

(12)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

* * *

Date of Decision: 3/8/2000

OA 565/94

Ghasi Ram Sharma, Head Clerk, DRM Office, Commercial Branch, Ajmer Division, W/Rly, Ajmer.

... Applicant

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Dvl.Rly.Manager, Western Railway, Ajmer Division, Ajmer.
3. Dvl.Personnel Officer, W/Rly, Ajmer Division, Ajmer.

... Respondents

CORAM:

HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER

HON'BLE MR.N.F.NAWANI, ADMINISTRATIVE MEMBER

For the Applicant	... Mr.J.K.Kaushik
For the Respondents	... Mr.Manish Bhandari

O R D E R

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER

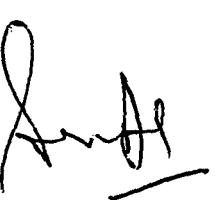
In this OA filed u/s 19 of the Administrative Tribunals Act, the applicant makes a prayer to declare the provisions contained in Rule-228 of the Indian Railway Establishment Manual (IREM, for short) as illegal and unconstitutional in so far as it deprives the benefit of arrears on promotion, and the respondents may be directed to pay the arrears of difference of pay w.e.f. 31.8.90 to 25.7.94 for the post of Head Clerk alongwith interest.

2. The facts of the case, as stated by the applicant, ar-

that the applicant was initially appointed on the post of Junior Clerk on 6.2.1957 at Ajmer. He was promoted to the post of Clerk in 1961 and was further promoted on the post of Senior Clerk w.e.f. 14.2.79 on ad hoc basis. The applicant could not pass the suitability test for the post of Senior Clerk. However, he was allowed to continue on the post of Senior Clerk without any break. It is stated that the applicant filed an OA (OA 555/92 - Ghasi Ram Sharma v. Union of India & Others) for considering him for promotion to the post of Senior Clerk from the date his junior was promoted and this Tribunal was pleased to allow the same vide order dated 2.2.94. The operative part of the same reads as under :-

"In the circumstances, communications Annexures A-2 and A-3 are quashed. The respondents are directed to modify the seniority list as per Annexure A-1 by assigning the applicant a higher seniority than that assigned to respondents No.3 to 6. The applicant shall be allowed all consequential benefits as may be admissible to him."

It is stated that thereafter the applicant submitted a detailed representation on 17.2.94. The applicant was allowed his promotion to the post of Head Clerk but the actual payment was allowed to the applicant w.e.f. 25.7.94 only. It is stated that this Tribunal has given clear direction to assign correct seniority and allowed all consequential benefits and the consequential benefits includes the actual payment of dues/promotion etc. at par with his juniors. The applicant was allowed correct seniority and due promotion but without any arrears of pay. It is stated that on account of administrative error the applicant was not allowed arrears.



It is also stated that Rule-228 of the IREM does not apply in the present case because it reveals hostile discrimination. Therefore, a prayer has been made to declare the provisions of Rule-228 of IREM as illegal and against the provisions of Constitution and also to direct the respondents to pay arrears with all consequential benefits.

3. Reply was filed. In the reply it was admitted that in pursuance of the order passed in OA 555/92 on 2.2.94, seniority was assigned to the applicant and he was also promoted but the applicant had not actually performed/shouldered the responsibility of the higher post. Therefore, as per the provisions contained in Rule-228 of the IREM the applicant was not entitled to the benefit of pay scale to the promoted post. It was denied that Rule-228 of the IREM was arbitrary, discriminatory or in violation of Articles 14 and 16 of the Constitution. Therefore, the respondents have requested to dismiss this OA with costs.

4. Heard the learned counsel for the parties and also perused the whole record.

5. The learned counsel for the applicant has argued that in pursuance of the order passed in OA 555/92 on 2.2.94 the applicant was entitled to the actual monetary benefits of the pay scale to the promoted post. In support of his contention he has referred the order passed in OA 16/98 (Jagdish Chandra Mathur v. Union of India & Another) dated 16.10.98. On the other hand, the learned counsel for the respondents has submitted that this Bench of the Tribunal in OA 269/96 decided on 30.3.2000, and in OA 86/97 decided on 10.4.2000, held that if the applicant has not shouldered the responsibility of the

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higher post, the applicant is not entitled to back wages of the post on which he was promoted.

6. In Shaik Khasim Sahib v. UOI & Ors, (1994) 28 ATC 684, it was held that when neither the employer nor the employee is at fault, the principle of no work no pay can be made applicable.

7. In Telecommunication Engineering Service Association (India) & Anr. v. UOI & Anr, (1994) 27 ATC 742, Hon'ble the Supreme Court has held that the Central Administrative Tribunal has rightly held the back wages with effect from the date on which the applicant actually worked on the higher post.

8. In State of Haryana & Ors. v. O.P.Gupta & Ors, (1996) 33 ATC 324, Hon'ble the Supreme Court has reiterated the principles of no work no pay and also followed the earlier decisions in Paluru Ramkrishnaiah v. UOI (1989) 2 SCC 541, and UOI v. K.V.Jankiraman, (1991) 4 SCC 109.

9. Consistently, Courts of this country have been of the view that there should be no pay for no work and if the applicant has not been performed/shouldered the responsibility of the higher post, he is not entitled to the actual benefits of the higher pay scale. In Hukmi Chand v. Jhabua Cooperative Central Bank Ltd., Jhabua (MP) & Anr, 1998 SCC (L&S) 509, Hon'ble the Supreme Court held that the employer has discretion to grant back wages according to the facts and circumstances of each case and such exercise of discretion cannot be said to be unreasonable or arbitrary. In that case

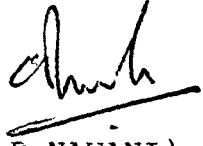
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both the Trial Court and Appellate Court convicted the applicant but he was acquitted in the revision and it was held that in such circumstances, the applicant was not entitled to back wages.

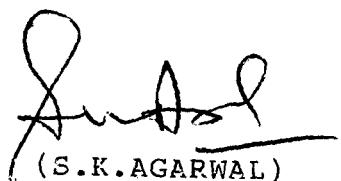
10. In view of the settled legal position and facts and circumstances of this case, we are constrained to say that the applicant is not entitled to the relief sought for and the citation, as referred by the learned counsel for the applicant, do not help the applicant in any way in view of the settled legal position of Hon'ble the Supreme Court and catena of decisions given by different Tribunals.

11. In view of the foregoing, we do not find any merit in this OA and the same is liable to be dismissed.

12. We, therefore, dismiss this OA with no order as to costs.


(N.P.NAWANI)

MEMBER (A)


(S.K.AGARWAL)

MEMBER (J)