

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the 21st day of May, 2004.

Original Application No. 445 of 1998.

Hon'ble Mr. Justice S.R. Singh, Vice-Chairman.

Hon'ble Mr. S.K. Hajra, Member- A.

Sudama Ram S/o Late Sri Sunder Ram  
Presently working as S.P.O/Law Officer/  
North Central Railway, Head Quarters Office,  
Allahabad.

.....Applicant

Counsel for the applicant :- Applicant inperson

V E R S U S

1. Union of India through General Manager,  
Northern Railway, Baroda House, New Delhi.
2. F.A & CAO, Northern Railway,  
Baroda House, New Delhi.
3. Divisional Railway Manager,  
Northern Railway, Allahabad.

.....Respondents

Counsel for the respondents :- Sri Prashant Mathur

O R D E R

By Hon'ble Mr. Justice S.R. Singh, VC.

The facts giving rise to this O.A, stated briefly, are that while the applicant was working as Senior Welfare Inspector, Northern Railway, Allahabad, a panel was drawn of those officers who were eligible for promotion to the post of Assistant Personnel Officer in which panel the applicant was also included. Promotion to the post of Assistant Personnel Officer was to be made on the basis of written test followed by viva voce. The applicant appeared in the written test and was declared successful. He was called

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for viva voce test but could not appear in the viva voce test due to the reason that the panel of eligible candidates itself was cancelled in view of the order dated 13.07.1989 passed by the Central Administrative Tribunal, Allahabad Bench in TA No. 367/1987 (W.P. No. 5996/79) Dori Lal Pal vs. U.O.I and others. The Tribunal in that case held that the panel of 21 officers declared by order dated 26.06.1979 impugned therein was liable to be quashed and accordingly the General Manager, Northern Railway would have to hold a fresh interview by a fresh selection board. Accordingly the order dated 26.06.1979 as well as the promotion orders of the same date were quashed. As the very empanelment of the applicant as Labour Inspector having been quashed by the Tribunal in TA No. 367/1987, Dori Lal Pal v. U.O.I & Ors., he was not allowed to appear in the interview. However, it appears that Sri Dori Lal Pal, the applicant of TA No. 367/87 refused to appear in the interview and accordingly the Railway administration moved an application No. 1356/91 in TA No. 367/87 for modification of the earlier order. On the premises of the implementation the order passed by the Tribunal was installed due to the petitioner Dori Lal Pal himself. The Tribunal by its order dated 22.08.1991 declined to modify the order but having regard to the fact on compliance of the judgment and order of the Tribunal, it was observed that the competent authority may exercise his own discretion. Accordingly the competent authority namely Chief Personnel Officer exercising his own discretion restored the panel of Welfare Labour Inspector (W.L.I) grade in the scale of Rs. 425-640 (RPS) which was duly circulated by letter dated 25.06.1979 in its original form vide ibid letter dated 31.10.1991. As a result the applicant, who was already qualified in the written test became eligible to call for <sup>for</sup> <sub>in</sub> <sup>Lab</sup> <sub>be ad</sub> viva voce selection test for the post of Assistant Personnel Officer and accordingly he appeared in the viva voce held on 30.10.1992 at Head Quarters office, Baroda House, New Delhi

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and the applicant was duly selected vide letter dated 01.04.1992 and was promoted to the post of Assistant Personnel Officer (Group 'B' service). The applicant was, however, granted ~~proforma~~ fixation w.e.f 16.10.1990, the date on which his junior Sri Z.A. Farugui was promoted. The grievance of the applicant herein is that he was entitled to monetary benefits as well for the reasons that he was denied promotion due to "administrative lapses" and accordingly he prays for issuance of direction to respondents to pay salary and other monetary benefits for the post of A.P.O from 16.10.1990 to 17.05.1992 with 14% interest. He has also prayed for declaring the order dated 02.07.2003 as violative of Article 14 and 16 of the Constitution. The impugned order of Railway Board's Circular dated 02.07.2003, it may be observed, has been issued in terms of the judgment of Hon'ble Supreme Court in civil appeal No. 8904/94 (U.O.I and Ors. vs. P.O. Abraham and Ors. providing therein that the Apex Court judgment should be <sup>guiding</sup> a/factor while deciding the CAT/court cases including S.L.P, if any.

2. We have heard the applicant Sri Sudama Ram, who appeared in person and Sri Prashant Mathur, learned counsel for the respondents. It has been submitted by the applicant that he was denied promotion alongwith his junior due to the administrative lapses and, therefore, he was not only entitled to retrospective promotion w.e.f the date his junior was promoted but he was also entitled to monetary benefits with effect from the date he has been given retrospective promotion. The applicant placed reliance on a decision of C.A.T, Ernakulam Bench in O.A 649/90 dated 30.09.1991 in which the validity of Railway Board's Circular dated 15/17.09.1964 was under challenge. The said circular stipulated that the staff who have lost promotion on account of administrative errors should on promotion be assigned correct seniority vis-a-vis their juniors already promoted, irrespective of the date of promotion.

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Pay in the higher grade on promotion may also be fixed proforma at the stage which the employee would have reached , if he was promoted at the proper time. The circular also provides that the enhanced pay may be allowed from the date of actual promotion and no arrears on this account shall be payable, as he did not actually shoulder the duties and responsibilities of the higher grade posts. The Ernakulum Bench has held the expression "No arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher grade" as illegal and unconstitutional. The decision of Ernakulum Bench was, however, came to be set aside to the extent declaring the above para of the circular as unconstitutional Hon'ble Supreme Court has held "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".

3. Sri Sudama Ram, the applicant, however, submits that the decision of Hon'ble Supreme Court in civil appeal No. 8904/94 U.O.I & Ors. Vs. P.O. Abraham & Ors <sup>may be in</sup> ~~ignored the being~~ <sup>non-consideration of</sup> per incuriam in view of the earlier decision of the Apex Court in U.O.I & Ors. Vs. K.V. Jankiraman AIR 1991 (SC)2010, Basant Rao Roman Vs. U.O.I & Ors 1993 SCC (L&S) 590, P.S. Mahal Vs. U.O.I & Ors 1985 SCC (L&S) 61 and State of Mysore Vs. C.R. Sheshadri AIR 1974 (SC) 262. None of the earlier judgments relied on by Sri Sudama Ram was called upon to consider the effect of the circular dated 15/17.09.1964 or the similar stipulation contained in para 228 of I.R.E.M providing that the staff who lose promotion on account of administrative error, should on promotion be assigned correct seniority vis-a-vis their juniors already promoted, irrespectiv of the date of promotion and the pay in the higher grade may

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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. We are afraid to ignore the judgment of Hon'ble Supreme Court per incurium. Sri Sudama Ram has then placed reliance in Basant Rao Roman Vs. U.O.I & Ors 1995 SCC (L&S) 950 where in arrears to emoluments on promotion were allowed for the reasons that non promotion was due to administrative reason. In the instant case the denial of promotion was not due to the administrative reasons but due to the effect that his empanelment was cancelled pursuant to the order passed by the Tribunal and it was on account of subsequent order passed by the Tribunal that the competent authority in its own discretion restored the panel whereupon the applicant was called for viva voce and ultimately selected and promoted with effect from the date his junior was promoted. Sri Sudama Ram has placed reliance on certain judgments of the Tribunal including O.A No. 1072/01 Kapoor Chand Verma Vs. U.O.I & Ors. decided by CAT, Principal Bench vide order dated 29.01.2003 but in view of the direct decision of Hon'ble Supreme Court in U.O.I & Ors. Vs. P.O. Abraham, we are of the view that the Tribunal's decision do not help the applicant. In Sudarsan Rai Vs. U.O.I & Ors in O.A No. 656/98 decided vide order dated 12.01.2004, the Tribunal has dealt with the most of the cases relied on by Sri Sudama Ram and following the decision of Hon'ble Supreme Court in P.O. Abraham has held that the applicant in that case were in similar situation would not be entitled for salary on the principal of 'no work no pay'. Accordingly the O.A is dismissed.

4. There will be no order as to costs.

*Sanjiv Kumar*  
Member- A.

*D.S.G.*  
Vice-Chairman.

/Anand/