

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 656 of 1998

Dated: This the 12 ^{1/2} day of January, 2004

HON'BLE MR. V.K.MAJOTRA, V.C.
HON'BLE MR. A.K.BHATNAGAR, J.M.

Sudershan Rai

S/o Late A.N.Rai,
R/o D-365 G-2 -KH-M Jai
Prakash Nagar,
Varanasi.

... Applicant.

By Advocate : Shri S.K.Om

Versus

1. Union of India through
Genral Manager, N.E.Railway,
Gorakhpur.
2. Chief Personnel Officer, N.E.Railway,
Gorakhpur.
3. Divisional Railway Manager (P),
N.E.Railway, Varanasi.

... Respondents.

By Advocate : Shri P. Mathur

O R D E R

By Hon. Mr. V.K.Majotra, Vice-Chairman

By virtue of this O.A., applicant has challenged the action of respondents for not paying the arrears of salary to the applicant for the post of Head Train Examiner, Chief Train Examiner and Senior Section Engineer in the pay scales of Rs.550-750, Rs.700-900 and Rs.840-1040 respectively.

2. Briefly stated the facts of this case are that the applicant was promoted as Train Examiner in 1968 from the post of Artisan staff (Class III). He was confirmed as Train Examiner from 10.06.1970. Seniority list of Train Examiner as on 01.04.1974 indicated applicant's name at serial no.47. Juniors to the applicant S/Shri D.S.Singh and V.N.Singh were at serial nos. 52 and 53

respectively. In the next seniority list dated 22.09.1977 applicant was shown at serial no. 46 and S/Shri D.S.Singh and V.N.Singh found place at serial nos. 52 and 53 respectively. However, in the seniority list dated 24.3.1983 (Annexure-III) while S/Shri D.S.Singh and V.N.Singh were mentioned at serial nos. 20 and 24 applicant ^{was} relegated to serial no. 69. The applicant made a representation dated 17.06.1983 against change in the previous positions in the seniority list. He made further representations, the last being that on 15.06.1994 (Annexure-V). The applicant's seniority was corrected vide Annexure-VI dated 18.08.1994 and vide Annexure-VII dated 09.02.1995, respondents stated that seniority list dated 18.08.1994 is the correct seniority list. In Annexure-VIII applicant has been shown at serial no. 38 and S/Shri D.S.Singh and V.N.Singh have been shown at serial nos. 42 and 43. The said juniors were promoted as Senior Section Engineer w.e.f. 27.07.1994. It has been contended on behalf of applicant that though the applicant has been accorded relevant promotions on proforma basis from the dates when his juniors were so promoted, he has been denied arrears of pay and allowances for promotion to the higher posts on the ground that he had not actually shouldered the duties and responsibilities of the higher posts. The applicant retired on 31.03.1998. The learned counsel for the applicant has relied upon 1982(1)SLR 455 Shaikh Mehaboob Vs. Railway Board and Others (Karnataka High Court) and Supreme Court order dated 13.8.1997 in Civil Appeal No. 8904 of 1994, Union of India & Ors. Vs. P.O. Abraham & Ors and 1997(36) ATC 225, D.L. Deshpande Vs. Divisional Railway Manager and another.

3. The learned counsel for the respondents contended that the cause of action, if any, had accrued in the year 1983 but the applicant has made the present application in the year 1998. As such the application has not been made within the limitation prescribed under section 21 of Administrative Tribunals Act 1985. The learned counsel for the respondents also contended that

the applicant has been accorded relevant promotions on proforma basis but he could not be granted arrears of pay and allowances and revised pension retrospectively as he had not actually shouldered the duties and responsibilities of the higher posts. Learned counsel, too, relied upon P.O. Abraham(supra).

4. Para 228(I) of I.R.E.M., reads as follows:-

"(I) Sometimes due to administrative errors, staff are overlooked 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) Where a person has not been promoted at all because of administrative errors, and
- (ii) where a person has been promoted but not on the date from which he would have been promoted but for the administrative error.

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-a-vis their juniors already promoted, irrespective of the date of promotion. Pay in the higher grade on promotion may be fix a proforma 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 shouldered the duties and responsibilities of the higher posts."

5. In 1997(36)ATC 225, D.L. Deshpande Vs. Divisional Railway Manager and another the last sentence of para 228(I), "No arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher posts.", was held as non-existent having already been set aside by the Ernakulam Bench of this Tribunal in the case of P. Thyagarajan Vs. U.O.I. 1992 (19) ATC 839. The applicant-Shri D.L. Deshpande was allowed consequential benefits with retrospective effect from the date from which he was given proforma promotion. In the case of Shaikh Mehaboob(supra) too Karnataka High Court held him entitled to arrears of salary consequent upon retrospective promotion. In 1990(2) SCR 769 Virendra Kumar General Manager, Northern Railway New Delhi Vs. Avinash Chandra Chadha & Others it was held that

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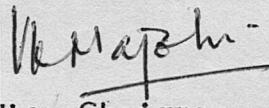
the respondents not having actually worked on the said post were not entitled to the higher salary on the principle of 'no work no pay'. In this case no directions were given and it was left open to the appellant to give such relief as deemed fit by them. In the case of P.O.Abraham(Supra) the Apex Court relied upon Virendra Kumar (supra) and held that the Tribunal was not right in directing the deletion of the clause 'No arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher posts.' It was directed that respondents will be given deemed promotion, if any, before retirement and also the benefit in the matter of fixing pension. The applicant cannot draw any support from this ruling of the Hon'ble Supreme Court wherein preforma promotion without retrospective arrears, duties and responsibilities of the higher posts [redacted] not having been shouldered, were held to be in order.

6. In the teeth of the Supreme Court rulings in the matters of Virendra Kumar(supra) and P.O.Abraham(supra), ratios in matters of Shaikh Mehaboob(supra) and D.L.Deshpande(supra) will not have any force. In result, applicant is held not entitled to the higher salary, on the principle of 'no work no pay' not having actually worked on the higher posts.

7. Accordingly this O.A. is dismissed.

No costs.


Member J


Vice-Chairman

Brijesh/-