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CENTRAL ADMINISTRATIVE TRIBUNAL : PRINCIPAL BENCH

NEW DELHI

DA No.1083/1993

22nd September, 1994

Shri N.V.Krishnan, Vice-Chairman(A)
Mrs. Lakshmi Swaminathan, Member(J)

Shri I.D. Gulati
Retired Works Accountant
Northern Rly Hqrs. Office
SFS-205, Phase II
Ashok Vihar, Delhi .. Applicant

By Advocate Shri B.S. Mainee

Vs.

Union of India, through

1. The General Manager
Northern Railway
Baroda House, New Delhi
2. The Chief Admn. Officer (Const)
Northern Railway, Kashmeri Gate
Delhi .. Respondents

By Advocate Shri Romesh Gautam

ORDER (Oral)

(Hon'ble Shri N.V.Krishnan, VC(A))

This DA is a sequel to TA 319/85, which was disposed of on 24.9.87. It is stated that the applicant was also a petitioner in that TA, which was received on transfer from the High Court of Delhi. A direction was given in that TA that the Works Accountant who were promoted directly from the grade of UDC as also the Head Clerks promoted as Works Accountants, should be given a unified revised scales were made generally operative and that the Works Accountants in the integrated seniority list with Head Clerks should be placed en bloc above the Head Clerks. The circular of 30th March, 1973 was quashed to this extent.

2. Consequent upon that judgement,, the respondents issued the Annexure A-3 order ~~xxx~~ dated 22nd August, 1988 wherein the names of the
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17 persons who were petitioners in that TA were directed to be included in the panel prepared on 30.9.66. The annexure ^{2 dated 23.4.91} A-5 notice shows that the applicant was eligible for proforma promotion as Assistant Superintendent of Works on the basis of the revised seniority list from 7.12.66, but he was actually promoted from 1.6.79. Similarly, it is stated that he is eligible for proforma promotion as Superintendent of Works from 16.10.78 before he retired from service from 31.10.80.

3. In similar circumstances, one Shri S.C. Bhatnagar approached the Tribunal (OA 918/89) for a direction that, as a consequence of the earlier judgement in the TA, he should be allowed the benefit of arrears of pay from the dates on which, notional promotion has been given to the two grades. Apparently, he had the grievance that such fixation has been done in the case of 15 others. That OA was allowed by the Annexure A-4 judgement dated 19.11.90 as follows:

"The position, therefore, is that in spite of an order passed in favour of the applicant in TA 319/1985, the same had not been complied with as far as the applicant is concerned. We are of the view that this is a fit case where the respondents should be told in clear words that they have failed to implement the order of the Tribunal and have been sitting over it without any valid reasons. The Tribunal takes a dim view of the matter. The Railways is one of the biggest establishments in India and there is no reason why they are not able to implement an order of the Tribunal even after three years of the order passed on 24.9.1987. This is a fit case in which heavy costs are to be allowed because the respondents have compelled the applicant to come to this Tribunal again on account of their failure to implement the earlier order of the Tribunal dated 24.9.1987.

We, therefore, allow the OA and direct the respondents to implement the order dated 24.9.87 passed in TA 319/1985 within a period of one month on receipt of a copy of this order.

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The respondents are also directed to include the name of the applicant in the earlier panels of Assistant Superintendent (Works) and Superintendents (Works) in which the names of his juniors had already been included. The respondents are further directed to fix the pay of the applicant as has been done in the case of other 15 applicants giving him the benefit of annual increments. The respondents are also directed to pay the arrears to the applicant from the date he ought to have been promoted as Assistant Superintendent(Works)/Superintendent (Works), and to refix the pension of the applicant according to the fixation of pay. The applicant is awarded costs, which we assess at Rs.1000/- (Rupees one thousand only) and direct the respondents to pay the same to the applicant within the same period as indicated above."

4. In the present application, the grievance of the applicant is that the benefits granted to Bhatnagar have not been given to him. By the ^{Am. A-1} impugned order dated 10.7.92, arrears of pay have ^(i.e. 1.6.79) been ordered to be paid only from the date, the applicant held the higher responsibility of the ^{g. Ant. S-pdt.} post. He contends that he should be paid arrears of pay from the date of notional promotion as ordered in Shri Bhatnagar case.

5. The respondents have filed the reply. The main contention in that is the applicant has already been given the benefits of proforma promotion with reference to the date of promotion to his juniors and he has also been allowed arrears of pay with effect from 1.6.79, i.e. from the date he held the responsibility. It is contended that the applicant is not entitled to any arrears of pay for the earlier period because of the principle of 'No work No pay' and also on the grounds that he did not shoulder the higher responsibility during that period. It is also contended.

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that the applicant's case is different from that of Shri Bhatnagar.

6. We have considered the contentions of learned counsel for the parties. It is seen that the respondents sought to distinguish the case of S.C. Bhatnagar from the case of Balwant & Others, though all were petitioners in TA 318/85. When S.C. Bhatnagar was not given the benefit which was given by respondents to Balwant Singh & Ors., he filed OA 918/89 which was disposed of by the directions reproduced in para 3. Balwant Singh & Others also filed OA 833/89 following the judgement in Bhatnagar's case and they were also given benefit of arrears of pay from the date they were due for promotion and not from the date when they were promoted. The applicant herein seeks the same benefit. We are of the view that in the light of the earlier judgements, it is now no more open to the respondents to resist this OA. Evidently, the actual promotion on due date was denied due to some fault of the respondents, which was directed to be rectified by the directions in TA 319/85. In the circumstances, the respondents can not contend that the pay will be given only for the period when the post is actually held. Accordingly, we dispose of this OA with a direction to the respondents to grant arrears of pay to the applicant from the dates he ought to have been promoted as Assistant Superintendent of Works (i.e. 7.12.66) and as Superintendent of Works (i.e. 16.8.78) as shown in the Annexure A-5 notice dated 23.4.91 and to grant him arrears on the basis of that notice

within a period of three months from the date of receipt of this order.

7. The applicant has also prayed for costs as allowed in the case of OA 918/89 (Bhatnagar case) and OA 833/89 (Balwant Singh case). This is vehemently resisted by the learned counsel for the respondents. We notice from the judgement in Bhatnagar case (Annexure A-4) that the Bench had taken a serious view about not extending the benefits of the order in TA 319/85 to Bhatnagar. Hence costs were awarded on 19.11.90. In Balwant Singh case also (OA 833/89), where the order in Bhatnagar case was followed, costs were awarded on 4.2.91 (Annexure R-5). The applicant had made representations on 28.11.91 (Annexure A-6) and on 25.3.92 (Annexure A-2) for arrears of pay from the date he was due for promotion and not only proforma fixation from ^athat date, based on the directions in Bhatnagar's case. But his request was unjustly rejected. As the arrears were not paid despite the orders in the case of Bhatnagar (Annexure A-4) and Balwant Singh (Annexure R-5), ^{and} despite representations, the applicant is entitled to costs, which we allow at Rs.1,000/- (Rupees one thousand only).

8. OA is disposed of with the above directions.

Lakshmi Swaminathan
(Mrs. Lakshmi Swaminathan)
Member (J)

V. V. Krishnan
24/9/94
(V.V. Krishnan)
Vice-Chairman (A)

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