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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO. 502/2004

This the 3rd day of March. 2005

HON'BLE MR. JUSTICE M.A.KHAN, VICE CHAIRMAN (J)
HON'BLE MR. S.A.SINGH, MEMBER (A)

Bhageloo,
Working as Fitter Grade-II
In the office of
Divisional Engineer, Northern Railway,
Nizammudin, New Delhi.

(By Advocate: Sh. M.K.Bhardwaj)

Versus

Union of India through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
New Delhi.
3. The Chief Personnel Officer,
Northern Railway,
New Delhi.

ORDER (ORAL)

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

Applicant has filed this OA assailing the order of the respondents dated 14.5.2003 (Annexure-I) whereby while promoting him from the post of Fitter Grade-II in the scale of Rs.4000-6000 to the post of Fitter Grade-I in the scale of Rs.4500-7000 notionally w.e.f. 1.5.2002, he is given the monetary benefit w.e.f. 1.6.2003.

2. Applicant joined as Khallasi with the respondent in 1978 and then promoted to the post of SS Fitter from 15.12.1980 and to the post of fitter in the pay scale of Rs.950-1500 from 15.1.1983. After rendering 7 years of service in the said grade he was eligible for promotion to the next higher grade of Rs.1200-

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3. Respondents contested the OA. Dhirender Singh and Dhuli Chand, who were junior to the applicant, were granted promotion prior to the applicant because they were falling in the reserved category and the applicant had never disclosed that he also belonged to a reserved category ever since he joined the department. Pursuant to the order of the Tribunal dated 6.6.2002 applicant was granted proforma promotion on the post of Fitter Grade-II in the pay scale of Rs.4000-6000 w.e.f. May 1991 and on the post of Fitter Grade-I in the pay scale of Rs.4500-7000 w.e.f. 1.3.1993 at par with his junior vide letter dated 19.5.2003. The actual payment in the higher grade has been given to the applicant w.e.f. 1.6.2003, in terms of Railway Boards instructions vide letter No. E (NG) I-2002/PMI/16 dated 2.7.2003, as such, no arrears were payable to the applicant on proforma promotion. The Hon'ble Supreme Court has also held that the employees were not entitled to higher salary during the period of proforma promotion on the basis of principle of 'no work no pay' since they

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4. We have heard the learned counsel for the parties.

6. The short question is whether the applicant who has not worked on the higher post between May 1991 to 1.6.2003 and has been granted proforma promotion was entitled to receive the full backwages for the aforesaid period. Para 228 of IREM has provided that when an employee did not work on a particular post he would not be entitled to receive actual arrears of pay of that particular post on which he has not discharged the duties on the basis of principle of 'no work no pay'. The said paragraph has provided as under:-

“228. **Erroneous Promotions:-** (I) Sometimes due to administrative errors, staff are over-looked for promotion to higher grade could either be on account of wrong assignment of relative seniority of the eligible staff or full facts not being placed before the competent authority at the time of ordering promotion or some other reasons. Broadly, loss of seniority due to the administrative errors can be of two typed:-

(i) Where a person has not been promoted at all because of administrative errors and

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(ii) Where as person has been promoted but not on the date from which he would not have been promoted but for the administrative error.

Each such case should be dealt with on its merits. The staff who have lost promotion on account of administrative error should on promotion be assigned correct seniority vis-à-vis their juniors already promoted, irrespective of the date of promotion. Pay in the higher grade on promotion may be fixed proforma at the proper time. The enhanced pay may be allowed from the date of actual promotion. No arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher posts."

7. The Railway Board vide its letter No. E (NG) 1-2002/PMI/16 dated 2.7.2003 has issued the following instructions:-

"In terms of provision's of para 228 of IREM, Vol.1, 1989, the staff who lose promotion on account of administrative error should on promotion be assigned correct seniority vis-à-vis their juniors already promoted, irrespective of the date of promotion. However, pay in the higher grade on promotion may be fixed proforma at the proper stage but no arrears on this account shall be payable as the concerned staff did not actually shoulder the duties and responsibilities of the higher post.

Notwithstanding the above provision in the recent past, a number of employees have approached CAT/Courts and secured judgements in their favour for payment of arrears. However, in the SLPs filed against order dated 30.9.1991 of CAT Ernakulam Bench in O.A. No.649/90, the Hon'ble Supreme Court by their judgment dated 13.3.1997 in Civil Appeal No.8904 of 1994, (Union of India & Ors. Vs. P.O.Abraham & Ors.) have upheld the above provision regarding non-payment of back wages on proforma promotion. A copy of the judgment is sent herewith for information and guidance.

The above judgement of the Hon'ble Apex Court should be the guiding factor while defending the pending CAT/Court case (including SLPs if any) and that may arise in future on issue. The CPOs should ensure that in all such cases, the judgment is invariably connected and cited to counter the claim for payment of arrears in the type of cases referred to in para 1 above."

8. The paragraph 228 of IREM is a condition of service of the Railway employees. The applicant is one such employee. The Railway Board's instructions in respect of this paragraph, in the light of the judgment of the Hon'ble Supreme Court referred, binds the authorities of the respondents. Validity of the Rule 228 so far as it has provided, "no arrears on this account

shall be payable as he did not shoulder the duties and responsibilities of the higher post." has been upheld by the Hon'ble Supreme Court in an order (Union of India and others Vs. P.O. Abraham and others decided on 13.8.1997), which is as follows:-

"This appeal is directed against the order of the Central Administrative Tribunal, Ernakulam Bench, in OA No.649/90 dated 30th September, 1991. though the appeal challenges the order in its entirety, Mr. Goswami learned counsel for the appellants fairly stated that the appeal is now confined only to the payment of back-wages ordered to be given by the Tribunal.

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

"No arrears on this account shall be payable as he 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 Railway, New Delhi vs. Avinash Chandra Chadha & others (1990) 2 SCR 769. This Court, in that case held on principle of 'no 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. No costs."

9. In the case of Virender Kumar, General Manager, Northern Railway, New Delhi vs. Avinash Chandra Chadha and others (1990) 2 SCR 769 dealing with the principle of 'no work no pay' the Hon'ble Supreme Court observed as follows:-

"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 higher salary hence we give no direction in this behalf and leave it to the appellants to give such relief as they may deem fit."

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10. The Division Bench of the Hon'ble Rajasthan High Court in a bunch matter titled D.F. Civil writ petition No.4227/2002 Union of India and others vs. CAT and others and seven other writ petitions which were decided by a common order on 10.9.2003 has held as under:-

“10. In view of the aforesaid, all the writ petitions filed by the Union of India are allowed and the impugned order of the Central Administrative Tribunal in each writ petition is quashed and set aside to the extent of directing petitioners to pay the salary from the back date.”

11. From the pleading it seems that the juniors to the applicant were promoted prior to the applicant on account of an error in the seniority list. The contention of the respondents in their counter that applicant himself was at fault as he had never pointed out that he belonged to the SC community so was eligible for promotion against the reserved vacancies like his juniors, does not seem to be correct since the applicant had pointed out in the last paragraph of his representation dated 4.11.95 which is at page 27 of the OA, specifically stated that he was a SC employee. Anyhow mistake in the seniority list was rectified and the applicant was also promoted from the due date. May be the applicant is not at fault for his non-promotion or in supersession by his junior but he had not actually worked on the higher post during the proforma period and in view of the para 228 of IREM and the Railway Board's instructions reproduced above, it will not be possible to hold that the principle of 'no work no pay' would not apply to his case. He was not entitled to the payment of full wages from May 1991 to May 2003.

12. Learned counsel for the applicant has himself referred to the State of A.P. vs. K.V.L.Narasimha and others (1999) 4 SCC 181 where it is held that the back wages are not normally to be allowed in case of retrospective promotion though in the peculiar facts of the case, the arrears were granted.

13. Counsel for applicant has next referred to the judgment of Hon'ble Supreme Court in Union of India and others vs. K.V.Jankiraman and others,

For and on behalf of the applicant

(1993) 23 ATC 322, where the Hon'ble Supreme Court has laid down in para 25 and 26 as follows:-

"25. We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases.

26. We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances the concerned authorities must be vested with power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated in disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardize public interests. We are, therefore, unable to agree with the Tribunal that to deny the salary to an employee would in all circumstances be illegal. While, therefore, we do not approve of the said last sentence in the first subparagraph after clause (iii) of paragraph 3 of the said Memorandum, viz., "but no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion", we direct that in place of the said sentence the following sentence be read in the Memorandum:

"However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears or part of it, it will record its reasons for doing so."

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In State of Haryana and others vs. O.P. Gupta and others, (1996) 7 SCC 533, the

Hon'ble Supreme Court observed as follows:-

“This Court in Paluru Ramkrishnaiah v. Union of India (SCR at p. 109' SCC p.556, para 19) considered the direction issued by the High Court and upheld that there has to be “no pay for 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, G.M., N.Rlys. v. Avinash Chandra Chadha (SCC p. 432 para 16).”

The Apex Court has as such distinguished the case of Union of India vs. K.V.

Jankiraman (supra) observing as follows:-

“It is true, as pointed out by Shri Hooda, that in Union of India v. K.V. Jankiraman this Court had held that where the incumbent was willing to work but was denied the opportunity to work for on 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.”

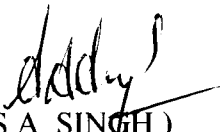
14. Counsel has also placed reliance on the judgment of the Hon'ble Single Judge of Delhi High Court in J.P.S.Bhandari vs. B.B.Mishra, D.G., CISF 110 (2004) DLT 432 which was an order passed in contempt proceeding wherein the backwages were granted on notional promotion. It was also observed in the judgment that in K.V.Jankiraman case (supra) Hon'ble Supreme Court has held that where applicants were deprived of the wages for the work done, principle of 'no work no pay' would be applicable. It was further observed that the case before the Hon'ble High court was not “one of preparation of seniority list as in O.P.Gupta's case (supra) wherein the Hon'ble Supreme Court held that the

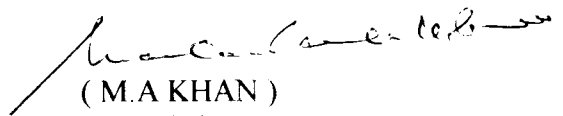
occasion for a person to be deprived of would only arise after the finalisation of the seniority list.”

15. A careful consideration of the judgment of Hon'ble Supreme Court and the Hon'ble High Court referred to by the counsel for applicant does not to our considered view advanced the case of the applicant. In the present case, the applicant was not promoted because of some mistake in the seniority list. He was given notional promotion from 1991 when the seniority of the applicant was restored to the correct position. Therefore, it cannot be stated in this case that the applicant was willing to work on the promotional post and was deprived of an opportunity to work on that post by the respondents for which the rule of 'no work no pay' would not be applicable. In V.K. Jankiraman's case (supra) no absolute rule has been laid down that a person will be entitled to back wages in every case of notional promotion. The decision about payment of salary for notional promotion is left to be decided by administrative authority in the light of the facts and circumstances of each case. In V.K. Jankiraman (supra) arrears of salary was denied for the period during which the employee remained under suspension on account of disciplinary inquiry. The facts of the case of O.P. Gupta (supra) were more or less similar to the case in hand. The employee was denied back wages for notional promotion period since his promotion was delayed due to wrong placement in the seniority list which error was corrected subsequently. Same is the case here. The Hon'ble High Court in J.P.S. Bhandari (supra) has clearly distinguished the case of O.P. Gupta (supra) observing that the occasion for a person to be deprived of work would only arise after the finalisation of the seniority list. Whereas in the case which was before the Hon'ble High Court it was observed that due weightage of service rendered from 1970 to 1977 was not given to the petitioner of the case. Therefore judgment of the Hon'ble High Court is on peculiar facts and the principle of law laid down in this judgment would not apply to this case.

16. As observed above, para 228 of IREM was part of the service conditions of the applicant and the applicant would be bound by it. Applicant was not promoted, in other words, deprived of working on the promotional post because of his seniority not being fixed properly and promotion order was passed after this mistake was rectified. Therefore, principle of 'no work no pay' would be applicable in his case.

17. Having regard to the above discussion, we do not find any merit in the application and dismiss it. No costs.


(S.A. SINGH)
Member (A)


(M.A KHAN)
Vice Chairman (J)

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