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**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI**

C.P. NO.461/2005  
in  
O.A. NO.3105/2002

This the 27<sup>th</sup> day of July 2005.

**HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)**

**HON'BLE SHRI SHANKER RAJU, MEMBER (J)**

Vishwa Nath Nangia S/O Jagan Nath Nangia,  
R/O B-1, Hurricane,  
Greater Kailash Enclave-II,  
Opposite Savitri Cinema,  
New Delhi-110048.

... Applicant

( By Shri M.L.Sharma, Advocate )

versus

1. R.K.Singh,  
Chairman, Railway Board,  
Principal Secretary to Govt. of India,  
Ministry of Railways, Rail Bhawan,  
New Delhi-110001.
2. R.R.Jaruhar,  
General Manager,  
Northern Railway,  
Baroda House,  
New Delhi-110001.

... Respondents

( By Shri R.L.Dhawan, Advocate )

**O R D E R**

**Hon'ble Shri V.K.Majotra, Vice-Chairman (A):**

OA No.3105/2002 was allowed vide order dated 22.4.2004 with the following observations/directions to respondents:

“10. In the result, OA is allowed. Impugned orders are quashed. Respondents are directed to consider the case of applicant for promotion to the post of COS in accordance with rules and instructions w.e.f. 10.5.1998 and as a consequence thereof grant benefit including retiral benefits to applicant, within a period of three months from the date of receipt of a copy of this order. No costs.”

2. It has been alleged that respondents have not complied with the directions of the Tribunal willfully. Finding *prima facie* contempt having been made out, notice for contempt was issued to respondents. Respondents have filed affidavit of compliance as also a supplementary affidavit of compliance.

3. The learned counsel of respondents stated that a revised PPO has been issued on 15.6.2005 (Annexure R-2) and the following retiral benefits have been paid to applicant on promotion to the post of Chief Office Superintendent grade Rs.7450-11500 (RS/RP):

1. Difference of leave encashment	Rs.7220/- vide RBI crossed cheque No.440006 dt. 8.6.05.
2. Difference of Gratuity	Rs.11913/- vide AB No.9907209-93 dt. 14.6.05
	CO7 No.9907209-36 dt. 14.6.05
	P.O. No.060698 dt. 9.6.05.
3. Difference of commutation of pension	Rs.10241/- to be paid by the Punjab & Sind Bank, Connaught Place, New Delhi advised by the FA&CAO/Pension vide letter dt. 15.6.05.”

4. The learned counsel of applicant stated that applicant has not yet received the cheque for difference of gratuity. In any case, he submitted that while in terms of Tribunal's directions, applicant ought to have been paid arrears of pay and allowances on promotion, he has merely been accorded notional promotion and no arrears of pay and allowances have been paid to him. Relying on Annexures CP-2, CP-3 and CP-4, the learned counsel contended that in similar cases as that of applicant S/Shri Sewa Das Nimbakar, Amar Singh and Lakhan Singh were granted arrears of pay and allowances. He contended that applicant was to be granted promotion on upgradation only and as such the question of denial of arrears of pay and allowances should not have arisen at all.

5. The learned counsel of respondents relying on Railway Board's circular No. E(NG)I-2000/PMI/16 dated 2.7.2003 stated that in terms of



provisions of para 228 of IREM Vol.I, 1989, no arrears could be paid to such staff who were granted *pro forma* promotion later on and had not actually shouldered the duties and responsibilities of the higher post. He further relied on Tribunal's orders dated 17.3.2005 in OA No.1882/2004 : *Ram Saran Dua v Union of India & Others*, in which it was held that applicant having not discharged the functions of the post of Director would not be entitled to the arrears from 23.7.2003 to 30.9.2003.

6. We have considered the rival contentions as also the material on record.

7. Circular dated 2.7.2003 relates to grant of *pro forma* promotion on rectification of administrative errors. It has been directed therein that in such cases no arrears are payable to the concerned staff as they had not actually shouldered the duties and responsibilities of the higher post. The case of *Ram Saran Dua* (supra) is that of a person who was not granted promotion to the post of Director prior to his superannuation and was later on granted *pro forma* promotion and was denied arrears of pay and allowances as he had not shouldered the duties and responsibilities of the higher post. These instructions, in our view, are not applicable to cases where merely upgradation is involved with no higher duties and responsibilities. Provisions of para 228 IREM, circular dated 2.7.2003 and the ratio of the case of *Ram Saran Dua* are not applicable to a case like the present where merely upgradation is involved. In the present case, there was no question of higher duties and responsibilities. The aforesaid instructions and case law relate to cases involving promotions to posts where incumbents on promotion have to shoulder duties and responsibilities of the higher post. Respondents have themselves granted arrears in the cases of S/Shri Sewa Das Nimbakar, Amar Singh and Lakhan Singh, which are similar cases to that of applicant, who had retired on superannuation. They were granted post facto promotion on the upgraded posts and also accorded arrears of pay and allowances. As such,

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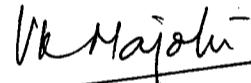
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respondents ought to have granted the applicant promotion along with consequential benefits of pay and allowances. That is the spirit of the relevant rules and instructions on the subject. Applicant, like the aforesaid three persons is entitled to arrears of pay and allowances w.e.f. 10.5.1998. Respondents have grossly erred in not granting applicant arrears of pay and allowances from the date when he has been accorded promotion on upgraded post.

8. In the facts and circumstances as discussed above, taking a lenient view in the matter, the contempt petition is disposed of with a direction to respondents to pay the difference of pay and allowances to applicant on the upgraded post of Chief Office Superintendent grade Rs.7450-11500 w.e.f. 10.5.1998 till his date of retirement. Respondents are directed to pay to applicant consequential arrears of pay and allowances within a period of one month from the date of communication of these orders, failing which applicant shall have liberty to revive the contempt proceedings.

  
( Shanker Raju )

Member (J)

  
( V. K. Majotra )  
Vice-Chairman (A)

27.7.05

/as/