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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH, LUCKNOW.

ORIGINAL APPLICATION NO. 633/92

this the 23rd day of November, 1998.

HON'BLE MR D.C. VERMA, JUDICIAL MEMBER.

Abdul Majeed Siddiqui, aged about 60 years, son of Sri Abdul Jalil, Retired Office Superintendent-II, divisional Railway Manager Office, N.E. Railway, Ashok Marg, Lucknow resident of Bhikampur, Nishatganj, P.S. Mahanagar, Lucknow.

Applicant.

By Advocate : In person.

Versus.

Union of India through the General Manager, N.E. Railway, Gorakhpur.

2. divisional Railway Manager, N.E. Railway, Lucknow..

3. Senior Divisional Commercial Supdt., N.E. Railway, Lucknow.

4. Senior Divisional Personnel Officer, N.E. Railway, Lucknow.

Respondents.

By Advocate : Shri A.K. Chaturvedi.

O R D E R

By this O.A., the applicant has claimed the arrears of salary for the period he was notionally promoted vide order dated 18.6.91 (Annexure B-2) and dated 11.12.91 (Annexure B-3).

2. The brief facts leading to the present claim is that the applicant ^{who} was posted as Senior Typist at Gorakhpur, was transferred and posted as Junior Typist. That resulted in reduction of seniority of the applicant and consequent promotion. The ^{> giving bottom seniority} transfer order was challenged by the applicant before High court by filing ^{of} Writ petition No. 1144/83 at Lucknow Bench

of Allahabad High Court. The Writ Petition stood transferred, after coming into force of Administrative Tribunals Act, 1985, and was registered as T.A. No. 1129/87 before Lucknow Bench of the Tribunal. The aforesaid T.A. was decided by Division Bench on November 15, 1990 by which the order determining the seniority on the basis of bottom seniority was quashed and the respondents were directed to re-consider the case of the applicant for seniority. The applicant's seniority was re-considered by the impugned order dated 18.6.91 (Annexure B-2). This order was, however, subsequently modified by second impugned order (Annexure B-3). The applicant's seniority was restored and was allowed the admissible pay-scale. Consequently, the applicant came to be appointed as Office Supdt. Grade-II on 10.7.91. The applicant, however, superannuated on 31.7.91. By the impugned orders Annexure B-2 & B-3 the applicant was given notional promotion from his due date and the salary was given from the actual date of promotion. For the period the applicant was promoted on notional basis, arrears of salary was not paid, hence the present O.A.

3. Heard the applicant in person and the learned counsel for the respondents and perused the documents on record.

4. The following chart would indicate the period for which the claim has been made:

Post	Date from which the applicant actually shouldered the responsibility	Date of Notional promotion
Senior Clerk	31.5.1988	17.5.1982
Head Clerk	17.6.1991	1.1.1984
Office Supdt-II (superannuated on 31.7.1991)	10.7.1991	28.10.1986

5. The submission of the applicant is that he had suffered his promotion and pay due to administrative

lapse of the department, he should be allowed the benefits of salary from the date, his promotion was due.

6. The learned counsel for the respondents has, however, submitted that the applicant actually shouldered the responsibilities of Senior Clerk w.e.f. 31.5.1988 and as Office Supdt.-II w.e.f. 10.7.1991. The applicant infact did not shoulder the responsibility of Head Clerk during his complete tenure.

7. The second submission of the learned counsel for the respondents is that in his earlier case (Writ petition No. 1144/83-T.A. No.1129/87) the applicant had claimed seniority, scale and all the benefits thereof. However, the Tribunal while deciding the T.A. allowed the claim of the applicant partly and directed the respondents to determine the seniority in the cadre of clerk on the basis that the applicant had ~~not~~ consented to be transferred as Clerk with bottom seniority. The submission of the learned counsel is that the claim of the applicant for grant of salary etc. was not allowed by the Tribunal. The order of the Tribunal dated 15.11.90 became final as the applicant failed to agitate the matter further by filing Review Petition or S.L.P. The learned counsel urged that by the present O.A., the applicant cannot re-agitate the issue for a relief which was not granted earlier.

8. The third submission of the learned counsel for the respondents is that in the light of para 228 of Indian Railway Establishment Manual Vol.I (copy Annexure R-2 to Counter), the applicant was allowed the enhanced pay from the date of actual promotion and arrears were not given, as the applicant had not actually shouldered the duties and responsibilities of

the higher post.

9. The submission of the applicant is that though after transfer from Gorakhpur, he was given bottom seniority of Clerk, on various occasions, the applicant was asked to look-after the work of Senior post and the respondents' contention that he never shouldered the duties and the responsibilities of the higher post, is not correct.

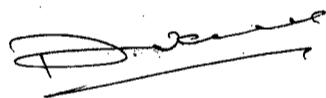
10. The contention of the applicant cannot be accepted. ~~In absence~~, During leave, vacancy or on occasions, he may have been asked to look to the work of senior post but that would ~~not~~ suffice for payment of salary of the higher post for holding ~~current~~ charge unless there is specific order to that effect as per Rules.

11. The next submission of the applicant is that even if the Tribunal has not granted him the relief of arrears of salary while deciding T.A. 1129/87, the applicant is entitled to the same in the light of various decision of Hon'ble Supreme Court and the Tribunal. The applicant has, in this connection, filed several decisions. However, in the circumstances of the present case, which is being discussed below, it is not necessary nor required to consider those decisions as the same are not relevant on the point.

12. Admittedly, in T.A. No. 1129/87 the claim of the applicant was for seniority in accordance with the Rules and ^{for} all the benefits which would accrue to him if his seniority is fixed as claimed. The Tribunal allowed the T.A. partly by quashing the seniority and directing the respondents to reconsider the applicant's seniority. The applicant was not granted consequential benefits after re-fixation of seniority.

That order of the Tribunal became final as the applicant filed no Review Petition or S.L.P. As the said decision of the Tribunal has become final, the same issue cannot be reagitated by filing another O.A. During the course of the arguments, it has been admitted by the applicant that though arrears of salary has not been given to him, his salary has been fixed on the promotional post from the date of notional promotion and, therefore, the applicant's last pay drawn has been accordingly fixed after re-fixation. The pension of the applicant is, therefore, not affected.

13. In the light of the discussions made above, the O.A. has no merit and the same is dismissed. No costs.



MEMBER(J)

LUCKNOW:DATED: 23-11-90

GIRISH/-