

Open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,  
ALLAHABAD.

....

Original Application No. 1514 of 2000.

this the 26th day of September 2002.

HON'BLE MAJ GEN K.K. SRIVASTAVA, MEMBER (A)  
HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)

Dinesh Chandra Maheshwari, S/o late Audesh Behari  
Lal, R/o Defence Colony, Nagariya Parikshit Izatnagar,  
Bareilly.

Applicant.

By Advocate : Sri T.S. Pandey.

Versus.

1. Union of India through General Manager, N.E.R.,  
Gorakhpur.
2. Divisional Rail Manager, N.E.R., Izatnagar,  
Division, Bareilly.
3. Sr. Divisional Personnel Officer, N.E.R.,  
Izatnagar, Bareilly.
4. Divisional Mechanical Engineer (Diesel),  
N.E.R., Izatnagar, Bareilly.

Respondents.

By Advocate : Sri K.P. Singh.

ORDER (ORAL)

MRS. MEERA CHHIBBER, MEMBER (J)

This is second round of litigation as the  
O.A. was disposed of on 28.8.2000 (Annexure A-10)  
by directing the respondents to dispose of the  
representation of the applicant within two months  
from the date of copy of the order is filed. The  
applicant's representation was decided by the  
respondents on 14/15.11.2000, which are being challen-  
ged in the present O.A.

2. The brief facts as stated by the applicant  
are that the applicant was appointed as khalasi



(artisan) under 25% direct recruit quota. After the written test, viva voce and trade tests were held on 8.8.1994 and 7.12.1994 respectively. The applicant was sent for training for the post of Fitter Gr. III and vide order dated 20.1.1995 the applicant was promoted (Annexure A-4) as Fitter Gr. III.

3. It is submitted by the applicant that on 19.3.97 and 21.3.1997 further tests were held for Fitter Gr. II and the applicant was promoted as Fitter Gr. II vide order dated 31.3.1997 (Annexure A-5). The applicant has submitted that he discharged his duties as such in Gr. III and Gr. II respectively, which is evident from test records dated 5.11.95 and 12.4.97 (Annexure Nos. 6 & 7).

4. The applicant's grievance is when he represented on 17.6.99 for payment of difference of arrears of salary from 20.3.95 to 30.3.97 in Fitter Gr. III post and from 31.3.97 to 14.9.98 in Fitter Gr. II post, the applicant was informed vide letter dated 29.6.99 <sup>that he would be entitled to fixation on</sup> proforma ~~pay scale~~ <sup>basis</sup> and difference of arrears is not payable (Annexure-8).

5. It is submitted by the applicant that once it is admitted by the respondents that the applicant was senior to Shri Ram Kumar and has been assigned seniority and promotion from a back date, actual arrears for promotional post could not have been withheld as he actually performed the duties on the higher post. He has, therefore, sought the following relief(s):

"(A) Issue any writ, order or direction in the nature of certiorari quashing the orders dated 24th September 1998, 29.6.1999 and 14.11.2000 (Annexure 1, 2 & 3)

(B) Issue any other writ, order or direction in the nature of mandamus commanding the

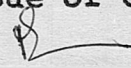
B



respondents to pay the arrears of salary of the applicant of the post of Fitter Gr.III from the period 20th May, 1995, to 20th March 1997 and of the post of Fitter Grade-II for the ~~period~~ from 31st March 1997 to 14th Sept., 1998 with costs.

C- ....."

6. The respondents have opposed the O.A. and have submitted the applicant has not given the correct facts. The correct facts are that the applicant was appointed as Artisan Khalasi (Diesel) vide APO Ajmer's order no. E/L/891/8 Bhag-1 dated 17.9.85 of Western Railway. The applicant was called-for in the selection for the post of Fitter Gr.III, but could not appear in the selection as he was out of duty to Sabarmati in Gujrat. The applicant, however, again appeared in the selection on 15.5.1996 and 31.5.1996 and was declared successful vide letter dated 2.9.1997 as per the order the Hon'ble CAT, Allahabad. He was subsequently sent for six months training and after completion of training, he was promoted as Fitter Gr.III vide order dated 13.5.1998. They have further explained that it is not fact that the applicant appeared in the test for promotion from the Fitter Gr.III to Fitter Gr-II on 19.3.97 and 21.3.1997 and thereafter a promotion order dated 31.3.97 was issued alongwith 12 others, whereas as per the office order dated 31.3.97, promotion order of 40 employees of different categories was issued and the name of the applicant did not appear therein at all. He, however, appeared in the trade test for Fitter Gr.II in the pay-scale of Rs.1200-1800 on 29.7.98 and on being successful in the test he was promoted as Fitter Gr.II in the pay-scale of Rs.4000-6000 vide office order dated 18/24.9.98 and was given proforma fixation against his junior Sri Ram Kumar Fitter Gr.II w.e.f. 31.3.97 and actual payment was made from the date of issue of office order dated





18/24.9.1998. They have, thus, submitted that the applicant is not entitled to any relief as per policy prevailing in the Railways, prescribed written and trade test are taken before any staff is promoted on the higher grade post and the same has been done in the case of the applicant as well, as the applicant has already been given proforma fixation against his junior Sri Ram Kumar w.e.f. 20.1.1995 as Fitter Gr.III in the pay-scale of Rs.950-1500 and 31.3.97 as Fitter Gr.II in the pay-scale of Rs.4000-6000/- respectively and actual payment has been made w.e.f. 13.5.98 in Gr.III in the pay scale of Rs. 950-1500 and from 24.9.98 for Gr.II in pay scale of Rs.4000-6000/-.

7. They have relied on para 228 (1) of IREM Vol.I which 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 errors 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-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 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."

8. They have explained that since the applicant did not actually shoulder the duties and responsibilities of a higher post so he is not entitled to any arrears.

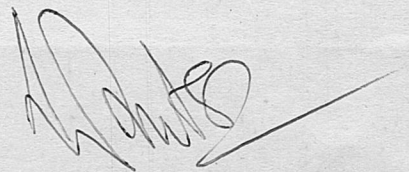




9. We have heard both the counsel and find that the case is fully covered by Rule 228(1). It is correct that the applicant could not appear, but subsequently when he passed the test, he has been assigned the correct seniority and his pay has also been protected by giving him proforma promotion. He has not been granted the arrears because he had not actually worked on the higher post, but from the date he assumed the charge, he has been given the actual wages, <sup>also, 12</sup> We do not find any illegality in the said orders. The applicant has not challenged the rule 228(1) of IREM Vol.I, therefore, he is not entitled to any relief. The O.A. is accordingly dismissed with no order as to costs.



MEMBER (J)



MEMBER (A)

GIRISH/-