

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 30TH DAY OF JANUARY, 2002

Original Application No.613 of 1994

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MAJ.GEN.K.K.SRIVASTAVA, MEMBER(A)

S.N.Singh,a/a 59 years, Son of  
SriSahdeo Singh, resident of  
196-A Shivapuram behind Nehru  
Yuva Kendra Basharatpur,Gorakhpur.

... Applicant

(By Adv: Shri Sudhir Agrawal)

Versus

1. Union of India through the Secretary  
Ministry of Railways, New Delhi
2. The Railway Board, Rail Bhawan  
new Delhi through its Chairmab
3. The General Manager(P) North  
Eastern Railway, Gorakhpur.

...Respondents

(By Advs: S/Shri A.K.Gaur/Govind Saran)

O R D E R(Oral)

JUSTICE R.R.K.TRIVEDI,V.C.

By this OA the applicant has challenged the order dated 19/20.7.1993(Annexure 1) by which he has been denied the payment of arrears of salary for the period he had been found entitled for promotion.

The facts in short, giving rise to this controversy are that applicant was serving as Welfare Inspector Grade-II under respondent no.3, General Manager, North Eastern Railway

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Gorakhpur. He was subjected to disciplinary proceedings by serving a memo of charge dated 19.12.1981. In these proceedings applicant was awarded punishment of compulsory retirement vide order dated 28.3.1989. During this period applicant and other candidates were considered for promotion to the post of Welfare Inspector Gr.I and A.P.O. As the disciplinary proceedings were pending against the applicants the D.P.C kept the result of the applicant under sealed cover until conclusion of the disciplinary proceedings. Against the order awarding punishment of compulsory retirement applicant filed OA No.272/89 in this Tribunal which was allowed vide order dated 28.2.1991. The applicant was thereafter reinstated on the post as Welfare Inspector Gr.II w.e.f. 7.6.1991 and he was paid arrears as Welfare Inspector Gr.II for the period 28.3.1989 to 10.6.1991 by order dated 1.7.1991. Applicant was thereafter granted promotion to Welfare Inspector Gr.I vide order dated 20.6.1991 w.e.f. 11.3.1987 when juniors to the applicant were promoted. However, he was denied actual payment of salary of the higher grade and promotion was directed to be notional. As the applicant was not promoted as A.P.O and the result was kept in sealed cover was not opened, the applicant filed contempt application no.226/92 which was decided on 3.12.1992 and thereafter respondents promoted the applicant as (Assistant Personnel officer(in hort A.P.O) w.e.f. 8.3.1988. The order to this effect was passed on 19.4.1993. While promoting him as A.P.O again applicant was denied <sup>the</sup> actual payment of salary and it was treated as notional w.e.f. 8.3.1988, aggrieved by the aforesaid order applicant filed a representation on 8.6.1993 claiming actual salary which has

been rejected by the impugned order (Annexure 1) dated 19/20.7.1993.

Shri Sudhir Agrawal learned counsel for the applicant has submitted that as applicant was not found guilty to any charge and he was honourably exonerated from the allegations he is entitled for the actual payment of salary for the period he was deprived of function on the promotion post on account of the disciplinary proceedings pending against him. It is also submitted that impugned order has been passed relying on the Railway Board's letter dated 21.9.1988 which was based on an O.M. of the D.O.P.T dated 12.1.1988. The Hon'ble Supreme Court in its judgement in a case of 'Union of India Vs.K.V.Janki Raman', A.I.R 1991 SC-2010 considered the effect of the O.M. dated 12.1.1988 and modified it extensively and substantially. Thereafter a fresh O.M. was issued by D.O.P.T on 14.9.1992 and Railway board issued it on 21.1.1993 prescribing conditions for granting arrears of salary in such matters. However, the respondents have rejected the claim of the applicant on the basis of the Railway Board's letter dated 21.9.1988 which could not be relied on after the judgement of Hon'ble Supreme Court in case of 'Union of India Vs.K.V.Janki Raman (Supra)'. Shri Sudhir Agrawal has submitted that the order rejecting the claim of the applicant is liable to be quashed and the applicant ~~and the applicant~~ is entitled for full back wages on promotional post.

learned counsel for the respondents, on the other hand, submitted that the claim of the applicant has been rightly rejected on the basis of the Railway Board's order dated 21.9.1988 which was in force during the relevant period and the applicant is not entitled for any relief.

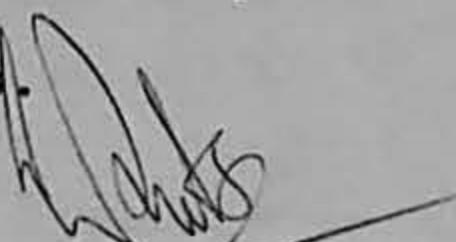
We have considered the submissions of the learned counsel for the parties carefully and in our opinion, the impugned order (Annexure 1) cannot be sustained in view of the judgement of Hon'ble Supreme Court in 'K.V.Janki Raman's case and the Railway Board's circular dated 21.1.1993. It cannot be disputed that the order of promotion in favour of applicant was passed on 19.4.1993 on which date both the judgement of Hon'ble Supreme court and the Railway board's circular dated 21.1.1993 were in existence. The applicant cannot be blamed in any way for passing <sup>an order</sup> ~~an order~~ after such a long time he had to file contempt application for compelling the respondents to pass the order promoting him to the post of A.P.O. He can also not be held responsible for being not able to function on the promotional post on account of the pendency of the disciplinary proceedings. All these circumstances and the judgement of Hon'ble Supreme court and the fresh circulars issued in pursuance of the judgement ~~were~~ ought to have been taken into consideration which in the present case has not been done.

Shri Sudhir Agrawal also placed reliance in a judgement of Hon'ble Supreme court in a case of 'Smt.Sudha Srivastava Vs.Comptroller & Auditor General of India, A.I.R 1996 SC pg- 571 dealing such a situation where the sealed cover procedure was followed in respect to the right of promotion. In our opinion, ends of justice required that this matter may be remitted again for fresh consideration to the respondents in the light of observations made in fresh circular issued by the Railway Board.

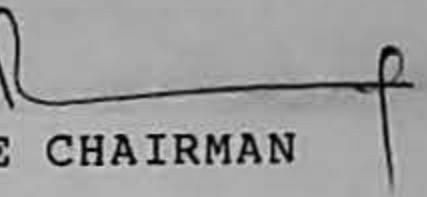
For the reasons stated above, this OA is allowed. The order dated 19/20.7.1993 is quashed. The respondents are directed to decide the claim of the applicant afresh in the light of the observations made above within a period of three

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months from the date a copy of this order is filed. In case, applicant is found entitled to the amount of arrears of salary, it shall be paid to him within three months from the date of the order passed by the respondents. There will be no order as to costs.



MEMBER(A)



VICE CHAIRMAN

Dated: Jan: 30th, 2002

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