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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH AT JODHPUR**

**O.A.NO.70 OF 2009**

Dated this the 8th day of August, 2012

CORAM

**HON'BLE MR. G. SHANTHAPPA, JUDICIAL MEMBER**  
**HON'BLE MR BK SINHA, ADMINISTRATIVE MEMBER**

Kapoor Chand, S/o Shri Raghuvir,  
Resident of C/o Shivdhar, Seth G.L.Behani  
Sanatan Dharma, Shiksha Trust, Sukhadiya Circle Chowk,  
Sriganganagar (Rajasthan)

Last employed on the post of RR Cook  
in the office of Station Superintendent  
North Western Railway, Sriganganagar.

...Applicant

(By Advocate Mr. J.K.Mishra)

Vs.

1. Union of India through General Manager,  
North Western Railway, Jaipur Zone, Jaipur.
2. Divisional Personnel Officer, North Western  
Railway, Bikaner Division, Bikaner.
3. Divisional Finance Manager, North Western Railway,  
Bikaner Division, Bikaner.

.....Respondents

(By Advocate Mr. Vinay Jain)

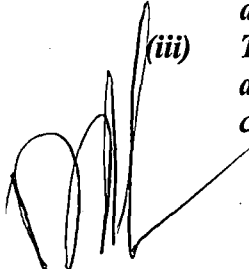
**ORDER**

**Per: B K Sinha, Administrative Member**

The OA is not directed against any impugned order but for grant of promotion to the applicant to the post of Cook in the scale Rs. 4000-6000 as per promotion order dated 26.6.2008.

**Relief(s) sought:**

- (i) *That the respondents may be directed to treat the applicant as promoted to the post of RR Cook in the pay scale of Rs. 4000-6000 and fix his pay at Rs. 4500 w.e.f. 26.6.2008 in pursuance with order dated 26.6.2008 (Annexure.A2) and to allow all the consequential benefits including revision of retrial benefits granted via PPO No.302333 at Anexure.A1 and the arrears of difference be paid along with market rate of interest.*
- (ii) *That the Circular No.5668 dated 3.6.72 (Annexur.A4) may be declared as unconstitutional and the same may be struck down.*
- (iii) *That any other direction, 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 in the interest of justice.*



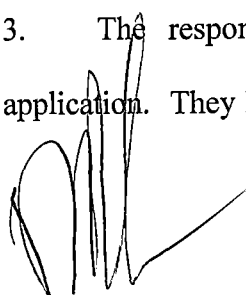
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***Case of the applicant:***

2. The applicant was initially appointed as Cook at Sriganganagar Railway Station on 19.2.1972 in a scale Rs. 196-232 which is also applicable to the Running Room Bearer. However, during the period from 1.12.77 to 7.1.82 the applicant was given officiating allowance of RR Cook in scale Rs. 210-270. On promotion as RRC Cook he was paid in the scale Rs. 950-1500/3050-4590 from 1993 and retired from service on 30.6.2008. When he was working as RR Cook in scale 3050-4590, he was officiating a promotional vacant post of RR Cook in scale 400-6000 for over two years. On 11.6.2008 he was subjected to a trade test for promotion to the scale Rs. 4000-6000. He qualified and posted at Safety Camp Lalgahh w.e.f. 26.6.2008.[A2]. However, even though he was willing to go to Lalgahh, he was not relieved and competent authority allowed to continue at the present place in the scale Rs. 4000-6000 at Rs. 4500, in view of his impending retirement on 30.6.2008.[A3]. There is a provision that one could be given promotion at the same station if one is at the verge of retirement. However, he retired in the scale Rs. 3050-4590 at Rs. 4350 on 30.6.2008[A1]. Since he was not allowed to take charge in the promotional post, his pension calculation was made in the lower scale Rs. 3050-4590. When he contacted the competent authority, he was told, that since there was no fault on his side, he would be getting the due fixation and benefits, but he did not get any benefit of fixation on the higher scale. He submits that he was willing to join the promotional post but he was not allowed to do so, which is illegal, arbitrary and cannot be sustained under law. The applicant further states that there is no intelligible differentia for providing separate class in case one could not be relieved in the interest of service for joining to give effect to the promotion on transferred place and the one who was not promoted for other administrative reasons.

***Case of the respondents***

3. The respondents filed a counter affidavit opposing the averments in the application. They have stated that the applicant was actually initially appointed as RRB



in the grade of Rs.70-85 on 19.2.1972 and not as a Cook. Later on vide office letter dated 6.2.1984 he was posted as RR Cook on adhoc basis in the grade Rs.210-270. As per this order he was never paid officiating allowance from 1.12.1977 to 7.1.1982. Applicant was regularized in the post of RR Cook w.e.f 4.1.1994. He was promoted on the panel of RRC in the grade of Rs. 950-1500/3050-4590 w.e.f. 8.2.2005. The respondents have refuted the allegation that the applicant was officiated as RR Cook in the grade of Rs. 4000-6000 before 26.6.2008 when he was issued with the promotion orders on the basis of his suitability. They submit that the applicant has qualified in the suitability test held on 11.6.2008 and this order was issued on 26.6.2008. They state that the contention of the applicant that the controlling in charge has not relieved him is not correct, rather the applicant was not interested to take charge of the promotional post as he is to retire after 4 days ie., 30.6.2008. They have refuted the allegation that one post of RR Cook was available at Sriganganagar stating that which post was occupied by an incumbent. They have stated that in terms of II Qrs. Instructions circulated vide office letter dated 24.7.2007 no floating of post is permissible. [R2]. He has not represented to the higher authorities for non-relieving by the controlling officer. Since the applicant has not joined at Lalgah, he is not entitled to get the benefit of promotional post.

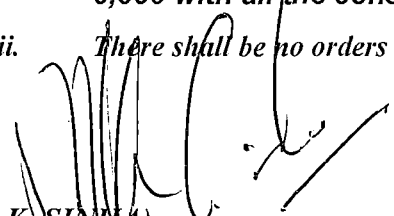
4. Having heard the learned Counsels appearing for the parties and having gone through their respective pleadings the only fact-in-issue that emerges is that whether having promoted the applicant late the respondents are justified in pleading that ~~the~~ since the applicant did not join at the new place of posting on promotion his promotion does not take effect. Here it is well admitted that the order of promotion was issued on 26.6.2008. The applicant claims that it was received on 30.6.2008 and when he wanted to be relieved he was not relieved to join at his new place of posting. This is denied by the respondents who submit as per their CA that the applicant did not make any such request for joining at his new place of posting and the question of the same being not permitted by the respondents does not arise. It appears to have devolved into a case of oath-against oath. Let us assume, for the sake of argument, that the respondents are

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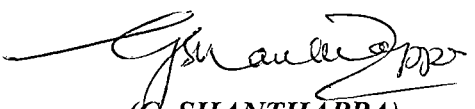
correct and that the applicant did not seek permission to join at the new place of posting as has been averred by him and hence the question of denial of permission does not arise. However, the question that remains open ended is that that does the duty of the respondent as employer end with this assertion. Admittedly, the order was issued on 26.6.2008 and was received by the applicant on 30.6.2008 making allowance for the time taken in issue and delivery. Was it feasible for the applicant to join on the last day of the month, on the date of his retirement? It has also to be considered that the applicant is not well educated and barely literate and cannot be expected to understand the full implications of his act. It also holds good that the Railways claim to be and are to a certain extent model employers. Such model employers are expected to fully understand the implications of their orders in all its aspects and also safeguard the interest of the employees as well. The least that the model employers could have done was to grant him a posting at the same station. If a post did not exist a post or supernumerary post could have been created for a day. It is evident that no one bothered to safeguard the interest of a Cook.

5. It is to be understood that there is not much benefit that the applicant stands to derive from this promotion and, even if it were, the demand of justice is that it should be ensured for the applicant. It is a classic case of '*justice vrs law*' and it is the bounden duty of this Tribunal to correct the travesty that has already occurred. Hence, the Tribunal has no hesitation to order:

- i. ***That the respondents are directed to treat the applicant as having been promoted to the post of RR Cook in the scale of Rs. 4,000-6,000 with all the consequential benefits that arise from the same;***
- ii. ***There shall be no orders as to the cost;***

  
(B K SINHA)  
ADMINISTRATIVE MEMBER

pps

  
(G. SHANTHAPPA)  
JUDICIAL MEMBER