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CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR.

DATE OF ORDER: 13/12/2002

ORIGINAL APPLICATION NO.: 29/2002

Kishtooram S/o Shri Bishna Ramji, aged about 61 years, R/o Baitu, Panji, District Barmer (Rajasthan). Ex Office Superintendent from Office of P.W.I. (West), Northern Railway, Barmer (Rajasthan).

...APPLICANT.

V E R S U S

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Jodhpur.
3. Divisional Personnel Officer, Northern Railway, Jodhpur.

...RESPONDENTS.

Mr. S.K. Malik, counsel for the applicant.

Mr. Manoj Bhandari, counsel for the respondents.



HON'BLE MR. A.P. NAGRATH, ADMINISTRATIVE MEMBER.
HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER.

: O R D E R :

Per Mr. A.P. Nagrath, Adm. Member:

This is the 5th occasion on which the applicant has felt it necessary to approach this Tribunal to have his legal rights enforced. He started his legal battle with the department from December 1981 and for every stage of his promotion i.e. to the post of Senior Clerk, Head Clerk and Assistant Superintendent, he had to seek redressal from the Tribunal. He has come again by filing this Original Application seeking promotion to the post of Office Superintendent Grade-I in the pay scale of Rs 6500-10,500 with effect from the date his next junior were so promoted. The date of promotion of his next junior shri Om Prakash Agarwal and shri Prahalad Kumar Meena is admittedly 19.09.1996

2. The respondents have filed a detailed reply resisting the

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claim of the applicant.

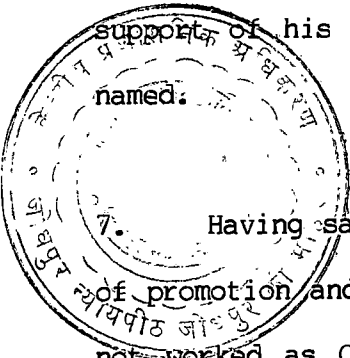
3. We have heard the learned counsel for the parties.

4. Shorn of all superficialities, the case now is confined to a short controversy i.e. whether the applicant who had not completed two years of service on 19.09.1996 in the grade of Assistant Superintendant in the grade of Rs 1600-2660 (revised pay scale of Rs 5500-9000) could claim to be promoted to the next higher grade from that date. It is not in dispute that his juniors have been promoted on that date. The only ground which the respondents have taken to oppose this claim is that the applicant had no occasion to hold the post of OS-II (the then Assistant Superintendant) and thus he cannot claim promotion because the promotion rules have specified a minimum length of service as two years before a railway servant can be considered for promotion to the next higher grade. The learned counsel for the respondents also raised a plea of non-joinder of necessary parties in as much as the juniors Shri Om Prakash Agarwal and Shri Prahlad Kumar Meena have not been impleaded as party respondents.

5. We find from the facts that the applicant has retired on superannuation on 30 September 2000. He could not have agitated this matter earlier as the claim for his promotion to the grade of Assistant Superintendant w.e.f. 31.10.1988 was still under scrutiny with the Hon'ble Rajasthan High Court where the respondents had filed a Writ Petition against the order of the Tribunal dated 26.03.1998. The Tribunal had granted relief to the applicant and had directed the respondents to promote him w.e.f. 31.10.1988 to the post of Assistant Superintendant. DB Civil Writ Petition No. 2746/98 filed by the respondents against this order of the Tribunal was dismissed vide order dated 26.05.2000 and the Tribunal's order was upheld. Apparently, no benefit of promotion to the post of OS-I has been granted to the applicant even after that date.

6. We do not find any force in the plea of the learned counsel for the respondents that the applicant cannot claim relief without impleading Shri Om Prakash Agarwal and Shri Prahlad Kumar Meena as respondents. Under the facts and circumstances of the case any relief granted to the applicant will have absolutely no impact on the status and position of these two persons who have actually held the post of OS Grade-I. For this reason, we do not consider it necessary to dwell into various judgements relied upon by the learned counsel in support of his contention for impleadment of the two persons above

named:



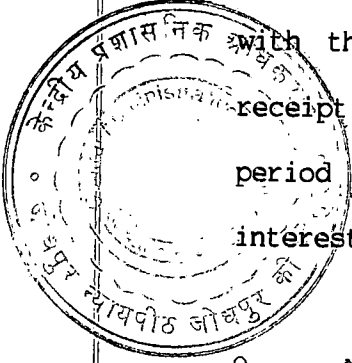
7. Having said that we find the only ground on which the benefit of promotion and pay is being denied to the applicant is that he had not worked as OS-II i.e. the next lower grade for a period of two years. This plea of the respondents betrays ignorance of the rules on their part. Para 215 in the revised Edition of 1989 of Indian Railway Establishment Manual, Vol.-I clearly provide that if a junior is eligible for promotion, his senior also will be eligible for such promotion even though he might not have put in a total service of two years or more. We have perused the relevant provisions and we find that this aspect has been clearly stated in para 215 (क) of the Hindi version of the rules. Apparently there was some omission in the English version which has also been made good by Railway Board vide their letter No. E(NG) I-97/PM-I/39 dated 07.08.1998 as corrigendum in IREM, volume-I (1989 Edition). Obviously, the respondents have illegally denied promotion to the applicant.

8. In the light of discussion aforesaid, we allow this Original Application and direct the respondents to consider the case of the applicant as having been promoted to the post of OS-I in the grade of Rs 6500-10,500 with effect from 19.09.1996 i.e. the date from which persons junior to him have been promoted. The applicant is entitled

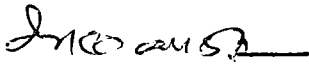
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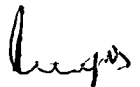
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to all consequential benefits which include arrear of pay from that date and resultant pensionary benefits. The respondents shall comply with this order within a period of four months from the date of receipt of a copy of this order. For delay in payments beyond the period of four months the applicant shall be entitled to receive interest @ 9% p.a.



9. No order as to costs.


(J.K. KAUSHIK)
Judl. Member


(A.P. NAGRATH)
Adm. Member

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Kumawat