के.प्र.म. (प्रक्रिया) नियमावली के नियम 22 के अन्तर्गत निः शुल्क प्रति

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH
JODHPUR

Date of decision : 15-9-2006

CORAM : **HON'BLE MR. KULDIP SINGH, VICE CHAIRMAN &**
HON'BLE MR. J. P. SHUKLA, MEMBER (A)

1. O.A.No.346 of 1999

Ram Kishan S/o Shri Mangat Ram, aged 45 years, Machine-man Grade – II, Wheelshop, Ticket No.862, Northern Railway Workshop, Lalgarh, Resident of Gali No.14, Rampura Basti, Lalgarh, Bikaner.

2. O.A.No.347 of 1999

Nav Ratan S/o Shri Madan Lal, aged about 43 years, Technician Grade II (Black Smith), Ticket No.219, Northern Railway Workshop, Lalgarh, R/o Harijan Basti, Pabu Bari, Bikaner.

3. O.A.No.348 of 1999

Prakash S/o Shri Ram Bux, aged 44 years, Technician-II (Fitter), Grade Rs.4000-6000, Ticket No.3012, Northern Railway Workshop, Lalgarh R/o L-1/2/12, New Railway Colony, Lalgarh, Bikaner-334004.

4. O.A.No.349 of 1999

Bishan Lal S/o Shri Akru Ram, aged about 43 year, Moulder Grade III, Ticket No.13, Northern Railway Workshop, Lalgarh, R/o Chote Guar, Harijan Basti, Near Pabu Bari, Bikaner.

5. O.A.No.350 of 1999

Abdul Aziz S/o Shri Amir Deen, aged about 43 years, Welder Grade II, Ticket No.2118, Northern Railway Workshop, Lalgarh, R/o Pathano Ka Mohalla, Phar Bazar, Bikaner.

Applicants

BY : Mr.Y.K.Sharma, Advocate.

Versus

1. Union of India through General Manager, Northern Railway, H.Q. Office, Baroda House, New Delhi.
2. Chief General Manager, Northern Railway, Baroda House, New Delhi.
3. Dy. Chief Mechanical Engineer (Workshop), Northern Railway, Workshop, Lalgarh, Bikaner.

.... Respondents

COMPARED & CHECKED

Present : Mr.Salil Trivedi, Advocate for Respondents.

ORDER

KULDIP SINGH,VC

Since the facts and point of law involved in the above five O.As. are common, we have decided to dispose the same of through a common order. For the facility of reference facts have been taken from O.A.No.346 of 1999 (Ram Kishan Vs. Union of India & Others).

The applicant has impugned the order dated 4/5.6.1999 (Annexure A-1), passed by the Respondent No.3, by which he has been denied benefit of arrears of pay and allowance on account of his promotion from retrospective date on the ground that he will be entitled to actual benefits from the date of taking over the charge and for earlier period, he has been granted only proforma fixation of pay and seniority etc. with a prayer to direct the respondents to pay him arrears of pay and allowances from the date of notional promotion in different grades with interest etc.

The facts as alleged by the applicant are that consequent upon a joint informal meeting of recognized Unions with Respondent No.2, it was agreed that Safaiwalas recruited in Workshop and working on the shop floor may be given channel of promotion towards Artisan side (Annexure A-2). This decision was circulated by Respondent No.3 vide letter dated 30.12.1987 (Annexure A-2).

However, the respondent no.3 did not implement the said decision properly due to some mis-understanding with the Unions. So, an O.A.No.89 of 1989 was filed before this Tribunal seeking a direction to the respondents to implement the decision, taken vide Annexure A-2. The O.A. was disposed of at admission stage, with direction to the

respondents to take a decision on the representation submitted by the Association within a period of 3 months.

Vide Annexure A-4 dated 13.7.1998, it was conveyed that implementation of the decision dated 10.11.1987 (Annexure A-2) be taken up with retrospective effect for opening the AVC of existing Safaiwalas towards Artisan side as it is just and reasonable because they cannot be made to suffer for delay which was not on their account. Thus, it was directed that Deputy CME (W), Bikaner, may be asked to implement the aforesaid PNM Decision with effect from 10.11.1987.

The applicant submitted a demand notice dated 24.9.1998 to the respondent no.3 to implement the decision dated 10.11.1987 retrospectively with all the consequential benefits including payment of arrears (Annexure A-5). The Respondent No.3 issued a general Notification on 29.10.1998 showing the names of those senior persons who will be affected by the change and gave them one months' notice to file objections, with a mention that the changes made in seniority will be treated as final, if no objections are received within the stipulated time.

Thus, decision was taken on 5.6.1999, that the persons who were working as Safailwala on the Shop Floor and who have been given benefit treating them as Artisan w.e.f. 31.1.1992, they will be treated as Khalasi w.e.f. 10.11.1987 and proforma seniority shall be assigned to them. However, the payment of actual benefits has been allowed only from the date of joining the post.

By order dated 5.6.1999 (Annexure A-1), applicant Ram Kishan has been assigned seniority over and above one Shri Vinod Kumar and promotion has been given to him from the same date as given to Shri

Vinod Kumar to different grades on the basis of old seniority. However, the applicant has been given only proforma promotion from retrospective date and the actual benefit has been granted only from the date of joining the post. Similar orders have been passed in respect of other applicants also.

Aggrieved against the non-payment of arrears of pay and allowances on account of retrospective promotion, the applicant approached this Tribunal by filing instant O.A with a prayer to issue direction to the respondents to pay him arrears of pay and allowances from the date he has been granted notional promotion along with interest.

The O.A was contested by the respondents by filing reply. They submit that since the applicant has not performed any duties on the post of higher responsibilities, he is not entitled for the wages for those higher responsibilities on the promoted post. The O.A. is pre-mature as no appeal has been submitted by the applicant. In pursuance of directions of this Tribunal in O.A.No.89/98, the applicant was given the due benefits. In terms of instructions contained in P.A.No.8984 (Annexure A-1), the payment of arrear from the retrospective date is not admissible to the applicant as he had not actually shouldered higher responsibilities on the post or has not performed the duties on the higher promoted post. Same is the position under the provisions of para 228 of IREM. Thus, he is not entitled for the wages for this post.

So, the issue involved in these O.As boils down to this - as to whether para 228 of the IREM is invalid and violative of Article 14 and 16 of the Constitution of India or whether same is valid and intra vires of the Constitution of India, to the extent it denies payment of arrears

of pay and allowances for retrospective promotion.

All the five O.As were allowed by a Division Bench of this Tribunal by a common order dated 12.4.2002, quashing the impugned orders, Annexure A-1, in so far as they denied arrears of pay fixation from a retrospective date with all consequential benefits. The respondents were directed to pay the arrears of pay fixation to the applicants from the date they have been given promotion to the Artisan category with reference to their juniors, within a period of three months from the date of receipt of certified copy of the order.

The respondents challenged the Order passed by this Tribunal through different writ petitions before the Hon'ble High Court of Judicature for Rajasthan at Jodhpur. Various decisions were cited before the Hon'ble High Court and one of them was Full Bench decision of this Tribunal in the case of Devi Lal Vs. Union of India & Others, decided on 11.2.2002, in which it was held that para 228-A of the IREM is invalid. The High Court did not agree with the view expressed by the Full Bench of this Tribunal and it observed that the view taken by Full Bench of the Tribunal holding para 228 of IREM as invalid and violative of Article 14 of the Constitution is not correct and it was held that same is intra vires of the Constitution. Thus, the Writ Petitions were allowed on 10.9.2003 and the order of this Tribunal was quashed and set aside to the extent of directing petitioners (Railway) to pay the salary from the back date. It was further directed that each Original Application shall be restored to its original number. A direction was issued to this Tribunal to give fresh decision keeping in view the fact that para 228 of the IREM is intra vires of the Constitution.

Thus, the Original Applications are before us once again for a fresh decision.

Even after the judgment of the Hon'ble High Court in these very cases, same issue cropped up in various other cases before the Tribunal as well as before the other High Courts as well. The latest judgment on this aspect has come in O.A.No.857 of 2005 (P.B.Narang Vs. Union of India & Others) decided by Principal Bench of this Tribunal on 19th April, 2006 wherein finding that there are conflicting views on the legality or otherwise of IREM No.228, it has been observed that assuming the decision of the Hon'ble Jodhpur Bench of the High Court is binding, but the Hon'ble High Court has also observed that "each case has to be dealt with on its own merit". Thus, the position regarding para 228 of the IREM as it stands today is that the same is not to be applied universally as a straight jacket formula. Each case has to be considered and decided on its own merit and as such in case of dispute, whether the actual benefits have to be given with retrospective effect or prospective effect to an employee on account of retrospective promotion, the decision has to be taken by the Court.

In the case of P.B. Narang (supra), the Tribunal has observed that paragraph 228 (1) of IREM – I provides that once due to an administrative error staff are over looked for promotion to higher grades due to wrong assignment of relative seniority of the eligible staff or full facts not being placed before the competent authority at the time of ordering promotions, each such case should be dealt with on its merits and those who lost promotions on account of administrative errors should on promotion be assigned correct seniority vis-a-vis their juniors already promoted. According to this judgment of the Principal Bench at Delhi, if an employee has been denied promotion due to administrative lapses such as on the basis of

wrong fixation of seniority, after rectification of the seniority, he has to be given benefit from the date juniors to him were given such benefit including arrears of pay and allowances.

Similarly in another O.A.No.2402 of 2004 (Subhash Chander & Another Vs. Union of India & Another) decided on 10.2.2006, by a Division Bench of Principal Bench, where the applicants were denied the arrears, it was held that where retrospective promotions are ordered, all benefits flowing there from having monetary benefits must be extended to such employees who have been denied such promotions on an earlier occasion.

However, the counsel for the ~~applicant~~ placed reliance upon a recent order passed by the Hon'ble High Court in C.W.P.No.76 of 2004 (Union of India & others Vs. Gaffar & Others), which has arisen out of O.A.No.380 of 1996 (Gaffar & Others Vs. UOI & Others), decided on 21.2.2002 by a Bench of this Tribunal. In that case also the dispute related to the regularisation of the employees from back date and grant of seniority and arrears of pay and allowances on the basis of such retrospective regularisation. The employees had claimed consequential monetary benefits on account of their retrospective regularisation. The Tribunal had disposed of the O.A. with direction to the respondents to accord all the consequential benfits to the applicants. Since the consequential benefits were not paid, a C.P. Was filed against the Department. The Department went in appeal against the order passed in O.A. As well as against the contempt proceedings by filing a C.W.P. The Hon'ble High Court had stayed the order regarding benefit of regularisation with retrospective effect. But ultimately, the Court on 7.8.2006, vacated the stay by observing as under : -

"Coming to the merits of the case, after hearing counsel for the parties we are prima facie satisfied that the respondents (petitioners) having regularized the respondents pursuant to relaxation of qualification, and the regularisation having made effective from 1.1.1988 respondents are entitled to the benefit of regularisation from the due date i.e. 1.1.1988 itself. In this view of the matter we vacate the order of stay dated 16.7.2004 and direct the petitioners to pay within three months the consequential monetary benefits pursuant to the regularisation pursuant to order dated 25.9.1995 with effect from 1.1.1988 subject to decision in this writ petition".

So, now after going through all these judgments / orders, we are satisfied that the entitlement of arrears to the employees on grant of promotion with retrospective effect depends on merits of each case and principle of "no work no pay" cannot be applied across the board, as an universal application.

Now we proceed to examine the entitlement of the applicants in this case for arrears of pay and allowances on their promotion to different grades from retrospective date. Learned counsel for the applicants has taken us through the order passed by the Department on 13.7.1998 (Annexure A-4), by which while disposing of the representation, the General Manager (P), has specifically recorded as under :

"I am of the view that the implementation of decision dated 10-11-87 with retrospective effect for opening the AVC of existing Safaiwalas towards artisan side is just and reasonable because they cannot be made to suffer for delay which was not on their account. Therefore, Dy. CME (W) / BKN may be asked to implement the aforesaid PNM decision with effect from 10-11-87 after giving a notice to those employees whose seniority will be affected by this change. Since the delay occurred on account of stand taken by the unions, no individual can be held responsible for the time lapse.

The representationist may be informed of my decision so that the orders of the Hon'ble CAT dated 15-4-98 could be implemented within the permitted time."

Thus, in a way the railway authorities had themselves recognized that

the applicants who were denied promotion because of administrative lapse are entitled to the arrears of pay and allowances with retrospective date and they are entitled to pay and allowances from the date they have been given promotion to the Artisan grade with reference to their juniors. Moreover, perusal of Annexure A-2 dated 30.12.1987, the basic policy decision, shows that the authorities have taken a conscious decision that the Safaiwalas working in the Shop, ***will be entitled to all the benefits, such as Khalasi, Khalasi Helper etc. in accordance with the letter of Head Office.*** Obviously, the term "all the benefits" would take within its ambit the payment of arrears of pay and allowances also. This basic decision does not talk of restriction on payment of arrears of pay and allowances and as such the respondents cannot be allowed to take shelter of para 228 of IREM, to deny benefit of arrears of pay and allowances.

Further, we find that issue of payment of pay and allowances on account of retrospective promotion is pending before the Hon'ble High Court at Jodhpur in the case of Gaffar (supra). Shri Gaffar & Others, have been granted benefit of arrears of pay and allowances as a result of orders passed by this Tribunal in their favour, in view of interim order passed by the Hon'ble High Court on 7.8.2006 in Civil Writ Petition No.37 of 2004.

In view of our above decision, we allow these Original Applications. The impugned orders, annexure A-1, in each case is quashed and set aside to the extent these deny benefits of arrears of pay and allowances to the applicants. The respondents are directed to grant the applicants the benefit of arrears of pay and allowances also on account of promotion to different grades ~~retrospectively~~ but

payment of same shall be subject to the final decision taken in the Writ Petition No.76 of 2004 (Union of India & Others Vs. Gaffar & Others). To be on safer side, the respondents may obtain an undertaking from the applicants for refund / adjustment of the arrears, if the decision of the Hon'ble High Court goes adverse to their interests. No costs.

Sd/-
[J.P.SHUKLA]
MEMBER[A]

Sd/-
[KULDEEP SINGH]
VICE CHAIRMAN

By. Registrar
C.A.T., JODHPUR

क.प्र.अ. (प्रक्रिया) नियमावली के नियम 22 के अन्तर्गत नि: शुल्क प्रति

CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH, JODHPUR.

COPY OF ORDER DATED 14-7-2004 PASSED IN MA NO.72/2004 IN

O.A. No. 346/1999 to 350/1999

RAM KISHAN & Vs. UNION OF INDIA & Ors.

04 Ors.

M.A. No. 72 /2004 in O.A. Nos. 346/1999 to 350/1999
(Ram Kishan & 4 Ors. Vs. UOI & Ors.)

Date of order: 14.07.2004

Mr. Y.K. Sharma, counsel for the applicants.

MA for restoration of the O.A. pursuant to judgement passed by the Hon'ble High Court filed by the applicant may be registered. Objection raised by the registry is waived off. However, the learned counsel for the applicant is directed to produce a copy of the judgement on the next date of hearing of the O.A.

COMPARED & CHECKED

2. In view of the judgement passed by the Hon'ble High Court, relevant portion which has been extracted in the M.A., the Original Application Nos. 346 of 1999, 347 of 1999, 348 of 1999, 349 of 1999 and 350 of 1999 shall stand restored to its original number. The Registry is directed to fix these cases for further order on 29.07.2004. The M.A shall stand disposed of accordingly.

Sd/-
(M.K. MISRA)
Administrative Member

Sd/-
(M.L. CHAUHAN)
Judl. Member

प्रमाणित सही प्रतिलिपि

15/7/04

अनुभाग अधिकारी (न्यायिक)
केन्द्रीय प्रशासनिक अधिकरण
जोधपुर

के.प्र.अ. (प्रक्रिया) नियमावली के नियम 22 के अन्तर्गत निः शुल्क प्रति

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,
J O D H P U R

O.A.NOS. 346,347,348,349 & 350 OF 1999

Date of Order :12th April, 2002.

1. Ram Kishan S/o Shri Mangat Ram, aged 45 years, Machine-man Grade - II, Wheelshop, Ticket No. 862, Northern Railway Workshop, Lalgarh, Resident of Gali No. 14, Rampura Basti, Lalgarh, Bikaner.

.....Applicant in OA No.346/1999

2. Nav Ratan S/o Shri Madanlal, aged about 43 years, Technician Grade II (Black Smith), Ticket No. 219, Northern Railway Workshop, Lalgarh, R/o Harijan Basti, Pabu Bari, Bikaner.

.....Applicant in OA No.347/1999

3. Prakash S/o Shri Ram Bux, aged 44 years, Technician-II (Fitter), Grade Rs. 4000-6000 Ticket No. 3012, Northern Railway Workshop, Lalgarh R/o L-1/2/12, New Railway Colony, Lalgarh, Bikaner 334004.

004.

.....Applicant in OA No.348/1999

4. Bishan Lal S/o Shri Akru Ram, aged about 43 years, Moulder Grade III, Ticket No. 13, Northern Railway Workshop, Lalgarh, R/o Chote Guar, Harijan Basti, Near Pabu Bari, Bikaner.

.....Applicant in OA No.349/1999

5. Abdul Aziz S/o Shri Amir Deen, aged about 43 years, Welder Grade II, Ticket No. 2118, Northern Railway Workshop, Lalgarh, R/o Pathano Ka Mohalla, Phar Bazar, Bikaner.

.....Applicant in OA No.350/1999

versus

1. Union of India through :
General Manager, Northern Railway, H.Q.Office, Baroda House, New Delhi.

2. Chief General Manager, Northern Railway, Baroda House, New Delhi.

3. Dy. Chief Mechanical Engineer (Workshop), Northern Railway, Workshop, Lalgarh, Bikaner.

.....Respondents in all OAs.

.....

Mr. Y.K.Sharma, Counsel for the applicants in all OAs.

Mr.Vinit Mathur,Counsel for the respondents in OA 346/99.
Mr.Salil Trivedi,Counsel for the respondents in OA 347/99
Mr.Kamal Dave,Counsel for the respondents in OA 348/99.
Mr. K.K.Vyas, Counsel for the respondents in OAs 349 & 350 of 99.

.....

C O R A M :

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)

The controversy involved and the relief sought in all these five applications is the same, therefore, all these applications are being disposed of by this common order.

2. Applicants' case is that the Respondent-Railways had opened a channel for promotion to Safaiwalas working in the Railway Workshop to Artisan category vide their letter dated 10.11.1987. However, the benefit of this promotional channel was not extended to the Safaiwalas because of some misunderstanding amongst the Unions and in the meantime, fresh recruitment to the post of Khalasi was

undertaken. It may be mentioned that Khalasi/Khalasi - Helper is the feeder category for promotion to the Artisan category. Since Safaiwalas working in the Shop Floors were eligible for promotion to Artisan category from 10.11.1987 itself but were not given this benefit, All India Scheduled Caste and Scheduled Tribe Railway Employees Association, Workshop Branch, Bikaner, approached this Tribunal vide O.A. No. 89/1998 praying for extending the benefit of new promotion channel with retrospective effect with all consequential benefits. This O.A. was disposed of by order dated 15.4.1998 with a direction to the Chief Personnel Office, Northern Railway, to take a decision on the representation dated 19.3.1997 within a period of three months. In compliance thereto, the representation was considered and the respondent - department issued promotion orders to the Safaiwalas working in the Shop Floors vide their order Annex. A/1 in the Artisan category. In this order, it was pointed out that the applicants' would not be entitled to arrears of revised pay fixation consequent upon their promotion to the Artisan category, they would, however, be entitled to payment in the higher pay scale from the actual date of taking over the charge of the higher post. Applicants have been demanding the arrears of pay fixation in the higher pay scale with reference to the date their juniors have been appointed as such. Hence, these applications

3. In the counter, it has been stated by the respondents that the applicants have been given the benefit of promotion channel to Artisan category and have been given promotion from the date their juniors have been promoted in the respective pay scale. It is also pointed

out by the respondents that they are not entitled to arrears of pay fixation on their promotion to the Artisan category in terms of Para 228 of the Indian Railway Establishment Manual, Vol. I. Hence, they have been denied the arrears of pay fixation. They have actually been given the benefit of higher pay scale from the date they have assumed the charge of the post on higher pay scale. It has, therefore, been urged by the respondents that there are no merits in the applications and all the applications are liable to be dismissed.

4. We have heard the learned counsel for the parties and perused record of the case carefully.

5. The question whether Para 228 of the Indian Railway Establishment Manual, is invalid and violative of Articles 14 and 16 of the Constitution of India, as held by the Ernakulam Bench of the Central Administrative Tribunal in P. Thyagarajan V. 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], was referred to a Larger Bench in Devi Lal Vs. Union of India and Ors. and the Batch. The Larger Bench sitting at Jodhpur, vide their judgement dated 11.2.2002, 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 arrers 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."

Thus, an employee who has been denied promotion because of administrative lapse and has subsequently been promoted from a retrospective date, would be entitled to full pay and allowances from the date his junior has been promoted. In the instant case also, the respondent-department has given effect to promotion of the applicants from the respective date of promotion of their juniors, they have, however, been denied actual financial benefits and the actual financial benefits have been extended only from the date of assuming the charge of the higher post. Thus, we are of the view that the applicants would be entitled to arrears of fixation of pay in the higher pay scale on actual basis from retrospective date of their promotion to the respective pay scale.

6. We also consider it appropriate at this stage to extract below, orders of the Chief Personnel Officer, Northern Railway, on the representation dated 19.3.1997 in compliance to the orders of this Tribunal dated 15.4.1998 passed in O.A. No. 89/1998 :-

"I have gone through the representation of the petitioners (Annnexure A-I) dated 19-3-97, addressed to CPO, Northern Railway, Baroda House, New Delhi. The representationists in their representation have demanded the promotion and

—.

benefit w.e.f. 10.11.87 as Artisan to the Safaiwalas working in Northern Railway Workshop/ Bikaner, in terms of G.M. PNM decision, which was communicated through letter No. 561-E/85-32/Pt.8/ EIIW dt. 10.11.87 and have also requested to take action against the persons who are responsible for not allowing the said benefit to them.

I have gone through the complete case and the letter No. 561-E/85-32.Vol.8 (EIIW) dated 10.11.87 issued to all Incharges of Northern Railway Workshops to adopt the practice to give channel of promotion to Safaiwalas working on the Shop Floor as is being followed in various workshops. According to this letter both the unions had agreed that Safaiwalas recruited in the workshops and working on the shop floor may be given channel of promotion to Artisan posts subject to relaxed educational qualification and passing the Trade Test prescribed for that particular category. This decision however was to apply to those Safaiwalas existing on the shop floor on date. This was agreed to and decided that orders to this effect will be issued to all concerned. In response to the aforesaid letter Dy. CME (W) Bikaner vide his letter No. 842E/Pt.2/147 dt. 1.1.88 transferred 22 Safaiwalas working on shop floor to PCO. But this proposal was not agreed to by the Local Union Office bearers of both the recognised unions and discussions were held at various levels on various dates, ultimately it was agreed to by both the recognised unions that if there is a specific decision of G.M. in 1988, then it should be implemented from 1988, if not, then from 1992.

The decision taken by Dy. CME(W)/BKN to give them the seniority as Khalasi w.e.f. 31.1.92 from the date they were posted in PCO by issuing the seniority list dated 3.10.96 is contrary to the decision dated 10.11.87.

The said 22 Safaiwalas working on the shop floor were rather entitled for the benefit in artisan category from the date decision for opening the channel of Safaiwalas was taken.

The said decision for not giving the benefit of advancement in the artisan category w.e.f. date of decision i.e. 10.11.87 is not only against the soul of the GM's PNM decision but also against the principle of natural justice.

I am of the view that the implementation of decision dated 10.11.87 with retrospective effect for opening the AVC of existing Safaiwalas towards artisan side is just and reasonable because they cannot be made to suffer for delay which was not on their account. Therefore, Dy. CME(W)/BKN' may be asked to implement the aforesaid PNM decision with effect 10.11.87 after giving a notice to those employees whose seniority will be affected by this change. Since the delay occured on account of stand taken by the unions, no individual can be held responsible for the time lapse.

The representationist may be informed of my decision so that the orders of the Hon'ble CAT dated 15.4.98 could be implemented within the permitted time."

7. It is clear from the above that the Chief Personnel Officer, Northern Railway, in his order has held that the implementation of the decision dated 10.11.1987 with retrospective date, is just and reasonable because they (applicants') cannot be made to suffer for the delay which was not on their account. Thus, even the respondents have admitted that the applicants are entitled to the actual benefit of the scheme from the retrospective date. In the light of what has been stated above, we find much merit in these applications and all the applications deserve to be

allowed. Accordingly, we pass the order as under :-

"All the O.As are allowed. The impugned orders at Annex. A/1, in so far they denied arrears of pay fixation from a retrospective date, are quashed and set aside with all consequential benefits. The respondents are directed to pay the arrears of pay fixation to the applicants from the date they have been given promotion to the Artisan category with reference to their juniors, within a period of three months from the date of receipt of a certified copy of this order. No order as to costs."

-sd-
(GOPAL SINGH)
Adm. Member

-sd-
(JUSTICE O. P. GARG)
Vice Chairman

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mehta

Part II and III destroyed in my presence on 11.4.14 under the supervision of section officer ( ) as per order dated 31.01.14

Section officer (Record)

प्रमाणित सही प्रतिलिपि
16/4/02
अनुभाग अधिकारी (न्यायिक)
केन्द्रीय प्रशासनिक अधिकरण
जोधपुर

17/4/2002

12.4.02