

Central Administrative Tribunal, Principal Bench

O.A. No. 2445/2004

New Delhi this the 25th day of April, 2006

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)
Hon'ble Mrs. Chitra Chopra, Member (A)

Shri Hargian Singh
Assistant Engineer,
Northern Railway,
Rohtak (Haryana).

....Applicant

By Advocate: Shri Sachin Chauhan, proxy counsel for Shri B.S. Mainee.

Versus

Union of India: Though

1. The General Manager
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
New Delhi.

.....Respondents

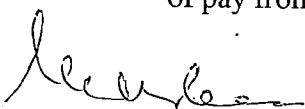
By Advocate: Shri Sat Pal Singh.

ORDER

By Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

The applicant has filed the present OA for a direction to the respondents to antedate his promotion to the post of Inspector of Works Grade-I in the pre-revised pay scale of Rs.2000-3200 from 22.9.1993 to 1.3.1993 and further direction to pay him consequential monetary benefits.

2. The applicant who joined the respondent as SOM on 24.12.1985 was promoted to the post of Inspector of Works Grade-III on 4.4.1988. After an administrative error in the seniority list was corrected, the applicant has been promoted as Inspector of Works Grade-II with effect from 22.7.1991 and he has further been promoted to the post of Inspector of Works Grade-I on pro-forma basis 22.9.1993 with actual monetary benefit payable with effect from 14.5.2002. The applicant's grievances are twofold. Firstly, he ought to have been given promotion to the post of Inspector of Works Grade-I with effect from 1.3.1993 when he had become eligible for such promotion and a vacancy was available as per the restructuring scheme and secondly he should also be given the arrears of pay from 1.3.1993.



3. Upon revision of his seniority the applicant by order dated 15.5.2002 (Annexure A-1) as modified by order dated 27.8.2003 (Annexure A-2) has been granted pro-forma promotion in the grade of Rs.2000-3200 with effect from 22.9.1993 on which date his immediate junior Shri Ashok Kumar Dewakar had been promoted, but on the premises that he had not shouldered the higher responsibilities on promotion, he has been given the actual monetary benefit of the promotion with effect from 15.5.2002.

4. The respondents, on the other hand, have refuted the applicant's claim for antedating his promotion from 1.3.1993 on the ground that he had been granted pro-forma promotion from the date from which his immediate junior was promoted. They have also rejected the claim of the applicant for actual monetary benefit/differential of pay for the period from 22.9.1993 to 14.5.2002 on the ground that he has not performed the duties and shouldered the responsibilities of the higher post.

5. We have heard the learned counsel for the respondents. The counsel for the applicant, however, has submitted the case law, which has been taken into consideration.

6. As regards the contention of the applicant that he ought to have been promoted from 1.3.1993, the date on which as a result of restructuring order a vacancy existed in higher post for his promotion, suffice to say that no rules or administrative instructions have been cited before us which say that the applicant had a vested legal right to the promotion to the higher post from the date on which he had become eligible for consideration for promotion or a vacancy on higher grade had become available. It is well settled that a person has only a right to be considered for promotion and he had no indefeasible right to the actual promotion to the higher post from the date a vacancy in the higher post has arisen or he has become eligible for promotion. (See Union of India and others vs. N.R.Banerjee and others 1997 (1) SLR 751).

7. The applicant has been given promotion from 22.9.1993 at par with his junior. The applicant has not denied that his junior Shri Ashok Kumar Dewakar was promoted on 22.9.1993. The applicant's contention that as per restructuring order vacancy in restructured higher post became available on 1.3.1993 on which date the applicant had two years service (reduced to one year service as one time exception) so was eligible for promotion to the upgraded higher post. The contention is not legally tenable. The claim

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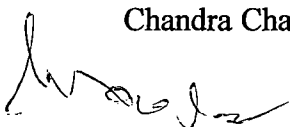
of the applicant, therefore, for antedating the promotion from 22.9.1993 to 1.3.1993 is devoid of any merit and is accordingly rejected.

8. Coming to the contention that the applicant is entitled to receive the pay and allowances of the higher post on his promotion for the period from 22.9.1993 to 14.5.2002, it is pertinent to note that the applicant has been granted only pro-forma promotion from 22.9.1993 and he has been granted the actual pay and allowances of the higher post from 15.5.2002. The question, therefore, is whether the applicant has a right to be paid the actual monetary benefit for the period from 22.9.1993 to 14.5.2002. The Railway Board's Instruction No.E (NG) 1-202/PMI/16 dated 2.7.2003 which was on the basis of the decision of the Hon'ble Supreme Court dated 13.8.1997 in Civil Appeal No.899/1994 in the case titled **Union of India Vs. P.O. Abraham and Others** directed that where an employee who had not been given promotion on account of administrative lapse and he is assigned the correct seniority and promotion vis-à-vis his junior, his promotion would be on pro-forma basis and that he would not be paid arrears of pay on account of pro-forma promotion as he did not actually shouldered the duties and responsibilities of the higher post. Ernakulam Bench of this Tribunal in the OA filed by P.O. Abraham and Others had directed deletion of a clause which was a part of para 228 of IREM volume I which disallowed back wages on promotion on proforma basis was challenged in appeal before the Hon'ble Supreme Court. In the appeal **Union of India and Others Vs. P.O. Abraham and Others (Supra)**, copy of which has been placed on record by the learned counsel for the respondents Hon'ble Supreme Court had quashed the order of the Tribunal whereby clause part of para 228 of IREM was directed to be deleted. Hon'ble Court as regard to the payment of actual pay and allowances resulting from the correction of the seniority and promotion on pro-forma basis from retrospective date has observed as follows:-

“ By the order appeal, the Tribunal has allowed this application which challenged the Railway Board Circular dated 15/17 September, 1964. The said circular stated:

‘No arrears on this account shall be payable. She did not actually shoulder the duties and responsibilities of the higher posts’.

Consequent to the deletion of the above clause further directions were given. Learned counsel submits that the clause which has been directed to be removed, is in accordance with the judgment of this Court in Virender Kumar, General Manager, Northern Railways, New Delhi Vashvinash Chandra Chadha & Others (JSSO) 8 SCR 759. This court, in that case held



on principle office work no pay that the respondents will not be entitled to the higher salary as they have not actually worked in that post. The clause, which has been directed to be deleted by the Tribunal being in consonance with the ruling of this Court, we are of the opinion that the Tribunal was not right in directing the deletion of that clause. Accordingly, to that extent this appeal is allowed. The result is that the respondents will be given deemed promotion, if any, before retirement and also the benefit in the matter of fixing pensions."

9. Moreover, the Supreme Court in the case of State of Haryana and Others Vs.

O.P. Gupta and Others, 1996 (7) SCC 533 on the same question has held as under:-

"6. Having regard to the above contentions, the question arises whether the respondents are entitled to the arrears of salary? It is seen that their entitlement to work arises only when they are promoted in accordance with the Rules. Preparation of the seniority list under Rule 9 is a condition precedent for consideration and then to pass an order of promotion and posting to follow. Until that exercise is done, the respondents cannot be posted in the promotional posts. Therefore, their contention that though they were willing to work, they were not given the work after posting them in promotional posts has no legal foundation. The rival parties had agitated their right to seniority. Ultimately, this Court had directed the appellant to prepare the seniority list strictly in accordance with Rule 9 untrammelled by any other inconsistent observation of the court or the instructions issued in contravention thereof. Since the order had become final in 1990, when the appeal had been disposed of by the Court by the above directions, the State in compliance thereof prepared the seniority list in accordance with the Rules and those directions and promotions were given to all eligible persons and posting were made accordingly on 1.12.1992. In the interregnum some had retired. As stated earlier, though the deemed date has been given as 1.1983, the respondents cannot legitimately claim to have worked in those posts for claiming arrears and, as a fact, they did not work even on ad hoc basis.

7. This Court in Paluru Ramkrishnaiah Vs. Union of India (SCR at page 109: SCC p.556, para 19) considered the direction issued by the High Court and upheld that there has to be "no pay no work", i.e., a person will not be entitled to any pay and allowance during the period for which he did not perform the duties of higher post, although after due consideration, he was given a proper place in the gradation list having been deemed to be promoted to the higher post with effect from the date his junior was promoted. He will be entitled only to step up the scale of pay retrospectively from the deemed date but is not entitled to the payment of arrears of the salary. The same ratio was reiterated in Virender Kumar, GM, Northern Railways Vs. Avinash Chandra Chadha (SCC p. 482, para 16).

8. It is true, as pointed out by Shri Hooda, that in Union of India Vs. K.V. Jankiraman this Court had held that where the incumbent was willing to work but was denied the opportunity to work for no fault of his, he is entitled to the payment of arrears of salary. That is a case where the respondent was kept under suspension during departmental enquiry and sealed cover procedure was adopted because of the pendency of the criminal case. When the criminal case ended in his favour and departmental proceedings were held to be invalid, this Court held that he was entitled to the arrears of salary. That ratio has no application to the cases where the claims for promotion are to be considered in accordance with the rules and the promotions are to be made pursuant thereto".

The Hon'ble Supreme Court in the aforesaid judgment has distinguished its judgment in U.O.I. Vs. K.V. Jankiraman, 1991 (4) SCC 109.

10. In the case of Paluru Ramkrishnaiah and Others Vs. U.O.I. and Another, 1989 (2) SCC 541 the Supreme Court has held that applying the principle of 'no work for no pay' the employee would not be entitled to the pay and allowances of the higher post if he had not worked or shouldered the responsibilities of the higher post.

11. Again in the case of Virender Kumar, General Manager, Northern Railways, New Delhi Vs. Avinash Chandra Chadha and Others, 1990 (3) SCC 472 also the Supreme Court has categorically held that the employee would not be entitled to higher salary of the post on which he had not actually worked on the principles of 'no work no pay'. In Para 16 it was observed as under:-

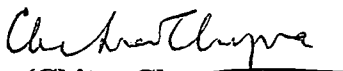
"16. It is true that the appellant-railways had failed to give correct effect to the decision dated July 30, 1975 of the High Court in LPA No.220 of 1972, and had kept the matter hanging till this day for no fault of the respondents. The High Court by its said decision had directed the appellant-railways to prepare a seniority list within three months from the date of the decision, and also to proceed to make further promotions in the higher grades in accordance with law, rules and orders in force from time to time. But it is equally true that during all these years the higher posts were not vacant and were manned by others and the appellant-railways had paid the incumbents concerned the emoluments of the said posts. The respondents have not actually worked in the said post and, therefore, on the principle of 'no work no pay' they will not be entitled to the higher salary. Hence, we give no directions in this behalf and leave it to the appellant to give such relief as they may deem fit".

12. The learned counsel for the applicant has relied upon a decision of the Principal Bench of this Tribunal dated 10.2.2006 in OA No. 2402/2004 in the case titled Subhash Chander and Another Vs. U.O.I. and Another in which benefit of back wages was given to the railway servant on his promotion on the basis of revised seniority. In this order the Bench has referred to a number of decisions of other Benches on this question. It did mention to the case of U.O.I. & Others Vs. P.O. Abraham and Others (Supra) but did not discuss it. It has noted that para 228 of IREM applied to "Erroneous Promotions due to administrative error and not otherwise" and it also stated that each case should be dealt with on its merit. Following the decision of co-ordinate Benches back wages were granted to the applicant. But the principles of law laid down by the Hon'ble Supreme Court in the case of P.O. Abraham (Supra), State of Haryana and Others Vs. O.P. Gupta (Supra), Paluru Ramkrishnaiah and Others Vs. U.O.I (Supra) and Virender Kumar, General Manager, Northern Railways, New Delhi Vs. Avinash Chandra Chadha and

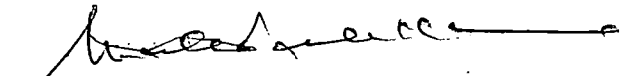
Others (Supra) cited above were not taken into consideration. In all these cases also the promotion was delayed on account of error in fixation of seniority due to administrative lapse and in all of them the back wages were denied on the principles of 'no work no pay' after proforma promotion was granted with retrospective effect. We are bound by the judgments of the Hon'ble Supreme Court referred to above and find us unable to follow the order of the co-ordinate bench relied upon by the applicant.

13. As such, the Supreme Court has repeatedly held that where the employee has not been performing the duties and shouldering the responsibilities of the higher post and had been granted the proforma promotion as a result of the revision in the seniority position or correction of the administrative lapse and error on fixation of seniority, he would not be entitled to receive the actual monetary benefit for the period he has not performed and shouldered responsibilities of the higher post. This negates the claim of the applicant for grant of actual amount of differential of pay and allowances for the period from 22.9.1993 to 14.5.2002. The validity of para 228 of IREM Volume I has been upheld by the Hon'ble Supreme Court.

14. The result of the above discussion is that the OA fails and it is dismissed. No costs.


(Chitra Chopra)
Member (A)

Rakesh


(M.A. Khan)
Vice Chairman (J)