

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 799/99

New Delhi this the 4th day of November 1999

Hon'ble Mr. Justice V. Rajagopala Reddy, VC (J)
Hon'ble Mrs. Shanta Shastry, Member (A)

Shri Om Prakash Saini
S/o Shri Atma Ram
R/o Suit No.1
Panjab Bhawan
Copernicus Road
New Delhi.

...Applicant

(By Advocate: Shri S.K. Sawhney)

Versus

1. Union of India through
General Manager
Northern Railway
Baroda House
New Delhi.
2. Divisional Railway Manager
Northern Railway
Chelmsford Road
New Delhi.
3. Divisional Personnel Officer
Northern Railway
Baroda House
New Delhi.

...Respondents

(By Advocate: Shri D.S. Jagotra)

ORDER (Oral)

By Reddy, J.:-

Heard the counsel for the applicant and the
respondents.

2. The only point that arises for
consideration in this case is whether the applicant
is entitled for arrears of pay and the difference
in wages and the revision of seniority
retrospectively w.e.f. the date of promotion.

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3. The applicant who was working as Train Examiner in the Railways, filed OA No. 711/88 seeking his seniority w.e.f. 15.3.1979. The OA was allowed directing the respondents to pay all consequential benefits. Subsequently, he filed another OA-953/97 for promotion to the post of Chief Wagon Superintendent (CWS) retrospectively. This OA was also allowed and the respondents were directed to consider his case for promotion as CWS w.e.f. 25.2.94 and that if he was found fit for promotion, he would be entitled for all consequential benefits. The applicant was considered for promotion and he was in fact promoted as CWS w.e.f. 25.2.94. But the grievance of the applicant is that he was not given the consequential benefits viz., arrears of pay w.e.f. 25.2.94. Learned counsel for respondents, however, submits that under Rule-228 of the Indian Railway Establishment Manual (1) unless the employee works in the post concerned, he was not entitled for the pay and that whenever the promotions are granted retrospectively they should be given only on notional basis. Hence, it is contended that the applicant is not entitled for arrears of pay.

4. This case wholly rests upon two judgments of this Bench, in OA-711/88 and OA-953/94. In OA-711/88, it has been ordered as follows:-

"From the above facts and circumstances of the case it appears to us that the petitioner was declared successful in the said examination in 1979 when he was promoted on ad hoc basis w.e.f. 15.3.1979. He was sent for intensive training for one year which he cleared

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on 13.7.1983. In the meantime, he had continued to work as TXR uninterruptedly. The training for the apprentices under paragraph-142 (ii) is for two years. The petitioner had appeared in the selection held later in terms of paragraph-142 (ii) also in which he was declared the latter selection and not of the former. Since he was selected in terms of paragraph-142 (iii) I.R.E.M. and was given training accordingly, he is entitled to reckon his seniority w.e.f. 15.3.1979. Ordered accordingly. He shall also be entitled to the consequential benefits which will accrue to him by virtue of his seniority being reckoned from 15.3.1979. No costs".

5. According to the above directions the applicant was extended the benefits of promotion at par with his next junior, in view of the revised position of seniority in the grade of Rs. 425-700 w.e.f. 15.3.79, he was given the deemed promotion of Rs. 1600-2660 w.e.f. 23.9.87. Vide order dated 18.1.95. It was stated that the applicant was not entitled for the arrears of pay. The applicant, however, had neither made representations against this order, had not challenged the order before any judicial forum. The order dated 18.1.95 has, therefore, become final. Hence the applicant is not entitled to question this order in the above OA at this stage.

6. The applicant subsequently filed the OA-953/97 seeking promotion to the post of Chief Wagon Superintendent (CWS) w.e.f. 25.2.94. This OA has been allowed and the respondents were directed by the impugned order dated 4.9.98, to consider the case of the applicant for promotion to the post of CWS w.e.f. 25.2.94 alongwith all "consequential benefits" if he was found fit for promotion w.e.f. 25.2.94. Accordingly, the

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respondents promoted the applicant w.e.f. 25.2.94 for the post of CWS. The grievance of the applicant is that he was not granted the consequential benefits. As per this judgement the impugned order was passed dated 4.3.99 re-fixing the pay of the applicant w.e.f. 25.2.94. The fixation of the pay was, however, only on proforma basis. No arrears have been paid to the applicant. Learned counsel for applicant contends that as the court granted all consequential benefits, he is also entitled for all the arrears of pay. He relies upon the judgement in 1992(1) AISLJ 484 Ramesh Chander vs. R.S. Gahlewat, where it was held that the "consequential benefits" include arrears of pay and when promotion was wrongly denied arrears of pay should be paid. In this case the judgment of Supreme Court in U.O.I. vs. K.V. Jankiraman, AIR 1991 SC 2010 was relied upon where it was held that the normal rule of "no work no pay" is not applicable to cases where the employee although he is willing to work is kept away from work by the authorities for no fault of his. In the present case, in view of the above decision, as the applicant was wrongfully denied of his due promotion, he is entitled for the arrears of pay and the rule 228 has no application. In the circumstances, the OA partly succeeds. Respondents are directed to pay all the arrears of pay to the applicant w.e.f. 25.2.94.

7. No costs.

Shanta

(Mrs. Shanta Shastry)
Member (A)

cc.

V. Rajagopala Reddy
(V. Rajagopala Reddy)
Vice-Chairman (J)