

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR

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O.A. No. 339/96

Date of order: 27-3-2002

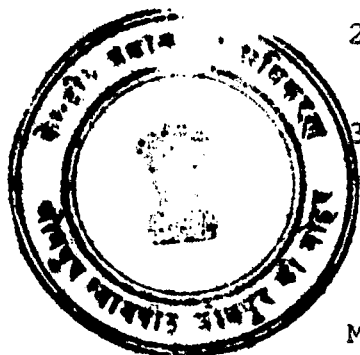
Champa Lal son of Shri Shiv Shankar aged about 60 years,
resident of Pipaji Mandir Ki Gali, Samdari, Distt. Barmer,
last employed on the post of Head Clerk in Loco Shed,
Samdari, Northern Railway.

...APPLICANT

V E R S U S

1. Union of India through General Manager,
Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway,
Jodhpur Division, Jodhpur.
3. The Divisional Personnel Officer, Northern Railway,
Jodhpur Division, Jodhpur.

...RESPONDENTS



Mr. B. Khan, counsel for the applicant.

Mr. S.S. Vyas, counsel for the respondents.

CORAM:

Hon'ble Mr. Justice O.P. Garg, Vice Chairman.

Hon'ble Mr. Gopal Singh, Administrative Member.

O R D E R

(per Hon'ble Mr. Gopal Singh, Adm. Member)

In this application under Section 19 of the
Administrative Tribunals Act, 1985, applicant Champa Lal,
has prayed for the following reliefs:

"(i) That the impugned order dated 8.2.96 (Annex. A/2)
rejecting the representation of applicant may be
declared illegal and the same may be quashed.. The
Respondent No. 1 to 3 may be directed to consider

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Champa Lal

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the promotion of applicant under Restructuring Scheme at par with his next junior with all consequential benefits.

(ii) That the impugned order dated 12.7.95 (Annex.A/1) passed by 3rd Respondent may be modified and the portion which denies the actual arrears on account of revised fixation may be deleted and the Respondent be directed to make actual payment of the arrears on a/c of re-fixation of pay of the applicant.

(iii) That the para 228 of IREM (Annex. A/3) framed by Railway Board so far it relates "No arrears on these account shall be payable as he did not actually shoulder the duties and responsibilities on the higher post", may be declared unconstitutional and the same may be struck down to that extent.

(iv) Any other order/direction/reliefs may be passed in favour of applicant which may be deemed just and proper under the facts & circumstances of this case.

(v) That the cost of this application may be awarded.



In Original Application No. 339/96, applicant has prayed for quashing the impugned order dated 8.2.96 (Annex.A/2) rejecting his representation for promotion with retrospective date as Head Clerk w.e.f. 1.1.1984, instead of 12.1.89. He has also challenged para 228 of Indian Railway Establishment Manual (IREM), vide Annexure A/3 so far it relates to denial of arrears, with further prayer for arrears of salary on such promotional post.

3. The controversy in this case was referred to the Larger Bench of the Central Administrative Tribunal for consideration as under:

"(i) Whether the applicants, who were not promoted earlier due to administrative lapse, on their retrospective notional promotion to higher posts subsequently with effect from the date their juniors have been promoted, would be entitled to arrears of pay and allowances with retrospective date;

a n d

(ii) Whether Para 228 of IREM is invalid and violative of Articles of 14 and 16 of the Constitution of India, as held by the Ernakulam Bench of the Central Administrative Tribunal in P. Thyagarajan vs. Union of India & Ors. (1992 (19) ATC 839), or whether Para 228 of IREM is valid and intra vires of the Constitution of India, as held by Jodhpur Bench of the Central Administrative Tribunal in Ramzan Ali vs. Union of India and others (1996 (2) SLJ (CAT) 135).

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The Larger Bench vide their judgement dated 11.2.2002 passed in O.A. No. 543/95 and the batch held as under:

" a) An employee who was not promoted earlier due to administrative lapse, on his retrospective notional promotion to the higher post subsequently with effect from the date his juniors have been promoted, would be entitled to arrears of pay and allowances with retrospective date, and

b) Para-228 of IREM in so far as the same denies an employee pay and allowances on the principle of 'no work no pay' even if an employee has been erroneously denied the actual work on account of the fault of the management is invalid and violative of Articles 14 and 16 of the Constitution of India."

4. It is seen from above that para 228 of IREM so far as the same denies an employee pay and allowances on the principle of 'no work no pay', though he has erroneously been denied promotion on account of default of the management, is invalid and violative of Articles 14 and 16 of the Constitution of India. In the circumstances, it has been held that an employee who was not promoted due to administrative lapse, on his retrospective promotion would be entitled to arrears of pay and allowances with retrospective date.

5. The applicant has also prayed for direction to the respondents for his promotion to the post of Office Superintendent-II grade Rs 1600-2660 (RPS), on the basis of modified selection procedure in the context of cadre restructuring w.e.f. 1.3.1993. Since this prayer does not directly emanate from the prayer challenging the provisions of para 228 of IREM, we are not expressing any opinion on merits of this prayer. The applicant would be at liberty to raise this issue with the respondent-department and in case he still feels aggrieved by the action of the respondent-department, he will be at liberty to approach the appropriate forum for redressal of his grievance.

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6. In the circumstances the O.A. deserves to be *partly* allowed.

Accordingly, we pass the order as under:

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"The O.A. is *partly* allowed. The impugned order dated 12.07.1995 (Annexure A/1) is modified to the extent that the applicant will be entitled to arrears of pay and allowances for the post of Senior Clerk, pay scale of Rs 330-560 (RPS) w.e.f. 9.11.1976 to 30.9.1980 and for the post of Head Clerk, pay scale of Rs 425-700/1400-2300 (RPS) w.e.f. 1.1.1984 to 11.8.1989. The respondents are given 3 months' time from the date of receipt of a copy of this order to comply with these orders. The parties are left to bear their own costs."

Gopal Singh

(GOPAL SINGH)
Adm. Member

Garg

(JUSTICE O.P. GARG)
Vice Chairman

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Part II and III destroyed
in my presence on 20.2.07
under the supervision of
section officer () as per
order dated 14.5.07

Section officer (Records)