

Order dated 30.3.2004

This Original Application has been filed by Shri N.V.Subba Rao, a retired Ass Engineer(Con.) under S.E.Railway, Vishakhapatnam with a prayer that the Respondents may be directed to pay in the scale of Rs.840-1040/- with effect from 1.5.1979 and to pay him differential arrears in pay & allowance with effect from 1.5.1979 to 15.10.1979 and other consequential financial benefits.

We have heard Shri P.K.Chand, learned counsel for the applicant and Shri R.C.Rath, learned Standing Counsel appearing on behalf of the Respondents.

The short question to be answered in this case is that as to whether the applicant, who, in pursuance of Office Order dated 20.10.1979 passed by the Respondents was granted promotion on proforma basis as I.O.W.(Spl.) in the scale of Rs.840-1040/- with effect from 1.5.1979 is entitled to the benefit of difference in actual pay and allowance for the period from 1.5.1979 to 15.10.1979. On behalf of the Respondents, it has been submitted that because it was a proforma promotion the actual pay is not to be disbursed. In this connection, the learned Standing Counsel for the Respondents have drawn our notice to Estt.Sl.No.102/2003 dated 25.7.2003 wherein it has been laid down that the staff who lose promotion on account of administrative error should on promotion be assigned correct seniority vis-a-vis their junior already promoted irrespective of the date of promotion. However,

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pay in the higher grade on promotion is to be fixed on proforma basis, but no arrears on this account should be payable as the concerned staff did not actually shoulder the duties and responsibilities of the higher post. Whereas there can be no dispute that the basic principle is that in case of proforma promotion, no arrear is payable to the concerned staff. But in the instant case, it was not the case of proforma promotion, but a case of promotion granted to the applicant retrospectively. In fact, the applicant was eligible for upgradation to the post of I.O.W.(Spl.) with effect from 1.5.1979 although he was granted the scale of that grade with effect from 15.10.1979. In the circumstances, it was a case of promotion in the same cadre and therefore, it was incorrect on the part of the Respondents to treat his promotion on proforma basis.

For the reasons discussed above, we hereby direct that the applicant's pay may be fixed in the scale of Rs.840-1040/- (in the grade of IOW(Spl.) with effect from 1.5.1979 and he be paid the actual/differential arrears of pay and allowances as due and admissible with effect from 1.5.1979 till 15.10.1979. The office order bearing No.P/Engg./W/24/2000 dated 20.10.2000(Annexure-R/1) is modified to the extent indicated above.

The Respondents are directed to effect financial benefits to the applicant within a period of 120 days from the date of receipt of this order.

The O.A. is allowed accordingly. No costs.

MEMBER(JUDICIAL)

VICE-CHAIRMAN 273