



**Central Administrative Tribunal  
Principal Bench, New Delhi**

**O.A. No. 3079/2016**

**This the 30<sup>th</sup> day of January, 2020**

**Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)  
Hon'ble Mr. Pradeep Kumar, Member (A)**

Shri Kanta Prasad  
S/o Shri Nanak Chand  
Aged 54 year  
Working as Clerk,  
Under Chief Medical  
Superintendent, Northern Railway,  
Divisional Hospital,  
Delhi.

... Applicant

(By Advocate: Sh. Manjeet Singh Reen)

**VERSUS**

Union of India & Others : through

1. The General Manager,  
Northern Railway,  
Headquarter's Office,  
Baroda House,  
New Delhi.
2. The Divisional Railway Manager,  
Northern Railway,  
State Entry Road,  
New Delhi.

... Respondents

(By Advocates: Sh. Krishna Kant Sharma)

**ORDER (Oral)**

**Hon'ble Mr. Pradeep Kumar, Member (A):**

1.0 The applicant, herein, was posted as Gangmen under the respondent Railways on 05.10.1985. He was



promoted as Pointsman to the pay scale of Rs. 2650-4000 at a station known as Ghevera in the year 1995. Subsequently, he was promoted as Sr. Pointsman-cum-Shuntman in the pay scale of Rs. 3050-4590 on 03.08.1999. In due course, the applicant was de-categorised and was declared fit for the post of Clerk and accordingly, he was re-deployed and seniority was fixed.

2.0 At some stage, it came to light that the applicant's seniority was not correctly assigned. He approached this Tribunal by filing OA No. 2174/2012, which was allowed vide orders dated 16.07.2014, wherein the following directions were passed:-

*“6. Accordingly, we allow this O.A. and quash the impugned order dated 03.09.2011 by which the claim of seniority of the applicant has been rejected. We also quash the seniority list circulated by the respondents on 20.06.2010 qua the applicant. We direct that seniority of the applicant be re-fixed taking applicant's date of promotion to the grade of Rs.3050-4590 as 03.08.1999. This benefit will be extended to the applicant within eight weeks from the date of receipt of a certified copy of this order. No costs.”*

These directions were complied with by the Railways vide order dated 28.08.2014 and he was assigned seniority above one Shri Hari Shankar.

3.0 Subsequently, another order for pay fixation as Clerk, Senior Clerk and Office Superintendent was



issued on 01.07.2015, wherein it is seen that even though proforma fixation was given w.e.f. 01.08.2010 onwards when he was promoted as Sr. Clerk.

However, applicant was not paid the arrears for the period from 01.08.2010 to 31.10.2013. He was promoted as OS w.e.f. 01.11.2013 and has been paid his dues w.e.f. 01.11.2013. It is in respect of the arrears for 01.08.2010 to 31.10.2013, that the applicant had made a representation to the respondents on 21.04.2016. This has been denied vide respondents letter dated 23.06.2016. This denial letter reads as under:-

*“Subject :- Representation of SH. Kanta Prasad Office Supd under CMS/DLI.*

*Reference:- Your application dated 09.6.2016 received through single window cell.*

*In reference to the above cited application it is to inform that as per IREM Vol.I Para-228, the staff who have lost promotion on account of administrative error should on promotion, be assigned correct seniority vis-a-vis their juniors already promoted irrespective of the date of promotion. Pay in the higher grade on promotion may be fixed Proforma at the 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 posts.*

*Therefore, it is not possible to consider your request.”*

4.0 The applicants pleads that the denial has been made on the basis of rulings contained in IREM Vol.I Para-228.



In this regard, the applicant pleads that this particular para was struck down by the full bench judgement dated 02.01.2002 in OA No. 2066/1997. The full bench Tribunal gave the following rulings:-

*“13. In view of the reasons recorded and discussion made above, the issues under reference are decided as follows:*

*(i) Whereas the respondents cannot rely on provisions contained in para-graph 228 of IREM Vol.I, the same having been declared invalid by Courts, they 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 earlier wrong action of the respondents was involved in not promoting the employee.*

*(ii) The principle of "no work no pay " is not applicable in the particular facts and circumstances of the present case, first, because upgraded post did not involve shouldering of higher duties and responsibilities, and, secondly, because while applicant's seniors as well as juniors had been granted benefits of the upgraded post for the relevant period, applicant was denied the same for no fault of his; and had thus been subjected to hostile discrimination, therefore, he is entitled to arrears of pay and allowances of the upgraded post for the relevant period, which shall be paid to him within a period of three months from communication of these orders.*

*(iii) Provisions of paragraph 228 of IREM Vol.I are not applicable to the railway servants, the same having been declared invalid and non-existent in terms of various Court rulings. However, FR 17 (1) which is applicable to other Central Government employees, being the basic law, can be relied upon by the railway authorities to deny an employee salary on the promoted post where action to rectify the erroneous order has been taken by the respondents suo motu.*

*(iv) In view of our solutions to issues (i) to (iii) above, no further general observations are necessary.”*

5.0 The applicant pleads that another OA No. 428/2011 was decided by the Tribunal on similar basis,



vide their orders dated 13.01.2014 (Abdul Sayeed vs. Union of India & Ors.). This OA also was for Respondent Railway and was in the context of para 228 of IREM-Vol.I. The operative part reads as follows:-

*“O.A. No.428/2011*

*As the limited issue involved in this OA is with regard to grant of payment of difference of arrears w.e.f. 1.11.2003 to 26.11.2009, for the reasons stated in the aforesaid order in the Review Application, we modify the earlier Order of this Tribunal dated 24.2.2012 and direct the respondents to pay actual arrears of difference of pay and allowance w.e.f. 1.11.2003 to 26.11.2009 on his promotion as OS Grade I w.e.f. 1.11.2003 vide their order dated 27.11.2009. The respondents shall pass appropriate orders for implementing the aforesaid directions within a period of two months from the date of receipt of a certified copy of this Order.*

*2. This OA is disposed of accordingly.”*

6.0 The applicant pleads that he needs to be granted the arrears for the period 01.08.2010 to 31.10.2013 as he cannot be made to suffer on account of wrong fixation of seniority which was done by respondents.

7.0 Respondents have submitted their counter reply wherein it has been brought out that on promotion as Sr. Pointsman in Rs. 3050-4590, the applicant was first posted as Traffic Inspector, Rohtak vide their office letter dated 03.08.1999 but he did not resume his duty there. Later on, his promotion order was again issued as Sr. Pointsman and he was posted at Ghevera Station



vide office letter dated 11.01.2000. Since he did not resume his duty on 03.08.1999 and joined subsequently, he was assigned seniority w.e.f. 11.01.2000 and accordingly, arrears were not payable.

8.0 Matter has been heard at length. Sh. Manjeet Singh Reen, learned counsel appeared on behalf of the applicant. Sh. Krishna Kant Sharma, learned counsel appeared on behalf of the respondents.

9.0 It is seen that the time duration when the applicant did not resume the duty as Sr. Pointsman pertains to 03.08.1999 to 11.01.2000. Since there was certain error in fixation of seniority, this aspect has already been gone into by the Tribunal in OA No. 2174/2012 (para 2.0 supra) and directions were issued to correct the seniority w.e.f. 03.08.1999 and this has since been corrected also.

Accordingly, the respondents cannot raise the same issue again while dealing the instant OA.

10.0 Further, the arrears being claimed now are the consequential arrears for an altogether different period 01.08.2010 to 31.10.2013, for which proforma fixation has also been given. Moreover, for this fixation, the juniors to the applicant has already been paid. The



applicant is still in service. There is no reason to deny arrears to the applicant.

The denial of the payment of arrears on the basis of IREM Vol. I Para-228 cannot be sustained in view of the Full Bench judgement as quoted above (para 4.0 supra) and another judgement in para 5.0 supra.

11.0 In view of the foregoing, this Tribunal finds no reason to deny the arrears to the applicant. Accordingly, OA is disposed of by directing the respondents to work out the arrears for the period 01.10.2010 to 31.10.2013 and release the payment to the applicant within a period of six weeks. However, these arrears shall not carry any interest. No order as to costs.

**(Pradeep Kumar)**  
**Member (A)**

**(Justice Vijay Lakshmi)**  
**Member (J)**

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