

क्र.प्र. वार्षिक नं. २००६/२००७ का नाम से दो अपराध निः शुल्क नं.

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH
JODHPUR**

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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**

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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 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).

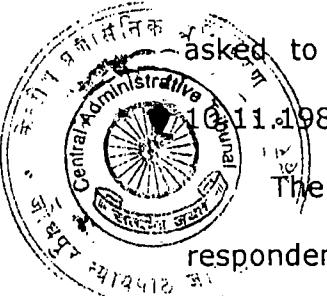
However, the respondent no.3 did not implement the said decision properly due to some mis-understanding with the Unions. So, an O.A.No.89 of 1989 was filed before this Tribunal seeking a direction to the respondents to implement the decision, taken vide Annexure A-2. The O.A. was disposed of at admission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

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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.

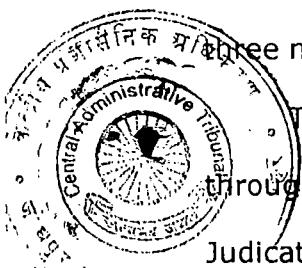
The O.A was contested by the respondents by filing reply. They submit that since the applicant has not performed any duties on the post of higher responsibilities, he is not entitled for the wages for those higher responsibilities on the promoted post. The O.A. is pre-mature as no appeal has been submitted 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

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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 overlooked 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.

for the parties also b
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 benefits 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 :



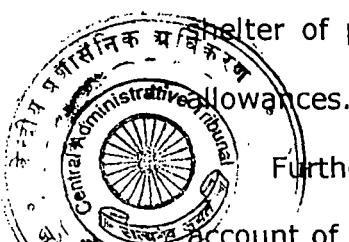
"I am of the view that the implementation of decision dated 10-11-87 with retrospective effect for opening the AVC of existing Safaiwalas towards artisan side is just and reasonable because they cannot be made to suffer for delay which was not on their account. Therefore, Dy. CME (W) / BKN may be asked 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 *with full date from which are forwarded* 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

18.9.06
Dy. Registrar
S. A. T., JODHPUR

Part II and III destroyed
in my presence on ... 11/4/14
under the supervision of
Section Officer () as per
order dated 31/12/13

Section Officer (Recd.)