

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

DATE OF ORDER: 31.8.1998.

O.A.NO. 102/1996

Bhagirath Prasad S/o Shri Radha Kishan, Permanent Way Mistry, Northern Railway Engineering Track Depot Sadulpur (District Churu), R/o C/o Parasa Ram General Store Pilani Road, Near Sadulpur, District-Churu.

..... APPLICANT
VERSUS

1. Union of India through General Manager, Northern Railway, New Delhi.
2. Divisional Railway Manager, Northern Railway, Divisional Officer Bikaner (Rajasthan).
3. Senior Divisional Personnel Officer, Northern Railway, Divisional Officer, Bikaner (Raj).
4. Divisional Personnel Officer, Northern Railway, Bikaner Division, Bikaner.
5. Assistant Engineer, Northern Railway, Sadulpur Jn. District - Churu.

..... RESPONDENTS

Mr. Bharat Singh

..... Counsel for the applicant.

Mr. Vivek Gupta Brief holder for
Mr. Ravi Bhansali

..... Counsel for respondents.

CORAM :

HONOURABLE MR. A.K. MISRA, JUDICIAL MEMBER

HONOURABLE MR. GOPAL SINGH, ADMINISTRATIVE MEMBER

PER MR. GOPAL SINGH :

The applicant Bhagirath Prasad has filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for issue of a direction to the respondents to modify the date from 31.8.1994 to 1.7.1979 in impugned orders Annexs. A/1, A/2 and A/3 and also to pay the monetary benefits of difference of pay and allowances w.e.f. 1.7.1979.

Gopal Singh

2. Applicant's case is that he was initially appointed as Gangman in the Engineering Branch of Northern Railway at Jetsar on 3.4.1965. He was selected as Permanent Way Mistry in terms of order dated 8.2.1977 and was promoted vide order dated 13.4.1977. The applicant was declared unfit in medical category A-3 but was found fit in medical category B-2 as per Divisional Medical Officer, Bikaner, Memo dated 18.6.1977. The applicant thereafter was reverted as Waterman. Feeling aggrieved, the applicant approached this Tribunal earlier vide Transferred Application No. 1701/86 which was decided on 11.11.1992. While disposing of that application, this Tribunal had observed :-

"5. In view of the above, we allow this application and direct that the applicant shall be appointed as Permanent Way Mistry from 1.7.1979, with all consequential benefits, in the vacancy caused by retirement of Shri Bechulal. No order as to costs."

When these orders of the Tribunal dated 11.11.1992 were not complied with, the applicant filed a Contempt Petition which was registered as C.P.No. 56/1993. Since the Tribunal's order dated 11.11.1992 were partly complied with in as much as the seniority of the applicant was correctly fixed and he was given pay fixation ~~notionaly~~ from 1.7.1979, the C.P. was dismissed by this Tribunal. The pay fixation was subsequently revised correctly vide orders dated 2.11.1995 and 11.11.1995, however the arrears on account of re-fixation were allowed only from 31.8.1994 instead of from 1.7.1979. The applicant had again approached this Tribunal vide O.A.No. 158/1995 and the Tribunal while disposing of this application by its order dated 24.5.1995 observed as under :-

"The learned counsel for applicant wants to withdraw the O.A. The OA is dismissed as withdrawn. The applicant has not made any representation to the Deptt. for payment of outstanding Bills. He will represent to the concerned authorities who may dispose of his representation within reasonable period say 3 months from now, with liberty to approach this Tribunal when his representation does not have any reply."

The applicant submitted representations dated 14.6.1995 and 12.7.1995 in this regard but the same have not so far been disposed

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of by the respondents. Feeling aggrieved, the applicant has again approached this Tribunal through the present O.A.

3. Notices were issued to the respondents and they have filed their reply.

4. We have heard the learned counsel for the parties and perused the record of the case. It has been contended by the respondents that in terms of this Tribunal's order dated 11.11.1992, the applicant has already been promoted as Permanent Way Mistry w.e.f. 1.7.1979 and his pay has been fixed vide order dated 2.11.1995, Annex.A/1. The applicant has also been assigned correct seniority vide order dated 11.11.1995, Annex.A/2. The payment of arrears on account of promotion and re-fixation of pay of the applicant has been contested by the respondents stating that the Tribunal has not passed any order that applicant will also be entitled for payment of arrears and, therefore, the applicant is not entitled for payment of arrears as claimed by him.

5. The only question to be decided in this case is whether the applicant is entitled to arrears of pay fixation on promotion w.e.f. 1.7.1979 in terms of this Tribunal's order dated 11.11.1992. The order dated 11.11.1992 of this Tribunal had directed the respondents that the applicant shall be appointed as Permanent Way Mistry from 1.7.1979 with all consequential benefits, in the vacancy caused by retirement of Shri Bechulal. We do not find any ambiguity in the above mentioned order. It is very clear that the applicant has to be given promotion w.e.f. 1.7.1979 with all consequential benefits. The consequential benefits would also include arrears on account of re-fixation of pay consequent upon promotion of the applicant w.e.f. 1.7.1979. Thus, the argument of the respondents that this Tribunal had not ordered payment of arrears on account of re-fixation of pay, is not tenable.

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6. The learned counsel for the applicant has also cited the following judgments/orders in support of his contention :-

- 1) 1997 (2) CAT SLJ 324 - Ram Niwas Vs. UOI.
- 2) 1993 S.C.C. (L&S) 387 - K.V.Jankiraman Vs. UOI.
- 3) 1993 ATC (24) 363 - Vasant Rao Raman Vs. UOI.
- 4) 1994 S.L.J. (CAT) 77 - C.D.Sharma Vs. UOI.

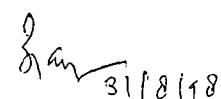
We have carefully gone through these judgments/orders and we find that the contention of the applicant for payment of arrears consequent upon promotion w.e.f. 1.7.1979 is well supported by these judgments/orders. We, therefore, do not find it necessary to discuss all these judgments/orders. As has been mentioned above, we are of the view that "all consequential benefits" would also include all financial benefits that would accrue to the applicant consequent to his promotion w.e.f. 1.7.1979. The learned counsel for the respondents could not produce any Rules/Government Instructions debarring payment of arrears on account of re-fixation of pay consequent upon promotion by way of consequential benefits.

7. In the result, we find that the O.A. has much strength and deserves to be allowed.

8. The O.A. is accordingly allowed with the direction to the respondents to pay the arrears on account of re-fixation of pay consequent upon promotion of the applicant w.e.f. 1.7.1979 in terms of this Tribunal's order dated 11.11.1992 passed in T.A.No. 1701/1986, within a period of **three months** from the date of issue of this order.

9. The O.A. is accordingly disposed of with no order as to costs.


(GOPAL SINGH)
Member
(Administrative)


31/8/18
(A.K. MISRA)
Member
(Judicial)

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