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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.269/96

Date of order: 23/3/2000

Nishi Kant Biswas, S/o Shri Bachcho Mandal, R/o C/o T.N. Chaturvedi, Nalanda Vihar, Maharani Farm, H.No.81, Durga Pura, Jaipur, last employed on the Post of Shunter in Ajmer Division, Western Railway, Ajmer.

...Applicant.

Vs.

1. Union of India through General Manager, Western Railway, Churchgate, Bombay.
2. The Divisional Railway Manager (Estt.) Western Railway, Ajmer Division, Ajmer.

...Respondents.

Mr. Shiv Kumar - Counsel for the applicant

Mr. U.D. Sharma - Counsel for respondents.

CORAM:

Hon'ble Mr. S.K. Agarwal, Judicial Member

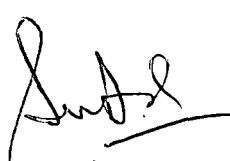
Hon'ble Mr. N.P. Nawani, Administrative Member.

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

In this Original Application under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to declare Rule 228 of the IREM as illegal, arbitrary and unconstitutional so far as it deprives the benefit of arrears on account of retrospective promotion is concerned and to modify the impugned order dated 18.1.95 accordingly and to direct the respondents to pay arrears of pay with interest and other consequential benefits.

2. Brief facts of the case as stated by the applicant are that he was retired from the post of Shunter w.e.f. 31.12.89. It is stated that a criminal case was pending against him before the Court of Railway Magistrate and he was acquitted in that case vide judgment dated 26.4.94. It is further stated that after a number of representations, the applicant was promoted in the scale of Rs.1350-2200 (RP) but only proforma fixation was given to the applicant. The applicant agitated the matter but with no result. It is stated by the applicant that there was no fault of the applicant and he was acquitted from the criminal charge, therefore, he is entitled for actual payment of salary and other consequential benefits. It is also stated that provisions of Rule 228 of the IREM <sup>is</sup> are not applicable in the case of the applicant. It is further stated that Rule 228 of the IREM <sup>is</sup> are discriminatory, arbitrary and in violation of Articles 14 and 16 of the Constitution of India, therefore, the applicant filed this O.A for the relief as mentioned above.

3. Reply was filed. It is stated in the reply that a criminal



case under Sec.3 of the Railway Property (Unlawful possession) Act, was registered against the applicant and remained pending trial but ultimately the applicant was acquitted vide judgment dated 26.4.94. It is also stated that the applicant was promoted but he had actually not performed/shouldered the responsibility of the higher post, therefore, he was not given the actual benefits of the pay scale to the promoted post as per Rule 228 of the IREM. It is also denied that Rule 228 of the IREM is arbitrary, discriminatory or in violation of Articles 14 & 16 of the Constitution of India, therefore, the O.A is devoid of any merits and liable to be dismissed.

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

5. The learned counsel for the applicant argued that Rule 228 of the IREM was struck down by the Ernakulam Bench of the Tribunal and in Easant Rao Vs. UOI & Ors, 1993(2) JT 451, ~~and~~ the Supreme Court has laid down the law and the case of the applicant is squarely covered by the judgment of the Hon'ble Supreme Court, therefore, the applicant is entitled to the actual benefits of the Grade Rs.1350-2200(RP), on his promotion. On the other hand, the learned counsel for the respondents has argued that Jodhpur Bench of the Tribunal decided in Ramjan Ali Vs. UOI & Ors, 1996(2) SLJ (CAT), 135, held that applicant is not entitled to the actual benefits of the grade in which he was promoted. The learned counsel for the applicant has also referred Hukmi Chand Vs. Jhabua Cooperative Central Bank Ltd, Jhabua (M.P) & Anr, 1998 SCC(L&S) 509 and Union of India & Ors Vs. Rajinder Singh Rawat, 1999 SCC(L&S) 944.

6. We have given anxious consideration to the rival contentions of the parties and have perused the whole record.

7. Consistently Courts of this country <sup>ve</sup> have been of the view that there <sup>would be</sup> [has been] no pay for no work and if the applicant has not performed/shouldered the responsibilities of the higher post, he is not entitled to the actual benefits of the higher pay scale. Hukmi Chand Vs. Jhabua Cooperative Central Bank Ltd, Jhabua (M.P) & Anr (supra) Hon'ble 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 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.

8. In State of Haryana & Ors Vs. C.P.Gupta & Ors, (1996) 33

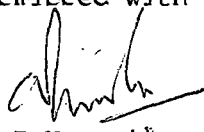
ATC 324, Hon'ble Supreme Court has reiterated the principle of no work no pay and also followed the earlier decisions in Paluru Ramkrishnaiah Vs. UOI (1989) 2 SCC 541 and UOI Vs. K.V.Jankiraman, (1991) 4 SCC 109.

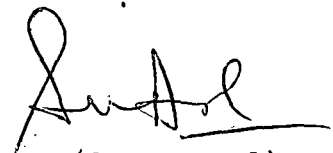
9. in Telecommunication Engineering Service Association (India) & Anr. Vs. UOI & Anr (1994) 27 ATC 742, Hon'ble Supreme Court has held that the Central Administrative Tribunal has rightly held the back wages with effect from the date on which the applicant actually worked on the higher post.

10. In Shaik Khasim Sahib Vs. 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.

11. In the instant case, admittedly due to the pendency of the criminal case against the applicant, he was not promoted on his turn and after his acquittal in the criminal case, he was given promotion but actual payment was made to the applicant from the date of his promotion. In the light of the legal position as mentioned above and the facts and circumstances of the case, the case of the applicant is not squarely covered by the judgment of the Hon'ble Supreme Court 1993(2) JT 451, and the applicant has no case for interference by this Tribunal.

12. We, therefore, find no merit in this O.A and the same is dismissed with no order as to costs.

  
(N.P. Nawani)  
Member (A).

  
(S.K. Agarwal)  
Member (J).