

RA 74/94 in OA 479/93.

Decided on 15.3.94

IN THE MATTER OF:

SHRI J.P.Kapoor Vs. Union of India & Others.

CORAM: !

SHRI J.P.SHARMA, MEMBER(J).

ORDER (*By circulation*)

Union of India for the Railways, through advocate Shri R.L.Dhawan, filed the review application against the order dated 20-1-94 by which the application of Shri J.P.Kapoor who was Station Master at the relevant time was allowed and the impugned order dated 12-2-93 re-fixing the pay of the applicant was quashed.

2. The respondents have raised the issue that there is an apparent error in the judgment inasmuch as the applicant J.P.Kapoor was posted at Pili Banga, remained on unauthorised absence from duty from 3-11-81 and he submitted his fitness certificate dated 15-1-83 issued by private medical practitioner. He did not file the fitness certificate from the Government doctor. There was a cadre re-structuring in 1982 and the applicant became due for his promotion

A.S.M. Rs.555-700 from 1-8-82. The applicant was wrongly given promotion to this grade and the fact that he was on unauthorised absence from duty from 3-11-81 to 24-1-83 was lost sight of and pay was wrongly fixed. He was only declared fit on 25-1-83 and he could have been given promotion only from that date. However, the applicant in due course was granted increments in August every year upto the year 1986 and was also promoted to the next higher grade of ASM Rs.1600-2600 from 19-5-87. In view of the fact that the period of absence from 3-11-81 to 24-1-83 was wrongly taken into account, the annual increment of the applicant was required to be put back by the aforesaid period of leave without pay in terms of para 606(V) of I.R.E.M. Vol.I Revised Edition 1989. The applicant has also remained on unauthorised absence from duty from 30-7-89 to 31-8-89 and the said period of leave without pay was also not to be taken into account for the purpose of drawal of annual increments. This mistake was corrected by issuing the impugned order dated 12-2-93.

3. This is not an error apparent on the face of the judgment because the respondents before correcting the mistake have not issued any show cause notice while re-fixing the pay of the applicant. The authority of the Hon'ble Supreme Court AIR 1967 SC p.1268 has been relied

inasmuch as the respondents have to follow the principles of natural justice even in the administrative orders which involves civil consequences. Considering all these facts, there is a detailed reasoning in the judgment in paras 6, 7 and 8.

4. The counsel for the Union of India has also annexed certain documents with the review application but these documents do not meet the requirement of law that if order is passed to the prejudice of the employee after a gap of more than 10 years, then without giving a show cause notice, no re-fixation of pay can be done to the disadvantage of the employee. What is exhibited in these documents is that leave on medical grounds under para 521 can only be sanctioned when the incumbent has filed the certificate of a Government Railway doctor. This may be a fact which at the relevant time might have deferred the promotion of the applicant on the basis of re-structuring to the grade of Rs. 455-700. But, when once the promotion has been granted, then after ten years that benefit cannot be withdrawn.

5. There is no merit in this review application and the same is dismissed as devoid of merit.