

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

.....
Date of Order : 06.06.2003.

1. O.A. NO. 524/2001
2. O.A. NO. 525/2001

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Gopal S/o Shri Madhav Das, aged about 50 years, resident of Quarter No. 458-A, Railway Colony, Gandhi Dham, at present employed on the post of Head Train Examiner, in the office of Carriage and Wagon Superintendent, Western Railway, Gandhi Dham.

.....Applicant In O.A. No. 524/2001.

Suraj Mal S/o Shri Birdi Chand, aged about 50 years, resident of No. 635-9B, Bharat Nagar, Gandhi Dham, at present employed on the post of Head Train Examiner, in the office of Carriage and Wagon Superintendent, Western Railway, Gandhidham.

.....Applicant in O.A.No. 525/2001.

VERSUS

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager, Western Railway, Ajmer Division, Ajmer.

.....Respondents in both O.As.

C O R A M :

Hon'ble Mr. Justice G.L.Gupta, Vice Chairman

Hon'ble Mr. G.C.Srivastava, Administrative Member

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Mr. C.B. Sharma, Advocate, present for the applicants.

Mr. R.G. Gupta, Advocate, present for the respondents.

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ORDER
[Per Mr. Justice G.L.Gupta]

The identical controversy is involved in both the matters, therefore, they have been heard together and are being disposed of by this common order.

2. Both the applicants were initially appointed in Group 'D'. They were promoted as Fitter in 1982. After due selection for the post of Train Examiner, the applicants were empanelled for the post of Train Examiner along with three others. Subsequently, the respondents vide order dated 9.3.1990 added the names of three more persons in the panel. The applicants' challenged that action by filing OAs before the different Benches of this Tribunal. The O.A. filed by Gopal (applicant in OA 524/2001) was allowed declaring his name a regular Train Examiner as on the date of panel i.e. 24.8.1988. It was directed that he would get all consequential benefits. In the matter of Suraj Mal (applicant in OA 525/2001), the O.A. was disposed of by giving directions to the respondents to decide the matter raised by him in his representation Annexure A/10. His representation was rejected vide order dated 21.8.1995, therefore, he filed another O.A. 476/1995 before the Jodhpur Bench. The said O.A. was allowed holding that Suraj Mal's name would figure above Shri Nathi Lal in the panel for the post of Train Examiner. Shri Gopal, was assigned due seniority pursuant to the decision of the Tribunal dated 19.8.1999. The respondents, thereafter, issued the orders Annexure A/1 and A/2 whereby, both the applicants were granted the grade increments in the scale of the Train Examiner and proforma promotion on the post of Head Train Examiner in the scale of Rs. 5500-9000 w.e.f. the date, person junior to them was granted promotion. However, it was directed that the actual payment in the

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grade of the promoted post shall be given from the date of actual promotion.

2.1. The say of the applicants is that they were not at fault when grade increments were not given to them during the training period and that they were denied promotion on the basis of the panel prepared by the respondents which was ultimately not accepted by the Tribunal. It is averred that applicants were ready and willing to perform the duties of the higher post and hence they are entitled to the actual benefit of the promotion from 8.4.1994.

3. In the counter, the respondents' case is that in terms of the RBE 89/92 dated 2.6.1992, the applicants' training period would be counted for grade increment but payment is to be made only from 1.10.1990 and, therefore, their pay has been rightly fixed in the order Annexure A/1. It is further stated that the applicants did not work on the promoted post and, therefore, they were not entitled to the actual benefit of the pay of the promoted post w.e.f. 8.4.1994.

4. We have heard the learned counsel for the parties and perused the documents placed on record.

5. The RBE No. 89/92 dated 2.6.1992, clearly says that the training period of the candidates shall be counted for the purpose of increments but, it shall be only on notional basis from 1.1.1986 and on actual basis from 1.10.1990. It is seen that vide order Annexure A/1, the respondents have given the benefit of actual increment w.e.f. 1.10.1990. The applicants have not challenged the vires of the RBE

No. 89/92, therefore, they cannot succeed in claiming the actual benefit of the grade increments from 9.12.1988. The respondents having not erred in issuing the order Annexure A/1.

6. However, the order Annexure A/2 dated 12.12.2000, whereby, the applicants have been given the benefit of actual promotion from 9.3.2000 is not sustainable. The applicants were not at fault when they were denied promotion to the post of Train Examiner w.e.f. 8.4.1994, the date on which the person junior to the applicants, was given promotion. When there was no fault on the part of the applicants, there cannot be any justification for denying them the benefit of actual pay from 8.4.1994.

7. A Full Bench of this Tribunal has held in the case of Devi Lal & others Versus Union of India and Others 2002 (1) ATJ 435, that the employees who were not promoted earlier due to administrative lapses are entitled to arrears of pay and allowances with retrospective effect on their notional promotion to the higher post, ordered subsequently.

7.1. It is significant to point out that the provision of Para 328 of the Indian Railway Establishment Manual, which denied the employees of pay and allowances on the principle of 'no work no pay', was struck down by the Full Bench.

8. In view of the decision of the Full Bench in the matter, it has to be held that the applicants' were not at fault when they were not promoted w.e.f. 8.4.1994. They are, therefore, entitled to the arrears of pay and allowances of the promoted post, from the date, Shri

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Nathi Lal, was given promotion. The order Annexure A/2, so far as it states that the benefit of actual pay and allowances shall be given from 9.3.2000 is not sustainable.

9. Consequently, both the O.As are allowed in part. The respondents are directed to give benefit of actual pay and allowances of the promoted post from the date Shri Nathi Lal, was promoted to the post of Head Train Examiner. The arrears of pay and allowances be paid within three months from the date of communication of this order.

10. No order as to costs.

(G.C.Srivastava)
Administrative Member

(G.L.Gupta)
Vice Chairman

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