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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

Registration O.A.No.1123 of 1987

S.I.H. Zaidi Applicant

Vs.

Union of India & Others Respondents

Hon'ble Mr. Justice U.C.Srivastava, V.C.

Hon'ble Mr. A.B. Gorthi, Member (A)

(Hon. Mr. Justice U.C. Srivastava, V.C.)

The applicant who was retired from service have approached the Tribunal against the refusal ~~of~~ the opposite-parties to grant him the grade of Rs.700-900(old scale) now Rs.2000-3200/ with effect from 2.1.1986 because one Sri S.Bharadwaj ~~who~~ was junior to him as Travelling Ticket Examiner and was granted the aforesaid pay scale due to the Chief Inspector of Tickets with effect from 2.1.87, and as such the applicant is entitled to be granted the said pay scale with effect from the said date. The Divisional Personal Officer, Northern Railway on 17.9.87 denied to the applicant the said grade and that is why he has approached the Tribunal. The applicant was initially appointed in the Northern Railway as Ticket Collector and he was promoted to the post of Travelling Ticket Examiner(TTE) prior to the promotion of Sri Bharadwaj and other juniors. His further promotion to the post of Head Ticket Collector/Special Ticket Examiner was due. The applicant had given his option for the post of Head Ticket Collector and Sri Bharadwaj had also given his option for the very same post. In the selection process no notice was issued to the applicant though notices were issued to the juniors, and the selections were held for the post of STE grade in the year 1983 but the applicant was not called in the same. The applicant filed an appeal against the same to the Divisional Railway Manager, but the same was not decided. The applicant again made a representation through the Uttar Railway Mazdoor Union, and when the Union raised the matter then a reply was given that the case of the applicant has now been traced out and will now be examined and the option filed by the applicant was in fact for the post of Head T.C., but the office had erroneously indicated the option of the applicant for STE and therefore, the applicant could not be

considered. It was also mentioned that the applicant has been promoted as Head TC with effect from 1.1.84 against the cadre restructuring, and because of the mistake of the department the applicant could not be promoted earlier and his seniority was denied. Although after detection of the mistake the applicant could have been given due seniority and his name could have been interpolated in the list at the proper place.

On 3rd March, 1987 the applicant was required to appear for selection as Head T.C. on 12.3.87. The notice was received by the applicant on 6th/7th March 1987. However, he appeared in the selection which was held on 12.3.87. Earlier the selection took place in the month of November, 1986, but the applicant's grievance is that the information was not duly communicated to him, and the result of the selection held on 12.3.87 were communicated to the applicant much after his retirement by the order dated 18.9.1987. By this result he was informed that he was selected and the results had been declared. Although the result was declared earlier on 4.4.87 but the applicant was communicated in September, 1987. By the impugned order the applicant was granted the benefit of interpolation to the post of Head T.C. with effect from 23.12.82 and his salary in the grade of Rs.425-640/- was to be fixed accordingly at Rs.530/- but this benefit was also substantially taken away from the applicant by adding that the interpolation was being done only formally and the arrears of salary would not be given to the applicant. The applicant was granted promotion to the post of Junior Ticket Inspector with effect from 1.1.84, but the other consequential benefit of promotion to the post of Chief Inspector of Ticket was refused. Thus the applicant was denied two benefits. Firstly he was not given the benefit of promotion to the post of CIT and secondly even with respect to the Head T.C. and Junior Ticket Inspector he was given only formal promotion and the financial benefit in the form of salary and other allowances were denied.

2. The respondents have resisted the claim of the applicant and have contended that on the basis of Railway Board circular the benefit of adhoc promotion has not been given to the applicant. Reliance has been placed on the Railway Board's circular which reads as follows:-

1. The loss of seniority due to administrative errors can be of two types.

(a) Where a person has not been promoted at all because of administrative error and

(b) Where a person has been promoted but not on the date from which he should have been promoted but for the administrative error.

2. The matter has been considered and the Board desire that each such case should be dealt with on its merits. The staff who have lost promotion on account of administrative errors 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 fixed proforma at the stage which the employee would have reached if he was promoted 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 grade posts.

3. On behalf of the applicant it was contended that there was no fault from his part but he was deprived to the promotional post, and an employee not to suffer because of delay, latches and lapses from the part of the Government. In this connection reference has been made to the case of State of Maharashtra Vs. Jagannath Achutya Karandikar AIR 1989 Supreme Court page 1133, wherein it has been held that it would be unjust, unreasonable and arbitrary to penalise a person for the default of the Government to hold the examination every year. If the examination was not held in any year, the person who has not exhausted all the permissible chances has a right to have his case considered for promotion even if he has completed 9 years service. The said case was followed in the case of S

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Here in the instant case the applicant filed his option and the mistake has been committed by the Office because the file was not traced and when the file was traced the applicant was allowed to appear in the examination at the late stage for no fault of his. Thereafter this benefit was given to him when he was already retired from the service. The applicant who had already retired from the service he cannot denied the benefit even the monetary benefit. In view of the fact that he never refused to work on the post to which he was entitled to, and the respondents have deprived the same to the applicant, the principle of no work no wages will not apply in the said case as has been observed by the Supreme Court in the case of

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Union of India Vs. K.V. Janki Raman, 1991(5) SLR page 602.

So far as the post of Cheif Inspector is concerned the junior was given only promotion on ad-hoc basis. The said post was the selection post, and the applicant was not entilted to the said post merely because the applicant was given only notional promition with effect from the due date. Accordingly this application is allowed in part and the respondents are directed to calcualte the monetary benefit to which the applicant is entitled with effect from the date he was entitled to the promotion. Let it be done within a period of 3 months from the date of communication of this order. There will be no order as to costs.

Thompson
Member (A)

by

22nd January, 1992, Alld.

(sph)