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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A.NO . 442 of 2004.

Cuttack, this the 24th day of February, 2006.

M. PUNAYYA

.....

APPLICANT.

VERSUS

UNION OF INDIA & ORS

.....

RESPONDENTS.

FOR INSTRUCTIONS.

1. Whether it be referred to the reporters or not? Yes.
2. Whether it be circulated to all the Benches of CAT or not? Yes.

(M.R. MOHANTY)
MEMBER (JUDICIAL)

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK.**

O.A.NOS. 442 of 2004.

Cuttack, this the 24th day of February, 2006.

C O R A M:-

THE HON'BLE MR.M.R.MOHANTY, MEMBER(JUDICIAL)

M. PUNAYYA, Aged about 50 years,
S/o. Late M.Appalaswami,
At present working as Fitter,Gr.I (C & W)
East Coast Railway, Puri,
At/PO/PS/DIST. PURI.

..... APPLICANT.

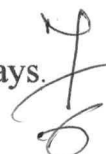
By legal practitioner:- In person
(Mr.N.R. Routray on amicus curie).

-VERSUS-

1. Union of India, through its General Manager,
East Coast Railway, Rail Vihar, Chandrasekharpur,
Bhubaneswar, Orissa.
2. The Divisional Railway Manager, East Coast Railway,
Khurda Road, At/Po: Jatni, Dist. Khurda.
3. The Divisional Mechanical Engineer,
East Coast Railway, Khurda Road,
At/Po:- Jatni, Dist:- Khurda.

..... RESPONDENTS.

By legal practitioner:- Mr. B.K. Bal, Counsel for Railways.



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ORDER

MR.M.R.MOHANTY, MEMBER(JUDICIAL):-

Applicant, a Fitter Gr. III in Railway service was placed under suspension w.e.f. 06-04-1989 pending drawal of a disciplinary proceedings against him. In the disciplinary proceedings that was initiated against him, the Applicant was visited with the punishment of "removal" and, in the said premises, he approached this Tribunal in Original Application No. 169 of 1990; which was disposed of on dated 07-01-1991 with the directions quoted herein below:-

".....In our opinion, the interest of justice would be best served if an enquiry be made into the charges leveled against the applicant and finalized within three months. The Applicant should cooperate and would make himself available for the progress of the disciplinary proceeding. Copy of the charges is served on the applicant in court today. In view of this the consequence would be that the order of removal cannot stand and is quashed. Subsistence allowance will be paid according to Rules till the conclusion of the Disciplinary Proceeding."

There after, on order dated 04-11-1998, the order of suspension (of Applicant) was revoked and he faced reversion to a lower grade for a period of one year. Applicant in the said premises, again approached this Tribunal in Original Application No. 156 of 1999 (challenging order of reversion dated 04-11-1998) which was disposed of by this Tribunal on 08-08-2000 with the following observations and directions:-

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"9. In the result, we quash the order of the Disciplinary Authority awarding penalty of reduction to lower stage in the same time scale for a period of one year and consequential direction to the extent that the order dated 04-11-1998 under Annexure-3 is also quashed.

9. Before closing we can take note of the fact that the applicant was kept under suspension from 31-03-1988 onwards till his reinstatement in November, 1998, yet the order of Disciplinary Authority is silent as to how this period of suspension would be treated. Be that as it may, since we have quashed the order of the Disciplinary Authority, the Department will pass necessary orders according to law on this matter within a period of 60(sixty) days from the date of receipt of a copy of this order".

The aforementioned orders of this Tribunal, were subjected to the judicial scrutiny of the Hon'ble High Court of Orissa in OJC No. 2926 of 2001 filed by the Railways and the said Writ application was dismissed on 04-10-2001.

In compliance of the orders of this Tribunal/Hon'ble High Court of Orissa and in order to remove the injustice done to the Applicant, the Respondents/Railways (vide corrigendum issued on 20-10-2003) made the following orders:-

**"CORRIGENDUM
PART-A**

In obedience to Hon'ble CAT/CTC's order on OA No. 156/1999, M. Pooniah vs. UOI, the suspension order issued was subsequently cancelled the period from 31.3.1989 to 03.11.1998 was treated as 'ON DUTY' vide the Disciplinary Authority/DME/KUR's No.M/RS/17/51/CE/1895/98/2931 dated 22-08-2003.

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Consequently by virtue of cancellation of this suspension & treating the period as 'ON DUTY' the consequential service benefits is considered as follows to have immediate effect.

PART-B

In partial modification to this office order No.93/05 dated 19-01-1993 Shri M. Pooniah Ex. Fitter Gr. III in scale Rs.3050-4590/- (RSRP) is promoted as Tech. Gr.II (Fitter) in scale Rs. 4000-6000/- (RSRP) wef. 19/01/1993 on proforma basis & actual monetary benefits wef 19/11/2001 i.e. the date of shouldering higher responsibility as per extent rules.

PART-C

Further in partial modification to this Office order No. 27/2001 dated 25-04-2000 Shri M. Pooniah Tech. II (Fitter) in scale Rs. 4000-6000/- (RSRP) is promoted as Tech. Gr.I (Fitter) in scale Rs. 4500-7000/- (RSRP) w.e.f. 25-04-2000 proforma basis & actual monetary benefits from the date of shouldering higher responsibility as per extent rules.

This has the approval of the competent authority.

Note:-

1. All other term & conditions related with such promotions stipulated in this office order Nos. quoted above shall remain unchanged.
2. Any arrear arising out of such promotion/should be drawn through supplementary bill.
3. The implementation of this order should be intimated to this office at the earliest.

Sd/Sr.Divl.Personnel
Officer/KUR"

Actual promotional benefits, on his retrospective promotion, having been denied to the Applicant, he carried the matter in appeal under Annexure-A/6 dated 12-04-2004. No order having been passed on the said appeal, the Applicant approached this Tribunal in the present Original

Application (filed under section 19 of the Administrative Tribunals Act, 1985) for direction to the Respondents to grant him financial benefits for the period between 13-02-2002 and 22-08-2003.

2. Respondents have filed their counter stating therein that, as he did not discharge his duties in the promotional post by shouldering higher responsibility, the Applicant has rightly not been paid the salary meant for the higher post and he was, therefore, only given proforma promotion retrospectively.

3. Heard the Applicant in person, Mr. N.R. Routray, Learned counsel appearing on amicus curie and learned counsel appearing for the Respondents and perused the materials placed on record.

4. As facts of this case are not in dispute, the learned counsel appearing for the respective parties addressed on the specific question as to whether one is entitled to back wages on his retrospective promotion to the next higher rank. By placing reliance on the judgment of the three Judges Bench of the Hon'ble Supreme Court of India rendered in the case of **UNION OF INDIA Vrs. K.V.JANKIRAMAN** (reported in AIR 1991 SC 2010), Applicant, who appeared in person, submitted that since, for no fault of his, he was kept away from his promotional post, he should not be

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deprived of any benefits including the salary of the promotional post; especially when promotion was granted retrospectively. This was vehemently opposed by Mr.B.K.Bal, learned counsel appearing for the Respondents/Railways stating that as the Applicant did not shoulder the higher responsibility in the promotional post, by applying the principles of the normal rule of "no work no pay", he is not entitled to any back wages.

5. Since the dispute remained only with regard to payment of the arrear financial benefits including salary in the Promotional post, anxious consideration to the issues (with reference to various judge made laws) were given at hearing of the parties. The issues with regard to payment of arrear salary in case of retrospective promotion is no more res integra. The Hon'ble Supreme Court in the case of Union of India vrs. K.V.Jankiraman (supra) held as under:-

"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 F.R. 17(1) will also be inapplicable to such cases."

This was the consistent view taken in the case of **H.S.Chandra Shekara**

Chari v. Divisional Controller, KSRTC and Others, reported in (1999) 4

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SCC 611=1999(3) SLJ 291(SC); **State of A.P. v. K.V.L. Narasimha Rao and Others** (1999)4 SCC 181=1999(3) SLJ 255(SC); **Paramjeet Singh v. State of U.P. and Others** (1998) 8 SCC 388; **Rabindra Kumar Battack and Another v. State of Orissa and Others** (1998)8 SCC 769; **J.N.Srivastava v. Union of India and Another** (1998)9 SCC 559 and a decision of the Delhi High Court in **Sunder Das v. The Management of M/s. Asthetic Exports Pvt. Ltd. and Others** 1985 (1) SLJ 577. No where in the counter nor in course of hearing the Respondents herein stated that, although asked to shoulder the higher responsibility in the promotional post, the Applicant declined to do so. The consistent view of different courts is that the normal rule of no work no pay is not applicable to such cases; where the employee, although is willing to work, is kept away from work by the authorities for no fault of his.

6. In the above view of the matter, there is no escape from the conclusion that the Applicant was illegally denied the benefits (including salary) in the promotional post. He is, therefore, entitled to the differential arrear salary in the promotional post for the period from 13-02-2002 to 22-08-2003; which should be calculated and paid to the Applicant within a period of three months from the date of receipt of a copy of this order.

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7. In the result, this Original Application succeeds by leaving the parties to bear their own costs.

M.R. Mohanty
24.02.06
(M.R. MOHANTY)
MEMBER (JUDICIAL)