

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD

D.A.No. 1321 of 2003

dated: This the 3<sup>rd</sup> day of June, 2004

Hon'ble Mrs. Meera Chhibber, J.M.  
Hon'ble Mr. S.C.Chaube, A.M.

Diwan Singh son of Shri Udai Singh,  
working as Painter Grade-II under  
Section Engineer (P.Way), North Central  
Railway, Chunab.

....Applicant.

Counsel for applicant. :- Shri Sudama Ram

Versus

1. Union of India through the General Manager,  
North Central Railway, Allahabad.

2. The Divisional Railway Manager,  
North Central Railway, Allahabad.

....Respondents.

Counsel for the respondents: Shri G.P.Agarwal.

O R D E R

By Hon'ble Mrs. Meera Chhibber, JM

By this D.A. applicant has sought quashing of the letter dated 25.5.03(pg 13) whereby applicant has been informed that though he has been correctly allowed proforma promotion as Painter grade II w.e.f. 05.11.1998 with reference to his junior Shri Navrangi Lal but he would not be entitled to actual pay from that date because he had not shouldered higher responsibility of the post of Painter Grade II in view of para 228(i) of I.R.E.M. Vol.-I. He has of course been allowed actual pay w.e.f. 30.3.2000.

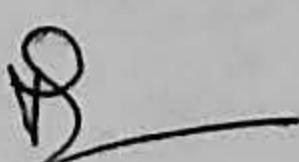
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2. He has further sought a direction to the respondents to pay the arrears of salary of the post of Painter grade II w.e.f. 5.11.98.

3. The brief facts as alleged by applicant are that he was initially appointed as gangman. He was regularised in 1989. He was promoted as Painter grade III in pay scale of 950-1500 after passing the trade test. It is submitted by applicant that he was senior to Navrangi Lal yet Shri Navrangilal was promoted as Painter grade III w.e.f. 5.11.1999 after he passed trade test but applicant was not even called for the said trade test due to the reasons best known to respondents when applicant came to know about it, he immediately represented. His seniority was fixed above Shri Navrangilal vide order dated 05.10.1999(Annexure-A-2) at serial no. 3 while Navrangilal was placed at serial no.4. Yet applicant was subsequently promoted as Painter grade II w.e.f. 30.3.2000 after passing the trade test(Annexure 4). whereas Navrangilal was promoted w.e.f.05.11.1998.

4. Being aggrieved he gave a representation but since no reply was being given, he filed O.A.No.1186/02. The said O.A. was decided on 20.1.03 by directing the respondents to decide his representation within three months(Annexure-A-5). Respondents passed the order dated 25.5.2003 as mentioned above, which has been challenged by applicant in this case.

5. It is submitted by the counsel for applicant that once para 228 of I.R.E.M. Vol.-I has been held to be ultra vires by the Full Bench of the Tribunal, respondents could not have denied the actual payments by attracting the same para 228, therefore, impugned order



is bad in law and is liable to be quashed. counsel for the applicant relied on following judgments:-

1. 1998(1)AISLJ Bangalore 88 D.L.Deshpande Vs. Divisional Manager,
2. 1993(24)ATC 759 Ramesh Chander & Anr. Vs. R.S.Gahlot & Ors.,
3. 2002(1) ATJ 485 Full Bench Jodhpur Devilal AND Ors. Vs. U.O.I. & Ors.
4. 1993 SCC(L&S) 590 Vasant Rao Raman Vs. U.O.I. & Others.

6. Respondents, on the other hand, have opposed this C.A. and have submitted that this point has already been finally settled by the Hon'ble Supreme Court reported in 1989 F.L.R. Volume 58, page 713 SCPAL UVU Ram Krishna Vs. Union of India and 1996 FLR Volume 73 SC page 1290 State of Haryana Vs. D.P.Gupta and also the Railway Board has decided that on account of mistake or omission of the department if an employee has not been granted promotion on due date and the mistake is rectified, the employee shall be granted ~~per~~ forma promotion. The logic and reason behind this is that the employee concerned have not shouldered the responsibility of the promoted post(~~higher~~<sup>8th</sup> post). In the present case it is admitted by the applicant that he has not shouldered the higher responsibility w.e.f. 05.11.1998 to 30.3.2000 hence the applicant is not entitled for the actual pay for the aforesaid period. Though they have referred to some judgments in C.A. but neither those journals are available in our library nor counsel for respondents has provided the same so we don't know which judgments are those.

7. The judgments produced by counsel for the applicant show that para 228 of IREM Vol. I has been held



to be ultra vires and has been quashed by various Benches of the Tribunal viz by Bangalore Bench in D.L.Deshpande's case, by Ernakulam Bench in P.Jhyagarajan & Others case, by Jodhpur Full Bench in Devilal's case. Counsel for respondents has not shown us any judgment by which these judgments have been reversed. Therefore, once para 228 has already been held to be ultra vires by Courts, naturally department could not have relied on same provision to deny the benefit to applicant. In all these cases the view taken by Tribunal is that a person~~xx~~ who has been deprived of promotion in time due to administrative error, he can not be denied the wages of promotional post with retrospective date as he has no fault but was deprived of it due to the mistake of department.

8. The net result is, that once a provision has been declared as ultra vires and quashed, <sup>it means</sup> as if it does not exist ~~on~~ the statute. Counsel for the respondent has not shown us any judgment of Hon'ble Supreme Court whereby the above judgments have been set aside. Therefore, the position in law is clear that para 228 of I.R.E.M. does not exist,

The counsel for applicant has rightly submitted that an ~~order~~ passed under a provision which has already been declared ultra vires is not at all sustainable. Even, otherwise, in somewhat similar circumstances in the case of Vasant Rao Raman reported in 1993 SCC(L&S) 590 Hon'ble Supreme Court held as under:-

" Promotion - Railways - Non-promotion due to administrative reasons- Due to shortage of literate shunters, appellant being literate, deputed for table work as a result of which he could not complete requisite number of firing kilometers and as such for no fault on his part, his juniors promoted as shunters drivers ignoring his claim for promotion- In the circumstances held, his claim for promotion over his juniors and for arrears of emoluments to the promotion post to be allowed"

In the instant case also, applicant was not called for the trade test when his junior was called and it was only when he represented that he was called to appear in the trade test. We see no justification as to why applicant should suffer for the fault of railways. The very fact that respondents have attracted para 228 shows that applicant was deprived of his promotion due to the administrative error as para 228 of I.R.E.M. Vol I for ready reference reads as under:-

" Erroneous Promotion.- (I) 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 paper 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."

In our considered view the facts of this case are identical with that of Vasant Rao Raman Vs. U.O.I. & Ors. case reported in 1993 SCC(L&S)590. Therefore, applicant would be entitled to same relief.

9. In view of the above discussion since para 228 is already quashed and the impugned order has been passed under para 228, the said order is illegal. As such the same is quashed and set aside. We also hold that since applicant was deprived of his promotion due to administrative error, he cannot be deprived of actual wages for the said period. Admittedly

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applicant has been given proforma promotion as painter grade II w.e.f. 5.11.1998 because he was entitled to be promoted from that day. Once he has been given retrospective promotion from the due date when he was entitled to it, we are of the opinion that he should be given the actual wages also from that date. Therefore, respondents are directed to calculate the actual wages ~~in~~ the scale of Painter grade II w.e.f. 05.11.1998 to 29.3.2000 and pay the arrears to the applicant within three months from the date of receipt of a copy of this order.

10. The D.A. is accordingly allowed with no order as to costs.

*Shank*  
Member-A

*B*  
Member-J

Brijesh/-