

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.1111/1996

Wednesday the 11th day of April, 2001

HON'BLE MR. KULDIP SINGH, MEMBER (J)
HON'BLE MRS. SHANTA SHASTRY, MEMBER (A)

Shri Ashok Kumar Singh age 44 years
Occupation: Service (HTTE), Central Railway,
Residing at Zilani Manzil, Ist Floor,
Rambaug lane No.Zero (0),
Kalyan (W). District Thane-421 301. ...Applicant
By Advocate: None.

Versus

1. The Union of India through the
The General Manager, Central Railway having
office at Chatrapati Shivaji Terminus, Bombay-400 001.
2. The Divisional Railway Manager,
Central Railway (Commercial),
having office at Chatrapati Shivaji Terminus,
Bombay-400 001.Respondents

By Advocate Shri Suresh Kumar.

ORDER (ORAL)

Hon'ble Mr. Kuldip Singh, Member (J)

The applicant in this case is aggrieved of the fact that he has been given promotion as Head Travelling Ticket Examiner (HTTE) w.e.f. 26.2.1996 instead of January, 1992 from which date the applicant claims that he should have been promoted.

2. The facts in brief are that while the applicant was working as Senior Ticket Checker he was served with a charge-sheet on the allegations that he had outraged the modesty of a lady passenger who travelled by Bombay/Howrah Express on 4.3.1989 when he was on duty as TTE. A criminal case was also registered against the applicant bearing No.68/89. The trial of the said criminal case had ended on 14.5.1993 and the applicant had been acquitted by the criminal court. *[Signature]*

3. It is also pleaded that no appeal was filed against the order of acquittal so the order of acquittal had become final.

4. The applicant also pleaded that vide letter dated 6.1.1992 issued by the Central Railway the applicant had become eligible for being promoted as HTTE but his promotion was kept pending since a charge-sheet had been issued to him and SF-5 was pending against him as such the applicant continued to work as Sr.TC instead of HTTE only because of pending SF-5.

5. The applicant further pleads that though he had been acquitted by the Criminal Court, Kalyan but still the respondents decided to continue with the departmental enquiry and held the applicant guilty and as such penalty of withholding of increments for 2 years was imposed. Against this order of punishment, the applicant preferred an appeal which was allowed vide an order dated 9.1.1996 and the order of punishment was cancelled.

6. The applicant further claims that though the charge-sheet was pending, but he was never suspended and he continued to work. As such there was no necessity ^{and} propriety either to postpone the date of promotion or even to keep pending consideration of promotion and since the applicant has been acquitted so he is entitled to be promoted w.e.f. 6.1.1992 with all consequential benefits ^{and} he is also entitled to the arrears so he has asked for the following reliefs:-

(i) This Hon'ble Tribunal be pleased to direct respondents to issue promotion order with retrospective effect from 6.1.1992 as HTTE, in the grade of Rs.1400-2300 (RPS).

(ii) Further be pleased to direct Respondents to pay difference in pay attached to the promotional post of HTTE in the grade of Rs.1400-2300 (RPS) after giving one notional increment effective from 6.1.1992, a day on which applicant declared eligible for the promotion, after allowing annual due appropriate increments within one month's time. *ku*

7. The OA is contested by the respondents.

8. However, we find that ^{vide} ~~while~~ Exhibit RI ~~is~~ a letter dated 18.11.97 which was issued by the respondents during the pendency of the case whereby the applicant had been given proforma promotion w.e.f. 6.1.1992 against a regular vacancy. So the only question which survives is whether the applicant is entitled to the arrears w.e.f. 6.1.1992.

9. We have heard Shri Suresh Kumar, Counsel appearing for the respondents but no one has appeared for the applicant.

10. Since the applicant has been given promotion only on proforma basis and no arrears have been paid to him so a question arises whether the applicant had been prevented to work on a promoted post because of his own fault or reasons beyond his control and whether he is entitled to monetary benefits of the promoted post w.e.f. 6.1.1992.

11. Shri Suresh Kumar, Counsel appearing for the respondents submitted that since the applicant had not worked on a promoted post so on the principle of no work no pay, the applicant should not be given the pay of the promoted post. However, we find

that in view of the judgment of the Hon'ble Supreme Court in K.V. Jankiraman's case ^{1991(2)SCALE SC 423} when the applicant has been prevented

to work on the promoted post without any fault on his part then

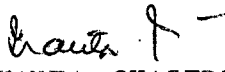
the applicant is also entitled to the arrears of pay ^{from the date} ~~when he~~

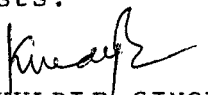
^{when his junior is promoted} ~~was actually~~ promoted. However, the counsel for the respondents

pointed out that it was for the respondents to decide the question whether at the time of deciding the disciplinary proceedings against the applicant and at the time of passing of the order of promotion, he is entitled to the arrears of salary or not and since the department had chosen to pass an order that the applicant is entitled to proforma promotion, so the OA should be dismissed.

12. In our view the above contention of the respondents has

no merits because the order of promotion has been passed in a routine manner and the respondents have not applied the principle of law as laid down in K.V. Jakiraman's case ^{by} ~~of~~ the Hon'ble Supreme Court so we allow the OA and direct the respondents to consider the case of the applicant for grant of arrears of salary w.e.f. 6.1.1992 the date when applicant was promoted. While considering the case for arrears they shall keep in view the law laid down in the case of K.V. Jankiraman. The orders to this effect be passed within a period of 2 months from the date of receipt of a copy of this order. No costs.


(MRS. SHANTA SHASTRY)
MEMBER (A)


(KULDIP SINGH)
MEMBER (J)

Rakesh