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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 254 OF 1992  
Cuttack this the 13<sup>th</sup> day of September, 1999

N. Appa Rao

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? Yes,
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? NO

Somnath Som  
(SOMNATH SOM)  
VICE-CHAIRMAN 13.9.99

G. Narasimham  
(G. NARASIMHAM)  
MEMBER (JUDICIAL) 13.9.99

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CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 254 OF 1992  
Cuttack this the 13th day of September, 1999

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN  
AND  
THE HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

...

N.Appa Rao, aged about 59 years  
Son of Late N.Tarrinaya, Reted. SMF(F) LOCO  
S.E.Railay, Khurda Road,  
At: Khurda Road, Dist: Puri, at present  
residing at Raja Bazar(Jatni) P.O: Jatni  
Dist: Puri

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Applicant

By the Advocates : M/s.G.C.Mohapatra  
J.M.Patnaik  
A.C.Das

-Versus-

1. Union of India represented by  
the General Manager, S.E.Railay,  
Garden Reach, Calcutta-43
2. Divisional Personnel Officer  
S.E.Railway, At/Po: Khurda Road  
Dist: Puri
3. Divisional Railway Manager(P)  
S.E.Railway, At/Po: Khurda Road  
Dist: Puri

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Respondents

By the Advocates : Mr.Ashok Mohanty

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ORDER

MR.G.NARASIMHAM, MEMBER(J): In this application filed under Section 19 of the Administrative Tribunals Act, 1985 by a retired railway employee claiming financial benefits in the promotional post with effect 1.1.1984, the admitted facts are that he preferred O.J.C. 1646/82 before the Hon'ble High Court of Orissa claiming seniority over Shri A.K.Mazumdar and Shri S.C.Bauri, who were impleaded as Opposite Parties 3 and 4 respectively in that O.J.C. Under Section 29 of the Administrative Tribunals Act, the O.J.C. had been transferred to this Tribunal and renumbered as T.A.278/86. The then Division Bench of this Tribunal disposed of the matter on 7.1.1987(Annexure-1) directing the Department to treat the applicant as senior in the cadre of Gr."C" over Res.3 and 4 and accordingly promotion should be given to the parties concerned. Before pronouncement of this judgment Shri A.K.Mazumdar was promoted to the post of SMF(F) on 1.1.1987. After receipt of the copy of the judgment in T.A.278/86, the applicant was given adhoc promotion in that cadre on 26.3.1990 where he retired on superannuation on 1.5.1991. Thereafter by order dated 23.5.1991 (Annexure-A/2) Respondent No.2 while giving promotion to the applicant as S.M.F.(F) in the scale of Rs.700 - Rs.900/- retrospectively with effect from 1.1.1984 purely on proforma basis at par with his immediate junior Shri A.K.Mazumdar directed that the applicant is entitled for current payment as S.M.F.(F) in the scale of Rs.700-Rs.900/-(RS)/Rs.2000-3200/-(RPS) only from 26.3.1990, i.e. the actual date of shouldering higher responsibility

as S.M.F.(F) The applicant thereupon preferred appeal under Annexure-A/3 which was turned down by Res.3 vide Annexure-A/4 dated 22.11.1991.

The case of the applicant is that he cannot be blamed for not discharging the actual duties in the promotional post with effect from 1.1.1984. Though he was senior to Shri A.K.Mazumdar <sup>and</sup> ~~he~~, was entitled to be promoted earlier than him, <sup>by</sup> ~~the~~ respondents/\_treating Shri Mazumdar as senior promoted him with effect from 1.1.1984. This Tribunal in judgment dated 7.1.1987 declared him to be senior to Shri Mazumdar and directed promotion should be given accordingly. Respondents <sup>by</sup>/\_giving due respect to this declaration of the Tribunal gave him promotion with effect from 1.1.1984 at par with Shri Mazumdar, his immediate junior. Had not the respondents wrongly treated Shri Makzumdar as senior to him, he would have been entitled to get promotion earlier than Shri Mazumdar. In other words, according to him, he was prevented from discharging the duties in the promotional post from 1.1.1984 on wards, though he was willing.

2. Respondents in their counter take the plea that since the applicant did not actually discharge the duties of promotional post from 1.1.1984 to 25.3.1990, he would not be entitled to draw the pay scale of promotional post during that period.

3. In the rejoinder the applicant more or less has reiterated the plea as taken in the Original Application.

4. We have heard Shri G.C.Mohapatra, learned counsel for the applicant and Shri Ashok Mohanty, learned senior counsel apparing for the respondents. Also perused the records.

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5. There is no dispute that the applicant is senior to Shri A.K.Mazumdar. Shri Mazumdar was promoted on 1.1.1984. Accordingly the applicant was entitled to be promoted to that cadre at least on 1.1.1984. In fact, respondents being aware of this legal position gave him promotion retrospectively from 1.1.1984. Question for consideration is whether the applicant would be entitled to draw the promotional scale of pay from 1.1.1984 to 25.3.1990, i.e., for the period he did not actually discharge the duties of promotional post. In other words, whether the well known principle of "No Work No Pay" can be made applicable to the applicant during that period.

The Hon'ble Supreme Court in K.V.Janakiraman case reported in AIR 1991 SC 2010 held that normal rule of "No Work No Pay" is not applicable to such cases where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This has also been reiterated by the same Court in the case of J.N.Sribatchha vs. Union of India reported in 1998 SCC(L&S) 1251. As earlier indicated, the applicant being senior to Shri A.K.Mazumdar, though was entitled to be promoted earlier than Shri Mazumdar was not promoted under a wrong impression by the Department that Shri Mazumdar was senior to the applicant and subsequently thereafter the Tribunal declared the applicant to be senior to Shri Mazumdar and that promotion should be given accordingly. Thus it is a case where the applicant though willing to work in the promotional post on his entitlement to such promotion earlier than Shri Mazumdar was kept away from work in that promotional post by the

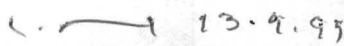
respondents for not fault of his.

5. We are, therefore, of the view that the applicant is entitled to promotional scale from 1.1.1984 to 25.3.1990 with consequential financial benefits till his retirement on superannuation.

6. In the result while allowing this Application we direct the respondents to settle pay of the applicant in the promotional post with effect from 1.1.1984 and disburse the arrear financial benefits to the applicant within a period of 90(Ninety) days from the date of receipt of copy of this order. There shall however, no order as to costs.

  
(SOMNATH SOM)  
VICE-CHAIRMAN

B.K.SAHOO

  
(G.NARASIMHAM)  
MEMBER(JUDICIAL)