O.A. No. 125 of 2007
Ram Behera ... Applicant
Versus
UOI & Ors. ... Respondents

O.A. No. 172 of 2007
Purusottam Sasmal ... Applicant
Versus
UOI & Ors. ... Respondents

O.A. No. 179 of 2007
Lingaraj Sundara ... Applicant
Versus
UOI & Ors. ... Respondents

O.A. No. 302 of 2007
Tarini Behera ... Applicant
Versus
UOI & Ors. ... Respondents

Order dated 18th November, 2009.

C O R A M
THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)
A N D
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)
.....

All the four applicants in these four applications are the retied Railway servants. Their grievance is also one and the same to the extent that after their retirement, vide order dated 15.12.2000 they were given promotion to the post of Fitter Grade-I/Loco with effect from 01.03.1993 on proforma basis without actual payment. They have taken up the matter with their authorities for payment of actual financial benefits on their retrospective promotion. Having received no favourable consideration they approached this Tribunal seeking direction to the respondents to fix their pay on promotional post with effect from 01.03.1993, to sanction and disburse the pension after fixing the pension on promotional post to disburse the

differential amount with effect from 01.03.1993 to the dates of their retirement and other consequential service benefits. The reason for non-payment of actual financial benefits in the event of their retrospective promotion and fixation of their pay on notional basis as explained in the counter filed by the Respondents in these four OAs is that the duties and responsibilities of Fitter Grade I/Loco are much higher than the duties and Responsibilities of the post from which the Applicants retired from service. As the Applicants did not shoulder the duties and responsibilities in the higher post of Fitter Grade I/Loco, their pay in the post of Fitter Grade-I/Loco was rightly fixed on notional basis instead of allowing them the actual financial benefits in the higher post in the event of their promotion retrospectively which order warrants no interference by this Tribunal. Accordingly, the Respondents prayed for dismissal of these OAs. By filing rejoinder, it has been prayed by the Respondents that applicants were promoted to the post of Fitter Grade-I in the scale of pay of Rs.1320-2040/- (RSPR) due to restructuring of old steam Loco and they are entitled to the benefits of notional promotion as admissible under South Eastern Railway Establishment Sl.Nos.13/93 & 49/93. Such promotion was given to the applicants after they became successful in the trade test retrospectively i.e. w.e.f. 01.03.1993 but instead of on actual basis on notional basis. Accordingly, the Applicants reiterated grant of actual financial benefits from the date of their promotion till the date of retirement and re-fixation of their pension.

2. Reiteration of their arguments having heard at length, perused the materials placed on record. There is no need to deal with all those arguments advanced by the respective parties as the issues involved in these four cases have received due consideration in numerous decisions of the Hon'ble Supreme Court rendered over a span of nearly two decades. Principles have been laid down and reiterated which the courts must apply while considering the question of payment of arrears in the event of retrospective promotion of an employee. It will suffice to quote the general principle which has been laid down by the Hon'ble Apex Court in the case of **Union of India v B.M.Jha**, 2008 (1) SLR 488 (SC) and held as under:

> "5. When a retrospective promotion is given to an incumbent normally he is entitled to all the benefits flowing there from. However, this Court in the case of **State of Harayana and others v D.P.Gupta and others**, JT 1996 (3) SC 141=1996 (7) SCC 533 and followed in the case of **A.K.Soumini vs State Bank of Travancore**, JT 2003 (8) SC 35= 2003 (7) SLR 1 (SC) has taken the view that even in case of a notional promotion from retrospective date, it cannot entitle the employee to arrears of salary as the incumbent has not worked in the promotional post. These decisions relied on the principle of no work no pay. The Learned Division Bench in the impugned judgment has placed reliance on the case of **State of Andhra Pradesh v K.V.L.Narasimha Rao and others**, JT 1999 (3) SC 205=1999 (2) SLR 352 (SC). In our view the High Court did not examine that case in detail. In fact, in the said judgment the view taken by the High Court for grant of salary was set aside by this Court. **Therefore, we are of the view that in the light of the consistent view taken by this Court in the above-mentioned cases, arrears of salary cannot be granted to the respondent in view of the principle of no work no pay in case of retrospective promotion."** (emphasis supplied)

3. In view of the above, we do not find any illegality in the order dated 15.12.2000 in allowing them notional pay instead of actual financial benefit in the event of their retrospective promotion to the higher post. It has been stated by the Learned Counsel for the Applicants that their pension and pensionary benefits have not been re-fixed/re-imbursed even after fixation of their pay on notional basis after their promotion to higher post. It is held that the Applicants are entitled to notional fixation of pay on their promotion to higher post which has rightly been **admitted** by the Respondents in **paragraphs 4, 6 and 7** of their counter filed in **OA No. 125 of 2007**. In the above premises, the Respondents are hereby directed to do the needful for re-fixation of pension of the Applicants after re-fixation of their pay in the promotional posts on notional basis w.e.f. 1.3.1993 and grant them the differential arrears of pension and pensionary benefits forthwith in any event within a period of ninety days from the date of receipt of the order.

4. In the result, these OA stands allowed to the extent stated above. No costs.

(JUSTICE K.THANKAPPAN)
MEMBER (JUDICIAL)

(C.R.MOHAPATRA)
MEMBER (ADMN.)