

(10)

Central Administrative Tribunal, Principal Bench

Original Application No.2728 of 2001

New Delhi, this the 3rd day of October, 2002

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. M.P. Singh, Member(A)

Shri Gian Chand
S/o Shri Tulsi Dass
R/o Quarter No.180-A/3, Railway Colony,
Basant Lane, New Delhi

....Applicant

(By Advocate: Shri R.R. Ahlawat)

Versus

1. Union of India,
Through the General Manager,
Northern Railway, Baroda House,
New Delhi-1

2. The Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi

....Respondents

(By Advocate: Shri B.S. Jain)

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

Applicant alongwith others, had filed O.A.No.917/95 complaining that they are not being given the benefit of the order of Northern Railway whereby certain artisan staff in the engineering department against TLA, have been upgraded. This Tribunal had allowed the application on 30.8.99 and the operative part of the order is:

"6. In the result, the OA is allowed. The respondents are directed to consider the applicants for promotion to Gr.II as per their seniority and if they have passed the requisite trade test, to grant them promotion w.e.f. the same date their juniors have been promoted with all consequential benefits. This will be done within a period of four months from the date of receipt of a copy of this order. No orders as to costs."

2. The grievance of the applicant is that before the



said order had been passed, he had retired in the year 1997. He could not, therefore, take the trade test and his juniors have been given the benefit while he has been debarred.

3. Learned counsel for the applicant has drawn our attention to a decision of this Tribunal in the case of Ram Krishna Dutta & ors. vs. Union of India & ors., 1988 (4) SLR 405 wherein paragraph 6 of the order, this Tribunal held:

"6. In the result it is ordered that the applicants (plaintiffs in the Title Suit) who are still alive - either in service or since retired will be entitled to proforma promotion on the basis of the dates of promotions of their next juniors. Arrears of salary that will be due to the applicants on account of fixation as ordered above shall be paid within six months."

4. Learned counsel also relies upon paragraph 228 of the Indian Railway Establishment Manual (IREM) which also deals with the situation of erroneous promotion and it is being reproduced below for the sake of facility:

"228. Erroneous Promotions - (1) Sometimes due to administrative errors, staff are over-looked for promotion to higher grades could either be on account of wrong assignment of relative seniority of the eligible staff or full facts not being placed before the competent authority at the time of ordering promotion or some other reasons. Broadly, loss of seniority due to the administrative errors can be of two types:-

- (i) Where a person has not been promoted at all because of administrative error, and
- (ii) Where a person has been promoted but not on the date from which he would have been promoted but for the administrative error.


Each 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 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."

5. On careful consideration of the facts, it is clear beyond any tale of controversy that the said paragraph from the IREM as well as the case of Ram Krishna Dutta (supra) pertain to where there is erroneous promotion of a junior having been made.

6. Can, in the facts of the present case, it be stated that juniors have been erroneously promoted? The answer would be in the negative. Only those persons have been promoted who have passed the trade test. The order of this Tribunal inter-se between the parties is clear and unambiguous. Unless the trade test is passed, question of promotion to Grade-I will not arise. The applicant does not fulfil the said fact. He has not passed the trade test. Resultantly the applicant in the present application is not entitled to the relief claimed. If the applicant so desires, he may challenge the earlier order of this Tribunal for proper relief. Resultantly the application fails and is dismissed.


(M.P. Singh)
Member(A)


(V.S. Aggarwal)
Chairman