

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A. NO.1320/2000

(9)

New Delhi, this the 08<sup>th</sup> day of February, 2002

Hon'ble Mrs. Lakshmi Swaminathan, V.C. (J)  
Hon'ble Mr. S.A.T. Rizvi, Member (A)

1. Shri C.N. Sahai,  
S/o Late Shri B.K. Lal,  
Signal Inspector
2. P.N. Sharma,  
Chief Signal Inspector
3. Tarlok Nath,  
Signal Inspector
4. Shanti Kumar,  
Signal Inspector
5. K.K. Marwaha,  
Chief Signal Inspector
6. B.N. Misra,  
Signal Inspector
7. B.B. Arora,  
Chief Signal Inspector

Applicants

(By Advocate : Shri B.S. Maine)

Versus

Union of India through:

1. The General Manager,  
Northern Railway,  
Baroda House,  
New Delhi - 110001
2. The Divisional Rly. Manager,  
Northern Railway,  
New Delhi
3. The Div. Rly. Manager,  
Northern Railway,  
Ambala
4. The Divisional Rly. Manager,  
Northern Railway,  
Ferozepur
5. The Divisional Railway Manager,  
Northern Railway,  
Lucknow
6. The Divisional Rly. Manager,  
Northern Railway,  
Moradabad

7. The Divisional Rly. Manager,  
Northern Railway,  
Jodhpur

(By Advocate : Shri B.S. Jain & Shri Rajinder Khatter) 20

O R D E R

HON'BLE MR. S.A.T. RIZVI, MEMBER (A) :

The applicants had, inter alia, prayed for the following set of reliefs by filing OA No. 2899/1991:-

- "(i) That this Hon'ble Tribunal may be pleased to direct the respondents to assign seniority to the applicants from the date of their continuous officiation as Assistant Block Inspectors as has been done in cases of Shri S.C. Kulshrestha and Ors. v. UOI, K.D. Bhardwaj Vs. UOI & Ors. and R.C. Nigam Vs. UOI & Ors.
- (ii) That this Hon'ble Tribunal may be pleased to direct the respondents to give all consequential benefits including further promotion, fixation of pay and arrears."

The aforesaid O.A. was allowed on 3.1.1996 and the following direction was given to the respondents:-

"We are of the view that only a direction can be issued that consequent upon giving them higher seniority in terms of the aforesaid direction, the applicants are entitled to all benefits, including consideration of the cases for further promotion as and when due in terms of the revised seniority." *(emphasis supplied)*

2. Alleged non-compliance of the aforesaid order, faithfully and completely, led to a CP, being CP No.213/1998, ~~being~~ filed in this Tribunal. The Tribunal, after consideration, found that there was no wilful or contumacious disobedience of the Tribunal's order and dismissed the Contempt Petition giving liberty to the

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applicants (Petitioners in the aforesaid C.P.) to pursue such other remedy as might be available to them if they so desired. The aforesaid order was passed on 25.4.2000. On the basis of the liberty so given, the applicants have filed the present O.A. claiming payment of arrears w.e.f. the dates the applicants were <sup>+ each</sup> notionally promoted as Signal Inspector Grade-II, Signal Inspector Grade-I and Chief Signal Inspector.

3. The learned counsel appearing on behalf of the applicants has drawn our attention to the relief No.(ii) sought when the aforesaid O.A. No. 2899/1991 was filed (reproduced in Para-1 above) (Annexure A-1), and has submitted that a specific mention was made therein with regard to the payment of arrears of pay and allowances. The Tribunal, in turn, while allowing the aforesaid O.A. had also directed, as would be clear from what has been reproduced in paragraph 1 above that the applicants were entitled to all the benefits including consideration of their cases for promotion. According to him, by rendering the applicants eligible for all the benefits, the Tribunal had undoubtedly <sup>+ though</sup> impliedly included the benefit of arrears of pay and allowances also as part of the overall relief to be given to the applicants. After consideration, we find ourselves in agreement with the aforesaid contention raised on behalf of the applicants and conclude that the relief package granted in favour of the applicants did include payment of arrears of pay and allowances.)

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4. The prayer made in the present O.A., however, includes not only the arrears of difference of pay and allowances in the manner stated above but also payment of interest on the amount of arrears of difference of pay and allowances. The relief relating to the payment of interest was, we have noticed, not included in the list of various reliefs sought when the O.A. No.2899/1991 was filed. The learned counsel appearing on behalf of the respondents has accordingly argued that such a plea (with regard to payment of interest) cannot be raised at this stage, and the applicants are prevented from doing so <sup>in now</sup> in accordance with the principle <sup>the principle of</sup> akin to <sup>1</sup> constructive resjudicata. We agree.

5. In support of the applicants' case for payment of arrears of difference of pay and allowances, the learned counsel appearing on their behalf has placed reliance on the judgement rendered by the Full Bench of this Tribunal on 2.1.2002 in C.P. No. 154/2001 in O.A. No.2066/1997. In the aforesaid judgement, the following question posed for a verdict of the Full Bench

"(iii) whether the provisions of Paragraph 228 of IREM (Vol.I) applicable to Railway servants or any other similar provisions applicable to other Central Government employee can be relied upon by the authorities to deny the applicant salary on the promoted post where action to rectify the erroneous order has been taken by the respondents suo moto".

was decided in the following terms :-

"(iii) Provisions of paragraph 228 of IREM Vol. I are not applicable to the railway servants, the same having been declared invalid and non-existent in terms of various Court rulings. However, FR 17(1) which is

applicable to other Central Government employees, being the basic law, can be relied upon by the railway authorities to deny an employee salary on the promoted post where action to rectify the erroneous order has been taken by the respondents suo moto." (emphasis supplied)

6. The aforesaid clearly implies, according to the learned counsel, that the payment of salary and allowances in respect of the promotional post from the date of promotion can be denied only when the mistake committed by the official respondents by not promoting the employees from the due date is rectified by the official respondents on suo moto basis, and not otherwise. In the present OA, the relief of payment of salary and allowances w.e.f. the date of applicants' notional promotion to the respective grades has been granted by the Tribunal and, therefore, in terms of the law propounded by the Full Bench, the applicants are entitled to the payment of arrears of difference of pay and allowances. On a careful consideration of the matter, we find ourselves inclined to accept the aforesaid view.

7. The learned counsel appearing on behalf of the respondents has disputed the claim of the applicants for the payment of arrears of difference of pay and allowances, and he has done so by placing reliance on the judgement rendered by the Supreme Court on 12.1.1996 in State of Haryana and Others vs. O.P. Gupta and Others reported as (1996) 7 SCC 533.

8. The aforesaid judgement was made by a Division Bench of the Supreme Court. The principle upheld in the

aforesaid judgement in the circumstances of that case is that in the event of notional promotion an employee is not entitled to arrears of pay from the deemed date to the date of his posting in the promotional post on the ground that the employee had not worked during that period on the higher post. The learned counsel for the applicants has, on the other hand, in respect of the same matter, relied on the ratio of the judgements rendered by the Supreme Court in Vasant Rao Roman v. Union of India & Ors., 1993 (9) SC Service Rulings 213 (Civil Appeal No.709 of 1993 decided on 4.3.1993) and State of Andhra Pradesh v. K.V.L. Narsimha Rao & Ors., JT 1999 (3) SC 205 and B.M. Jha v. Union of India & Ors., 2000 (2) ATJ 24 all relied upon by the Full Bench. The last named case was decided by the Principal Bench of this Tribunal on 11.1.2000. In both the aforesaid judgements, the Supreme Court had held that in the circumstances similar to those obtaining in the present OA, the employees would be entitled to the payment of pay and allowances from the date of notional/deemed promotion. In the case of K.V.L. Narsimha Rao (supra), the Court had held as follows:-

"In normal circumstances when retrospective promotions are effected, all benefits flowing therefrom, including monetary benefits, must be extended to an officer who has been denied promotion earlier."

By placing reliance on the aforesaid judgements rendered by the Supreme Court, this Tribunal in the case of B.M. Jha vs. Union of India (supra) held that an employee who was willing to work on the promoted post but was not promoted for no fault of his, on promotion cannot be

denied arrears of pay and allowances of the promoted post on the ground of "no work no pay".

9. On a careful consideration of the law laid down by the Supreme Court and the Full Bench of this Tribunal in the aforesaid cases, and having particular regard to the decision rendered by the Supreme Court in K.V.L. Narsimha Rao (supra) as late as in 1999, i.e., much after the case of State of Haryana & Ors. (supra) was decided, we are inclined to favour the contention raised on behalf of the applicants. In the circumstances, we find considerable merit in the present OA and no force in the various contentions raised on behalf of the respondents.

10. We will also like to observe that the applicants having been rendered eligible for all the benefits, which evidently included the benefit of payment of arrears of difference of pay and allowances, by orders passed on 3.1.1996, the aforesaid payment of arrears of difference of pay and allowances should have been made to the applicants. However, if the respondents had a doubt in the matter, as regards the payment of aforesaid arrears, they could file an appeal or a review application against the Tribunal's aforesaid order of 3.1.1996 in accordance with the law and rules. They have not done so and instead the applicants have had to move in the matter by following the route involving the stage of filing of a Contempt Petition. Since the respondents did not go in appeal nor filed a review application in the manner just stated, they had only one option in the matter which was to comply with the Tribunal's order dated 3.1.1996 by

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paying the arrears of difference of pay and allowances, as the aforesaid order of the Tribunal had become final. On this count also, the present OA is found by us to have considerable merit.

11. For all the reasons brought out in the preceding paragraphs, we allow the O.A. in part and direct the respondents to pay arrears of difference of pay and allowances to the applicants from the dates from which they stood promoted to Grade-II, Grade-I and to the post of Chief Signal Inspector respectively. The respondents are further directed to make payments involved in the above relief granted to the applicants within a maximum period of two months from the date of receipt of a copy of this order. The plea with regard to the payment of interest stands rejected.

11. The present O.A. is disposed of in the aforesated terms with no order as to costs.

*Rizvi*  
(S.A.T. RIZVI)  
MEMBER (A)

/pkr/

*Lakshmi Swaminathan*  
(MRS. LAKSHMI SWAMINATHAN)  
VICE CHAIRMAN (J)