

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR  
O.A.No.363/96

Date of order: 12/9/2001

Laxmi-Narain, S/o Sh.Sunder Lal, presently employed  
on the post of Chief TXR in W.Rly, Jaipur Divn.  
Jaipur.

...Applicant.

Vs.

1. Union of India through the General Manager, W.Rly,  
Churchgate, Mumbai.
2. Chairman, Railway Board, Rail Bhawan, New Delhi.
3. The Divisional Personnel Officer, W.Rly, Jaipur  
Division, Jaipur.
4. Sr.Divisional Mechanical Engineer(E), W.Rly, Jaipur  
Division, Jaipur.

...Respondents.

Mr.Shiv Kumar

: Counsel for applicant

Mr.S.S.Hasan

: for respondents.

CORAM:

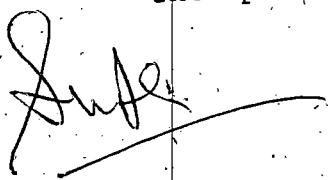
Hon'ble Mr.S.K.Agarwal, Judicial Member.

Hon'ble Mr.S.A.T.Rizvi, Administrative Member.

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

In this O.A filed under Sec.19 of the ATs Act, 1985,  
the applicant makes a prayer (i) to struck down Rule 228 of  
IREM and declare it as illegal and unconstitutional, (ii) to  
direct the respondents to pay arrears of difference of pay  
alongwith reasonable rate of interest, and (iii) orders  
dated 18.11.93 and 12.5.95 (Annx.A1 & A2) issued by  
respondent No.4 may be modified accordingly.

2. In brief facts of the case as stated by the  
applicant are that the applicant was initially appointed on  
the post of Cleaner on 9.6.88 at Sawaimadhopur, W.Rly,

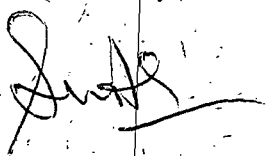


Jaipur. Thereafter, he was promoted on the post of TXR w.e.f. 1.10.84 and Head TXR vide order dated 25.11.93 but only proforma position was given to him and he was not granted actual fixation and monetary benefit. It is stated that the applicant was wrongly prevented to perform duties on the post of TXR and Head TXR which resulted him monetary/financial loss without any fault. It is stated that the applicant filed O.A No.395/95, Laxmi Narain Vs. UOI & Ors before this Tribunal but the said O.A was withdrawn by the applicant with a liberty to file a fresh O.A. Thereafter, the applicant made representation dated 2.11.95 to the competent authority for redressal of his grievances but till date the applicant has not been paid arrears. Therefore, the applicant filed this O.A for the relief as above.

3. Reply was filed. In the reply it is stated that Rule 228 of IREM Vol 1 is clear and according to this the pay on promotion may be fixed proforma at the proper time. The enhanced pay may be allowed from the date of actual promotion and no arrears on this account shall be payable if the applicant did not actually shoulder the duties and responsibilities of the higher post. It is stated that the applicant has already been given the benefit as admissible to him under the rules but no arrears could be given to the applicant as he did not shoulder the responsibility. Therefore, the applicant has no case for interference by this Tribunal.

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 IREM was struck down by Ernakulam Bench of the Tribunal in P.Thyagarajan Vs. UOI & Ors but the learned



counsel for both the parties failed to show whether the order passed by Ernakulam Bench of the Tribunal has reached finality. The counsel for both the parties agree that para 228 (1) IREM is still in force and has not been deleted from the IREM.

6. Consistently the Courts of this country have been of the view that there will be no pay for no work and if the applicant has not performed/shouldered the responsibility of higher post, he is not entitled to the actual benefits of higher pay scale.

7. In Telecommunication Engineering Service Association (India) & Anr. Vs. UOI & Anr, (1994) 27 ATC 742, Hon'ble Supreme Court 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 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.

9. In State of Haryana & Ors Vs. O.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 451 and UOI Vs. K.V.Kankiraman (1991) 4 SCC 109.

10. In Hukmi Chand Vs. Jhabua Cooperative Central Bank Ltd, Jhabua & Anr, 1998 SCC(L&S) 509, 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

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acquitted in the revision and it was held that in such circumstances, the applicant was not entitled to back wages.

11. In the instant case, admittedly, the applicant was given proforma promotion and actual payment was made to him from the date of actual working on the promotion post.

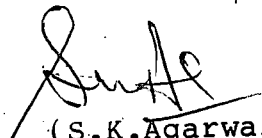
12. In the light of the legal position as mentioned above and facts and circumstances of this case, the applicant has no case for interference by this Tribunal.

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



(S.A.T. Rizvi)

Member (A).



(S.K. Agarwal)

Member (J).