Court, in that case, held on principle of 'no work no pay' that the respondents will not be entitled to the higher salary as they have not actually worked in that post. The

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clause, which has been directed to be deleted by the Tribunal being in consonance with the ruling of this Court, we are of the opinion that the Tribunal was not right in directing the deletion of that clause. Accordingly, to that extent this appeal is allowed. The result is that the respondents will be given deemed promotion, if any, before retirement and also the benefit in the matter of fixing pension. No costs."

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The cited decision on the face of it would / distinguishable because the short question before the Supreme Court was regarding the validity of the aforesaid Manual. There was no decision taken by the Supreme Court pertaining to the payment of arrears.

5. In fact, the Supreme Court in the case of State of Haryana and Ors. vs. O.P.Gupta and others, (1996) 7 SCC 533 had gone into this controversy and held:-

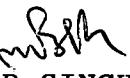
"8. It is true, as pointed out by Shri Hooda, that in Union of India v. K.V.Jankiraman, AIR 1991 SC 2010 this Court had held that where the incumbent was willing to work but was denied the opportunity to work for no fault of his, he is entitled to the payment of arrears of salary. That is a case where the respondent was kept under suspension during departmental enquiry and sealed cover procedure was adopted because of the pendency of the criminal case. When the criminal case ended in his favour and departmental proceedings were held to be invalid, this Court held that he was entitled to the arrears of salary. That ratio has no application to the cases where the claims for promotion are to be considered in accordance with the rules and the promotions are to be made pursuant thereto."

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The decision in the case of State of Haryana (supra) clearly lays down that where the incumbent was willing to work but was denied to work for no fault of his, he is entitled to the payment of arrears of salary. The principle of 'no work no pay', therefore, cannot be made applicable. Fault lies squarely with the respondents. Keeping in view the aforesaid, necessarily it must be held that the applicant is entitled to the relief claimed.

6. For these reasons, the original application is allowed. The impugned order dated 12.6.2001 is set aside to the extent it directs that the applicant is not entitled to arrears. However, since part of the claim has become time barred, it is directed that the applicant would be entitled to the arrears confined to 38 months before filing of the present application. No costs.

Announced.

  
(M.P.SINGH)  
MEMBER (A)

  
(V.S.AGGARWAL)  
CHAIRMAN

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