

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 379/1996

New Delhi this the 2nd day of September 1996

Hon'ble Shri A.V.Haridasan, Vice-Chairman (J)

Shri S.K.Ahuja,
Dy.Chief Controller
Northern Railway
D.R.M.Office
State Entry Road
New Delhi

.....Applicant

(By Advocate: Shri B.S.Mainee)

Versus

Union of India: Through

1. The General Manager
Northern Railway
Baroda House
New Delhi
2. The Divisional Railway Manager
Northern Railway
State Entry Road
New Delhi

.....Respondents

(By Advocate: Shri O.P.Kshtriya)

ORDER (Oral)

Hon'ble Shri A.V.Haridasan, Vice-Chairman (J)

The applicant and the respondents (Railway Administration) have been on litigating terms for the last one decade. The applicant was placed under suspension and a departmental enquiry for imposition of major penalty was commenced against him, by issuance of a charge-sheet dated 21-5-1983. A penalty of with-holding ^{of} increment permanently for 2 years to be effective from 1-6-84 was imposed on him by the Disciplinary Authority. On appeal, the Appellate Authority reduced the penalty of with-holding ^{of} increment temporarily for 2 years. During the course of the departmental proceedings, the applicant had been promoted to the scale

of Rs. 425-640. He was allowed to join duty on that promoted post. However by order dated 1-7-83 the promotion was cancelled. Aggrieved by the penalty imposed on him and the cancellation of the promotion and the consequent reversion, the applicant filed OA 1038 of 1986. After considering the contentions, the said OA was disposed of by order dated 15-11-1991 with a following direction:-

"In the conspectus of the above view of the matter in this case, we direct that the order of penalty dated 25-1-84 and the appellate order dated 12-6-84 be quashed and so also the reversion order dated 1.7.83. The consequential benefits arising out of the setting aside of the aforesaid orders should also be given to the applicant".

Pursuant to the above orders of the Tribunal the respondents issued order (Annexure A-2). Thereafter, the second respondents issued order dated 15-4-94 (Annexure A-4) re-fixing the pay of the applicant for the period he was subjected to undergo penalty and also for the period he was reverted to the lower grade, but he did not order to pay to the applicant any arrears of pay and allowances though the penalty imposed on the applicant as also the reversion have been set aside by the Tribunal in OA 1038/86. The applicant felt that he was entitled to get the difference in pay and allowances which was not paid to him by the respondents. Therefore the applicant made a representation dated 28-4-94 immediately on receipt of the Annexure A-4 letter, claiming that he was entitled to get arrears of pay and allowances. Finding no response to his

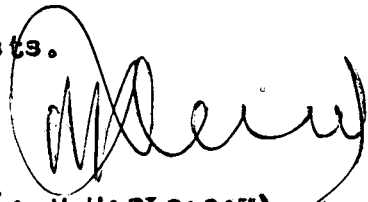
representation, he made another representations dated 22.5.95 and 26.7.95 (Annexure A-6&7). Ultimately the applicant received the impugned order at Annexure A-1 dated 27.10.95 wherein it was stated that he was entitled to fixation of pay and that actual payment would be given to him only from the date on which he shouldered the higher responsibilities of the post. Aggrieved by the stand taken by the respondents and their refusal to pay him the consequential benefits granted to him by the Tribunal in its order, the applicant has filed this application under Section 19 of the AT Act for a direction to the respondents to pay arrears of pay for the period from 13.6.1983 to 25.10.1987 night duty allowance for the period from 26.10.1987 to 31.12.1994 as also difference of Over Time Allowance. The applicant has also claimed interest of 18% on the delayed payment of pay and allowances.

2. The respondents in their reply contended that though the penalty of with-holding of increment and the reversion were struck down by the Tribunal, the applicant having not shouldered the responsibility of the higher post he is not entitled to the pay and allowances attached to the higher posts, in view of the Circular of the Railway Board Serial No. 2709 dated 16.10.64. The respondents, therefore, contend that the application be dismissed.

3. I have perused the pleadings and heard Shri B.S. Mainee counsel for the applicant and Shri O.P. Kshtriya counsel for the respondents. The penalty of with-holding of increment and the order of cancellation of promotion as also reversion were found to be illegal and unjustified by the Tribunal in its order 1038/96.

There orders are therefore struck down with consequential benefits. The result is that the impugned orders are non-est and without any legal consequence. As the applicant was wrongfully denied the benefit of holding the higher posts by an illegal order the respondents cannot escape the ^{debt of} benefits of paying him the arrears of pay and allowance, ^{or stating} ~~treating~~ that the applicant did hold the higher post, as not shouldering higher responsibility by the applicant was not for any reason ^{not respondents} attributable to him but, only on account of the illegal order. If an employee was not promoted at the relevant time due to some valid administrative reasons, and is promoted later he may not be entitled to arrears of pay. Here that is not the case. The Railway Board Circular referred to in the Counter Statement is therefore not relevant to the present case.

4. ^{found} In the conspectus of the facts and circumstances I ~~feel~~ that the applicant is entitled to the relief. In the result, the application is allowed and the respondents are directed to pay to the applicant the arrears of pay and allowances for the period from 13.6.83 to 25.10.87 and also the difference of Overtime Allowance for the relevant period. However, the claim for interest is disallowed. The compliance of the aforesaid direction shall be made by the respondents within the period of three months from the date of communication of this order. No costs.


(A. V. HARI DASAM)
Vice-Chairman (J)

cc.