

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 28/3/2002

OA 93/98

Hazari Lal, Gangman, Gang No.20 under PWI, Bhawani Mandi,  
W/Rly.

... Applicant

Versus

1. Union of India through General Manager, W/Rly, Churchgate, Mumbai.
2. Divisional Railway Manager, W/Rly, Kota Division, Kota.
3. Asstt.Engineer (South), W/Rly, Kota Division, Kota.

... Respondents

CORAM:

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

HON'BLE MR.A.P.NAGRATH, ADM.MEMBER

For the Applicant ... Mr.Shiv Kumar

For the Respondents ... Mr.S.S.Hasan

O R D E R

PER HON'BLE MR.A.P.NAGRATH, ADM.MEMBER

The applicant had been transferred from PWI Shamgarh under PWI Bhawani Mandi vide order dated 18/21.1.94. This transfer was treated as transfer on his own request. He challenged the said order by filing OA 513/94. Vide order dated 28.4.97 this Tribunal directed the respondents to pass suitable orders having regard to the decision taken in respect of the applicant in minutes of the PNM meeting. In



compliance of these directions, the respondents reviewed the transfer order of the applicant and decided that his transfer from Gang No.16 to Gang No.20 would be treated as transfer on administrative grounds. Obviously, as a consequence of these developments his seniority in the new unit came to be revised. He has now filed this OA seeking directions to grant him promotion to the pay scale of Rs.825-1200 w.e.f. 1.3.93 i.e. the date when his juniors were so promoted alongwith arrears of pay w.e.f. the said date of 1.3.93. Further, if any junior to the applicant has been promoted to the pay scale of Rs.950-1500, the respondents have been sought to be directed to promote the applicant to that grade w.e.f. the date of his junior.

2. The respondents have stated in their reply that consequent to revision of the applicant's seniority by order dated 29.10.97 a separate order dated 24.2.98 was issued granting promotion to the applicant to the scale of Rs.825-1200 w.e.f. 1.3.93. The respondents' case is that the applicant was actually holding the post of Senior Gangman w.e.f. 10.4.98. He has been given proforma fixation w.e.f. 1.3.93. <sup>But</sup> L the actual payment has been made w.e.f. 10.4.98 only and further, vide letter dated 27.11.2000 he has been promoted as Keyman.

3. Heard the learned counsel for the parties. The learned counsel for the applicant argued that since the applicant was rightfully due his promotion w.e.f. 1.3.93,

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the payment of arrears cannot be denied to him. This was countered by the learned counsel for the respondents saying that the applicant could not have been promoted earlier till his case of seniority got decided. The same was decided vide order dated 29.10.97 and it was only after that the applicant's claim for promotion w.e.f. 1.3.93 could be considered. The same has duly been given to him. In such a situation, the learned counsel contended that no arrears are payable.

4. The question which has arisen in that case is whether in the event a person who becomes eligible for promotion from a retrospective date because of revision of his seniority, which takes place at a later date, can claim payment of arrears. Such controversy has been finally settled by the pronouncement of the Apex Court in the case of State of Haryana v. O.P.Gupta & Ors., 1996 SCC (L&S) 633, Paluru Ramkrishnaiah v. UOI, 1989 SCC (L&S) 375, and Virendra Kumar, General Manager, Northern Railway v. Avinash Chadha, 1991 SCC (L&S) 62. It was held in such a case, when the promotion of the junior was ordered the senior was not available for consideration as his name at the relevant time did not appear in the zone of consideration. It was held that under such a situation the employee can only claim proforma fixation but is not entitled to the payment of arrears. In view of this settled legal position, we do not find any infirmity in the order of the respondents in denying arrears to the



applicant w.e.f. 1.3.93. The OA is, therefore, liable to be dismissed.

5. We, therefore, dismiss this OA as having no merits.  
No costs.

  
(A.P. NAGRATH)

MEMBER (A)

  
(S.K. AGARWAL)

MEMBER (J)