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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO. 1133 OF 1997  
ALLAHABAD THIS THE 26th DAY OF August, 2003

HON'BLE MAJ GEN. K.K. SRIVASTAVA, MEMBER-A  
HON'BLE MR. A. K. BHATNAGAR, MEMBER-J

1. Smt. Kanti Srivastava, (wife)  
aged about 45 years,  
R/o 935G Krishna Nagar,  
Gorakhpur.
2. Sanjay Kumar Srivastava, (son)  
aged about 34 years,  
R/o 935G, Krishan Nagar,  
Gorakhpur.
3. Manoj Kumar Srivastava (son),  
aged about 24 years,  
R/o 935G Krishna Nagar,  
Gorakhpur.
4. Km. Madhu Srivastava (daughter),  
aged about 28 years,  
R/o 935G, Krishan Nagar,  
Gorakhpur.
5. Km. Poonam Srivastava (daughter),  
aged about 26 years,  
R/o 935G, Krishan Nagar,  
Gorakhpur. ....Applicant

(By Advocate Shri O.P. Khare)

Versus

1. Union of India,  
through the General Manager,  
North-Eastern Railway,  
Gorakhpur.
2. Chief Commercial Manager,  
North-Eastern Railway,  
Gorakhpur.
3. Chief Claims Officers,  
North-Eastern Railway,  
Gorakhpur.
4. Bansh Narain,  
Superintendent Grade-I,  
Office of Commercial Manager,  
North-Eastern Railway,  
Gorakhpur. .... Respondents.

(By Advocate Shri G.P. Agrawal)

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O R D E R

HON'BLE MAJ GEN. K.K. SRIVASTAVA, MEMBER-A

In this O.A. filed under section 19 of Administrative Tribunals Act 1985, the applicants have prayed that respondent no.2 be directed to consider the applicant Shri Ramesh Chandra Srivastava, for promotion from due date retrospectively on the post of Office Superintendent Grade-I as per the recommendation of Departmental Promotion Committee (in short DPC) and pay him the arrears of pay and allowances with all consequential benefits including revision of pensionary benefits with 18% interest. Later by way of amendment applicants have claimed a further relief that the date of promotion be antedated from 21.10.1997 to April 1997 when his juniors were promoted.

2. The facts of the case, in short, are that the applicant was appointed on 18.12.1958 as Clerk in the respondent's establishment and later on promoted as Office Superintendent-Grade-II (in short O.S.). In the seniority list he was placed at serial no.273 and respondent no.4 Shri Bangh Narain, who was junior, was placed at serial no.290. While working as O.S.-II he was suspended on 24.09.1996 by respondent no.2 in contemplation of enquiry. Against the suspension order, applicant made a representation on 11.10.1996 and ultimately it was revoked with effect from 06.11.1996. In the respondents order there was no mention regarding regularisation of suspension period. However, the pay and allowances of the suspension period was wrongly <sup>with</sup> held.

3. Later on a chargesheet for minor punishment was issued but that was cancelled and a fresh chargesheet dated 30.01.1997 was issued on the same set of charges. The applicant vide his representation dated 05.02.1997 asked for certain

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documents. Thereafter neither the documents were served nor an enquiry was proceeded to and not even an enquiry officer was appointed which was causing great harassment to the applicant. Aggrieved by the action of the respondents applicant filed O.A. No.470/97 with prayer that the proceedings of DPC be kept in sealed cover and his suspension period be regularised. Respondents did not file any counter affidavit in the O.A. and on 25.06.1997 respondents cancelled the chargesheet.

4. Applicant further alleges that the chargesheet was deliberately issued to cause harassment and mental agony to applicant and to promote respondent no.4 Shri Bansh Narain as O.S.-I by superseding applicant's claim. Therefore, the applicant filed this O.A. on 20.10.1997. The applicant submitted that he was due for superannuation on 31.10.1997 and, therefore, respondents be directed to promote him and give all the consequential benefits.

5. Later , on 24.04.1998 applicant filed an amendment application whereby he stated that after filing the O.A. respondents have granted him the promotion w.e.f. 21.10.1997 though he is entitled for promotion w.e.f. April,1997 i.e. from the date his junior Shri Bansh Narain was promoted.

6. The respondents contested the claim of the applicant by filing the counter reply stating that applicant was suspended w.e.f. 24.09.1996 but the suspension order was revoked on 06.11.1996 and <sup>he</sup> was issued major penalty chargesheet which too was later on cancelled. Respondent's admitted that the period of his suspension has not been regularised though after cancellation of chargesheet, yet he has been promoted as O.S.-I vide order dated 22.10.1997 and finally he retired

on 31.10.1997 and thereafter Chief Commercial Manager, who is the competent authority, had granted him proforma fixation of pay.

7. We have heard Shri O.P. Khara, counsel for the applicant and Shri G.P. Agrawal, for respondents and perused the pleadings on record.

8. Learned counsel for the applicant submitted that respondent no.2 was interested in the promotion of applicant's junior Shri Bansi Narain and in order to promote <sup>him</sup> applicant was harassed and was placed under suspension. After suspending the applicant, respondents did not issue any chargesheet nor any reason of suspension was disclosed. No enquiry started after a lapse of sufficient time and ultimately the applicant had to file the O.A. before this Tribunal. The respondents did not care to file even counter reply. This shows that the action of the respondents was illegal and in order to avoid embarrassment, the respondents just slept over the matter.

9. Later on, although the suspension order was revoked but admittedly the suspension period has not been regularised which ought to have been done as per Rules on the subject. What is shocking to us is that after revoking the suspension applicant was issued a minor chargesheet which too was cancelled and on the same set of charges a major chargesheet was again issued. The respondents even on demand by the applicant did not supply the documents as asked for and finally that chargesheet too was cancelled without enquiry.

10. During the pendency of chargesheet applicant was superseded in promotion to the post of O.S.-I and the proceedings of the D.P.C. was kept in sealed cover. After dropping

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of the disciplinary proceedings it was found that the D.P.C. had recommended for applicant's promotion.

11. In support of his contention counsel for the applicant has relied upon the Apex Court judgment in the case of Union of India Versus K.V. Jankiraman reported in AIR 1991 SC 2010. In this <sup>in case</sup> their Lordships in para 6 have held that the promotion of an employee cannot be denied merely because of pendency of disciplinary proceedings and after exoneration of employee he is entitled for promotion and he cannot be deprived of any benefits including salary of promotional post.

12. Counsel for the applicant further relied upon the Full Bench decision of Jodhpur C.A.T. in the case of Devi Lal and Ors. Versus Union of India and Others reported in 2002(1) ATC 485, wherein the Full Bench has held that regularisation of promotion and proforma fixation envisaged in para 228 of the Manual is violative of articles 14 and 16 of the Constitution of India. Besides, we would not hesitate to observe here that the case of the applicant is a case of high-handedness on the part of the respondents.

13. Apart from it we also find that it is a case of unnecessary harassment in as much as that one after the other suspension, minor chargesheet and major chargesheet were issued and the same were cancelled without any enquiry or further progress. Even after cancellation of suspension order by the respondents, the suspension period of applicant has not

been regularised. Such an action cannot be justified in any way by the respondents. We do not find any substance in the submission of the respondent's counsel that the claim of the applicant has been regularised in terms of para 228 of Manual and since he has been promoted on 22.10.1999 before retirement there is no question of revision of salary or pension. The respondent's counsel submitted that in view of the judgment of Hon'ble Supreme Court in the case of Paluvu Ramakrishnaiah and Others Versus Union of India and Another reported in 1989(58) (S.C.) 713, has held that backwages are not permissible in retrospective promotion. By going through the judgment we find that the facts of that case are <sup>wholly</sup> entirely different from the facts of the present case and, therefore, the ratio laid down does not apply.

14. We are of the view, that since the disciplinary proceedings which were initiated against the applicant without any rhyme or reason and the applicant faced continuous harassment and more over disciplinary proceedings were dropped, merely promoting him and giving proforma fixation is not justified. We are in respectful agreement with the law laid down by Jodhpur Bench in the case of Devi Lal (Supra). The facts of the present case are also covered by the ratio laid down by the Hon'ble Supreme Court in the case of K.V. Jankiraman (Supra) and the applicant is entitled for his promotion from retrospective effect from the date his junior respondent no.4 Shri Bansi Narain was promoted. The applicant is also entitled for all the arrears of salary and other consequential benefits including revision of pension etc.

15. From the record we find that the applicant has unfortunately expired and, therefore, the interest <sup>of justice</sup> demands

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that the deceased applicant's dependants who have been substituted should get the benefit of this judgment. The O.A. is finally disposed of with following directions:-

- (i) The applicant will be <sup>deemed to be</sup> promoted from the date <sup>deceased</sup> applicant's Junior Shri Bansh Narain was promoted. The arrears of salary will be calculated and paid to the applicants.
- (ii) On revision of salary the pension of the applicant be also regularised and the arrears thereof be paid to the legal heirs of the applicant with 10% interest thereon.
- (iii) On regularisation of the pension the family pension of the widow shall also be regularised and the arrears thereof be paid to her with 10% interest thereon.

The above direction shall be complied with by the respondents within a period of four months from the date of communication of this order.

16. There shall be no order as to costs.

  
Member-J

  
Member-A

/Neelam/