

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH, JODHPUR.

O.A. No.16/1998

Date of Order: 16.10.1998

Jagdish Chandra Mathur s/o Shri Sanop Chand, r/o 11/G 95 Chopasani Housing Board, Jodhpur, at present employed on the post of Asst. Personnel Officer, DRM Office, Jodhpur.

... Applicant

VERSUS

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

... Respondents

Mr. J.K. Kaushik, Counsel for the applicant.

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

CORAM:

Hon'ble Mr. A.K. Misra, Judicial Member

Hon'ble Mr. Gopal Singh, Administrative Member

O R D E R

Per Hon'ble Mr. Gopal Singh

Applicant, Jagdish Chandra Mathur, has filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for setting aside the impugned orders dated 6.9.1996 (Annex. A/1), dated 4.4.1997 (Annex. A/2) and dated 28.4.1997 (Annex. A/4) denying the arrears of actual payment to the applicant from 12.10.1994 to 26.11.1995 as also for issuing a direction to the respondents to arrange actual payment of the arrears for the said period alongwith interest at market rate.

Gopal Singh

2. Applicant's case is that he was initially appointed as Clerk on 13.12.1973 and was finally promoted as Office Superintendent on 1.8.1995. The applicant had participated in the Limited Departmental Competitive Examination for the post of Assistant Personnel Officer (for short, APO) in terms of the respondents letter dated 14.7.1993 and had qualified in the written test but could not appear in the viva voce test held on 26.9.1994 as he was hospitalised. On a representation from the applicant the case for conducting the supplementary test for the applicant was taken up with the higher authorities but the same was rejected. The applicant had approached this Tribunal earlier vide O.A. No.390/95. This Tribunal vide its interim order dated 13.9.1995 in the above mentioned O.A. had directed the respondents to hold a supplementary viva voce test for the applicant. The respondents held such a test and the applicant was declared successful and his name was placed in the panel for promotion to the post of APO. He has already been promoted as APO at Bikaner. The O.A. No.390/95 was finally decided on 23.1.1996 with the following observations:

"In view of the reasons given herein above, the holding of the supplementary viva voce test as per the interim direction of this Tribunal was justified and the O.A. is, therefore, allowed accordingly. The applicant shall be entitled to all consequential benefits. No order as to costs."

On a representation by the applicant dated 10.6.1996 claiming pay fixation and arrears of pay from 28.9.1994, the date from which his next junior was promoted, the respondents issued orders for proforma fixation w.e.f. 12.10.1994 and the arrears if any from the date of actual taking over the charge as APO vide their letter dated 29.8.1996/6.9.1996 (Annex. A/1) and the
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representation of the applicant was rejected. Feeling aggrieved by this action of the respondents, the applicant has approached this Tribunal through this 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 carefully.

5. In its order dated 23.1.1996 this Tribunal had ordered that the applicant shall be entitled to all consequential benefits. The only question to be decided in this case is whether the applicant is entitled to promotion to the post of APO from the date his junior has been promoted and consequential pay fixation benefits from that date or not. The learned counsel for the respondents have cited para 228 of IREM Vol.-I as also Railway Boards' Circular No. E(NG)63PM1/92 dated 15/17.9.1964 in support of their contention. It has been laid down in para 228 of IREM Vol.-I that "the staff who have lost promotion on account of administrative error should on promotion be assigned correct seniority vis-a-vis their juniors already promoted, irrespective of the date of promotion. Pay in the higher may grade may be fixed per forma at the proper time. The enhanced pay may be allowed from the actual date of promotion. No arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher post". Railway Boards' Circular mentioned above also stipulates that the enhanced pay be allowed from the date of actual promotion and that no arrears on this account be payable

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as he did not actually shoulder the duties and responsibilities of the higher grade post.

6. Railway Boards' Circular mentioned above came under scrutiny before the Ernakullam Bench of the CAT in the case of P. Tyagrajan and others Vs Union of India and others - (1992) 19 ATC 839 and the following provisions in the Railway Boards' Circular dated 15/17.9.1964 were set aside:

"No arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher grade post."

and it was held that the applicants are entitled to arrears of pay on the basis of their promotion from the retrospective date. It has already been held by this Tribunal in its order dated 23.1.1996 that holding of the supplementary test as per the interim direction of this Tribunal was justified and the applicant shall be entitled to all consequential benefits.

7. In the circumstances, we are of the view that the applicant is entitled to arrear of pay fixation from the date he was given proforma promotion.

8. In the result, the O.A. is allowed with the observations that the applicant is entitled to arrears of his pay fixation on his promotion to the post of APO from 12.10.1994, the date when his junior was promoted. This order should be complied with within a period of three months from the date of issue of this order. No order as to costs.

Gopal Singh
(Gopal Singh)
Administrative Member

May 16/10/96
(A.K. Misra)
Judicial Member

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH, JODHPUR

Original Application NO. 16/1998

Jagdish Chandra Mathur vs. Union Of India (and Others)

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जोधपुर अदालत, C.A.T. Ju.
प्राप्त दाखिल किया/Filed to day

13 JAN 1998

File No. 1998
13/1/98.
By Registrar

Jodhpur

JKK
J. K. KAUSHIK/BK KAYAMKHANI, ADVOCATES.

2, VIDYA PARK, JODHPUR (PH. 622861)

Counsel for Applicant

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH JODHPUR

Original Application No. 16/1998

Jagdish Chandra Mathur son of Shri Sanop Chandji, aged about 44 years, resident of 11/B 95 Chopasani Housing Board Jodhpur, at present employed on the post of Asst. Personnel Officer D.R.M Office Jodhpur.

Applicant

VERSES

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

Respondents

DETAILS OF APPLICATION :-

1. Particulars of order against which this O.A. is made :-

Annex No. Order No. and Date Passed by.

A/1 No. 729E/2013/EIE Dt. 6.9.96 1st. Respdt.

A/2 729E/2014/EIE Dt. 4.2.97 -do-

A/4 -do- 28.4.97 -do-

Subject in brief: Performa Fixation of Pay:

Payment of Arrears

Further the rule 228 IREM (earlier known as P.S. 2709) so far it far it provides that "No arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher post" is also challenged in this Original Application.

2. JURISDICTION:-

The applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of the Hon'ble Tribunal.

3. LIMITATION :-

The applicant further declares that the application of the humble applicant is within the limitation period as prescribed in Section 21 of the Administrative Tribunal Act 1985.

4. FACTS OF THE CASE:-

The Original Application of humble applicant most respectfully showeth as under:-

(1) That so far relevant to this original application, the applicant was initially appointed to the post of Clerk on 13.12.73 at Jodhpur. He enjoyed his further promotion as per the channel of promotion and became Office Supdt. on dated 1.8.95. He has been discharging his duties satisfactorily and efficiently with clean records. At present he is posted at Jodhpur.

जोधपुर न्यायालयी, C.A.T. JH.
राज्य वासित दिनां/Filed to day

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(2). That the a selection for the post of APO under 30% LDCE quota was organised vide letter dated 14.7.93.

~~copy of same is filed herewith and marked as Annexure~~

~~A/4~~ The applicant was fully eligible and was allowed to appear in the written test in which he qualified to for appearing in the viva voce vide letter dated 16.9.94. A copy of same is filed herewith and marked as Annexure A/5.

(3). That the applicant fell seriously ill on 1.9.94 and was admitted in Railway Hospital Jodhpur. He could

not appear in the viva voce test held on 26.9.94. The divisional authorities took up the matter with higher authorities for conducting a supplementary test but of no avail. The panel of three candidates was promulgated vide letter dated 7.11.94.

(4). That the applicant had no option except to approach this Hon'ble Tribunal vide O.A No 390/95. An ad interim order was passed on dated 13.9.95. A copy of same is filed herewith and marked as Annexure A/6. He was allowed to appear in viva voce test. The OA was allowed with all consequential benefits vide Judgement dt. 23.1.96. A copy of same is filed herewith and marked as Annexure A/7.

(5). That the applicant was empanelled vide order dt. 17.10.95 but his result was said to be provisional and subject to the outcome of OA. A copy of same is filed herewith and marked as Annexure A/8. He was also promoted to the post of A P O vide letter 17.11.95 and posted at Bikaner. A copy of same is filed herewith and marked as Annexure A/9. His promotion has also been regularised w.e.f. 17.11.95 vide dated July 96. A copy of same is filed herewith and marked as Annexure A/10.

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(6). That applicant vide letter dt. 10.6.96 claimed his pay fixation from dated 28.9.94 from which applicant's next junior Shri Sohan Lal was promoted. A copy of same is filed herewith and marked as Annexure A/11. However, the 1st respondent issued orders for performance fixation w.e.f. 12.10.94 and arrears if any from the date of actual taking over charge as APO. A copy of same is filed herewith and marked as Annexure A/1. He apprised the 1st respondent vide letter dt. 29.11.96

that the delay in his promotion was not due to his fault and thus he ought to have been paid the arrears also. A copy of same is filed herewith and marked as Annexure A/12.

(7). That his representation has been rejected vide letter dt. 4.2.97 taking the shield of para 228 IREM. A copy of same is filed herewith and marked as Annexure A/2. Para 228 of IREM to the extent of "no arrears shall be payable" is under challenge in this OA. An extract of A copy of same is filed herewith and marked as Annexure A/3. The matter was further reminded but the same has been again turned down vide letter dt. 7.4.97. A copy of same is filed herewith and marked as Annexure A/4. The applicant is faced with humiliation and frustration and his service career is going to be jeopardised for none of his faults.

5. GROUNDS OF THE APPLICATION :-

The Application of humble applicant is preferred on the following amongst other grounds :-

(A). Because in the first instance it is submitted that the circular of the Railway Board dt. 15/17-9-64 and rule 228 IREM denying the benefits of arrears as a result of retrospective promotion is highly unreasonable and discriminatory so as to be violative of Articles 14 and 16 of constitution of India. If the mistake has been committed by the Department in not-according promotion to an employee within time and ultimately when the mistake is rectified, then the employee has to be placed in a position as if he has promoted within time. But by the impugned circular the mistake committed by the department is sought to be

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perpetuated without any fault of the concerned employee. The impugned Rule 228 IREM is therefore highly unreasonable and deserves to be struck down, violative of Art 14 and 16 of Constitution of India.

(B). Because the impugned circular and rule 228 IREM is discriminatory as well. The persons, who are junior to the employee are allowed to be promoted on account of the mistake of the department and they are being paid salary in higher grade, but the senior is deprived of the salary in the event of rectification of the mistake. Thus the premium is put on the mistake committed by the department thereby placing the senior in disadvantageous position without any fault on his part. Thus the impugned circular and Rule 228 IREM is a case of hostile discrimination being practiced amongst similarly situated persons, and is therefore violative of Articles 14 and 16 of Constitution of India.

(C). Because the impugned circular and Rule 228 IREM is arbitrary as well. There is no reasonable nexus and purpose being this circular, and rule 228 IREM But the circular and rule 228 IREM on the other hand places premium on the mistake and illegality committed by the

department, the circular is therefore highly arbitrary and can be said to be violative of Art.14 and 16 of Constitution of India.

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(D). Because the case of applicant has been kept pending just on the vague and flimsy reasons. His junior is already allowed due fixation. The impugned orders to the extent of denying the actual payment of arrear for the period the applicant was prevented to perform his duties on the promotional post , is not sustainable



in law and they deserve to be quashed to that extent.

(E) Because this application is sustainable on many other legal grounds which the applicant craves leave to urge at the time of admission/hearing of this case.

6. DETAILS OF REMEDIES EXHAUSTED :-

The applicant has already exhausted all the remedies available under service rules. He does not have any other equally efficacious, speedy and adequate remedy except to invoke the jurisdiction of this Hon'ble Tribunal.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT :-

Except the cases mentioned in para 4(4) above, The applicant further declares that he had not previously filed any application, writ petitioner suit regarding the matter in respect of which this application is made before any court of law or any other authority or any other Bench of the Tribunal and nor any such application, writ petition or suit is pending

before any of them.

8. RELIEFS SOUGHT :-

In view of the facts and grounds mentioned in para 4 and 5, above the applicant prays for the following reliefs :-

(i) That the para 228 of IREM (Annexure 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

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posts." may be declared un-constitutional and the same may be struck down to that extent.

(ii). That the impugned orders dated 6.9.96, Annexure A/1, order dated 4.2.97 Annexure A/2 and order dated 28.4.97 Annexure A/4, so far they deny the arrears of actual payment to the applicant for the period from 12.10.94 to 26.11.95, may be declared illegal and the same may be quashed and the respondents directed to make the actual payment of arrears for the said period in cash along with interest at market rate.

(iii) That any other direction, reliefs or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case.

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

9 INTERIM ORDER IF, PRAYED FOR :- NIL

10 This application is being filed through his counsel.

11 PARTICULARS OF IPO SUBMITTED TOWARDS FEES .

IPO No:8-13-553338 Date of Issue:13.12.97

Issued by and payable at: Jodhpur

12 List of Enclosures:- As per index to this O.A.

HUMBLE APPLICANT THROUGH HIS COUNSEL

JKK
J. K. KAUSHIK/BK KAYAMKHANI, ADVOCATES
2, VIDYA PARK, JODHPUR (PH:622861)

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VERIFICATION

I , Jagdish Chandra Mathur son of Shri Sanop Chandji, aged about 44 years , resident of 11/6 95 Chopasani Housing Board Jodhpur , at present employed on the post of Asst. Personnel Officer D.R.M Office Jodhpur. do hereby verify the contents of para 1 to 4 and 6 to 12 as true and correct to my personal knowledge and para 5 and its sub-para ,believe to be true on legal advice and nothing material has been concealed or suppressed.

SIGNATURE OF APPLICANT

(Jagdish Chandra Mathur)

Attested by
SAC
Am

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कार्यालय/Filed to do

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By Register