

Central Administrative Tribunal
Principal Bench

O.A.No.1702/2001

(2)

Hon'ble Shri Govindan S. Tampi, Member(A)
Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 29th day of January, 2003

Shri Kapoor Chand Verma
Junior Engineer Gr.I P-way
under Sr. Sectional Engineer (P-way)
Northern Railway
Tundla. ... Applicant

(By Advocate: Ms. Sumedha Sharma, proxy of Sh.
B.S.Maine)

Vs.

Union of India through

1. The General Manager
Northern Railway
Baroda House
New Delhi.
2. The Divisional Railway Manager
Northern Railway
Allahabad. .. Respondents

(By Advocate: None)

O R D E R

By Shri Shanker Raju, M(J):

In this OA applicant impugns respondents' orders dated 11.4.2001 and 16.4.2001 whereby his request for arrears of pay w.e.f. 13.5.1996 on proforma promotion has been rejected. Applicant has sought difference of wages and arrears from 13.5.1996 to 10.10.2000 and direction to promote him as JE Gr.I w.e.f. 20.2.1996.

2. Applicant while working as P.W.I, Gr.III was served upon a memorandum in the year 1994 as he was occupied the Railway quarter without proper allotment order held him guilty of the charge of unauthorised occupant of the said quarter. By an order dated 13.5.1996 a penalty of withholding of increment permanently for two years was inflicted.

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The next increment was due on 1.6.1996. On appeal, by an order dated 6.12.1996 appellate authority reduced the punishment to censure.

3. Applicant preferred representations for his promotion on the ground that once a charge sheet culminated into a minor penalty, promotion is to be accorded from the date the juniors have been promoted. Representation was rejected on the ground that ACR of the applicant for the period 31.3.1996 was below average.

4. On further representation, the relief was denied to the applicant. By an order dated 28.7.2000, the Headquarters Office advised that w.e.f. 13.5.1996 to 31.5.1996, when the applicant was free from penalty promotion should not have been withheld. Similarly an advice was also made which was accepted and by an order dated 28.2.2000 applicant was promoted to the post of JE-Gr.I in the scale of Rs.5500-9000 w.e.f. 13.5.1996, on proforma basis without according him actual arrears. Representation made against this order was also rejected, giving rise to the present OA.

5. None appeared for the respondents even on second call. The OA is disposed of in terms of Rules 16 of the Central Administrative Tribunal (Procedure) Rules, 1987.

6. In this OA, applicant has contended that applicant should have been promoted w.e.f. 13.5.1996 as a minor penalty of censure was awarded and this date is the date when the juniors have been promoted.

(AM)

7. In so far as the actual arrears is concerned, it is stated that though applicant was willing and available to work he has been kept away by the respondents and the principle of no work no pay would have no application in such circumstances. He places reliance on a decision of the Apex Court in Union of India v. K.V.Janakiraman, AIR 1991 SC 2010 and also a decision of this Bench in Rajbir Singh v. Union of India & Others, OA 910/94, decided on 18.2.2000 where a similar controversy has been laid down at rest and the applicant therein has been made entitled to arrears.

8. Applicant has also placed on record the decision of the High Court in CWP No.5952/2002 in Union of India v. C.N.Sahai and Others where the decision of the Tribunal for grant of arrears has been upheld.

9. It is also stated that in one of the cases Para 228 of IREM Vol.I has already been declared ultra vires and set aside.

10. On the other hand, respondents vehemently opposed the contentions and stated that on expiry of the punishment period, which was made effective from 26.3.1998, claim of applicant for placing him on higher pay scale of Rs.5500-9000 was considered and he was put on actual basis from 12.10.2000 and on proforma basis from 13.5.1996 vide order dated 28.2.2001.



11. Placing reliance on Para 228 of IREM Vol.I and the decision of the Apex Court in Virendra Kumar v. Avinash Chander Chaddha, JT 1990(3) SC 503, it is contended that on the principle of 'no work no pay', applicant is not entitled for higher salary.

12. We have carefully considered the rival contentions contained in their pleadings. In fact, subsequent to order passed by respondents in April, 2001, another order has been passed on 7.11.2001 where it is stated that orders dated 17.11.1997, 26.3.1998 and 12.11.1998 have been set aside and applicant is entitled to all consequential benefits and the implementation is to be carried out immediately. Despite this, the actual arrears have not been disbursed to applicant.

13. In so far as the pleas of respondents as to 'no work no pay' and their reliance to the decision of Apex Court in A.C.Chadda's case supra, we find, firstly, from the pleadings that Para 228 of IREM Vol.I has been declared ultra vires. Moreover, the decision of this Bench in Rajbir Singh's case supra held as follows:

"9. In so far as applicant's claim for arrears of pay as Sr. Clerk, Head Clerk and Assistant Superintendent are concerned. It is not denied that Shri Amba Prasad, who was also covered by the Hon'ble Supreme Court's judgement dated 12.11.90 was paid arrears as Sr. Clerk and Head Clerk and respondents' efforts to recover the arrears paid to Shri Amba Prasad have been struck down by the Tribunal in its order dated 29.9.99, holding that these arrears were correctly paid. In the light of the Hon'ble Supreme Court's ruling in Union of India vs. K.V.Janakriraman, AIR 1991 SC 2010 and in the background of that ruling, Rule 228 IREM Vol.I relied upon by

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respondents had no application. Nothing has been shown to us to suggest that the aforesaid order dated 29.9.99 has been stayed, modified or We as a coordinate Bench of the Tribunal we bound by that ruling. Furthermore in the case of persons similarly situated respondents cannot pay to one and deny payment to the other."

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. OM 10149/2002 also stands disposed of."

15. If one has regard to the aforesaid ratio laid down by High Court and the Tribunal, to which we respectfully agree. Once applicant has been given promotion, on notional basis from 13.5.1996, he cannot be deprived of consequential benefits including difference of pay and allowance as principle of no work no pay would have no application and as applicant has been prevented from joining duty on an higher post though available, he cannot be deprived of the benefits. Apex Court in State of Andhra Pradesh vs. K.V.L.Narisimha Rao, JT 1999(8) SC 205 clearly held that when retrospective promotions are effected all benefits flowing therefrom, including monetary benefits must be extended to an officer who has been denied promotion earlier. As respondents themselves promoted applicant from 13.5.1996, he cannot be deprived of the actual benefits, i.e., pay and allowances.

16. In the result, for the foregoing reasons, OA is partly allowed. Impugned orders are quashed and set aside. Respondents are directed to pay to applicant difference of wages and arrears from 13.5.1996 to 10.10.2000 within a period of three months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member(J)

(Govindan S. Tambi)
Member(A)

/rao/