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OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 25TH day of APRIL 2007.

Original Application No. 1416 of 2005

Hon'ble Mr. P.K. Chatterji, Member (A)

Hon'ble Mr. S.K. Dhal, Member (J)

Vidya Lal Yadav, S/o Sri R.N. Yadav,
R/o B-31 Deen Dayal Nagar, Nanda Pura, Jhansi

. . . .Applicant

By Adv: Sri A.K. Srivastava

V E R S U S

1. Union of India through General Manager, North Central Railway, Allahabad.
2. The Divisional Railway Manager, North Central Railway, Jhansi.
3. The Divisional Railway Manager (P), North Central Railway, Jhansi.

. . . .Respondents

By Adv: Sri R.C. Joshi

O R D E R

By Hon'ble Mr. P.K. Chatterji, Member (A)

The dispute involved in this OA is whether the applicant who was not promoted to the Grade of Tech II (T&C Wing) in the pay scale of Rs. 4000-6000 by mistake committed by the respondents, would be entitled to get the arrears of pay on correction of mistake by the respondents. In this particular case the applicant who was working in Grade Tech III was expecting promotion to Tech II. However, the respondents did not give him promotion and instead

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they promoted four other officers i.e. Sri Ravindra Kumar Mishra and three others. The applicant made several representations to the respondents who finally detected their mistake. On detecting their mistake the respondents decided to promote the applicant to Tech II from the date his junior Sri R.K. Mishra was promoted i.e. 20.10.1995 (Annexure A3). It was stipulated in the said order that the applicant would be promoted in the same grade and capacity from the date his junior Sri R.K. Mishra was promoted i.e. 20.10.1995 on proforma basis payable from the date he actually shouldered the responsibility in the said grade.

2. It is this order of the respondents which has aggrieved the applicant. He is of the view that the fault in giving promotion to his junior superseding his legitimate claim was that of the respondents. Therefore, he should not be made to pay for the same mistake. He has also stated that the job content of Tech III and Tech II are the same. There is no question ^{of} assumption of any higher responsibility on promotion to Grade III. The relief which is prayed for is that the respondents may be directed to pay arrears in the Grade of Rs. 4000-6000 w.e.f. 20.10.1995.

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3. We have gone through the counter affidavit filed by the respondents relevant part of which are extracted below:

" . . .

5. That on 20.10.1995 the 4 persons promoted on the post of Fitter (T&C) Gr. II in pay scale of Rs. 1200-1800 vide letter dated 20.10.1995.

6. That the applicant was represented in the year 2000 for correct fixation seniority to his junior Sri Ravindra Kumar Mishra, who was promoted on the post of Fitter (T&C) Grade II in pay scale of Rs. 4000-6000 (RSRP) on 20.10.1995. It is submitted that the seniority of the applicant was disputed as such matter was referred to Headquarter, Mumbai for further instruction/clarification with regard to seniority of the applicant decided over his juniors, who had already been promoted on the post of Fitter (T&C) Grade II w.e.f. 20.10.1995 vide letter dated 25.09.12000

7. That at the relevant time there was no vacant post in the cadre of Fitter (T&C)II Gr. Rs. 4000-6000 (RSRP) as such it has been decided to revert the juniors and to promote the applicant on the post of Fitter (T&C) Grade II in the pay scale of Rs. 4000-6000 (RSRP). Accordingly for reverting juniors namely S/Sri Ravindra Kumar Mishra, Indresh Chandra Pandey and S.R. Tiwari, a show cause notice issued by the respondents vide letter dated 22.10.2002."

4. It appears on perusal of the submission made by the respondents that the mistake committed by the respondents have been admitted by them. They have also corrected the mistake and a revised seniority list was prepared and the applicant has been placed senior to Sri R.K. Mishra in the said list. He has also been given proforma promotion from the date his junior was promoted. The only grievance which has not been remedied, according to the applicant, is that he has been deprived of the consequential benefits of the proforma promotion i.e. arrear of pay from the date from which the promotion was granted has still not been paid. In this context

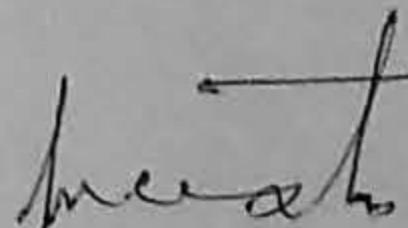
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the applicant's counsel has produced certain decision of the Tribunal of Bangalore Bench of this Tribunal reported in 1998 (1) AISLJ 88 in case of *D.L. Deshpande Vs. The Divisional Railway Manager & Ors* (OA No. 864/96) which has also relied upon the decision of an identical case by Ernakulam Bench of this Tribunal. The relevant portion of the said judgment is extracted below:

" . . .

7. "Accordingly, we declare that the last sentence of para 228 of IREM viz., "No arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher posts" no more exists. We cannot part with this order without expressing our concern for the persistent attitude of the Railways in ignoring the judgments of the Karnataka High Court and that of the Ernakulam Bench which have made it amply clear that the provision which disentitles an employee to get consequential monetary benefits in the case of notional promotions has been held to be invalid and arbitrary. When the circular that existed prior to incorporating the same as para 228(I) in IREM could not have been depended upon in view of the High Court Judgment, an ingenious way of circumventing the judgment seems to have been adopted by incorporating in as para 228(I). It is hoped that the Railway Board and the Department shall atleast hence forward refrain from adopting such a course to avoid unpleasant consequences.
8. With this observations aforesaid, we direct the respondents to grant all consequential monetary benefits to the applicant with effect from 13.3.1994, the date from which the applicant was given proforma promotion as Station Master, Grade III in the scale of Rs. 1400-2300. This discretion shall be carried out within 90 days from the date of receipt of a copy of this order. The applicant is also entitled to cost of this application. Advocate's fee is fixed at Rs.200/-."

5. On the basis of submission made and the arguments put forth by the applicant's counsel we are of the view that the claim made by the applicant is legitimate. In their own admission the respondents made the initial error of promoting the

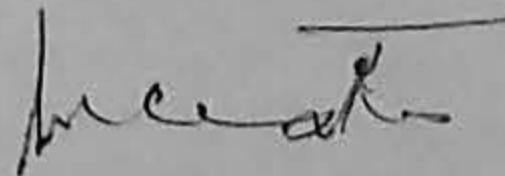


person junior to the applicant and retaining them in the higher grade for a long time. We are also convinced that the job content of Tech II would not differ substantially from that of Grade III in terms of responsibility and intellectual input. Denying the applicant the consequential benefits of promotion and at the same time acknowledging the error in not granting him promotion from the due date cannot be reconciled in our view, and the only way by which this contradiction can be resolved is by giving the consequential benefits of the proforma promotion. We are also convinced that the decision in the OA D.L. Despande Vs. DRM (supra) would cover the present application.

6. The OA is, therefore, allowed the respondents will pay arrears in the Grade of Rs. 4000-6000 to the applicant w.e.f. the date from which his junior was promoted to the same grade i.e. the date on which proforma promotion to the applicant is granted. This order may be complied with within a period of four months from the date a copy of this order is served upon them. With this direction the OA is disposed of with no order as to costs.



Member (J)



Member (A)

/pc/