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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.86/97

Date of order: 10th April 2000 (10-4-2000) Singh

Kanhaiya Lal, S/o Shri Ram Ratan, R/o Daou Nagar, Plot No.76, Near Bichan Road, Phulera, last employed on Senior Chageman in W.Rly, Jaipur, Division Ajmer.

...Applicant.

Vs.

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager(Establishment) Ajmer, W.Rly, 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 and unconstitutional so far as it deprives the benefit of arrears on account of retrospective promotion to the applicant and to quash and set aside the impugned order dated 14.3.96 and also to direct the respondents to pay arrear with all consequential benefits.

2. Facts of the case as stated by the applicant are that he was initially appointed on the post of Diesel Chageman. Thereafter he was entitled for promotion on the next higher post i.e. Junior Foreman in the year 1984 but the case of the applicant was not considered for promotion at that time. The applicant aggrieved by the same filed O.A No.767/92, Kanhailal Lal Vs. Union of India & Ors, before this Bench against nonconsideration of his promotion and this Tribunal vide order dated 26.10.94, decided the C.A and gave certain directions to consider the applicant for promotion. The applicant also filed Contempt Petition No.138/95 which was also disposed of and the respondents have given proforma fixation to the applicant. It is also stated that the applicant was not given the actual monetary benefits as per the directions of the Tribunal which resulted monetary/financial loss to the applicant for none of his fault. Therefore the applicant filed this O.A for the relief as mentioned above.

3. Reply was filed. In the reply, it is stated that the applicant was promoted but he had not actually performed/shouldered the responsibility of the higher post, therefore, he was not given

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the actual benefit 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 and 16 of the Constitution of India. Therefore, the respondents have requested to dismiss the O.A with costs.

4. Heard the learned counsel for the respondents and perused the whole record. The counsel for the applicant was asked to file written submissions within a week but no written submission has been filed so far.

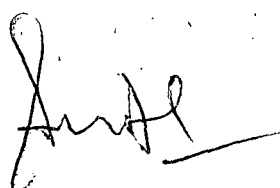
5. The learned counsel for the respondents has argued that Jochpur Bench of the Tribunal in Ramzan Ali Vs. UOI 1996(2) SLJ CAT, 135, held that the applicant is not entitled to the actual benefit of the grade in which he was promoted. Therefore, he submits that the impugned order dated 14.3.96 is perfectly legal and valid and not liable to be quashed. He further submits that para 228 of the IREM is neither arbitrary nor discriminatory or in violation of Articles 14 and 16 of the Constitution of India, therefore, there is no basis to struck down the same.

6. We have given anxious consideration to the contentions of the learned counsel for the respondents and also perused the whole record.

7. 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 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 (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 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. 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 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.

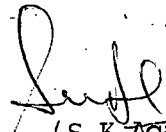
11. Admittedly, the order of promotion of the applicant in this case was issued after the applicant was superannuated and he never shouldered the responsibilities of the higher post. Therefore, in the light of the legal position as mentioned above and the facts and circumstances of the case, the case of the applicant is squarely covered by our order passed in O.A No.269/96 dated 23.3.2000 and the applicant has no case for interference by this Tribunal.

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



(N.P. Nawani)

Member (A).



(S.K. Agarwal)

Member (J).