IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

JAIPUR BENCH, JAIPUR.

Date of decision:15th March, 2004

OA No.542/2002

Dinesh Kapoor s/o Shri A.L.Kapoor, aged about 49 years, r/o Railway Quarter No.1658/B, Ram Ganj, Ajmer, presently working on the post of Senior Clerk under I.O.W. (North), Ajmer.

.. Applicant

Versus

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

.. Respondents

Mr. P.P.Mathur - counsel for the applicant

Mr.R.G.Gupta, counsel for the respondents

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

HON'BLE MR. A.P.BHANDARI, MEMBER (ADMINISTRATIVE)

O R D E R

PER HON'BLE MR. M.L.CHAUHAN.

The applicant is aggrieved of the order dated 11.4.2002 (Ann.A1) whereby the applicant has been notionally promoted to the post of Senior Clerk in the old scale w.e.f. 17.4.1995 and in the revised scale w.e.f. 1.1.1996 and the benefit of pay and allowances on the post of Senior Clerk was given from the date when the

applicant started performing duties on the said post. The applicant has filed this OA thereby praying for the following reliefs:-

"i) That the order dated 11.4.2002 by which the applicant has been denied the benefit of actual pay and allowance may be quashed and set aside.

ii) That the respondents may be directed to make payment of actual pay and allowance of the post of Senior Clerk from the date the other similarly placed persons were granted the said benefit and interest at the rate of 18% per annum may be allowed to be paid arrear accruing thereto.

Any other appropriate order or direction which the Hon'ble Tribunal thinks just and proper in the facts and circumstances of the case even the same has not been specifically prayed for but which is necessary to ensure ends of justice may kindly be passed in favour of the applicant.

Cost of the Original Application be awarded in favour of the humble applicant."

2. Facts of the case are that the applicant was initially appointed as Clerk in the Railways. The respondents conducted suitability test for the post of Senior Clerk vide

notification dated 27.7.1994. The applicant alongwith other persons qualified the same and they were promoted to the post of Senior Clerk vide order dated 17.4.1995. Most of the persons joined the said post, but the applicant could not join the promoted post as he was not relieved. The respondents abruptly cancelled the said examination without assigning any reason vide order dated 9.5.1995. The persons aggrieved by the said order filed OA No. 206/1995 in this Tribunal which was finally disposed of vide order dated 13.2.2001. Copy of this order has been placed on record as Ann.A7. From perusal of this order/judgment, it is clear that there were 7 applicants in all and name of the present applicant appears at Sl.No.6. This Tribunal vide order dated 16.5.1995 (Ann.R2) while admitting the case granted the interim order in favour of applicant Nos. 1 to 5. The said order is placed at Ann.R2, which will have bearing in this case and thus reads:-

> "Heard. Admit. Issue notices to the respondents for filing their reply returnable on 30.5.95. Notices may be given dasti to the applicants' counsel for service upon the respondents.
>
> The learned counsel for the applicants states that the applicants at serial Nos. 1 to 5 are already occupying the higher post. The applicants at serial nos. 6 and 7 are, however, not occupying the higher post

at present. In the circumstances as an interim measure, we direct that the applicants nos. 1 to 5 shall not be reverted to the lower post till the next date. Accordingly, the operation of the order Annexure A-1 dated 9.5.95 is stayed, in so far as applicants nos. 1 to 5 are concerned till the next date."

2.1 Thus from the portion as quoted above, it is clear that no interim relief was granted to the present applicant, who was applicant No.6 in that OA. The said OA was finally disposed of vide order dated 13.2.2001. At this stage it will be relevant to reproduce para 5 and 6 of the said judgment, which will also have bearing in this case:-

"5. The impugned order dated 9.5.95 (Ann.A/1) had come up for scrutiny before Ahmedabad Bench of the Central Administrative Tribunal in OAs 420, 421, 422 and 528/95. While disposing of OA No.528/95, vide order dated 16.8.2000, Ahemdabad Bench of the Central Administrative Tribunal observed as under:-

"We have considered the submission of Mr. K.K.Sharma and particularly the fact that the same order dated 9.5.95 was considered by the Tribunal and certain directions were given in OA No.420/95, 421/95 and 422/95. Following

our decision in these OAs we hold that the applicant had in fact assumed the charge as senior clerk on the basis of order dated 17.4.94. This has given him a certain right and he should have been given an opportunity before he was sought to be reverted by the respondents by order dated 9.5.95. The applicant was given regular promotion and it is not the case here that he had to be reverted to accommodate a senior or on account of the abolition of the post. The failure to give notice to him has resulted in non-aherence to the principles of natural justice. In view of the above and following our decision in Ramchandra..... case we quash the order dated 9.5.95 reverting him to the level of junior clerk. Mr. Shevde says that liberty may be given to the respondents to proceed further in the matter. The respondents may take whatever action is permissible under law.

6. In the light of the above mentioned judgment of Ahmedabad Bench of the Central Administrative Tribunal, we are of the view that this application is hereby covered by the said judgment. Accordingly, we pass the order as under:-

The OA is allowed. The impugned

order dated 9.5.1995 (Ann.A/1) is quashed and set-aside with all consequential benefits to the applicants. No costs."

2.2 Thus from the portion as quoted above, it is clear that the relief was granted by this Tribunal only to applicant Nos. 1 to 5 while relying upon the judgment of the Ahmedabad Bench as reproduced in para 5. The relief was granted solely on the ground that the applicants have been reverted without giving notice which has resulted in non-adherence of principles of natural justice and the impugned order was quashed. It was further made clear in the order that the respondents may take whatever action which is permissible under law. Thus, the Tribunal did not give any finding whether action of the respondents in cancelling the selection on account of procedural irregularity was not proper. As already stated above, the relief was granted to the applicant Nos. 1 to 5 and interim relief was also granted in their favour solely on the ground that they are working on the post of Senior Clerk, as such they could not have been reverted without issuing show-cause notice and no relief was granted to the present applicant as he was never promoted to the post of Senior Clerk. It was open for the applicant to file a separate OA thereby praying for quashing the impugned order dated 9.5.95 whereby the examination in question was cancelled and simultaneously praying that he be allowed to join the promoted post as

he was not allowed to join such post on account of lapse on the part of the respondents as he was not relieved. But the applicant has not chosen to avail the said remedy by filing a separate OA. Instead he preferred to sink and sail with other applicants who were already occupying the higher post. Be that as it may, there was no direction from this Tribunal in OA No. 206/95 that the present applicant be promoted to the post of Senior Clerk and he be given consequential relief of Senior Clerk. Thus the case of the present applicant cannot be equated with that of other applicants in OA No. 206/95 whereby they were holding the higher post of Senior Clerk and they were allowed to continue by virtue of the interim stay granted by this Tribunal and also finally relief was granted when the matter was finally decided vide judgment dated 13.02.2001 whereby the impugned order dated 9.5.95 was quashed and set-aside with all consequential benefits to the applicants. Thus reading of the extracted portion of the judgment as reproduced above, it can be safely concluded that the consequential benefits reletes only to applicant Nos. 1 to 5 who were already holding the post of Senior Clerk and in whose favour the interim stay was also granted by the Bench. Be that as it may, since the respondents themselves have decided to grant notional promotion with suitable revision of pay scale to the applicant itself was more than sufficient to meet the requirement be it of either in law or equity. Thus according to us,

further claim of the applicant for payment of arrears as well is far-fetched and cannot have any basis in law.

3. At this stage, it may be relevant to mention here that consequent upon the issuance of notices, the respondents have filed reply. The respondents have reiterated that the applicant is not entitled to arrears of salary on account of notional promotion.

4. During the course of arguments, the learned counsel for the respondents has drawn our attention to the decision of this Bench of the Tribunal in OA No.22/2003, Jitendra Kumar vs. Union of India and anr., decided on 8th March, 2004 and submitted that the matter is squarely covered by the said judgment. We have perused the judgment dated 8th March, 2004 rendered in the case of Jitendra Kumar (supra). According to us, the matter is squarely covered by the said judgment. In para 4 and 5 of the said judgment, this Tribunal has made the following observations:-

> "4. During the course of arguments, the learned counsel for the applicant has drawn our attention to the decision of the Apex Court reported in 1998 (8) SCC 769 and 1998 (9) SCC 388 to contend that since he was not relieved by the authorities, as such he could not join

the promotional post of Senior Clerk and, therefore, he is entitled for back wages. According to us, the ratio as laid down in the aforesaid cases is not applicable in the facts of the instant case. As already stated above, in case the applicant was not permitted to occupy the promotional post of Senior Clerk, he should have sought direction from the Tribunal in earlier OA that he be permitted to occupy the promotional post, as he was not relieved by the respondents. Since it appears that this was not the case of the applicant in the earlier OA and in any case no such direction was issued by the Tribunal qua the present applicant, this plea of the applicant cannot be entertained in this OA, being barred by principles of constructive res-judicata. if such plea was not taken in earlier proceedings or if such plea was taken, the same shall be deemed to have been rejected as no relief was granted in favour of the present applicant. On the other hand, according to us, the matter is covered by the decision of the Apex Court in the case of State of Haryana vs. O.P.Gupta, 1999 SCC (L&S) 633 wherein it has been held that on the principle of 'no work no pay', payment of arrears of salary as ordered by the High Court

cannot be countenanced for the reason that the promotee did not work for the period in the promoted capacity. In coming to such a conclusion the Apex Court followed the earlier decision in Paluru Ramkrishnaih vs. Union of India, 1989 SCC (L&S) 375 and also Virendra Kumar, G.M., N.Rlys Vs. Avinash Chandra Chadha, 1991 SCC (L&S) 62. Further, the Rajasthan High Court, Jodhpur Bench in D.B.Civil Writ Petition No.4227/02 and other connected matters reported in 2004 (1) ATJ 141, Union of India and ors. vs. Central Administrative Tribunal and ors. while relying on the various decisions of the Apex Court in para 9 has held that a person will not be entitled to any pay and allowances during the period he did not performed the duty of higher post although after due consideration he was given proper place in the gradation list having been deemed to be promoted to the higher post w.e.f. the date his junior was promoted. No employee can be held to be entitled to claim any financial benefit retrospectively. At the most he may be entitled to re-fixation of the salary on the basis of notional seniority granted to him in different grades and he may also be entitled to pensionary benefits.

5. According to us, the matter is also squarely covered by the latest decision of the Apex Court (3 Judges decision) as reported in 2003 SCC (L&S) 1041, A.K.Soumini vs. State Bank of Travancore and Anr.. In that case the Apex Court held that Supreme Court's order granting relief of promotion is a gesture of gratis and not by way of right. Thus retrospective promotion pursuant to such order, the appellant therein was not entitled to arrears of salaries on the principle of no work no pay. It was further held by the Apex Court that grant of relief to the appellant keeping in view the delay merely due to pendency of proceedings before it, was more in nature of gesture of gratis and not by way of any right. Consequently, the notional promotion given to her by the Bank with suitable revision of her pay scale itself was more than sufficient to meet the requirements be it either in law or in equity. The Division Bench, properly approached the question in the light of the relevant guiding principles and the same could not be said to be either arbitrary, unreasonable or unsound in law. As already stated above, the ratio as laid down by the Apex Court is fully

applicable in the instant case. Here, the Tribunal in earlier OA has not protected the right of the applicant in the higher post of Senior Clerk whereas the persons who had already joined the promoted post were allowed to continue to work and their right were protected by the Tribunal in earlier OA and as such the applicant cannot be said to have any legal right to continue against the post of Senior Clerk and on the principle of no work no pay, he is not entitled to the arrears on account of back salaries. According to us, the notional promotion given to the applicant with suitable revision of pay scale itself is more than sufficient to meet the requirement as per the law laid down by the Apex Court in A.K.Soumini's case (supra)."

5. In view of the findings given by this Bench in OA No.22/2003, Jitendra Kumar's case (supra) as quoted above, the applicant is also not entitled to any relief as the matter is squarely covered on facts as well as on law by the decision in Jitendra Kumar. Both Jitendra Kumar and the present applicant were applicants in OA No. 206/95 decided on 13.2.2001 and no interim relief was granted qua them by this Tribunal. Similarly, the Tribunal in earlier OA

has not protected the rights of the applicnat in the higher post of Senior Clerk whereas the persons who had already joined the promoted post of Senior Clerk were allowed to continue to work and their rights were protected by the Tribunal in that OA. As such, the applicant is not entitled to arrears of back salary in view of the findings recorded by us in para 4 and 5 of the judgment rendered in the case of Jitendra Kumar which has been extracted above and is equally applicable in the instant case.

6. The OA is accordingly dismissed with no order as to costs.

(A.P.BHANDARI)
Member (A)

(M.L.CHAUHAN)
Member (J)