

Central Administrative Tribunal  
Principal Bench:  
New Delhi.

OA No. 1058/96

New Delhi this the 25th day of December, 1996. (b)

Hon'ble Mr. R.K. Aahooja, Member (A)

Shri P.N. Kapoor  
S/o Late Shri Lekh Raj Kapoor  
Retired Senior Civil Engineer  
(Construction) Survey  
Northern Railway  
Kashmere Gate, Delhi  
R/o KG-1/276 Vikas Puri  
New Delhi - 110 018.

...Applicant.

(By Advocate: Shri S.K. Sawhney)

Versus

1. Union of India through  
General Manager  
Northern Railway  
Baroda House  
New Delhi.

2. Financial Adviser &  
Chief Accounts Officer  
(Construction)  
Northern Railway  
Kashmere Gato  
Delhi - 110 006.

...Respondents.

(By Advocate: Shri R.L. Dhawan)

ORDER

Hon'ble Mr. R.K. Aahooja, Member (A)

The case of the applicant is that on being selected for promotion in the panel of 1977-78, he assumed charge of Assistant Engineer on 22.4.1977. However, vide letter dated 7.4.1978 (Annexure A-4), he was reverted to Class III on account of certain disciplinary case initiated against him. He was ultimately exonerated and he was again promoted to the post of Assistant Engineer vide letter dated 28.8.1987 (Annexure A-6) and his name was interpolated in the seniority list at Sl. No. 17. On the recommendation of the DPC held on 8.12.88, he was also granted senior scale vide order dated 13.12.88 (Annexure A-7). Vide order dated 21.2.91 Annexure A-8 he was given proforma pay fixation

for the post of Assistant Engineer w.e.f. 26.7.77 when persons junior to him were promoted. The applicant was further granted proforma fixation in senior scale on the same basis w.e.f. 1.8.84. The grievance of the applicant is that though relief was conferred on him by virtue of this office order, as far as his promotion and proforma fixation of pay are concerned, he was not allowed arrears of pay from the date he was entitled to be promoted as Assistant Engineer from 26.7.77 and in his senior scale from 1.8.84. An earlier OA 448/94 was filed by him on this count which was disposed of by order dated 24.7.95 (Annexure A-11) with a direction to him to file a fresh and detailed representation and to respondents to consider the same and pass a detailed and speaking reasoned order. The applicant submits that he made his representation on 8.8.95 (Annexure A-12) which was rejected by the impugned order dated 8.11.95 (Annexure A-1).

2. Respondents in their reply submit that the applicant is not entitled to the arrears. In terms of the orders issued on the subject by the Ministry of Railways and that of Dept. of Personnel & Administrative Reforms, as were in force at the time, pay re-fixation was done in respect of the applicant, respondents state. They further state that as has been conveyed to the applicant in the impugned order, the Railway Board's instructions dated 29.1.72 and 30.1.82 and the instructions of DoPT were applicable in his case. These instructions prescribed that on conclusion of departmental proceedings, <sup>if</sup> the officer concerned is completely exonerated, he may be enlisted and promoted in his turn and that his pay on promotion is to be fixed on notional basis with reference to the date on which he would have been promoted in the normal course but no arrears of pay be allowed in respect of period prior to the date of actual promotion. Respondents further submit that the

(9)

applicant relies on Supreme Court judgement dated 27.8.91 in the case of UOI Vs.Jankiraman AIR 1991 2010 on the basis of which the Railway Board issued instructions regarding payment of arrears vide its letter dated 21.1.93. Since neither the aforesaid Supreme Court judgement had come at that time nor the letter of Railway Board dated 21.1.93 was issued, the benefits of these judgement and order could not be given to the applicant whose case was decided much earlier.

3. The respondents have also taken a preliminary objection that the application is barred by limitation. Learned counsel for the respondents pointed out during the course of the arguments that the order of pay fixation was issued on 21.2.91 (Annexure A-8) and the first OA 448/95 was filed 3 years thereafter. Shri S.K.Sawhney, counsel for the applicant cited AIR 1969 SC 23 Aggarwala Vs. UOI in which it was held that it does not behove the State to contest a good claim on the chances of success on some unsubstantiated technical plea, and Pritam Singh Vs. State of Punjab 1967 SLR 251 in which it was held that no hard and fast rules can be laid regarding delay and laches and the High Court would consider delay or laches on relevant facts, and a few other citations to show that the application could not be barred by limitation. In my view, the question of limitation does not arise at this stage since the applicant has come against the decision of the respondents dated 8th Nov. 1995 on the representation of the applicant which he had been directed to file on the orders of the Tribunal itself while disposing of OA 448/94. Hence the objection of the respondents is rejected.

Na

Learned counsel for the respondents then submitted that the applicant cannot take benefit of the decision of the Supreme Court judgement in Jankiraman case since this came after re-fixation of the pay of the applicant on 21.2.91. Shri Sawhney argued in reply that no new principle was laid down by the Supreme Court in Jankiraman case and what was done by the apex court was to explain the correct legal position. He, by way of example, cited Saik Mehboob V. Railway Board (Karnataka 1982 (1) SLR 455. In that case, claim for arrears was rejected on the ground that he did not shoulder duties and responsibilities of the higher post. Hon'ble single Bench of the Karnataka High Court held as follows:



"In my view, the denial of arrears of salary to the petitioner cannot be supported. The petitioner had a right to be considered for promotion on the dates when it was due in view of the right to equality guaranteed under Article 14 of the Constitution and right to equal opportunity in matter relating to employment guaranteed under Clause (1) of Article 16 of the Constitution. The said valuable rights guaranteed by the Constitution cannot be denied in the first instance and thereby deny the civil servant the opportunity to render service in the higher post and subsequently make it a ground for justifying the arrears of salary even after according retrospective promotion, at some point of time later. The giving effect to the circular as against the petitioner having regard to the facts and circumstances of the case, would amount to the violation of the fundamental rights guaranteed to the petitioner under Article 14 read with Clause (1) of Article 16 of the Constitution."

4. I find merit in the argument of Shri Sawhney. Jankiraman's case had arisen out of civil appeal Nos.3018-21 of 1987 and 3016 of 1988 after the judgement of March 1987 delivered by the full bench of the CAT. Para 19 & 20 of Jankiraman's case (Supra) in this context can be read as follows:

"19. The Full Bench of the Tribunal, while considering the earlier Memorandum dated January 30, 1982 has, among other things, held that the portion of paragraph 2 of the memorandum which says "but no arrears are allowed in respect of

(10)

the period prior to the date of the actual promotion" is violative of Articles 14 and 16 of the Constitution because withholding of salary of the promotional post for the period during which the promotion has been withheld while giving other benefits, is discriminatory when compared with other employees who are not at the verge of promotion when the disciplinary proceedings were initiated against them.

20. The Tribunal has, therefore, directed that on exoneration, full salary should be paid to such employee which he would have received on promotion if he had not been subjected to disciplinary proceedings."

5: Hon'ble Supreme Court after considering the conclusion of the Tribunal observed in para 26 as follows:

"26. We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty of even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it."

6. The Supreme Court in Jankiraman's case thus broadly confirmed the interpretation of the law as seen by the Tribunal in its order dated March 2, 1987, i.e. much before the impugned order of pay fixation was issued in respect of the applicant. Thus even on their own argument regarding the non-applicability of ratio of Jankiraman's case and in the case of the applicant, the position is that such an interpretation was already

10

available in the judgement of the Tribunal and in fact the Supreme Court has somewhat modified and gave discretion to the concerned authority to decide whether an employee at all deserves any salary for the intervening period and to what extent. The respondents have not refused the arrears on the ground that the delay in deciding his case was due to any action on the part of the applicant or because the applicant had not been fully exonerated; they rely only on the fact that the judgement in Jankiraman's case came at a date later than the order of reinstatement was issued. This, as has been seen above, is not the correct position in view of the judgement of the full Bench of the Tribunal which was already available.

7. In the light of above discussion, I allow the application and direct the respondents to pay to the applicant his arrears arising out of re-fixation of his pay. They are also directed to pay 12% interest thereon from one year from the date of filing of OA 448/94 till the date of payment. Respondents should comply with the order within 3 months from the date of receipt of this order.

Parties to bear their own costs.

*R.K. A*  
[R.K. Ahoja]

Member (A)

aa.