

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

THIS THE 19th DAY OF May 2011

**HON'BLE MR. JUSTICE S. C. SHARMA, MEMBER (J)
HON'BLE MRS. MANJULIKA GAUTAM, MEMBER (A)**

Original Application No. 1040 OF 2006
(U/S 19, Administrative Tribunal Act, 1985)

Raj Kumar Pathak, S/o Late Jai Narain Pathak, Northern Railway,
Headquarters Office, New Delhi.

.....Applicant

V E R S U S

1. Union of India, through General Manager, Northern Railway,
Headquarters Office, New Delhi.
2. Divisional Railway Manager, North Central Railway, DRM's
Office, Allahabad.
3. Senior Divisional Engineer – II, North Railway, DRM's Office,
North Central Railway, Allahabad.

.....Respondents

Present for the Applicant: Sri Sudama Ram.

Present for the Respondents: Sri Ravi Ranjan.

O R D E R

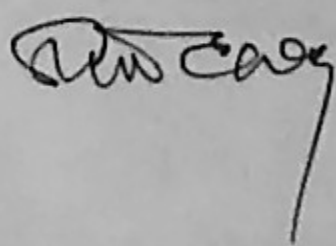
Delivered By HON'BLE MR. JUSTICE S. C. SHARMA, MEMBER (J)

Instant O.A. has been instituted for quashing the order dated 11th March, 2005(Annexure-A-1) and Railway Board's circular dated 02nd July, 2003 (Annexure-A-2) and letter dated 17th June, 2005 (Annexure-A-3) and order dated 23rd November, 2005 (Annexure-A-3/A). Further prayer has also been made for giving a direction to the respondents to pay all financial losses incurred to the

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applicant with his due promotions in respect of his juniors. Further prayer has also been made in order to give direction to the respondents to promote the applicant in higher grades from the date his juniors were promoted in Group 'C' and Group 'B' service and fix his pay notionally in accordance with the rules and pay all retirement benefits which are payable to him as per rules. Further prayer has also been made to pay a sum of ₹03 (three) Lacs as compensation for mental torture, harassment, loss of prestige and position and spoiling of his total service career for no fault on his part. Interest has also been prayed @18% per annum compound interest on the amount of ₹1,47,648/- from the date it became due to the applicant till the date it is actually paid by the applicant. The pleadings of the parties may be summarized as follows:-

2. The applicant was appointed as Apprentice Inspector of Works in Pay scale of ₹205-280/- (AS) on 1959 through the Railway Service Commission, Allahabad and he was posted in Diesel Locomotive Works (DLW), Varanasi. His lien was fixed in Engineering Branch of Allahabad Division, thereafter the applicant was transferred on 31st December, 1965 and posted at Etawah on 11th March,



1966. In August, 1978 the applicant was promoted on the post of Inspector of Works Grade-II in pay scale of ₹550-750/-(RS) as was posted as Inspector of Works/Ballast at Tundla under the Assistant Engineer Northern Railway, Etawah and on 22nd December, 1981 he was transferred from Tundla to Etawah. The applicant was further promoted on the post of Inspector of Works Grade-I in pay scale of ₹700-900/- (RS)/₹2,000-3,200/- (RPS) at Etawah on 01st January, 1984 and discharging the duties of Inspector of Works Grade-I. While working as Inspector of Works applicant submitted some store requirement as per rules to the competent authority. That the applicant was subsequently transferred to Tundla, as Inspector of Works Grade-I Chief Inspector of Works, Northern Railway, Tundla. On 24th April, 1990 applicant being the senior most Inspector of works Grade-I was ordered to take charge of Chief Inspector of Works Gr Rs.2375-3500/- at Tundla he took over the charge on the post of Chief Inspector of Works, at Tundla on 24th August, 1990 with higher responsibility of this post independently regarding complete stores, Work shop, General Supervision and controlling execution of all Civil Engineering works in Tundla Section. Though, the applicant was posted against

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the post of Chief Inspector of Works Grade 2375-3500/- (RPS) Tundla which was pinpointed and earmarked for him and he was shouldering the higher responsibility of this post satisfactorily but no benefit of pay scale of this post was given to him. On enquiry it was revealed that the pay in Grade ₹2375-3500/- was not charged and allowed to the applicant due to the alleged misconduct during the period 12th December, 1980 to 18th January, 1983 for which a memorandum of charges for major penalty was also served to the applicant by Senior Divisional Engineer-II dated 26th November, 1990/31st December, 1990. As per rules inquiry must be finalized within a period 365 days but in the applicant's case the D&AR proceedings were prolonged intentionally and deliberately, which is further proved from the fact that the appellate order was passed on 31st March, 1995 i.e. just on the date of retirement of the applicant, resulting heavy financial loss to him. The misconduct alleged was of the year 1980-83, and the disciplinary proceedings were initiated on the basis of vigilance report and inquiry was concluded on 18th July, 1994 and disciplinary authority passed penalty on 18th July, 1994 and Appellate Order was passed on 31st March, 1995. Thus the applicant was

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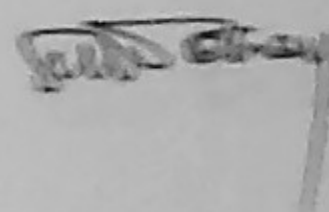
intentionally kept involved in totally false and fabricated case by the Vigilance Department for more than 15 years and due to this reason the career of the applicant was totally ruined. It has been alleged that the applicant while working as Inspector of Works/Etawah during the period 1980-84 knowingly and intentionally as placed excessive demand, for arranging through local purchase of stock and non-stock material on quotation with ₹2,17,053/- during the period from 12th December, 1980 to 18th January, 1983 and for ₹1,31,476/- during the period from 09th November, 1983 to 24th November, 1983 within 15 days. Irregularities were committed in appointment of the Inquiry Officer and he was changed subsequently and the Enquiry Officer was appointed after a period of two years due to interference of Vigilance Department. The presenting officer was appointed on the advice of the General Manager, the charges were totally failed to establish, the prosecution witness admitted during the enquiry proceedings that there was no misconduct on the part of the applicant but even then the Enquiry Officer being preoccupied mind held the applicant guilty of the charges in his letter dated 06th December, 1993. The disciplinary authority being a very lower rank officer than

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the Inquiry Officer was having no option but to accept the inquiry report dated 06th December, 1993, and the disciplinary imposed the penalty of reduction to lower grade and therefore, reduced to the grade-II in scale of ₹1600-2660/- with basic pay fixed to ₹2100 for a period of three years from the date of order, or till his retirement whichever is earlier, with cumulative effect. Appeal was filed against the order of punishment dated 18th July, 1994 and the Appellate Authority in the order dated 31st March, 1995 found the punishment excessive and revised the penalty and reverted the applicant by stage in the same time scale till his retirement. O.A. No. 447 of 1996 was filed by the applicant and challenging the order of punishment and the Tribunal allowed the O.A. and quashed the punishment as well as Appellate Order. Applicant in pursuance of the judgment of the Tribunal moved the representation requesting for payment of arrears of salaries from 24th August, 1990 to 31st December, 1990 in Grade ₹2375-3500/- and from 01st January, 1991 to 31st March, 1995 in Grade of ₹2375-3750/- on the post of Assistant Engineer with consequential benefits. The order of the Tribunal was complied with by the Divisional Superintending Engineer-

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He vide his letter dated 02nd December, 2003, and issued a formal order in this connection and paid the financial benefits only in grade ₹2,000-3,200/- on the basis of revised pay. Again a representation was also filed for correctly revising the pay and payment of consequential benefits but nothing has been done despite the representation, but during the pendency of the disciplinary proceedings juniors to the applicant were promoted and in the Grade of ₹2375-3500/- as Chief Inspector of Works against restructuring of cadre w.e.f. 01st January, 1993 but he was not considered by the respondents, the applicant was entitled for the consequential relief and promotion. The applicant is also due for promotion as Assistant Engineer Group-'B' service against 75% quota as per notification dated 09th July, 1991. The Written test was conducted and the applicant declared successful in the written test but inspite of performing well in the viva-voce test he was not declared successful due to pendency of the D&AR proceedings and it was kept in seal cover, the result of other candidates was declared on 03rd October, 1991 and they were promoted on 07th October, 1991, the applicant is also entitled for promotion on the post of Assistant Engineer



grade from date his juniors were promoted, the calculation of the amount has been given, due to the applicant. That still an amount of ₹1,47,648/- is to be paid by the respondents. O.A. No. 1167 of 2004 was also filed and the same has been allowed with direction to consider and decide the applicant's representation by means of speaking order, applicant made prayer for implementation of the order of the Tribunal passed in O.A. 447 of 1996, but they have not given any consequential benefits, hence the O.A..

3. Respondents contested the case and filed the Counter Reply. It has further been alleged that Sri R. K. Pathak IOW/HQ/TDL under AEN/HQ/TDL was taken up under D&AR in 12/90 and the applicant was awarded punishment of reduction to the scale of ₹1600-2600/- with basic pay fixed @ ₹2160/- for a period of three years from the date of order or till his retirement whichever is earlier vide order dated 18th July, 1994. The order of punishment was modified and in view of the modified order of punishment the applicant was reverted by one stage in the same till his retirement. The order punishment as well as Appellate order was challenged in O.A. No. 447 of 1996.

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And the Tribunal quashed the punishment order and further directed that the applicant shall be paid financial losses which have occurred on account of punishment order, in pursuance of the order of the Tribunal Divisional Railway Manager/establishment was ordered for revision of pension and difference of payment of DCRG/Leave Encashment and revised order was issued to the Accounts Branch. That the applicant had retired on superannuation on 31st March, 1995. The applicant was not satisfied from the decision of the Railway Administration and again filed an O.A. No.1167 of 2004 and it was decided on 08th October, 2004 with the remark that the applicant has not been paid full financial loss suffered by him as directed by the Tribunal. And Tribunal ordered for making comprehensive representation and disposed of the same by reasons and speaking order and communicated to the applicant. That the O.A. is barred by limitation and no explanation has been given of the delay. The applicant has placed excessive demand for arranging through local purchase of stock and non-stock materials on quotation and the Railway administration has suffered the loss. It has also been alleged that the disciplinary proceedings were delayed deliberately and intentionally

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due to the act of the applicant himself and, if any, delay was committed it was only due to administrative reasons, and it is incorrect to say that the false and fabricated case was filed against the applicant and proper inquiry was not conducted. That the disciplinary authority acted independently as per the material and evidence available on record, and that the order dated 11th March, 2005 was passed by the Competent Authority after due consideration of the facts and circumstances of the case and the representation of the applicant was rejected and it was ordered that since the applicant actually not shouldered the heavy responsibility of the higher post and retired on 31st March, 1995 hence he is not entitled for the benefit stated by him, all the financial benefits admissible to the applicant had already been paid. That the O.A. is liable to be dismissed.

4. We have heard Mr. Sudama Ram, Advocate for the applicant and Mr. Ravi Ranjan, Advocate for the respondents and perused the entire facts of the case. The applicant in the O.A. affected since the time of his appointment and subsequent promotion order, and the respondents have not disputed all these facts. Under these

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circumstances all the facts were admitted by the respondents. It has been alleged by the applicant that he took over the charge of Chief Inspector in Grade ₹2375-3500/- at Tundla with higher responsibility of that post regarding complete stores, Work shop, General Supervision and controlling execution of all Civil Engineering works in Tundla Section. And the applicant while posted on the post of Chief Inspector of Works Grade 2375-3500/- (RPS) Tundla which was pinpointed and earmarked for him, and he was shouldering the higher responsibility of this post with utmost devotion and to the satisfaction of the respondents. But no benefit of pay of this post was given to him. It has been alleged by the respondents that some misconduct was committed by the applicant during the period from 12th December, 1980 to 18th January, 1983 for which a memorandum of charges for major penalty was also served to the applicant. And the disciplinary proceedings were prolonged intentionally and deliberately, and this fact has been proved that the Inquiry Officer was appointed much delayed, and, thereafter, the disciplinary proceedings were also concluded but delayed. The punishment order was passed by the appellate authority on 31st March, 1995 i.e. just on

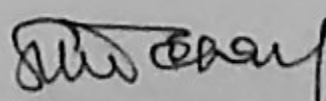
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the date of retirement of the applicant, resulting heavy financial loss to him on various accounts. The disciplinary proceedings were initiated on the basis of vigilance report and inquiry was concluded on 18th July, 1994 and disciplinary authority passed penalty on 18th July, 1994 and Appellate Order was passed on 31st March, 1995 and the applicant was remained involved for more than 15 years intentionally and his entire career of the applicant was ruined. The respondents filed the Counter Reply and they have not denied from this fact alleged in the O.A. although, they alleged inquiry was properly conducted, but there had been delay and it was only due to administrative reasons, but no reasons has been disclosed.

5. We are not required to decide that as to how the inquiry was delayed or as to why the false allegations were made against the applicant. The orders of punishment passed by the disciplinary authority as well as the order of the Appellate Authority were challenged by the applicant in O.A. No. 447 of 1996 Annexure-A-7 is the copy of the judgment passed by the Tribunal in O.A., and the O.A. was allowed and the punishment order dated 18th July, 1994 and Appellate Order dated 31st March, 1995

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were quashed, and it was also ordered that the applicant shall be paid the financial loss, which have occurred to him on account of punishment order. Alongwith the judgment of the Tribunal a representation was submitted to the respondents as the applicant had already retired hence whatever financial benefits were admissible to the applicant were required to be paid. But the financial losses were not properly calculated as per allegations of the O.A., hence the applicant had to file another O.A. No. 1167 of 2004 and this O.A. was also disposed of and it was ordered *"However, having regard to the facts and circumstances of the case and to the submission that the applicant has not been paid full financial loss suffered by him as per the order passed by the Tribunal, we dispose of the O.A. finally with direction to the competent authority to consider and decide the applicant's representation dated 30.10.2003 by means of a reasoned order to be passed and communicated to the applicant within four months."* The Tribunal in the subsequent O.A. ordered that benefits have not been paid to the applicant as per direction of the Tribunal in earlier O.A. No. 447 of 1996 and the same may be paid as per direction of the Tribunal in the earlier O.A. and as the allegation of the applicant. Under these



circumstances the matter had already been decided by the Tribunal, and now we have to see what are the benefits which are admissible to the applicant, and if the same could not be paid during his service as the disciplinary proceedings was kept pending against the applicant intentionally and deliberately for a period of 15 years.

6. It has been alleged by the applicant that the compliance of the order was made by the Divisional Superintending Engineer-II vide his letter dated 02nd December, 2003, issued a formal order in this connection. It has further been ordered that vide letter dated 14th January, 2004 the financial benefits be paid to the applicant grade ₹2,000-3,200/- on the basis of revised pay instead of in grade ₹2375-3500/-. The financial benefits in grade ₹2000-3200 were paid to the applicant. But payment has not been made in higher grades despite the representation. Respondents are not ready to pay financial benefits to the applicant in higher grades and that will be fixed on 2375-3500/- as requested by him. The applicant appeared in the written test on 10th August, 1981 at New Delhi and also appeared in the Interview on 19th September, 1991 but as per rules the result was not

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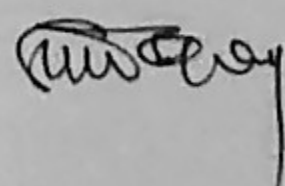
declared and was kept under seal cover due to pendency of the disciplinary proceedings against him. Whereas, juniors to the applicant were promoted in the grade of ₹2375-3500/- on the post of Chief Inspector of Works against restructuring of the cadre w.e.f. 01st January, 1993, and this fact has not been denied by the respondents under these circumstances applicant is entitled to the benefits of the Grade ₹2375-3500/- The applicant was entitled to be promoted in the higher scale from the date when his juniors were promoted in this Grade as Chief Inspector of Works, as the disciplinary proceedings were pending against the applicant hence the applicant could not be granted the benefits due to the pendency of the disciplinary proceedings. But when the applicant was exonerated by the Tribunal from all charges hence he is entitled for all the benefits from the date when his juniors were promoted. The applicant is entitled for promotion as Chief Inspector of Works in the grade of ₹2375-3500/- w.e.f. 01st March, 1993 and the applicant is also entitled for to the scale of ₹2375-3750/- as juniors were promoted to Assistant Engineer in that scale hence applicant is also entitled to that scale w.e.f. 07th October, 1991 and this fact has not been disputed by the respondents. A calculation

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has been carried out by the applicant at page No. 13 of the O.A. and according to that calculation sheet applicant is entitled for a sum of ₹1399.50/- as arrears of pay, 15,294/- as arrears of pay in the scale of Assistant Engineer w.e.f. 01st January, 1992 to 31st March, 1995, a sum of ₹ 58,083/- as arrears of pension, 3376/- as arrears of leave encashment, 8030/- as commutation of pension, Gratuity as ₹1,26,225/- and 62,865/- as amount of DCRG, hence the applicant is entitled for a sum of ₹1,47,648/- from the respondents along-with interest. The applicant has also annexed Annexure-A-2 copy of RBE No.114/2003 it is regarding rectification of administrative errors and it has been provided in the RBE *"In terms of provision of para 228 of the IREM Vol. I, 1989, the staff who lose promotion on account of administrative error, should on promotion be assigned correct seniority vis-à-vis their juniors already promoted, irrespective of the date of promotion. However, pay in the higher grade on promotion may be fixed proforma at the proper stage but no arrears on this account shall be payable as the concerned staff did not actually shoulder the duties and responsibilities of the higher post.* Learned counsel for the applicant argued that the respondents denied the actual payment of the arrears on

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the ground that the applicant actually did not shoulder the responsibility of higher posts. That there was no fault of the applicant in shouldering the responsibility and moreover, the applicant shouldered the responsibility of higher post as there was post against Chief Inspector of Works in Grade ₹2375-3500/- (RPS) Tundla which was pinpointed and earmarked for him. It has specifically been alleged that the applicant shouldered the higher responsibility to the best satisfaction but no benefit has been given to the applicant of the pay scale of this post on the ground that the disciplinary proceedings are pending against him. Hence applicant worked on the post of carries grade ₹2375-3500/-. Learned counsel argued that on the one hand applicant hired the responsibility of higher post and the contention of the respondents is wrong that as the applicant has not shouldered the responsibility of higher post, hence actual payment shall not be paid to him as per circular letter of the Railway Board, hence arrears of promotion is not payable to him. Hence, we are of the opinion that as the applicant had worked on the post of grade ₹2375-3500/- hence it can be said that the applicant shouldered the higher responsibility and he is entitled for to the differences and the circular letter of the



Railway Board is not applicable in the case of the applicant. Annexure-A-23 is the copy of the RBE No. 126/97 and it is relevant to reproduce the relevant portion of this Railway Board's letter *"For the period of notional promotion, his case for grant of arrears has also to be considered. While in the case of a serving employee that period will be the intervening period from the date of effect of notional promotion to the date of actual promotion, for a retired employee, this intervening period will be from the date of effect of notional promotion to the date of his retirement. The arrears of pay, wherever granted and the extent thereof, will also count for calculation of pensionary benefits of the employee concerned. Hence, in view of this circular letter also applicant is entitled for count of this period for calculation of pensionary benefits. Learned counsel further cited another REB No. 46/99 Annexure-A-24 it has been held in that "in terms of these instructions, an employee whose promotion was withheld on account of pending disciplinary/Judicial proceeding and who retires from service while the case is still pending eventually exonerated he would become entitled to notional promotion from the date he was due for such promotion. For the period of notional promotion his case for grant of arrears*

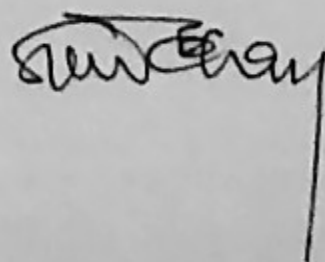
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has also to be considered. Hence, in view of this RBE also that period is also to be counted for the purpose of grant of arrears.

7. Learned counsel for the applicant also cited a judgment of Hon'ble Apex Court reported in 1993 SCC (L&S) 387 Union of India and others Vs. K. V. Jankiraman and Ors. it has been held by Hon'ble Apex Court that that *"We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that FR 17(1) will also be inapplicable to such cases."* Under these circumstances applicant is entitled to all the consequential benefits as he has been completely exonerated from the charges, hence he is entitled to the salaries of that period on the higher grade.

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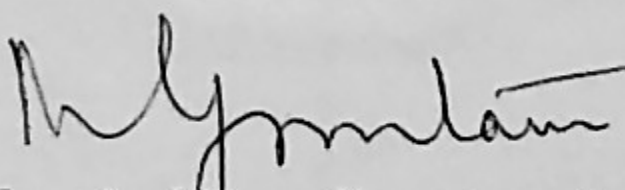
8. Learned counsel for the applicant also cited a judgment reported in ATJ 2005 (2) page 103 Sh. Ram Roop Sharma and anr. Vs. The General Manager, Northern Railway New Delhi and Ors. by Principal Bench, New Delhi and it has been held in this judgment "In the decision of the Hon'ble Apex Court in Abraham's case validity of Para 228 of IREM has been held valid and in a decision of the Karnataka High Court in WP No. 4427/2002 vires of para 228 was upheld but would apply only in a case where notional promotion is on account of an administrative error assignment of wrong relative seniority whereas, the decision of the Apex Court which is latest in Narshimha's case clearly hold that in normal circumstances when retrospective promotions are effect all benefits including monetary benefits flow from it." Under these circumstances and in view of the above judgments the applicant is entitled to all the benefits including monetary benefits. And the applicant is entitled to the differences of pay of promotion from the date when the juniors were promoted. It has not been alleged by the applicant that the calculation made by the applicant is incorrect hence we are of the opinion that the applicant is

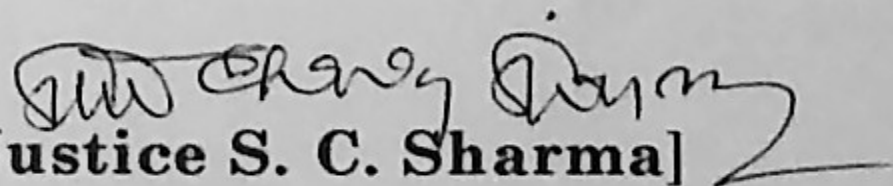


entitled for a sum of ₹1,47,648/- with interest @ 9% from the date of his retirement.

9 For the reasons mentioned above we are of the opinion that the O.A. deserves to be allowed. Applicant is entitled to all financial benefits which accrue to him. We are also of the opinion that the applicant shouldered the higher responsibility of the grade ₹2375-3500/- but it was not paid to the applicant and the applicant is entitled for that. O.A. deserves to be allowed.

10. O.A. is allowed, applicant is entitled to a sum of ₹1,47,648/- alongwith interest w.e.f. 31st March, 1995 till the date of his actual payment is made and his pension shall also be revised accordingly. The applicant is also entitled to a sum of ₹10,000/- as costs towards mental agony etc.


[Manjulika Gautam]
Member-A


[Justice S. C. Sharma]
Member-J

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