

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

NEW DELHI, THIS THE <sup>26th</sup> DAY OF <sup>November</sup> 1993.  
OA No. 1653/92

Mr. B.K. Singh, Member(A)

Shri A.P. Nagrath,  
S/o late Shri H.P. Rai Nagrath,  
Chief Personnel Officer/Administration,  
Northern Railway,  
New Delhi,  
R/o 6A, Tilak Bridge Railway Colony,  
New Delhi-110001. ... Applicant  
(By Advocate Shri R.K. Kamal.

vs.

Union of India  
through Secretary,  
Railway Board,  
Railway Bhavan,  
New Delhi. ... Respondents  
By Advocate Shri P.S. Mahendru, Counsel.

ORDER

(SHRI B.K. SINGH)

This OA has been filed against the order dated 25.10.1991 issued by the Railway Board giving proforma promotion to the applicant retrospectively from 30.3.88 but denying the arrears of pay.

2. The applicant joined the Indian Railways as a temporary Assistant Electrical Engineer on 9.5.1963 and was absorbed in Group 'A' in the cadre of Indian Railway Service Electrical Engineer with effect from 10.4.1973. On 1.1.1976, a new Group 'A' service called the Indian Railway Personnel Service (IRPS) was created. For initial constitution, options were invited and the applicant also exercised his option. A panel was issued on 14.7.1978. This is Annexure A-2 of the paper-book. The applicant's name was shown at Sl.No.15 in the order of merit. It is stated that originally his name was not included in the panel and it was only subsequently that his name was included after he filed a representation to the Ministry of Railways and after due consultation with the UPSC he was absorbed in the IRPS. This is Annexure A-3 of the paper-book. The question of his seniority was

decided on 6.2.90 as is evident from this Annexure. The applicant had filed OA No.789/90 which was disposed of by the Tribunal vide its decision dated 13.9.90. This is Annexure-A4 of the paper-book. His name was included by the Railways in the list of candidates who were selected for initial constitution of the service and on 27.6.89, he was assigned seniority below Shri N.K.Srivastava and above Shri A.R.Vadathiraha Nathan. This is Annexure A-5 of the paper-book. Annexure A-6 gives a picture of inter se seniority.

3. The applicant made a representation to the Railway Board on 29.5.91(Annexure A-9). The Railways granted the selection grade to the applicant on 1.1.86 and the senior administrative grade giving proforma promotion with effect from 30.3.88. The applicant filed a further representation (Annexure A-10) for grant of arrears of pay from 30.3.88 to 30.4.91.

4. The applicant has sought the relief that he be given arrears of pay and allowances and seniority and the senior administrative grade with effect from 30.3.88 with interest at the market rate.

5. A notice was issued to the respondents <sup>to who</sup> ~~to~~ filed a reply and contested the application and the grant of reliefs prayed for.

6. Heard Shri R.K.Kamal, <sup>ll</sup> counsel for the applicant and Shri P.S.Mahendru, <sup>ll</sup> counsel for the respondents and perused the record of the case.

7. The gist of the arguments of the learned counsel for the applicant was that since the applicant had been given the proforma promotion from 30.3.88 and given the actual pay from 30.4.91 he should be given the difference of the pay and allowances with effect from 30.4.88 to 30.4.91. The learned counsel for the respondents rebutted the arguments of the learned counsel for the applicant and stated that

the relief sought for is not in order and the application is fit to be dismissed in limine. The applicant has been allowed the benefits due to him. He argued that the Railways have 9 groups of organised service and the recruitment in the junior scale in the pay scale of Rs.2200-4000 is made through the UPSC. 75% of the posts are filled up by direct recruitment and 25% by promotion from Group 'B' to Group 'A'. He further stated that to meet the functional requirements, <sup>on a</sup> the recruitment was made on temporary basis and the applicant was one of them who <sup>was</sup> ~~were~~ subsequently absorbed in organised Group 'A' service of the Indian Railway Service of Electrical Engineers. The Railway Personnel Service was created in 1976 and consequently it was decided to have the nucleus from amongst other organised services of the Railway Board. It was argued that the applicant was recruited as a temporary Electrical Engineer on 9.5.1963 and was absorbed in Group 'A' of Electrical Service on 10.4.1973. He was selected for junior administrative grade and promoted in IRSEE on 16.1.1982. He worked in the IRSEE in various capacities upto 30.4.1991 when orders were issued appointing him to the senior administrative grade in the Indian Railway Personnel Service on the basis of a representation filed by him. This is Annexuare R-II of the counter-affidavit. The proforma promotion in senior administrative grade was given after holding a DPC meeting of all the members of the Board on 20.3.88 and the communication to this effect was received by the applicant only on 30.3.1988. In the case of Indian Railway Personnel Service created on 1.1.76 it was required to receive options from the 9 organised services of the Railways. The applicant <sup>did not</sup> ~~exercised~~ his option on 8.9.1978. It is only later that he wrote to the Northern Railway that he was not informed

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about the option and as such he could not do so. The matter was examined by the Railway authorities and it was decided to induct the applicant in the IRPS and accordingly a notification was issued on 1.1.91 appointing him in the junior administrative scale(Annexure A-6) placing him below Shri N.K. Srivastava and above Shri A.R.Vadathirabha Nathan with effect from 27.6.80(Annexure R-1). The notification to this effect was issued on 25.10.1991(Annexure A-1) giving him proforma promotion with effect from 30.3.88. It was further argued by the learned counsel for the respondents that appointment to the senior administrative grade is made by a very high level selection committee comprising all members of the Board and ex-officio Secretary to the Government of India in the Ministry of Railways. In the case of the applicant he was selected and approved for appointment to the senior administrative grade of IRPS on 20.4.91 and orders were issued on 30.4.91 giving him proforma promotion in IRPS in the senior administrative grade with effect from 30.4.88 with reference to his junior Shri A.R.Vadathirabha Nathan. He did not discharge the responsibilities and functions in that cadre and as such he cannot be entitled to payment of arrears since he had already drawn his his pay and allowances in the Indian Railway Service of Electrical Engineers and was not entitled to draw pay in the cadre of the IRPS prior to 30.4.91. As per statutory rules, pay and allowances are admissible from the date he is actually appointed to work in a cadre and he joins in pursuance thereof or utmost the benefit is given from the date of the notification and not earlier to that. The relevant instructions of the Railway Board were quoted by the learned counsel for the applicant which are at Annexure R-V issued

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on 15/17.9.64 vide letter No.E(NG)63PMI/92 read as follows:

" The staff who have lost promotion on account of administrative errors should on promotion be assigned correct seniority vis-a-vis their juniors.....Pay in the higher grade on promotion may be fixed proforma at the stage which the employee would have reached if he was promoted 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."

8. In this case, it is not due to the lapse of the administrative authorities that the applicant could not exercise option. The communication was made to the Zonal Railways and the General Manager to be circulated to all the organised services and it is not understood how the applicant did not receive the information on time. The lapse has been on the part of the applicant and not on the part of the Railways. He had exercised option later and the Railways took a sympathetic view of the matter on the basis of his representation and decided to induct him. The case of K.B.Jankiraman is not applicable to this case because in that particular case, the vigilance inquiry was pending and the method of sealed cover was adopted. Here, the case of the applicant is that he should be given pay and allowances from a date when he was working in other organised cadre i.e. IRSEE and he did not work in the newly organised cadre of IPRS which was created on 1.1.76 and the applicant was considered fit for promotion in this cadre by the DPC comprising members of the Railway Board and ex-officio Secretary to the Government of India in the Ministry of Railways on 20.4.1991 and the orders were issued on 30.4.91. The high level selection committee consisting of Members of the Railway Board did not agree to payment of any arrears

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from 30.4.88 when he was given proforma promotion which is to protect his seniority. Thus, it is obvious that the applicant has failed to make out a case on merits and the application is accordingly dismissed as devoid of any merit or any substance. In the circumstances, there will be no order as to costs.

  
(B.K.SINGH)  
MEMBER(A)