

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD.**

ORIGINAL APPLICATION NO. 472 OF 1998

THIS THE 10th DAY OF AUGUST, 2005.

HON'BLE MR. D.R. TIWARI, MEMBER-A
HON'BLE MR. K.B.S. RAJAN, MEMBER-J

A.K. Kohli, S/o Late Bhim Sain Kohli, Retired Section Engineer,
(Way), Meja Road, Allahabad, R/o 46-C/7, Paddleyganj,
Gorakhpur.

.....Applicant.

By Advocate : Sri S. Ram.

Versus.

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. General Manager, OSD,/ North Central Railway, Headquarters Office, Allahabad.
3. DRM, N.R., Allahabad.
4. Secretary Establishment Railway Board, Railway Bhawan, New Delhi.

..... Respondents

By Advocate : Sri A Tripathi.

ORDER

BY K.B.S. RAJAN, MEMBER-J

The applicant who became victorious in his OA No. 1101/89 vide order dated 23-01-1996 and had his seniority revised is aggrieved by the pedantic approach of the respondents who have, though revised of the seniority of the applicant and also promoted him to the higher post of Senior Section Engineer (Way) in the pay scale of Rs 2375 - 3500 with retrospective effect from 24-01-1996, vide order dated 21-03-

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1997, had flatly denied the fruit of his success in the above OA on the sole ground that he stood superannuated before the issue of the promotion order. The reason for such denial, as the respondents contend is that Rule 228 of the IREM does not provide for payment of salary on proforma promotion and actual benefit would be available only from the actual date of promotion, which in this case could not be possible as by the time the promotion order was issued, the applicant stood superannuated.

2. This is the second round of litigation and the facts of the case could well be borrowed from the order dated 23-01-1996. That was an application filed jointly by three individuals, including the applicant. Para 2 of the said order is reproduced below:-

".... The applicants who are three in number, were selected as Assistant Permanent Way Inspectors in the year 1972 and on completion of the training, were appointed as such on 24.10.1972. The post of Assistant Permanent Way Inspector Gr. III. It is averred that this post of Permanent Way Inspector Gr. III is selection post and is filled up either by direct recruitment through Railway Service Commission or by departmental promotion on the basis of selection. The inter-se seniority of the incumbents on the post is decided on the basis of merit obtained on completion of training course. It is said that the respondents no.1 to 3 appointed 14 Permanent Way Inspector Gr. III in the scale of Rs. 425-700/- (RS) in 1972. The respondent no.4 to 14 were amongst those 14 promotees. They were called to appear in the departmental selection test for the post of Permanent Way Inspector (for short PWI) Grade III on 20.12.1983, but they failed to appear and they have not passed the selection. Despite this fact, they were kept on panel of departmental promotion on the basis of judgment given by the Civil Court. The empanelment of respondents no. 4 to 14 and others was claimed to be illegal because they had not completed the training. It is also claimed that the respondents no. 4 to 14 cannot be given seniority over and above the applicants till they had passed training course, which is also called promotion course from Zonal Training School at Chandausi. The applicants contend that the respondents no. 4 to 14 had passed the said

1997, had flatly denied the fruit of his success in the above OA on the sole ground that he stood superannuated before the issue of the promotion order. The reason for such denial, as the respondents contend is that Rule 228 of the IREM does not provide for payment of salary on proforma promotion and actual benefit would be available only from the actual date of promotion, which in this case could not be possible as by the time the promotion order was issued, the applicant stood superannuated.

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course in 19072 yet the respondent nos. 4 to 14 have been declared senior to them. It is, thus, that the seniority list as mentioned above, has been challenged."

The above OA was allowed and the operative portion is as under:-

"11. In view of the discussion made above, we are of the view that the respondent nos. 4 to 14 who qualified training course in 1975, cannot be senior to the applicants who had qualified the training course in 1972. Thus, placement of Sri J.S. Gupta starting from serial no. 53 down to Sri Tarseem Lal at Serial no. 62 and over the head of the applicants and other persons, is not correct. The seniority list is, therefore, quashed to that extent and the respondents are directed to re-determine the seniority of the applicants and similarly situated other persons vis-à-vis respondent nos. 4 to 14. The O.A. is disposed of accordingly. No order as to costs."

3. In compliance with the above order, the respondents have revised the seniority list vide order dated 16-08-1996 and further acted by grant of promotion as Sr. Section Engineer (Way) to the applicant vide order dated 21-03-1997. Meanwhile the applicant superannuated w.e.f. 30-04-1996. When the applicant claimed fixation of pay on the basis of promotion granted to him and corresponding fixation of pension, the same has been denied to him vide the impugned order dated 15-12-1997 which reads as under:-

"In reference to your representation, it is informed that your seniority has been revised in view of CAT/ALD's judgment dated 23.1.96 (OA No. 1101/89) and accordingly you have been allowed proforma promotion as CPWI Grade Rs. 2375-3500 (RPS) w.e.f. 24.1.96 in reference to your junior named Sri J.S. Gupta Ex-CPWI vide this office notice of even no. dated 21.3.97 against whom you alongwith others have won the court case. Since you have retired on 30.4.96 without shouldering the higher responsibility of the post of CPWI Grade Rs. 2375-3500/- (RPS), you are not entitled to draw the actual pay. Accordingly, you are also not entitled for revision of the pensionary benefits as the same is done on the last pay drawn. As regards others who have won the Court case alongwith Sri Kohli, they have also been allowed the

proforma promotion as CPWI Gr. 2375-3500 (RPS) w.e.f. 24.1.96 and the actual pay has been granted from the date they shouldered higher responsibility of the post of CPWI."

4. The applicant has challenged this order and prayed for the following relief(s):-

"8(i) The Hon'ble Tribunal may graciously be pleased to direct the respondents to arrange arrears of salary of higher post after refixation of his pay in respect of his junior Sri J.S. Gupta in Grade Rs. 1600-2660/-w.e.f. 1.1.84 PWI Grde-I Rs. 2000-3200/-w.e.f. 20.3.86 and in the Grade of Rs. 2375-3500/-7450-11500/- w.e.f. 24.1.96 to 30.4.96.

8(ii) The Hon'ble Tribunal may further be pleased to direct the respondents to fix up pension of the applicant on the Notional pay in the Grade of Rs. 2375-3500/7400-11500 and other pensionary benefits.

8(iii) The Hon'ble Tribunal may further be pleased to allow 18% compound interest on all arrears of payment including arrears of all payments from the date became due and payable to the applicant.

8(iv)

8(v)

8(vi) The Hon'ble Tribunal may be pleased to quash the impugned order dated 15.12.97 (Annexure A-1)."

5. The respondents have contested the O.A. Their main plank of objection is that the applicant **"was retired prior to the date of issue of promotion orders, hence could not bear the higher responsibility of the grade, as such he could not draw pay of higher grade. As per rules, the employee's pay in the higher grade can only be charged when he bears the higher responsibility of the grade. Accordingly, pension has been fixed on last day drawn."** (Para 5 of the counter refers).



6. Rejoinder and supplementary counter have also been exchanged, which by and large only reiterated the respective contentions of either side.

7. We have heard the learned counsel for both the parties and also perused the relevant rule, relied upon by the respondent. The relevant rule is as under:-

"228. Erroneous Promotion:- (i) Sometimes due to administrative errors, staff are over looked for promotion to higher grades could either be on account of wrong assignment of relative seniority of the eligible staff or full facts not being placed before the competent authority at the time of ordering promotion or some other reasons. Broadly, loss of seniority due to the administrative errors can be of two types:

(i)

(ii).....

Each such case should be dealt with on its merits . The staff who have lost promotion on account of administrative error should on promotion be assigned correct seniority vis-à-vis their juniors already promoted, irrespective of the date of promotion. Pay in the higher grade on promotion may be fixed proforma promotion at the proper time. The enhanced pay maybe 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 post."

8. The applicant ^{has} been agitating about his erroneous fixation of seniority right from 1989. When he had filed the earlier OA he had at least 7 years to superannuate. The Tribunal had given its verdict on 23-01-1996 approximately 100 days in advance of the superannuation of the applicant. He had legitimately expected that he would be promoted during his service career and would have the pay fixed in the post of Sr. Section Engineer (Way) and thus would reap the fruits of his earnest effort in prosecuting his earlier OA in which he had become victorious. The respondents, in their leisure hours,

revised the seniority in August, 1996 which is at least 6 months after the pronouncement of the order of this Tribunal and subsequently taken a like period of six months in issuing promotion order. The applicant cannot be faulted for such a delay in implementing the order of the Tribunal.

9. Rule 228 has been misinterpreted. The rule does not contemplate a situation of a kind occurring in this case. While Rule 1345 contemplates a situation to cover retirement prior to reinstatement and fixation of pay and treatment of duty etc., such a stipulation is conspicuously missing in Rule 228. Hence, we have to consider the decisions of the Apex Court and other courts/tribunals in this regard.

In *S.D. Raghunandan Singh v. State of Karnataka*, 1994 Supp (2) SCC 526, the Apex Court observed as under:-

9. At the hearing of these appeals, it was pointed out to us that all the promotees have since retired and the only reason why they are contesting these appeals is that some of them may get benefit in the fixation of their pension and other retiral benefits. Even if we were to come to the conclusion that the subsequent order of the Tribunal against the review undertaken by the Government is unassailable and we were to dismiss the appeals preferred by the promotees, the State Government will once again be required to undertake a review which would create disturbance in the service. Having regard to the facts of the present case and, in particular, keeping in view the fact that all the erstwhile promotees have since retired, we think it would be in the interest of all concerned that notional promotions may be given to the erstwhile promotees on the basis of existing vacancies at the material date, ignoring 73 posts which were already occupied by the direct recruits and re-fix their pension and other retiral benefits on the basis of that notional date of promotion without disturbing the seniority of the 73 direct recruits. The effect of this order will be that some of the promotees will be given a notional date of promotion which may be antedated for the limited purpose of working out their retiral benefits depending on the availability of posts to which they could have been appointed after leaving out

the 73 posts occupied by the direct recruits. We once again make it clear that this would be for the limited purpose of working out the pensionary benefits of the promotees who could have been adjusted against the available posts, other than the 73 posts occupied by the direct recruits without disturbing their seniority. This may be done within a period of four months so that some of the retired promotees who may get the benefit under this order may avail of the enhanced pensionary benefits."

In Kishan Lal Kalal v. State of Bihar, 1990 (Supp) SCC 165, at page 165 :

1. Heard learned counsel for the parties. It appears that notification was issued on July 1, 1981 and because of this notification, the petitioner would have been given the benefit of retrospective promotion from the date on which he was found fit for promotion. But it appears, unfortunately his date of superannuation was June 30, 1981 and it is only because of this reason, he could not get the advantage of the notification issued on July 1, 1981. Those whose date of superannuation fell after July 1, 1981 had been admittedly given advantage of this notification and have been given benefit of retrospective promotion. It appears, therefore, that as the petitioner's date of superannuation fell on June 30, 1981, he could not be given advantage of the notification, which has been given to other officers similarly situated. It also appears that the notification was issued after some delay.

2. Looking at all these circumstances, in our opinion, the petitioner is entitled to the advantage of the notification, which was issued on July 1, 1981 and he may be given advantage accordingly.

10. Indeed, even Rule 228 has been held to be bad as contended by the applicant in his written argument and the following decisions have been cited by the applicant:-

- (i) P. Thygarajan & Others Vs. UOI & Ors (1992) 19 ATC 839.
- (ii) P. Narayanan Nair & Others Vs. chief General Manager, Telecom Kerala Circle, Thiruvananthapuram & Others, 1994 (1) AISLJ 415.
- (iii) Murlidhar Moharana Vs. UOI & Ors. (1996) 2 ATJ 434.
- (iv) D.L. Dehspande Vs. UOI & Ors. (1998) (1) SLJ 88.
- (v) Ramesh Chander & Another Vs. R.S. Gahlawat & Others (1993) 24 ATC 759.

- (vi) Devi Lal Vs. UOI & Ors 2002 (1) ATJ 485 (Full Bench).
- (vii) Sri Kapoor Chand Verma, Vs. UOI & Ors. (OA no. 170 of 2001 by the CAT (PB)
- (viii) D. Thomas Vs. UOI & Ors. (2004 (3) ATJ 36.
- (ix) P.B. Narang Vs. UOI & Another 2004 (3) AISLJ 84).
- (x) Ram Roop Sharma & Another Vs. General manager N.R., New Delhi & Ors. 2005(2) ATJ CAT (PB) 103.
- (xi) R.K. Nigam Vs. UOI decided by CAT Allahabad on 24.11.03.
- (xii) Diwan Singh Vs. UOI decided by CAT Allahabad on 30.6.04

Thus, the applicant is entitled to the pay and allowances at par with his junior as claimed in the O.A.

12. In view of the above the OA succeeds to the following extent. The pay of the applicant shall be fixed as under:-

- (a) w.e.f. 01-01-1984 upto 31-12-1985 in that Pay scale whose replacement scale is Rs1660 - 2660
- (b) From 01-01-1986 to 19-03-1986 in the scale of Rs 1660 - 2660
- (c) Pay scale of Rs 2000 -3200 w.e.f. 20-03-1986 upto 31-12-1995
- (d) From 01-01-1996 to 20-03-1996 in the revised scale for Rs 2000 - 3200 and
- (e) In the replacement scale for Rs 2375 - 3500 w.e.f. 21-03-1996 till 30-04-1996.

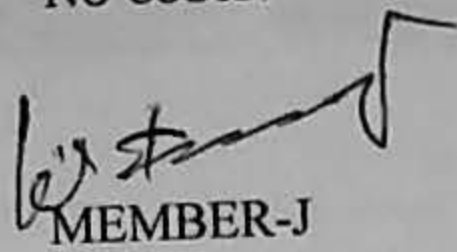
The applicant is also entitled to fixation of pension and other retrial benefits on the basis of the last pay drawn as per the above calculation and arrears thereof shall also be paid to him.

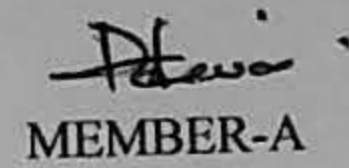
The applicant is entitled to simple interest @ 6% on the arrears of pay and pension as well as other terminal benefits.



Respondents are directed to work out the amount due and pay the same to the applicant within a period of eight months from the date of communication of this order.

No costs.


MEMBER-J


MEMBER-A

GIRISH/-

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OR

Correction app No 3444/05

has been filed on 9-9-05.

Case has been decided by

Hr. Mr. D.R. Tiwari, A.M

Hr. Mr. K.B. S. Rajan, J.M.

on 10-8-2005.

The same is submitted
for the file Court.d
26-9-05

Registrar

26/9/05

L.S.F. MA No 3444/05

(Correction Appl) before

concerned Bench on

05/10/05

Registrar

Registrar

05.10.05

concerned Bench is
not available today.

L.S.F. MA No 3444/05.

before concerned Bench
on 25/10/05

Registrar

OR

3444/05 is pending.

d
24-10-05

MA (Correction) NO 3444/05

GA 472/98

Registrar

25/10/05

None present
for the parties
concerned Bench
is not available
today. List MA NO
3444/05 before a DB
consisting of Hon.
Mr DR Tiwari AM & Hon.

Mr K B S. Rayan J.M
on 10/11/05 (10.11.05)

Registrar

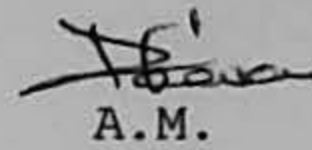
11.11.2005

Hon'ble Mr. D.R. Tiwari, A.M.
Hon'ble Mr. K.B.S. Rajan, J.M.

For Applicant : Sri S. Ram
For Respondents: Sri D. Dixit for Sri A.
Tripathi

M.A. No. 3444/2005 has been filed for making correction in para 12(d) and 12(e). The prayer is that 23.1.1996 be substituted in place of 20.3.1996 in para 12 (d) and in para 12(e) 24.1.96 in place of 21.3.1996 be substituted. M.A. is allowed. The necessary correction is also allowed. This will form the part of the original order dated 10.8.2005.


J.M.


A.M.

G.S.