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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

CP No.132/93 in OA No.39/87

NEW DELHI THIS THE 12TH DAY OF AUGUST, 1994.

MR.JUSTICE S.K.DHAON, ACTING CHAIRMAN
MR.B.N.DHOUNDIYAL, MEMBER(A)

Shri Jodh Singh
S/o Shri Chaman Singh
R/o 425, Sector-IX,
Faridabad, N.I.T.(Haryana) PETITIONER
By Advocate Shri J.K. Bali Vs.

Shri Raj Kumar
General Manager
Northern Railway
Baroda House
New Delhi. ... RESPONDENT

By Advocate Shri B.K. Aggarwal

ORDER(ORAL)

Justice S.K.Dhaon:

The complaint in this petition is that the directions given by this Tribunal on 1.8.1991 in OA No.39/1987 are being disobeyed by the respondent. In the OA, the petitioner came out with the grievance that his seniority had been wrongly fixed. This Tribunal upheld this contention and directed the respondent to refix the seniority of the petitioner from the date of his appointment as Accounts Clerk in Grainshop department i.e. 19.7.1946. This Tribunal further directed the respondent to pay to the petitioner, all the monetary or pensionary benefits to which he was entitled.

2. A counter-affidavit has been filed on behalf of the respondent. It appears to be an admitted position that the seniority of the petitioner has been refixed and he has been given notional promotion. It also appears to be an admitted position that on account of the fixation of the notional seniority, his pensionary benefits have been re-determined. The only controversy is as to whether under the directions of this Tribunal, the respondent was liable to give to the petitioner, the past salary i.e. the salary which would have been

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payable to him had he been promoted from a particular date.

3. It is clear from a bare reading of the directions of this Tribunal that no express direction had been given to the respondent to give the past salary to the petitioner. The crucial word used in the directions is "entitled". The Members of this Tribunal clearly meant by this expression, the entitlement according to law. The question, therefore, boils down to whether, under the law, the petitioner is entitled to be paid the past salary.

4. Our attention has been drawn by the learned counsel for the respondents to Rule 123 of the Indian Railway Establishment Code Volume I (Code). The Code has been framed under the proviso to Article 309 of the Constitution. Under the said Rule 123, the Railway Board is empowered to frame rules of general application to Group 'C' and Group 'D' railway servants.

5. Para 228 of the Indian Railway Establishment Manual Volume I (the Manual), as material, states that in a case where a person has not been promoted at all because of an administrative error and where a person has been promoted but not on the date from which he would have been promoted but for the administrative error, the enhanced pay may be allowed from the date of actual promotion. However, no arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher post.

6. We have gone through the Code but we have not been able to lay our fingers on any provision which lays down the manner of framing of the rules by the Railway Board. The learned counsel for the petitioner too has not been able to bring to our notice any such provision. We, therefore, have no difficulty in taking the view that *prima facie* Para 228 as contained in the Manual is really a rule framed under Rule 123 of the

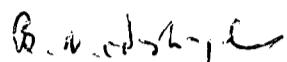
Code. We are fortified in our view by the decision of the Supreme Court in the case of **B.S.VADERA & ANR. vs. UNION OF INDIA AND OTHERS (AIR 1969 SC 118)**. There, their Lordships were considering Rule 157 as then contained in the Code. Their Lordships took the view that under that provision, the Railway Board was entitled to frame rules. Their Lordships took the view that a scheme could be framed by the Railway Board under Rule 157 of the Code. The contents of Rules 157 and 123 are similar.

7. The learned counsel for the petitioner has relied upon a decision of the Karnataka High Court in the case of **SHAIKH MEHABOOB vs. RAILWAY BOARD AND OTHERS (1982(1) SLR 455)**. That was a judgement given by a learned Single Judge. In that case, the Railway administration relied upon a circular, the contents of which were similar to those as contained in Para 228 of the Manual. The learned Single Judge held that the circular which prohibited the payment of the past salary in case of failure of the authorities to promote the petitioner therein from a particular date infringed Articles 14 and 16 of the Constitution.

8. These are contempt proceedings. We need not examine the validity of Para 228 of the Manual. We are only concerned with the question whether, in the context of the contents of that para, the respondents is wilfully disobeying the directions of this Tribunal. The respondent^{department}, it is trite, is bound by his own circulars/rules. Unless, the circulars/rules have been struck down or rescinded, the respondent^{department} will be justified in relying upon the same. Contempt proceedings are quasi-criminal proceedings. Therefore, the alleged contemner is always entitled to the benefit of doubt. Under these circumstances, no case exists to prosecute the respondents in these contempt proceedings. We, however, make it clear that it will be open to the

petitioner to challenge the legality of the decision of the respondent for not paying the past salary to him in an appropriate forum.

9. With these observations, this CP is dismissed. Notice of contempt is discharged. No costs.


(B.N.DHOUNDIYAL)
MEMBERA(A)


(S.K.DHAON)
ACTING CHAIRMAN

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