

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH: ALLAHABAD

ORIGINAL APPLICATION NO. 1408 OF 1998

ALLAHABAD THIS THE 25th DAY OF MAY, 2006

HON'BLE MR. K. B. S. RAJAN, MEMBER-A
HON'BLE MR. A. K. SINGH, MEMBER-J

Radhey Lal, Aged about 41 years, S/o Sri Chhedi Lal, Senior Section Officer (Pension), Senior Divisional Accounts Officer, Northern Railway, Allahabad.

.....Applicant

By Applicant: Shri K.N. Katiyar

Versus

1. Union of India, through the Chairman, Railway Board (Ex-Official Secretary), Ministry of Railways, Railway Bhawan, Government of India, Rail Bhawan, New Delhi.
2. Financial Advisor and Chief Accounts Officer, N.R. Baroda House, New Delhi.
3. Senior Divisional Accounts Officer, N.R., Allahabad.

..... Respondents

By Advocate: Shri A.V. Srivastava

O R D E R

By K.B. S. Rajan, Member-J

Two cardinal principles are -

(a) A party cannot be made to suffer for no fault of his own (Bhoop v. Matadin Bhardwaj, (1991) 2 SCC 128)

(b) One cannot take advantage of one's own mistake. Rekha Mukherjee v. Ashis Kumar Das,(2005) 3 SCC 427 wherein the Apex Court has held,



The case of the applicant is to be tested on the touch stone of the above said principles.

3. Brief Facts of the case as contained in the OA

(a) The applicant appointed as Clerk Grade I on 31.7.1981 qualified Appendix -III A Examination in 1987 and Section Officer Group in 1988 and finally was promoted in Section Officer in grade of Rs. 1640-2900 in March 1991 and posted as Works Accountant, Ambala from 26.3.1991 to 19.6.1992.

(b) The applicant was transferred as Section Officer in EDP Cadre Jagadhari Work Shop and worked there from upto 2.6.93. Later he was transferred to Allahabad in March 1993 as Section Officer Accounts in the grade of Rs. 1640-2900 assigned seniority at sl. No. 530 of gradation list dated 1.12.1993.

(c) He was ordered to work as Section Officer (co-ordination P.F.) with supervisory duties vide S.O.O. dated 10.5.96. The applicant on seeing the gradation list dated 2.7.97 in which he was shown as Senior Section Officer while he had neither been promoted nor his pay fixed as Sr. Section Officer Grade Rs. 2000-3200, submitted a representation dated 23.7.97.

(d) The respondent made it clear that the arrears are not payable to the applicant

4. Retort by the Respondents as contained in CA

(a) As a matter of fact, the applicant was not promoted as Senior Section Officer

Accounts alongwith his juniors on due date for want of his confidential reports and Vigilance clearance and further as the entire matter in his regard was referred to Railway Board, some time was taken to obtain instructions in this regard.

(b) As regards the actual salary and other benefits of the said promoted post in case of the applicant the same was given on proforma basis, in terms of the specific Rules in this regard which provides that the staff who have not been promoted on account of proforma fixation from his due and actual enhancement pay of the promoted post be allowed from the date of actual promotion.

5. Written arguments by the applicant were also filed, almost on the same lines as in the O.A. and same have also been considered.

6. The counsel mainly relied upon the following judgments:

- (i) 1991 SCC (L&S) 62 in re. V.K. General Manager, N.R., New Delhi Vs. Avinash Chandra Chadha & Others.
- (ii) (1996) 33 ATC 324 in re. State of Haryana & Others Vs. O.P. Gupta & Others.
- (iii) 1997 36 ATC 225, in re. D.L. Deshpande Vs. D.R.M. & Another.
- (iv) 2002(1) ATJ (Full Bench) in re. Devi Lal & Ors. Vs. Union of India & Others.
- (v) 2004(3) CAT SLJ 84 in re. P.B. Narang Vs. U.O.I. & Ors.

7. The case has been considered. Admittedly the applicant's promotion was delayed for no fault of his. The same was also rectified by promoting the

applicant from 29-04-1994 to 31-10-1997. Invoking the provisions of Rule 228 of the IREM, the respondents have afforded only notional fixation of pay for the above period.

8. Para 228 of the IREM reads as under:-

"Erroneous Promotion:- (1) Sometimes due to administrative errors, staff are over looked for promotion to higher grade 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 error, 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 be 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 fixed proforma 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 grades."

9. However, the Full Bench has in the case of Devi Lal vs Union of India and others (OA No. 543/95 with



connected cases of the Jodhpur Bench, decided on 11-02-2002) held as under:-

"Para 228 of IREM in so far as the same denies an employee pay and allowances on the principle of 'no work no pay' even if an employee has been erroneously denied the actual work on account of the fault of the management is invalid and violative of Articles 14 and 16 of the Constitution of India."

10. *In addition, the Apex Court in the case of Vasant Rao Roman v. Union of India, 1993 Supp (2) SCC 324 has held as under:-*

".....he had been made to suffer on account of administrative reasons for which the appellant was not responsible. There was shortage of literate Shunters at Gwalior during 1960. The appellant being literate was deputed for table work and therefore for administrative reasons he could not complete requisite number of firing kilometers. Thus, with no fault on his part his juniors had been promoted as Shunters and Drivers and his claim was ignored on account of having not completed the requisite number of firing kilometers. The Tribunal itself has allowed the claim of the appellant regarding seniority over his juniors, considering force in the contention of the appellant. Thus, in the facts and circumstances of this case, we find no justification whatsoever for not allowing the arrears of emoluments to the appellant of the post of Shunter 'B' from June 12, 1961 and that of the post of Driver 'C' from December 17, 1965."

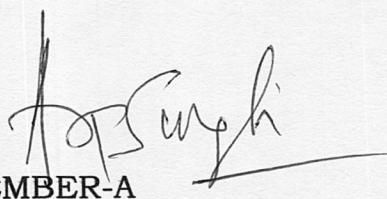
11. *In the case of State of A.P. v. K.V.L. Narasimha Rao, (1999) 4 SCC 181*

"5. In normal circumstances when the retrospective promotions are effected all benefits flowing therefrom, including monetary benefits, must be extended to an officer who has been denied promotion earlier.

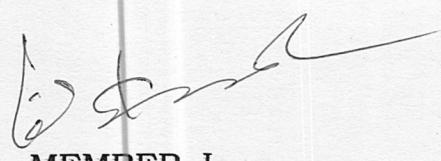
12. Taking into account all the above decisions coupled with those relied heavily upon by the applicant, we have no hesitation to come to the conclusion that the applicant is entitled to the back wages for the period in respect of which he was afforded only notional promotion. Thus, the respondents

are liable to fix the pay of the applicant at the appropriate level in the scale of Rs 2000 – 3200 w.e.f. 29-04-1994 and increment the same annually with the amount applicable to the said scale of pay of Rs 2,000 – 3,200 with corresponding replacement scale in the wake of the acceptance of the recommendations of Fifth Pay Commission upto 31-10-1997 and are also liable to work out the arrears thereof and pay the same to the applicant. Accordingly it is ordered.

13. Accordingly, the OA is allowed. The above exercise shall be completed within a period of four months from the date of communication of this order. No cost.



MEMBER-A



MEMBER-J

GIRISH/-