

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH
JAIPUR

Date of decision: 13.01.2004

OA No.13/2002

Ashok Kumar Mathur s/o Shri Brij Lal Mathur r/o 11/49, Bhrampuri, Ajmer, presently posted as Head Clerk in the office of Assistant Controller of Stores (Loco Stores), Western Railways, Ajmer.

.. Applicant

VERSUS

1. The Union of India through General Manager, Western Railway, Mumbai.
2. The Deputy Controller of Stores, Western Railway, District Ajmer.

.. Respondents

Mr. P.P.Mathur - counsel for the applicant

Mr. U.D.Sharma - counsel for the respondents

CORAM:

Hon'ble Mr. M.L.Chauhan, Member (Judicial)

Hon'ble Mr. A.K.Bhandari, Member (Administrative)

ORDER

PER HON'BLE MR. M.L.CHAUHAN

The present application has been filed against the order dated 28.9.2000 (Ann.A1) so far as it relates to the payment of monetary benefits w.e.f. 23.1.99 instead of 29.2.98, from which date the applicant was given proforma promotion on notional basis. In relief, he has prayed for quashing the said order and for directions to the respondents to grant benefit of arrears occurring due to fixation done and also to pay interest at the rate of 18% on the arrears from the date it became due till the date of actual payment.

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2. The facts of the case are that the applicant was initially appointed as Clerk in the Railways. The railway authorities issued a seniority list on 30.11.94 which was subsequently revised and a fresh seniority list was issued on 22.9.95, as according to the respondents the earlier seniority list was not prepared strictly in accordance with Para 302 of the IREM. Against this seniority list, the applicant has filed OA No.174/97 and the said OA was disposed of by this Tribunal vide order dated 17.1.2000 directing the respondents to dispose of the representation submitted by the applicant by a reasoned and speaking order. Subsequently, the said representation was decided by respondent No.2 vide order dated 15.7.2000 and the seniority list as issued on 22.9.95 was upheld. In this OA the applicant has not made any grievance regarding this seniority list. Based on this seniority list, the applicant was assigned position at Sl.No.21 above one Shri S.Kumar and consequently the applicant was given benefit of stepping up of pay vis-a-vis Shri S.Kumar vide order dated 28.2.2000 (Ann.A1). This benefit was given to the applicant on proforma basis w.e.f. 29.2.88 and the actual benefit was made effective from 23.1.89 on which date the applicant had been given actual promotion on the post of Senior Clerk. As already stated above, the grievance of the applicant is that he is entitled for arrears of pay w.e.f. 29.2.88, on which date he was given proforma fixation of pay on the basis of seniority list dated 22.9.95.

3. Notice of this application was given to the respondents. The respondents have filed reply. It has been stated in the reply that consequent upon revision of seniority list, the applicant came to be placed above Shri

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S.Kumar and was accordingly given the benefit of stepping up of pay vis-a-vis Shri S.Kumar. The applicant was required to be given the benefit of proforma fixation of pay and he was not entitled to arrears of pay w.e.f. 29.2.88 as he has not shouldered higher responsibilities of the post of Senior Clerk from the said date. Since the applicant was not entitled for actual payment from 29.2.88, the representation submitted by the applicant on 22.11.2000 did not require any consideration.

4. We have heard the learned counsel for the parties and gone through the material placed on record.

4.1 The short question which requires our consideration is whether the applicant is entitled to payment of arrears of salary for a period w.e.f. 29.2.88 till 23.1.89 during which he has not performed duties of the higher post. The question posed for our consideration has been answered by the Apex Court in a number of judgments wherein the Apex Court has held that the notional promotion given from back date does not entitle a person to payment of arrears of salary for a period when he has not performed the duties of higher post. Although after due consideration, such person has been given proper place in the gradation list having been deemed to be promoted to the higher post w.e.f. the date his junior was promoted. In such contingency, such person will be entitled only to stepping up of pay retrospectively from the deemed date, but is not entitled to the payment of arrears of salary. In this behalf reference may be made to the decision of the Apex Court in the case of State of Haryana Vs. O.P.Gupta, 1996 (7) SCC 533. The Apex Court in this case had occasion to deal with the claim of arrears

in a case where in adjudicating the dispute relating to seniority, the Apex Court directed the department concerned to prepare fresh seniority list in accordance with rules. In compliance thereof, a fresh seniority list came to be prepared and eligible persons were given notional promotion by the department from the deemed date. When such promotees claimed for payment of arrears of salary as well, the Apex Court rejected the claim applying the principle of "no work, no pay" and set aside the order of the High Court countenancing such claim to be illegal for the reason that the promotees did not work for the period in the promoted capacities. In coming to such conclusion, the Apex Court followed the earlier decisions in the case of Paluru Ramkrishnaiah vs. Union of India, 1989 (2) SCC 541 and Virendra Kumar, G.M.N.Rlys vs. Avinash Chandra Chadha, 1990 (3) SCC 472.

4.2 A similar view was also taken by the Apex Court in the case of A.E.Soumini vs. State Bank of Travancore and Anr., 2002 (7) SCC 238, whereby the Apex Court declined the arrears of pay on account of notional promotion. The ratio of the Apex Court as laid down in the aforesaid decisions is fully applicable in the instant case. As such, according to us, the applicant is not entitled to any relief.

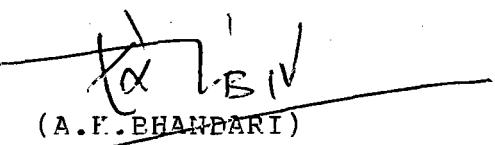
4.3 The learned counsel for the applicant has cited the decision of the Apex Court in the case of Paramjeet Singh vs. State of U.P. and Others, (1998) 8 SCC 369 to contend that the applicant is entitled to back wages. With great respect, the decision of the Apex Court in the case of Paramjeet Singh is not applicable in the instant case. That was a case where the appellant before the Apex Court who was originally working as Assistant Engineer in Minor

Irrigation Department of the State of U.P. was promoted as Executive Engineer vide order dated 22.7.1997. Vide order dated 19.8.97, he was posted as Executive Engineer, Minor Irrigation at Nainital and he took charge of the said post on 31.8.97. The respondent No.4 who was posted as Executive Engineer, Minor Irrigation at Nainital was transferred from Nainital and was attached to the Superintending Engineer, Fauri. The respondent No.4 filed a Writ Petition in the Allahabad High Court challenging the order of his transfer. Vide interim order dated 2.9.97, the operation of the order dated 19.8.97 relating to posting of the appellant was stayed. As a result of the interim order, the appellant was deprived of the post of Executive Engineer at Nainital by order dated 11.9.97 and he was neither given any other posting nor was he paid any salary after he was deprived of the post of Executive Engineer on 11.9.97. The appellant filed a Writ Petition in the Allahabad High Court praying for quashing the order dated 11.9.97 and for being posted as Executive Engineer, Minor Irrigation and for payment of salary and allowances since August, 1997. Both these petitions came to be decided by the High Court vide order dated 19.1.98. The Writ Petition filed by respondent No.4 against his transfer was dismissed by the High Court and the Writ Petition filed by the appellant was also dismissed having become infructuous. In that context, the Hon'ble Supreme Court has said that the order of the High Court in the writ Petition filed by the appellant whereby he was not given posting order and salary, though promoted on earlier occasion on account of interim stay granted by the High Court, cannot be appreciated. After dismissing the Writ Petition filed by respondent No.4 against his transfer, it

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was necessary for the High Court to have given appropriate directions in the Writ Petition of the appellant with regard to his posting as well as payment of salary. It was in this context that the order was passed by the Apex Court. The facts of case of Paramjeet Singh (supra) before the Apex Court are quite distinguishable. In that case though the appellant therein was given posting order and also joined on promoted post as Executive Engineer but subsequently he was deprived of the said post on the basis of interim order passed by the High Court. As such, the Hon'ble Supreme Court has rightly held that the appellant was entitled for back wages as he was deprived of the higher post on account of interim stay passed by the High Court. In the instant case, the applicant has been given the monetary benefits from the date he was promoted as Senior Clerk and he continued to work against that post i.e. from 23.1.89. As such the authority cited by the learned counsel for the applicant in support of his case is of no assistance to the applicant.

5. In view of what has been stated above, the applicant is not entitled to any relief and accordingly, the OA is dismissed with no order as to costs.


(A.F. BHANDARI)

Member (A)


(M.L. CHAUHAN)

Member (J)