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**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Original Application No.394/2009

Reserved on 25.09.2014.

Pronounced on 30/10/2014.

**HON'BLE MR. NAVNEET KUMAR, MEMBER (J)
HON'BLE MS. JAYATI CHANDRA, MEMBER (A)**

Om Prakash Gupta, aged about 54 years, S/o Late Jiya Lal, R/o 209 Cha/2, Durvijayganj, Lucknow.

...Applicant.

By Advocate: Sri Amit Verma holding brief for Sri A. Moin.

Versus.

Union of India through

1. General Manager, Northern Railway, Baroda House, New Delhi.
2. Workshop Electrical Engineer, Northern Railway, Charbagh, Lucknow.

...Respondents.

By Advocate: Sri D.B. Singh.

O R D E R

Pre Ms. Jayati Chandra, Member (A).

The present Original Application has been filed by the applicants under Section 19 of the Administrative Tribunals Act, 1985 with the following relief(s):-

“(i). to direct the respondents to pay the actual arrears of pay of the post of Junior Engineer-II grade r.132—2040/- (as amended from time to time) with effect from 1.8.1993 with interest @ 18% p.a. on the arrears of pay.

(ii). to direct the respondents to pay the arrears of the post of Junior Engineer w.e.f. 28.05.1996 with interest @ 18% p.a. on the said arrears of pay.

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(iii). To direct the respondents to pay the cost of this application.

(iv). Any other order which this Hon'ble Tribunal deems just and proper in the circumstances of the case be also passed."

2. The facts of the case as averred by the applicant are that the applicant was eligible for appearing in the recruitment of Intermediate Apprentice Mechanics for TL grade Skilled Artisans as per the terms and condition of the Notification dated 07.12.1991. He had appeared in the same but for the reasons which are not relevant at this point of he was not declared successful. The applicant preferred an O.A.No.283/1992. The OA was decided by this Tribunal on 24.05.1999 in favour of the applicant. The operative portion of the order reads as below:-

"Para-8.

In view of the discussions made above, we hold that the cancellation of the result by the Chief Electrical Engineer is violative of para 215 (K) of the Indian Railway Establishment Manual, and therefore, the order cancelling the said result is hereby quashed. We direct the respondents to announce and publish the final result of selection held in pursuance of the notification dated 7.12.91. We also direct that in case, on such publication of the result, the applicant is found selected, he be promoted and given all consequential benefits. Compliance of this order be made within two months from the date of communication of this order costs easy."

3. Thereafter, the respondents preferred a Writ Petition No.532/2000, which was dismissed by an order dated 25.4.2000. Thus the order of the Tribunal became final as

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no SLP was filed by the respondents. As the respondents did not comply with the order of the Tribunal, the applicant filed a C.C.P.No.10/2000. It is only after filing of the CCP that the respondents passed an order dated 10.05.2000 by which the applicant was declared as selected and sent for 1½ years training. Subsequently, the applicant completed his training and by means of an order dated 15.1.2002 the applicant was promoted as Junior Engineer Grade-II Rs.1320-2040/- w.e.f. 01.08.1993 (Annexure-5). By means of an order dated 30.4.2002, the pay of the applicant was fixed on the post of Junior Engineer Grade-II notionally w.e.f. 01.06.1993 but the actual arrears of pay were not given to the applicant. By means of second order dated 14.3.2002 the applicant was further promoted as Junior Engineer Grade-I w.e.f. 28.5.1996 but again the said promotion was made on notional basis (Annexure A-7) and no arrears were paid to him. Thereafter, by means of an order dated 07.06.2004 the seniority of the applicant was also reassigned taking into consideration his promotion as Junior Engineer Grade-II w.e.f. 1.8.1993. The applicant had filed the C.C.P. on the ground that the compliance of the order dated 24.05.1999 passed in O.A.No.283/1992 whereby all the consequential benefits were granted to the applicant and he is also entitled for the arrears of actual salary, which was due to him based on his due date of promotion. However, during the pendency of the CCP the respondents took a further plea relying on Para- 228 of IREM that the above provision provides for payment of monetary benefits from the date of actual date of shouldering responsibilities. This view is totally erroneous in view of the order dated 24.05.1999 passed in O.A.No.283/1992.

4. The respondents have contested the claim of the applicant by filing their Counter Affidavit, denying the claim of the applicant on two grounds. Firstly, the respondents have stated that the applicant was accorded promotion w.e.f. 11.05.2000 and his pay was notionally fixed at par with his juniors by means of order dated 15.01.2002. If the applicant was aggrieved by this order, it was open to him to challenge the same immediately on receipt of the order. However, the applicant had chosen to keep silent. The applicant had filed the C.C.P.No.10/2000 which was dismissed by an order dated 20.07.2009. The filing of such C.C.P. was no debarment to the challenging of the order dated 15.01.2002. The present OA has been filed without any delay condonation prayer. As such, the OA is highly time barred as per Section-21 of the Administrative Tribunals Act, 1985.

5. Coming to the merits of the case, the respondents have stated that the order of the Tribunal was passed in the O.A.No. O.A.No.283/1992 has been complied in letter and spirit inasmuch as the applicant has been given promotion as Junior Engineer Grade-II Rs.1320-2040/- w.e.f. 01.08.1993 and Junior Engineer Grade-I w.e.f. 28.5.1996 in accordance with his revised seniority. Moreover, his seniority has also been revised and the applicant has not challenged the said revised seniority. There is no specific order of the Tribunal, which override the provision of the Para-228 of IREM in as much as that there is no specific direction to pay the back wages.

6. The applicant has filed a Rejoinder reply more or less reiterating his contentions as raised in the OA.

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7. During the course of hearing the learned counsel for the applicant has placed reliance on the following cases:-

1. The Commissioner, Karnataka Housing Board vs. C. Muddaiah reported in 2007 (7) SSS-689 in which the Hon'ble Supreme Court had unequivocally held that once a direction is issued by a competent court I, it has to be obeyed and implemented without any reservation. Further, the Hon'ble Supreme Court had held that the payment of arrears on notional promotion is part and parcel of the "consequential benefits" of such promotion.
2. O.A.No.35/2003 in re: Gopendra Kalra vs. Union of India & Others decided on 08.01.2008 by CAT, Lucknow Bench.
3. Writ Petition No.38 (S/B) of 2009 in re: Union of India & Others vs. Gopendra Kalra decided on 15.01.2009 by Hon'ble High Court of Judicature at Allahabad, Lucknow Bench.
4. Execution Application No.213/2006 in O.A.No.103/1999 and O.A.No.270/2000 in re: Ashok Kumar Tewari vs. Union of India & Others decided on 25.09.2012 by CAT, Lucknow Bench.
5. Ramesh Chandra & Another vs. R.S. Gahlawat & Others reported in (1993) 24 Administrative Tribunals Cases-759.

8. The learned counsel for the respondents has placed reliance on the following cases:-

1. Writ Petition No.4657/2005 Union of India & Others vs. G.D. Goel connected with 2 other writ petitions decided on 14.03.2008 by Hon'ble High Court of Delhi at New Delhi in which after discussing the various pronouncements made by various Courts, including the Hon'ble Supreme Court, had held that payment of arrears to a railway employee consequent to granting him back-dated promotion is governed by Para-228 of the Indian Railway Establishment Manual.
2. Writ Petition No.1955/2012 Union of India & Others vs. Sant Ram decided on 09.07.2013 by Hon'ble High Court of Delhi at New Delhi.
3. Hon'ble Supreme Court in the case of Union of India & Others vs. Tarsen Lal & Others decided on 21.09.2006.

9. We have heard and examined all the relevant records and the various judgments cited by the parties.

10. The facts of the case are not in dispute. The dispute is confined to the question whether or not the provisions of Para-228 of IREM is applicable in the case of the applicant

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in view of the order dated 24.05.1999 passed in O.A.No.283/1992.

11. The respondents have sought the dismissal of this OA on the ground of delay. Their contention is that they complied with the order of this Tribunal by order dated 15.01.2002 through which the applicant was declared successful in the training and was posted as Junior Engineer-II on 14.11.2001. As a consequential benefit, their seniority position as Junior Engineer-II was assigned w.e.f. 26.05.1994. If the applicant was aggrieved in any way, he should have challenged the same within the limitation period as laid down in Section 21 of the Administrative Tribunal Act, 1985.

12. We are unable to agree with this contention as a careful reading of the order dated 15.0.2002 reveals that it makes no reference to the back wages. In fact the subject of the order is recorded as "Assignment of Seniority". The Annexure-A-6 is also a calculation sheet for the pay fixation as Junior Engineer-I which records certain pay fixation on proforma basis but there is no specific denial of arrears based on Para-228 of IREM or otherwise.

13. As the contempt Petition filed by the applicant alleging non-compliance of order passed in O.A.No.283/1992 was still pending, it is logical that the applicant did not file a separate OA as he had await the full compliance during the process of, or as a consequence of such contempt petition. The contempt petition was dismissed by order dated 20.07.2009 and the OA was filed thereafter. Hence, we hold that the delay, if any, in this case is reasonable and explainable and therefore does not come in the way of this OA.

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14. We next come to the relief claimed in this OA. The respondents have chosen to interpret the order dated 24.05.1999 passed in O.A.No.283/1992 in terms of grant of notional promotion as Junior Engineer -II w.e.f. 01.08.1993 and Junior Engineer-I w.e.f. 28.05.1996 actually. But, they have denied the back wages as the same can be withheld in terms of Para-228 of IREM. A reading of Para-228 of IREM shows that it is applicable in cases of erroneous promotion, but it is silent where there is an express direction of a competent Court.

15. In this particular case, the applicant had been granted all consequential benefits of a successful selection held in pursuance of notification dated 07.12.1991. It was open to the respondents to seek a clarification /amplification etc. through the review mechanism from the Tribunal citing the provisions of Para-228 of IREM. Instead they filed Writ Petition No.532/2000, which was dismissed by order dated 24.04.2000. No SLP was filed. Hence, the order of the Tribunal attained finality. The respondents have placed great reliance on the judgment passed by the Hon'ble High Court of Delhi in Writ Petition No.1955/2012, which has upheld the applicability of Para-228 of IREM. The issue here is not the validity/applicability of para-228 in normal cases. the issue here is its applicability post the order of the Tribunal passed in O.A.No.283/1992 and the dismissal order of the Hon'ble High Court of Allahabad at Lucknow Bench in Writ Petition No.532/2000. There is no scope of modifying an order passed a Court except though Review U/S-22 (f) of the Administrative Tribunal Act, 1985. The same can also be done by a higher Court of appeal or by a Writ Court. In the absence of any of these remedial measures order dated 24.05.1999 has become final. We are

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in fact inclined to agree with the direction of the Hon'ble Supreme Court in The Commissioner, Karnataka Housing Board vs. C. Muddaiah 2007 (7) SCC-689 cited by the applicant.

16. Therefore, on the basis of the above discussion the OA is liable to be allowed and is allowed. The respondents are directed to pay arrears as prayed for by the applicant. The above exercise shall be completed within a period of four months from the date of receipt of the copy of this order. However, he will not be paid any interest. No order as to costs.

J Chandra
(Ms. Jayati Chandra)

Member (A)

U.R. Kapoor
(Navneet Kumar)

Member (J)

Amit/