

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 15 day of Apr 2009

Original Application No. 487 of 2004

Hon'ble Mr. Ashok S. Karamadi, Member (J)
Hon'ble Mr. S.N. Shukla, Member (A)

Baboo Lal, S/o Satnoo, R/o Q. No. 58, Mahabir Nagar,
Manikpur, Distt: Chitrakoot (UP)

... .Applicant
By Adv : Sri S.S. Sharma

V E R S U S

1. Union of India through the General Manager, North Central Railway, Headquarters Office, Allahabad.
2. The General Manager, West Central Railway, Headquarters Office, Jabalpur.
3. Chief Medical Superintendent, North Central Railway, Jhansi.
4. The Chief Medical Superintendent, West Central Railway, Jabalpur.
5. The Divisional Railway Manager, North Central Railway, DRM Office, Jhansi.
6. The Divisional Railway Manager, West Central Railway, DRM Office, Jabalpur.
7. The Chief Vigilance Officer, North Central Railway, Headquarters Office, Allahabad.
8. Shri Narain Dass, S/o Shri Junni Lal, Safai Muccaddam Health Unit, N.C. Railway, Manikpur.

... .Respondents
By Adv: Shri A.C. Mishra

O R D E R

By Hon'ble Mr. S.N. Shukla, Member-A

This OA has been filed with a request for the following reliefs: -

"a. That the Hon'ble Tribunal may graciously be pleased to direct the Divisional Railway Manager, North



Central Railway, Jhansi, Respondent No. 5 to implement promotion order No. 33/2002 dated : 1.7.2002, promoting the applicant on the post of Safaiwala Muccaddam in pay scale Rs. 2750-4400/- w.e.f. 1.7.2002 at Manikpur.

- b. That the Hon'ble Tribunal may graciously be pleaded to allow all consequential and monetary benefits to the applicant since 1.7.2002 i.e. fixation of pay in grade Rs. 2750-4400/- w.e.f. 1.7.2002 and payment of arrears of pay and other connected benefits to the applicant.
- c. That the Hon'ble Tribunal may graciously be pleaded to allow interest @ 18% per annum compounded annually on the amount due to the applicant in this case from the date the amount is due to the date it is paid to the applicant.
- d. That the Hon'ble Tribunal may graciously be pleaded to direct the Chief Vigilance Officer, N.C. Railway, Allahabad to enquire into the illegally committed by the Officer concerned in this matter and to take suitable action against them as per law.
- e. That the Hon'ble Tribunal may graciously be pleased to allow damages to the applicant amounting to Rs. 2 lacs or as may be decided by the Hon'ble Tribunal under the facts and circumstances of the case.
- f. That the Hon'ble Tribunal may graciously be pleased to allow heavy cost of application and legal expenses to the applicant.
- g. That the Hon'ble Tribunal may graciously be pleased to pass any order or direction as may deem fit and proper under the facts and circumstances of the case."

2. The applicant has been working as a Safaiwala in the pay scale of Rs. 2650-4000 (RSRP) in the Health Unit, Medical Department, North Central Railway (NCR), Manikpur under the control of Senior Divisional Medical Officer, NCR, Banda. It is submitted that the promotion order dated 01.07.2002 in respect of the applicant, promoting him to the post of Safaiwala Muccaddam in the pay scale of Rs. 2750-4400 has been passed by the competent authority. Unfortunately the copy of the order was neither endorsed/sent to the office of the Medical Practitioner, Manikpur under whom the applicant was working nor was it endorsed/sent to the applicant, he was not even

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informed about it. He could obtain the copy of the promotion order dated 01.07.2002 from the office of Divisional Railway Manager, Central Railway, Jabalpur on 03.03.2003 when he came to know about his promotion only by chance. On receipt of the copy of the promotion order the applicant immediately made representation to the Divisional Railway Manager (P)/Medical, Central Railway, Jabalpur vide his letter dated 12.03.2003 with a request that the applicant be posted at Satna or Jabalpur. This application was duly forwarded by the Medical Practitioner, Manikpur to the Chief Medical Superintendent, Central Railway, Jabalpur for posting of the applicant on promotion to Satna or Jabalpur (Annexure A-4 & A-5 to the OA).

3. It is further submitted that when no action was taken, the applicant made representation through his letters dated 21.07.2003, 01.11.2003 and finally through the North Central Men Union letter dated 05.11.2003 for implementation of the promotion order dated 01.07.2002 (Annexure A-6, A-7 & A-8 to the OA). In the meantime one Shri Narain Dass, S/o Shri Junni Lal who was working as Safaiwala at Jhansi was promoted as Safai Muccaddam in the pay scale of Rs. 2750-4400 vide order dated 20/25.11.2005 from the office of Assistant Personnel Officer (S & M), North Central Railway, Jhansi and posted at Manikpur. The applicant seeks to invite our attention to the seniority list of Safaiwala, Medical Department of



Jhansi Division as issued vide letter dated 04.09.2003 (Annexure A-2 to the OA) where the name of the applicant is placed at Sl. No. 11 and the name of Shri Narain Dass is shown at Sl. No. 45. Significantly the scale of pay shown against the applicant is 2750-4400 and the location at Manikpur w.e.f. 01.07.2002, whereas the grade shown against Sri Narain Dass was Rs. 2550-4200.

4. As a consequence of the promotion order of Shri Narain Dass he joined at Manikpur as Safai Muccaddam on 09.12.2003. The applicant being senior to him as also aggrieved by his promotion order not having been implemented, once again made representation vide letter dated 17.12.2003 and 20.12.2003 which was duly forwarded by the Medical Practitioner, Central Railway, Manikpur vide his letter dated 20.12.2003 (Annexure A-11, A-12 & A-13 to the OA). Finally, the applicant was promoted vide order dated 28.04.2004 and posted at Lalitpur. It is urged by the applicant that he is entitled to his promotion w.e.f. 01.07.2002 as per the promotion order dated 01.07.2002 and in any event from a date his junior got his promotion.

5. On behalf of the respondents it is submitted that the applicant was promoted to the post of Safaiwala by the office of respondent No. 6 and posted at Satna as stated in the OA. However, he did not carryout the promotion order on his own volition. Some times

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during that period there was a bifurcation of the zone of North Central Railway and West Central Railway. In the distribution, Manikpur Section was assigned to Jhansi Division. Since the applicant was earlier shown as posted at Satna on promotion which falls under the Jabalpur division, the seniority list circulated by Jabalpur division reflected the applicant as Safaiwala/Jamadar in the Grade of Rs. 2750-4400 as per records received from Jabalpur division. Accordingly, the senior most person Shri Narain Dass was tested, promoted in the grade of Rs. 2750-4400 and posted at Manikpur. On assumption of charge by Shri Narain Dass and in response to the applicant's representation that he was senior and he should have been promoted before Shri Narain Dass on an inquiry from the Jabalpur division, it was found that the promotion order dated 01.07.2002 was never carried out by the applicant and he never proceeded to Satna and hence order dated 01.07.2002 could not have been given effect to. Subsequently, vide order dated 13.09.2004 the applicant has been promotion and transferred to Lalitpur (Annexure CA-1).

6. It is also contended by the respondents that the order of promotion though not forwarded to Assistant Divisional Medical Officer (ADMO), Manikpur should have been known to the applicant. It is also submitted that the applicant avoided carrying out the order dated 01.07.2002 because he was not interested in

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joining at Satna, instead he was interested in continuing at Manikpur and hence the administration is not responsible for the promotion order not having been implemented.

7. On behalf of the applicant, learned counsel once again emphasised that there is not an iota of evidence to show that the promotion order dated 01.07.2002 was ever endorsed to the applicant's place of work at Manikpur or for that matter to the applicant himself. There was no way the applicant would have known about the existence of the order. Further even after representation from the applicant, was duly forwarded by his superior on 12.03.2003, no steps were taken to relieve him from his place of posting i.e. Manikpur to join at Satna on promotion. Similarly not relieving him on promotion/granting him promotion inspite of several representations proves beyond doubt that the respondents have negligently denied granting him promotion legitimately due to him and instead promoted and posted his junior namely Shri Narain Dass at the same very station [Manipuri] causing great humiliation to the applicant.

8. Learned counsel for the applicant cited rule 228 of IREM which reads as under: -

"228. Erroneous Promotions. - (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

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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 on promotion be assigned correct seniority vis-à-vis those 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 may be 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 posts."

He also cited a decision of Full Bench (Jodhpur Bench) of this Tribunal in case of **Devi Lal and Ors Vs. Union of India and others : 2002-2003 ATJ (Full Bench)** 250 head notes of the same is as under:

"Constitution of India, Articles 14 and 16 - Indian Railway Establishment Manual - Para 228 - Pay and Allowances - Promotion - Employee not promoted earlier due to administrative lapse - Subsequently notional promotion given retrospectively w.e.f. the date when his juniors have been so promoted - Whether employee entitled to arrears of pay and allowances with retrospective date - Held yes - Further para 228 of IREM in so far as the same denies an employee pay and allowances on the principles 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."

The operative portion of the orders reads as under: -

"7. Having regard to the aforesaid reasons, we answer the reference as under: -

a) An employee who was not promoted earlier due to administrative lapse, on his retrospective notional promotion to the higher post subsequently with effect from the date his juniors have been promoted, would be entitled to arrears of pay and allowances with retrospective date, and

b) 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 to actual work on account of the fault of the management is invalid and violative of Articles 14 and 16 of the Constitution of India."

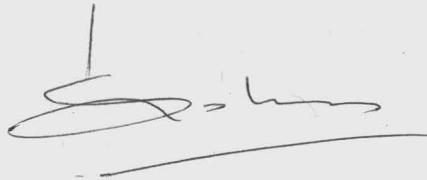
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9. We have heard the learned counsels for the parties and perused the pleadings and records. A perusal of the promotion order dated 01.07.2002 shows that a copy of the order is not endorsed to the place of his posting i.e. Health Unit, Medical Department, North Central Railway (NCR), Manikpur. Similarly, no endorsement has been made to the applicant as well. It is quite possible that the applicant did not get information regarding his promotion for several months till [as he claims] he visited Jabalpur on 03.03.2003. We have also noted that the applicant has made several representations and his willingness to carryout promotion order for joining at Satna with a request for being relieved, which were being regularly forwarded by his immediate supervisory officer to the next higher competent authority. There is no evidence to suggest that any action was taken by authorities on his request. There is also no evidence to suggest that the administration made any suo-moto moves to relieve the official from his existing position on his promotion. We are reasonably convinced that this is a case were the applicant has been denied timely by promotion but for the administrative error. In our view rule 228 of IREM cited by the learned counsel for the applicant is squarely applicable on the fact of the case. Similarly the Full Bench decision of this Tribunal in case of **Devi Lal and Ors** (supra) is also squarely covers the case of the applicant on facts.

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10. We understand that the applicant has since superannuated w.e.f. 30.09.2007, [page 18 of OA]. Therefore, the ends of justice will be deemed to have been met only if he is granted promotion from the date of the order dated 01.07.2002 and all the consequential benefits such as pay, increment and arrears etc are granted to him. It also follows that the consequential enhanced pensionary benefits will also be available to him. We order accordingly.

11. The OA is allowed with above directions. No cost.



Member (A)



Member (J)

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