

Date of order: 31.03.1998.

1. O.A. No. 85/1997

Devi Ram S/o Shri Parma Ram Ji, By caste Jatav,
R/o 16/233, Chopasani Housing Board, Jodhpur and
Retired as Chief Ticket Inspector, Northern
Railway, Jodhpur.

..Applicant
Versus

1. The Union of India through its General Manager (P),
Northern Railway, Headquarter Office, Baroda
House, New Delhi.
2. The Divisional Railway Manager, Northern Railway,
Jodhpur.
3. The Divisional Personnel Officer, Northern
Railway, Jodhpur.

..Respondents

2. O.A. No. 86/1997

Madan Lal Malu S/o Shri Tulchha Ram Ji, by caste
Jhingar, R/o C-77, Kamla Nehru Nagar, Jodhpur.
Retired as Chief Ticket Inspector, Northern Railway,
Jodhpur.

..Applicant

Versus

1. The Union of India through its General Manager
(P), Northern Railway, Headquarter Office,
Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway,
Jodhpur.
3. The Divisional Personnel Officer, Northern Railway,
Jodhpur.

..Respondents

Copy to
Mr. Chandra Sekhar on behalf of Mr. M.C. Bhoot, counsel
for the applicants.

Mr. R.K. Soni, counsel for the respondents.

HON'BLE MR. A.K.MISRA, JUDICIAL MEMBER

HON'BLE MR. GOPAL SINGH, ADMINISTRATIVE MEMBER

•••

PER HON'BLE MR. A.K.MISRA :

In both the above cited O.As, the facts and the controversy involved are similar to each other, therefore, they are disposed of one single order.

2. The applicants have alleged that each of them had entered into service as Ticket Collector and were then promoted as T.T.I. and then Inspector of Ticket (Travelling). When the matter of further promotion to the post of Chief Inspector (Tickets) arose, the applicants were discriminated and therefore, they had filed two separate O.As before the Tribunal. Those two O.As were decided by the Tribunal on 26.3.1992 directing the respondents to assign the correct seniority to the applicants. Thereafter, seniority was assigned to the applicants. On the basis of the correct seniority, the applicants became entitled for promotion w.e.f. 1.1.1984 on account of implementation of cadre re-structuring. It is further alleged by the applicants that had the applicants being given promotion otherwise than by way of cadre re-structuring they could have been denied arrears of pay but the applicants were given promotion on account of cadre re-structuring with retrospective date. Therefore, they are entitled for arrears of pay as per rules applicable to promotion on account of cadre re-structuring. When the respondents did not

pay arrears to the applicants they served the respondents authorities with a notice for demand of justice. When the applicants were given no relief within the stipulated time, they again filed two separate O.As before this Tribunal which were disposed of vide order dated 19.2.1996 directing the respondents to decide the notice for demand of justice dated 12.11.1994 in accordance with rules within a period of three months from the date of receipt of the order. Thereafter, the respondent No.2 by its letter dated 10.12.1996 rejected the applicants claim, therefore, they had to file the present O.As. It is contended by the applicants that their claim for arrears is based on promotion on the basis of re-structuring, therefore, they are entitled for arrears. But the authorities by denying the same have deprived them of their rightful due and thus the applicants have been discriminated against the similarly situated other persons. The applicants have further prayed that the order dated 10.12.1996 (Annex.A/1) be quashed and the respondents be directed to pay arrears of emoluments to the applicants along with interest.

3. Notice of these O.As were issued to the respondents who have filed their reply stating therein ^{Seniority} that the applicants were assigned revised/and were given promotion with retrospective effect i.e. with effect from 1.1.1984 but they have been given benefits of pay with effect from the date the applicants actually joined in the promoted grade. It is further

alleged by the respondents that in the order dated 26.3.1992, the Tribunal had clearly stated that the applicants however shall draw pay in the higher post only from the date they actually start working and therefore, the applicants are not entitled for the arrears of pay. It is also alleged by the respondents that as per the direction of the Tribunal dated 19.2.1992, the notice for demand of justice dated 12.11.1994 was decided by the respondents in accordance with rules meeting all the points raised therein. Since the applicants had not worked on promotional post from the date they were promoted on proforma basis, therefore, they are not entitled for arrears of pay.

4. We have heard the learned counsel for the parties and gone through the records.

5. It is argued by the learned counsel for applicants that as per the direction of the Tribunal, the applicants were assigned seniority and consequently were given proforma promotion. Since the applicants were not promoted as and when their turn came, therefore, they were directed to be promoted from a particular date, hence, they are fully entitled for arrears of pay. He has cited (1992) 19 ATC 839 - P.Thyagarjan and Others Versus U.O.I. and Others ; 1993 (24) ATC 759 - Ramesh Chander and Another Versus R.S. Gahlawat and Others and the judgment delivered by this Bench itself in O.A. No. 293/1994 decided on 23rd May, 1996 in the case of Shri Ishwar Lal Versus Union of India and Others.

(14)

On the otherhand, the learned counsel for the respondents has argued that the applicants are not entitled to arrears of pay on account of proforma promotion. They are only entitled to pay of promotional post from the date they had actually worked on that post. Therefore, the claim of the applicants bears no merit. He has also argued that while deciding the earlier O.A.s, the Tribunal had specifically observed that the applicants shall however draw pay in the higher post only from the date they actually start working. This observation was not challenged by the applicants neither any review was sought in respect of such observation. Thereafter, proforma promotion was given to the applicants and they now cannot claim arrears of the pay of the higher post.

6. We have considered the rival arguments. The applicants were given proforma promotion from the back date on assignment of correct seniority by the respondents. The applicants had not actually worked on the promotional posts from the date they were given proforma promotion. Therefore, in our opinion they are not entitled for the higher pay of the promotional post from the date ^{earlier than} they had actually worked on the promotional post. So far as the rules, laid down in the rulings cited by the learned counsel for applicants there cannot be two opinions. However, in view of the specific direction of the Tribunal in the past relating to applicants, they are not entitled to arrears of pay as per the principles laid down in the cited rulings. As per the rules, on notional

promotion, the concerned employee is entitled to higher pay only from the date of actual working on that post. On being notionally promoted the applicant is only entitled for proforma fixation of pay as if he had been promoted on that date. Increments of the intervening period are also taken into consideration while fixing the pay but only on account of this the applicant cannot be said to be entitled to claim arrears for that period. In our opinion, the present O.As are devoid of any merits and are liable to be dismissed.

7. In the O.As filed by the applicants in the past it was specifically ordered that they should be notionally promoted, however, they shall be entitled to draw pay in the higher post only from the date they actually start working in those posts. Therefore, if the applicants were aggrieved of this order they should have preferred an appeal or review as the case may be but they had no reason to reagitate the matter by filing O.As repeatedly. This in our opinion amounts to abuse of the process of law. Therefore, the applicants deserve to be saddled with costs.

8. The O.As No. 85 and 86 of 1997 are, therefore, dismissed with costs ^{as per rules} at the stage of admission.

Se/-

Se/-

(GOPAL SINGH)
MEMBER (ADMN.)

(A.K. MISRA)
MEMBER (JUDL.)

MEHTA

प्रमाणित
सत्य प्रतिलिपि
- 17/3/98
प्रनुभास विविकारी (न्यायिक)
केन्द्रीय प्रसासनिक अधिकरण
जोधपुर न्यायपीठ, जोधपुर

R. Singh
(Contd. Pg. 2)
24/3