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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A. No. 278 OF 1992

Date of disposal: April 6, 1993.

Govind Chandra Patnaik Applicant

Versus

Union of India and Others Respondents

For the Applicant ... M/s. Akhil Mohapatra,
P.C. Rout,
Advocates.

For the Respondents ... Mr. Ashok Mohanty,
Standing Counsel (Railway).

CORAM:

THE HONOURABLE MR. K.P. ACHARYA, VICE CHAIRMAN

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporters or not? No
3. Whether His Lordship wish to see the fair copy of the judgment? Yes.

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JUDGMENT

K.P.ACHARYA, V.C.

In this application under section 19 of the Administrative Tribunals Act, 1985, the petitioner prays to direct Opposite Parties 2 and 3 for payment of entire arrear dues to the petitioner in respect of the differential salary in different grades according to the entitlement from the date of retrospective promotion with other financial benefits and for payment of gratuity which was illegally recovered by the Opposite Party No.3 from the gratuity paid to the Petitioner.

2. Shortly stated the case of the Petitioner is that he was initially appointed in Eastern Railway and Posted at Mughalsarai in Danapur Division from 1953 to 1961. In the year 1961, the petitioner was transferred to South Eastern Railway on administrative ground and was posted in the Khurda Road Division. Seniority of the petitioner was affected as it was held by the concerned authority that such transfer was on own request. This grievance of the petitioner was redressed by this Bench in its judgment dated 12-1- 1987 passed in T.A. No.372 of 1986 contained in Annexure 1. In the said judgment this Bench held that the transfer of the petitioner was not on his own request but it was on administrative grounds. Therefore, the Bench directed for refixation of the seniority of the petitioner which was refixed but proforma promotion

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has been given to the petitioner with effect from due date disentitling the petitioner from his financial emoluments. In this application the petitioner prays that he was deprived of the promotional post and also deprived from working in the promotional post without any fault on his part but it was due to the erroneous view taken by the departmental authorities which was later rectified by the aforesaid judgment of this Bench. Therefore, the petitioner is entitled to full emoluments during this ~~period~~.

3. In their counter, the Opposite Parties maintained that on the principle of 'no work no pay' the Board has issued a Circular vide establishment Sl. No. 273/64 Circular No. P/R/14/257 dated 1-10-1964 in which it has been stated that wherever administrative error is committed in regard to refixation of seniority or promotion of an officer, the administrative error should be corrected and his seniority should be re-fixed and promotion should be given but only on proforma basis. Therefore, the present case being devoid of merit is liable to be dismissed.

4. I have heard Mr. A. Mohapatra learned counsel for the petitioner and Mr. Ashok Mohanty learned Standing Counsel (Railway) for the Opposite Parties. Mr. Mohanty strongly relied upon the aforesaid circular issued by the Board. I am not in agreement with the views expressed by the Board in the said circular. Once an

✓ administrative error has occurred for which the officer has suffered and such sufferance being not due to any fault on his part, the officer should not be deprived of his emoluments to which he would have been otherwise entitled to. Suppose a particular officer has been dismissed/removed from service, the punishment order is challenged before a court and the court quashes the order of punishment and orders re-instatement of the delinquent officer, is he not entitled to the backwages? the answer is being the affirmative. If so why? It is because an erroneous order or an illegal order was passed in removing the concerned officer. Similarly in a case of this nature, where the officer has been deprived of his promotion due to an erroneous view having been taken by the concerned authority and after such erroneous view has been quashed and the petitioner is given his due seniority etc. principle of no work no pay cannot be applied. as in the case of reinstatement after removal from service. Hence where the administrative error had been committed without any fault on the part of the petitioner and the court had specifically held that such transfer order was not on own request of the petitioner, but due to administrative exigency. In such cases it would be against all canons of equity, justice and fair play to deprive the petitioner of his emoluments to which he would have been otherwise entitled to.

legally entitled to. Therefore, it is directed that the petitioner Shri Govind Chandra Patnaik be paid all his emoluments in the promotional post as he was working on such promotional post. The amount should be calculated and paid (less already drawn) within ninety days from the date of receipt of a copy of the judgment.

5. Thus, the application is accordingly disposed of. No costs.



Lalji B.P.
6.4.1993
Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack/K. Mohanty/
6.4.1993.