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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 414/89

New Delhi this 22th Day of February 1994

The Hon'ble Mr. J.P. Sharma, Member (J)

The Hon'ble Mr. B.K. Singh, Member (A)

Shri S.C. Verma,
Son of Shri R.P. Verma,
Resident of 2/93, Sadiq Nagar,
New Delhi.

... Applicant

(By Advocate: S.K. Bisaria with
Shri J.K. Nayar)

Versus

1. Union of India,
through
Secretary,
Ministry of Railway,
Rail Bhawan,
New Delhi.

2. General Manager,
Central Railway,
V.T. Bombay

3. Division Railway Manager (P),
Central Railway,
Jhansi.

4. Chief Personnel Officer
(C) Central Railway,
VT Bombay.

... Respondents

(By Advocate: Shri H.K. Gangwani)

O R D E R (ORAL)

Hon'ble Mr. J.P. Sharma, Member (J)

The applicant was initially appointed as a Commercial Clerk was promoted as Assistant Commercial Inspector in the grade of Rs. 425-600 and on upgradation of the post it is alleged that the applicant was promoted to the grade of Rs. 455-700 with effect from 1.1.1984. The applicant has since retired on 28.2.1987. The applicant pursued his matter before Pension Adalat and he was informed by the Memo dated 11.1.1989. that none of the juniors to

to the applicant was promoted on the panel formed on 17.10.1986 in the Grade of Rs.455-700 from 1.1.1984. As the said panel was not operative consequent upon the merger of Grade of Rs. 425-640 and Rs.455-700 into the single scale of Rs. 1400-2300 (RPS). The applicant, however, in the present application has the grievance of not being granted the grade of Rs. 455-700 with effect from 1.1.1984 and alternatively he also claims the arrears of the Grade of Rs.425-640 with effect from 1.1.1984. He has also prayed for transfer allowance etc. amounting to Rs.1,778/- and the encashment of 28 days leave which was not accounted for in the encashment of leave earlier sanctioned to the applicant.

2. The learned counsel for the Applicant Shri Basaria did not press the relief for the promotion to the post of the applicant with effect from 1.1.1984 in the grade of Rs. 455-700. The application, therefore is confined to the grant of the relief of arrears of salary if due to the applicant with effect from 1.1.1984 in the grade of Rs.425-640 certain dues on account of transfer allowance amounting to Rs. 1,778/- and lastly the encashment of 28 days leave not accounted for in the leave encashment paid to the applicant.

3. The respondents contested the application and opposed the grant of the reliefs on the ground that since the applicant has retired on 28.2.1987 and actually he did not work in the upgraded post with effect from 1.1.1984 so he could not be granted the benefit of the scale of Rs. 425-640 from that date. The order has been passed by the respondents giving the benefit on 5.3.1987 i.e. subsequent to the date of superannuated from the service of the applicant.

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4. Regarding the claim for leave encashment and Transfer allowance it is said that the necessary bills for transfer were not submitted in time and further the leave due to the applicant at the time of the retirement has been rightly calculated and the amount equivalent in terms of money of the leave due has been paid.

5. We heard the learned counsel of the parties ^{certain} on 18.2.1994. No more information was desired from the parties. The learned counsel for the applicant was asked to substantiate that the applicant has applied for the transfer bill within time and also to show the leave account of the applicant. The learned counsel for the respondents was also asked to furnish certain records whether the order issued on 5.2.1987, was merely order of upgradation of post or it was a promotion given to the applicant from the earlier scale of Rs. 330-560.

6. The policy of re-structuring of posts issued by the Railway with effect from 1.1.1984 only increased accordance with the percentage of posts in various grades and the functions to the post remained the same. While in the promotional posts the functions and duties are attached to the promotional posts which vary substantially from the post the person is promoted. To deny arrears of salary only on the ground that the order of re-structuring for upgrading the post was passed after the retirement of the applicant will not be justifiable and will lead to discrimination and arbitrary besides being un equitable. While the posts are upgraded the pay scale only are differed by increasing the same on account of increasing the percentage in the particular grade. Of course, the upgradation is effective

on the basis of modified process of selection on the basis of the record of the service and it is because of the fact that a condemn person cannot be rewarded even in upgradation.

7. The applicant has superannuated and he has been granted benefit of upgradation while fixing his pensionary benefit in the scale of Rs.425-640. Thus, it will be unfair and unjust to treat the applicant differently than those who did not superannuate before the order dated 5.3.1987. The applicant, therefore, is entitled to arrears of salary if not already paid in the scale of Rs.425-640 from the date the post was upgraded till the date he is superannuated on that post.

8. Regarding the other reliefs the learned counsel for the applicant ^{placed} ~~lays~~ before the Bench a postal receipt of sending certain letters to the respondents that will not discharge the burden that the applicant has applied for the grant for TA in the prescribed period of one year. No claims for TA can be preferred beyond that period. One who alleges the facts should prove it and in the absence of any proof he fails. Similarly on being paid 28 days short leave encashment alleged to be due to the applicant we do not find any convincing evidence from the records besides certain averments in the D.A. reiterating in the rejoinder. That fact has been denied by the respondents who are the custodian of record. When there is oath Vs. ~~oath~~ the contention of the respondents who are custodian of the record has the persuasive force to be accepted.

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In view of the above facts and circumstances, the application is partly allowed with the direction to the respondents to pay the applicants arrears of salary in the scale of Rs. 425-640 with effect from 1.1.1984 if not already paid within a period of four months from the date of issue of this order. If the amount is not paid within four months, an interest at the rate of 12% will also be paid on that amount from the date of the order of this case. Parties to bear their own costs. Other reliefs claimed are disallowed.



(B.K. Singh)
Member (A)



J.P. Sharma
Member (J)

Mittal