

Central Administrative Tribunal, Principal Bench

O.A. No. 99/2004

New Delhi this the 12<sup>th</sup> day of August, 2005

**Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)**  
**Hon'ble Mr. S.K. Malhotra, Member (A)**

1. S. Banerjee  
S/o Shri S.K. Banerjee  
R/o 1704, Govind Puri Extension,  
Kalkaji,  
New Delhi-110 019.

2. Marut Kumar  
S/o Shri Chail Bihari  
R/o 79, Mausam Vihar,  
Delhi-110 051.

... Applicants

By Advocate: Shri Gyanender Singh, proxy for Shri Arun Bhardwaj.

Versus

Secretary,  
Ministry of Railways,  
Railway Board,  
Rail Bhawan,  
New Delhi.

... Respondents

By Advocate: Shri H.K. Gangwani with Shri Rajinder Khatter.

**ORDER**

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

The applicants have filed this OA for a direction to the respondents to grant consequential benefits including arrears of pay along with interest at the rate of 18% per annum from the date of the order dated 2.6.2000 in terms of that order and further to set aside the order dated 31.7.2003 whereby the applicants have been denied the arrears of salary.

2. Briefly the allegations are that the applicants No.1 and 2 joined the respondent Railway in 1981 and 1983 as Clerks respectively. In due course, they were promoted to the post of Assistants. Thereafter they cleared the Limited Departmental Competitive Examination in 1993 and 1994 for promotion to the post of Section Officer, but were not given promotion although the vacancies were available. The applicants then filed OA No. 2051/1995 for a direction to the respondents to fill up 6 unfilled vacancies of 1992 LDCE quota from LDCE quota of 1993 to be adjusted against seniority quota of 1993

and 1994 by promoting them against those vacancies and grant of consequential benefits.

The OA was decided on 2.6.2000 and the respondents were directed to consider the applicability of the decision contained in the letter dated 3.10.1997 (to be correct as 13.10.1997) in accordance with the rules and instructions and decide it by a reasoned order and in the event the applicants are promoted, they should be entitled to consequential benefits in accordance with the rules and instructions. On 24.8.2001, the respondents included the name of the applicant No.1 in the select list of Section Officer for the year 1994. The applicant No.2 was placed in the select list of 1993. The applicant No.1 was thereafter promoted as Section Officer with effect from 29.8.2001 and applicant No.2 was promoted to the said post on 3.7.2001. They have, however, not been paid consequential benefits. Their representations had been rejected.

3. In the reply the respondents contested the claim of the applicants that they were entitled to the arrears of monetary benefits for the period. According to the respondents the order of the Tribunal was implemented and the applicants were promoted as Section Officer applying the decision of the Railway Board in its letter dated 13.10.1997. Their pay has also been notionally fixed with reference to their juniors and other consequential benefits in accordance with the rules and instructions in pursuance of the directions of the Tribunal. The claim of the applicants for arrears/back wages will not be covered by rules and instructions. They have quoted an order by the Hon'ble Supreme Court in the case of **Union of India Vs. P.O. Abraham Civil Appeal No.8904/1994 decided on 13.8.1997**, which supported their contention.

4. In the rejoinder the applicants reaffirmed their allegation.

5. We have heard the learned counsel for the parties and perused the record.

6. The short dispute is about the claim of the applicants for grant of arrears of pay and allowances from the date of their notational promotion to the date of the order of the promotion which has not been granted to the applicants. The representations of the applicants in this regard had been rejected vide order dated 31.7.2003, copy of which is Annexure A-1 (cumulative).

7. The case of the respondents is covered by the judgment of the Hon'ble Supreme Court quoted in the case of U.O.I. Vs. P.O. Abraham, Civil Appeal No. 8904/1994 which reads as under:-

*made not only*



" This appeal is directed against the order of the CAT, Ernakulam Bench in OA No. 649/90 dated 30.9.1991. 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 orders 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". "

Consequential 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 and 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 the Court, we are of the opinion that the Tribunal was not right in directing the deletion of that clause. Accordingly, to that extent thus 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".

8. The Tribunal by order dated 2.6.2000 in OA No. 2051/1995 had, inter alia, passed the following order:-

" In the event that consequent to the application of that decision, applicants are promoted, they shall be entitled to consequential benefits in accordance with rules and instructions".

Accordingly, as per this decision, the consequential benefits monetary or otherwise were to be given to the applicants in accordance with the extant rules and instructions. The Railway Board Circular dated 15/17-9-1964 has been quoted in the above mentioned order of the Hon'ble Supreme Court, according to which, arrears on account of the notional promotion are not payable whether the officer actually has been shouldering higher responsibilities. Validity of these instructions of the Railway Board ~~was~~ upheld. The respondents have not brought to our notice any other rules or instructions contrary to this circular dated 15/17-9-1964 which made them eligible for payment of actual arrears of pay and allowances for the period made which they had not actually worked and discharged duties and functions of the higher post to which they were promoted notionally. The learned counsel for the applicants though has stated that he will be filing some case law but has not been able to file it <sup>the</sup> today.


9. The result of the above discussion is that as per the Railway Board instructions dated 15-17/9/1964 and the order of the Hon'ble Supreme Court in U.O.I. Vs. P.O.

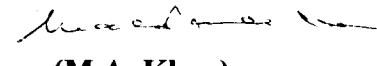
*[Handwritten signature]*

4

Abraham the applicants will not be entitled to the monetary benefit for the period during which they had not actually worked on the post of Section Officer in terms of the order of the respondents. We do not find any illegality or lacunae to interfere with the order of the respondents.

10. Accordingly, the OA has no merit and is dismissed leaving the parties to bear their own costs.

  
(S.K. Malhotra)  
Member (A)

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

Rakesh