

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

M.A. NO. 4066/2005

IN

R.A. 69/2005

IN

O.A. 1123/2003

Allahabad this the 10th day of February, 2006

Hon'ble Mrs. Meera Chhibber, Member (J)

Shri Bhushan Shukla

... Applicant.

Versus

Union of India & Ors.

... Respondents.

O R D E R (By Circulation)

Hon'ble Mrs. Meera Chhibber, Member (J)

This Review Application has been filed against order dated 27.7.2005, on the ground that counsel for applicant had given number of judgments to substantiate the claim for arrears on account of promotion given to applicant with retrospective date but those judgments have not at all been considered or dealt with in the final order. Moreover, Para 228 of IREM has been declared ultra vires by the courts, therefore, back wages could not have been denied to him. He has also submitted that in order dated 30.7.1993, there is no denial of payment of arrears, therefore, there was no need for the applicant to challenge the said order. He has given list of judgments stated to have been relied upon by the counsel. However, none of those judgments have been annexed in the R.A.

2. Since this RA has been filed with delay, applicant has also filed Misc. Application No.4066 of 2005 seeking condonation of delay.

3. I have read the review application as well as application for condonation of delay. It is stated by the applicant that the judgment was pronounced on 27.7.2005 but copy was delivered to the counsel on 10.8.2005, therefore, as per rules review application ought to have been filed by 10.9.2005 but it is being filed on 21.9.2005 i.e. after a delay of 11 days. The reason given is that the applicant is an old ailing retired Railway employee, aged about 70 years and he was



confined to bed since 3.9.2005, medical certificate to this effect has also been annexed along with the application. I am, therefore, satisfied with the cause shown by the applicant. As such, MA for condonation of delay is allowed.

4. This file has been sent to me on 30.1.2006. In the Original Application or R.A. sent to me, no judgments are annexed as are stated to have been filed by the applicant's counsel during the course of arguments or after the orders were reserved. Only one judgment given on 4.4.1992 in OA 543/86 has been annexed with the review application. In normal course, since no such judgments are found either in the main file or with R.A., this RA could have been dismissed for want of those judgments even now. However, in order to do justice, I think it would be appropriate if the contention raised by the applicant in review application is considered on the basis of judgments which can be called from library. Those judgments, which are not available at Delhi cannot be dealt with.

5. The whole case of the applicant in the O.A. was, that applicant could not have been denied his back wages on account of promotion given to him with retrospective date because, according to him, para 228 of IREM has already been held to be ultra vires of the constitution. Therefore, no reliance could have been placed by the Railways on the said para. It is correct that earlier Full Bench of the Tribunal as well as Ernakulam Bench of the Tribunal had declared Para 228 of the IREM to be ultra vires and was ordered to be struck off but the respondents had filed batch of writ petitions in different High Courts and SLP in Hon'ble Supreme Court. I quote the relevant portion from one of the judgments that is readily available with me. Hon'ble High Court of Rajasthan had the occasion to deal with the batch of writ petitions filed by respondents bearing Nos. 4227 of 2002 and 7 others against the orders of Tribunal whereby para 228 was struck off. After considering rival contentions of all the parties, the said writ petitions were allowed on 10.7.2003 by observing as under :-

"Thus, in our view a person will not be entitled to any pay or allowances during the period for which he did not perform the duties on higher post although after due consideration, he was given proper place in gradation list having been deemed to be promoted to the higher post w.e.f. the date his junior was promoted. No employee can be held to be entitled to claim any financial benefits retrospectively. At the most he may be entitled to re-fixation of the salary on the basis of the notional seniority granted to



him in different grades and he may also be entitled to the pensionary benefits. The provisions contained in para 228 deny the arrears from the date of notional promotion in case where the promotion is withheld or not granted due to administrative lapse. It is based on principle of 'no work no pay'. The rule allows arrears from the date of actual promotion as such it cannot be said that such a principle is arbitrary or unreasonable. In our opinion, the view of the Full Bench of the Tribunal holding Para 228 of IREM as invalid and violative of Articles 14 & 16 of the Constitution of India is not correct. We hold para 228 of IREM intra vires of the Constitution.

6. From the above, it is clear that Para 228 of IREM has been restored by Hon'ble High Court of Rajasthan. Apart from it, the identical matter came up before Hon'ble Supreme Court also in the case of Union of India & Ors. Vs. P.O. Abraham & Ors. (Civil Appeal No. 8904/1994) when Hon'ble Supreme Court also held as under on 13th August, 1997.

"By the order under appeal, the Tribunal has allowed the application which challenged the Railway Board Circular dated 15/17 September, 1964. The said Circular stated:

"No arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher posts".

Consequent to the deletion of the above clause further directions were given. Learned counsel submits that the clause, which has been directed to be removed, is in accordance with the judgment of this Court in Virender Kumar, General Manager, Northern Railways, New Delhi Vs. Avinash Chandra Chadha & Others (1990 (2) SCR 769). This Court, in that case held on principle of 'no work no pay' that the respondents will not be entitled to the higher salary as they have not actually worked in that post. The clause, which has been directed to be deleted by the Tribunal being in consonance with the ruling of this Court, we are of the opinion that the Tribunal was not right in directing the deletion of that clause. Accordingly, to that extent this appeal is allowed. The result is that the respondents will be given deemed promotion, if any, before retirement and also the benefit in the matter of fixing pensions. No costs.

On the basis of this, Railway Board issued a letter dated 2.7.2003 informing all the General Managers about the decision of Hon'ble Supreme Court, which, for ready reference, is quoted below:

"In terms of the provisions of para 228 of IREM, Vol.I, 1989, the staff who lose 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. However, pay in the higher grade on promotion may be fixed proforma at the proper stage but no arrears on this account shall be payable as the concerned staff did not actually shoulder the duties and responsibilities of the higher post.

2. Notwithstanding the above provision in the recent past, a number of employees have approached CAT/Courts and secured



judgments to their favour for payment of arrears. However, in one of the SLPs filed against order dated 30.9.1991 of CAT/Ernakulam Bench in OA No. 649/90, the Hon'ble Supreme Court by their judgment dated 13.8.1997 in Civil Appeal No. 8904 of 1994 (Union of India & Ors. Vs. P.O. Abraham & Ors.) have upheld the above provision regarding non-payment of back wages on proforma promotion. A copy of the judgment is sent herewith for information and guidance.

3. The above judgment of the Hon'ble Apex Court should be the guiding factor while defending the pending CAT/Court cases (including SLPs if any) and that may arise in future on the issue. The CPOs should ensure that in all such cases, the judgment is invariably connected and cited to counter the claim for payment of arrears in the type of cases referred to in para 1 above".

7. It is thus clear that even Hon'ble Supreme Court observed that the Tribunal was not right in deleting the clause of no arrears for not actually doing the duties and responsibilities of the higher posts and even in that case respondents were directed to be given only proforma promotion if any before retirement and also the benefit of fixing pension, etc.

8. The above judgments would clearly show that the stand taken by the applicant in his O.A. was not correct. In the RA, applicant has stated that he had relied on number of judgments of Tribunal but all those judgments would be of no consequence because Para 228 of IREM has been upheld by the Hon'ble High Court of Rajasthan as well as the same principle by Hon'ble Supreme Court. Para 228 of IREM for ready reference reads as under:

"Erroneous promotion: (1) 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 error 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 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 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".



9. It goes without saying that so long para 228 exists, applicant would not be entitled to back wages on account of promotion with retrospective effect. Therefore, there is no error in the judgment of which review is sought. In the order dated 8.9.1993, it was clearly mentioned that on promotion, applicant's pay is being fixed on proforma basis which itself means that the person would not be entitled to any arrears on account of such fixation.

10. Counsel for the applicant has relied on 2005 (2) ATJ 103, to state that P.O.Abraham's case (supra) has been distinguished by the Principal Bench of the Tribunal but perusal of the said judgment shows that even Principal Bench has observed in Para 8 of the said judgment that validity of Para 228 of IREM has been held to be valid by Hon'ble Supreme Court as well as by Karnataka High Court in Writ Petition No. 4427 of 2002. It has also been observed that Para 228 would apply in a situation where notional promotion is on account of administrative error or assignment of wrong relative seniority, therefore, applicant's case cannot get improved by said judgment because the whole case of applicant in O.A. was, that he was denied promotion due to administrative error. Therefore, that judgment also cannot advance the case of applicant. I need not refer to other judgments of the Tribunal as they are not even annexed by the applicant nor are they available in OA. It is also relevant to note that Railway Board's letter dated 2.7.2003 was annexed by the respondents with counter but that has not been challenged by the applicant, therefore, it is reiterated that applicant would not be entitled to difference of arrears on account of his promotion from a retrospective date.

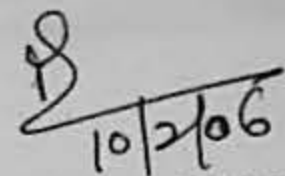
11. A conscious decision was taken by the court, wherein opinion has already been expressed. I cannot sit in appeal over my orders. If applicant is aggrieved his remedy lies elsewhere. Applicant cannot be allowed to argue the matter in the guise of R.A.

12. At this juncture, it would be relevant to quote from Union of India Vs. Tanitranjan Das, reported in ATJ 2004 (2) SC 190, wherein it has been held by Hon'ble Supreme Court that the scope of review is very limited and it is not permissible for the forum hearing the review application to act as an appellate



authority in respect of original order by afresh and rehearing of the matter to facilitate a change of opinion on merits.

13. In view of the above, there is no merit in the review application and the same is accordingly rejected.


(Mrs. Meera Chhibber)
Member (J)

'SRD'