

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD

Dated: Allahabad, the 2nd day of July, 2001.

Coram: Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mr. Rafiq Uddin, J.M.

ORIGINAL APPLICATION No.985 OF 1995

R. D. Ram,
office Superintendent Grade I,
D. R.M's office,
Northern Railway,
Allahabad. Applicant
Counsel for Applicant: Sri S. S. Shama
Versus

1. Union of India through the General Manager,
Northern Railway, New Delhi.
2. Divisional Railway Manager,
Northern Railway,
Allahabad.
3. Senior Divisional Personnel Officer,
Northern Railway, Allahabad.

. Respondents

Counsel for the respondents: Sri A.K. Roy

O_R_D_E_R (ORAL)

(By Hon'ble Mr. S. Dayal, A.M.)

This application has been filed for setting aside order dated 20.5.95 issued by the Divisional Personnel Officer, Northern Railway, Allahabad. A direction to the respondents is sought to pay back wages to the applicant with effect from 1.5.87 to 28.2.93 in the grade of Rs.1600- 2660 (RPS). The cost of the application has also been sought.

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2. The case of the applicant is that the Respondents had arbitrarily lowered down his seniority in the cadre of Senior Clerk in the grade of Rs.330-560 (RPS). As a consequence, he was not given promotion on the post of Head Clerk and Office Superintendent Grade II from the date his junior Sri Satya Ram was promoted on these posts on 15.3.83 and 1.5.87 respectively. The applicant filed O.A. No.978 of 1987, which was decided on 6.11.92 in favour of the applicant. It is claimed that the applicant was consequently promoted with effect from 15.3.87 and allowed arrears of pay as per extent rules. The applicant, who had been promoted as Office Superintendent Grade II on the basis of modified selection held in 1993 was granted retrospective promotion with effect from 1.5.87 on proforma basis by an order of the Divisional Personnel Officer, Northern Railway, Allahabad dated 27.2.95. The applicant made a representation on 14.3.95 that he should be allowed back wages in the pay-scale of Rs.1600- 2660 (RPS) w.e.f. 1.5.87, as per direction of the Tribunal in O.A. No.978 of 1987. This representation was rejected by Divisional Personnel Officer, NR, Allahabad by an order dated 20.5.95, which has given rise to this application before us.

3. We have heard the arguments of Sri S. S. Shamma, learned counsel for the applicant and Sri A. K. Roy, learned counsel for the Respondents.

4. The learned counsel for the applicant has read the following directions of the Tribunal in O.A. No.978 of 1987: "So far as the next promotional

post is concerned, the law will take its own course and the applicant will also be entitled to all consequential benefits". The learned counsel for the applicant contends that the Tribunal by declaring the applicant to be entitled for all consequential benefits declared that the applicant was also entitled to arrears of pay. Hence, denial of arrears of pay from 1.5.87 upto 28.2.93 needs to be allowed. The learned counsel for the applicant has in making the above contention relied on the order of a Division Bench of Central Administrative Tribunal, Ernakulam in a case of P. Thyagarajan and others Versus Union of India and others, (1992) 19 ATC 839, in which it has been held that the applicants on their retrospective notional promotions to higher grades cannot be denied the arrears of pay in these grades calculated from the respective dates of promotions. The Tribunal set aside the following provision of Railway Board's circular dated 15/17-9-64 : " No arrears on this account shall be payable, as he did not actually shoulder duties and responsibilities of higher posts."

5. The second authority relied on by the learned counsel for the applicant is of Hyderabad of Central Administrative Tribunal in the case of G. Nancharaiah Versus Smt. Karuna Pillai and others, (1992) 19 ATC 365. In this order, the learned counsel for the applicant contends that consequential benefits mean and imply back wages also. The order is in the context of order of removal and reads as follows:-

"9. In O.A. No.411 of 1986, the Tribunal held that the removal is unjust and it is not according to law and principles of natural justice. So, the removal order was quashed and the respondents were directed to reinstate the applicant in service with all consequential benefits. The consequential benefits means and implies back wages also. When the removal order is bad, it means and implies that without taking proper precautions or without examining the case carefully, the respondents removed the applicant. On account of his removal, the applicant was not able to perform duties under the respondents. If he is not removed from service, he would have performed his duties as usual and on account of the illegal termination of his services, the applicant was not given an opportunity to serve under the respondents. When the Tribunal held that the removal is bad, it implies that on account of the illegal action of the respondents only, the applicant failed to work under them. So, when the removal is illegal, the applicant is entitled to back wages also. The direction of the Tribunal while allowing the O.A. No.411 of 1986 that the applicant is entitled to the consequential benefits means and implies the back wages also. So, the interpretation given by the respondents is with a view to dishonour the order of Tribunal and the action of the respondent-1 is pervasive and highhanded."

6. The learned counsel for the applicant has also produced a copy of the judgment of Hon'ble Supreme Court in Jambal Lal Versus G. Ramakrishna and another in Special Leave Petition No.4362 of 1995. The Hon'ble Supreme Court addressed itself to the issue as to whether "all benefits" included only the promotion of Scheduled Caste candidates or the salary

of promotional post also. It was held that all benefits cannot ~~be~~ ^{exclude s} monetary benefits. It was held that if the applicant was denied promotional post on erroneous grounds, he should not be blamed for not having worked on the promotional post.

7. We have considered the ratio of decisions cited before us in the context of order of the Tribunal in O.A. No.978 of 1987. It is clear from the facts before us that the applicant was initially shown as junior to one Sri Satya Ram, although the applicant had joined Allahabad Division on 21.6.72 and Sri Satya Ram had joined the Railway Service on 7.7.72 and on account of that he was promoted as Senior Clerk on 8.12.81. He took up his case of seniority through Permanent Negotiating Machinery and was ultimately promoted to the post of Senior Clerk in the grade of Rs.330- 560 with retrospective effect on 1.1.79. It has also been mentioned in the order that the applicant had been given out of turn promotion as Head Clerk and was posted at Ghaziabad. The applicant made a representation that he should be posted at Allahabad, which was allowed and the applicant was allowed to join at Allahabad. Later, he was relieved from the post of Head Clerk at Allahabad and was directed to go to Ghaziabad. He was again promoted as Head Clerk on an upgraded post w.e.f. 1.1.84. The Tribunal considered the claim of the Respondents that the applicant, who had been offered the post of Head Clerk in 1993 and posted at Ghaziabad and not accepted the offer could no longer contend

that he was senior or entitled to the post of Head Clerk on the date his junior was promoted. The Tribunal did not accept this contention, because the Department had decided to restore the seniority of the applicant with effect from 1.1.79 as Senior Clerk and, therefore, he was entitled to notional promotion on the post of Head Clerk from the date of promotion of his junior. Thus, it is clear that the applicant has been allowed only notional promotion from the date of promotion of his junior and not promotion with arrears of pay. The contention of the learned counsel for the applicant that Paragraph 228 (i) of I.R.E.M. (1989) has been struck down by an order of the Tribunal in P. Thyagarajan and others Versus Union of India and others (Supra) is not valid. The letter struck down is dated 15/17th September, 1964 bearing No. E(NG) 63 RM/92.

8. Since the applicant has been allowed notional promotion in the grade of Head Clerk, he cannot have a better claim other than what has been allowed in subsequent promotion to the post of Superintendent Grade II. The direction of the Tribunal was to consider the applicant on the next promotional post as per law and declared that the applicant is entitled to all consequential benefits. It cannot be taken to mean that the applicant shall be allowed pay for the period for which he had not actually worked on the post of Superintendent Grade II. He has rightly been granted proforma promotion by order dated 20.5.95. The application is, therefore, dismissed as lacking in merits. No order as to costs.

J. M.
J. M.

A. M.
A. M.

Nath/