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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

O.A.No.1507/94

New Delhi: this the 24th day of September, 1999.

HON'BLE MR.S.R.ADIGE, VICE CHAIRMAN (A).

HON'BLE MR.KULDIP SINGH, MEMBER (J).

Devi Lal,

s/o Shri Charan Singh,
Superintendent Lab,
Northern Railway Diesel Shed,
Tughlakabad,
New Delhi.

..... applicant.

(By Advocate: Shri G.D.Bhandari)

Verus

1. General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. The Chief Workshop Engineer,
Northern Railway,
Baroda House,
New Delhi.

3. The Sr. Divisional Mechanical Engineer (O&L),
Northern Railway,
Diesel Shed,
Tughlakabad,
New Delhi.

4. The Commissioner,
National Commission for SC/ST,
5th Floor,
Lok Nayak Bhn.,
New Delhi.

..... Respondents.

(By Advocate: Shri D.S.Jagotra)

ORDER

HON'BLE MR.S.R.ADIGE VICE CHAIRMAN (A).

Applicant impugns respondents' orders dated 21.9.93 (Annexure-1) promoting him as Superintendent Lab (Rs.2000-3200 RPS) w.e.f. 24.6.87 with effect from the date his immediate junior Shri J.N.Malick, S.C. was promoted, and seeks promotion as Superintendent Lab. w.e.f. 1.1.84.

2. Heard both sides.

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3. Applicant had earlier filed O.A No.2317/89 seeking a direction to expunge certain uncommunicated adverse remarks for the years 1981-82; 1982-83 and 1983-84. He also filed O.A.No.639/86 for grant of promotion in the scale of Rs.550-900. Both OAs were disposed of by common order dated 11.12.91 (Annexure-9) in which it was held that no adverse entries should be deemed to have been made against applicant and further directed respondents to consider granting applicant promotion to the scale of Rs.550-900 from the date his junior was promoted, along with consequential benefits and interest @ 12% p.a.

4. Pursuant to that order dated 11.12.91 applicant admittedly was promoted as Lab. Supdt. (Rs.550-900/1640-2900) w.e.f. 1.1.84 and was granted arrears and interest @12% p.a. Respondents also considered applicant's case for promotion to the next higher grade of Rs.2000-3200 and promoted him as such w.e.f. 24.6.87 which was the date his junior Shri J.N.Malick was promoted in that grade.

5. Thereafter applicant filed O.A.No.1506/94 challenging respondents' action in not giving him financial benefits on his promotion in grade of Rs.2000-3200/- from 24.6.97 and prayed for arrears together with interest. That OA was allowed by order dated 29.7.99.

6. At the outset we notice that the claims in this OA are squarely hit by the principle of Constructive Res-Judicata contained in Section 11 Explanation IV CPC which envisages that any matter which might and ought

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to have been made on ground of defence or attack in a former suit, shall be deemed to have been matter directly and substantially in issue in a subsequent suit. Even otherwise when applicant filed OA No.1506/94 and specifically did not make the present claim, Order 2 Rule 2 CPC prohibits him from seeking this remedy in the present OA.

7. That apart when the Tribunal in its order dated 29.7.99 in OA No.1506/94 which to our knowledge has not been stayed, quashed or set aside, has held that applicant was entitled to this scale of Rs.2000-3200 w.e.f. 24.6.87 with arrears, we as a Co-ordinate division Bench are bound by the same, and the question of granting this scale from 1.1.84 does not arise.

8. The OA is dismissed. No costs.

Kuldeep
(KULDIP SINGH)
MEMBER(J).

S. R. Adige
(S. R. ADIGE)
VICE CHAIRMAN (A).

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