

CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH,
JA BALPUR

CCP No.91 of 2005
(in O.A. No.530 of 2004)

Jabalpur this the 10th day of May, 2006.

Hon'ble Dr.G.C.Srivastava, Vice Chairman
Hon'ble Ms. Sadhna Srivastava, Judicial Member

Tej Singh Kushwaha aged about 32 years,
S/o late Shri Jai Kishan Singh Kushwaha,
Technician III, resident of R.A.Kidwai,
Ward, Roshan Nagar, Katni (M.P.).

-Petitioner

(By Advocate – Shri L.S.Rajput)

V E R S U S

1. Union of India, Through Shri P.Sudhakar,
General Manager, West Central Railway,
Indira Market, Near Railway Station,
Jabalpur (M.P.)
2. Shri Ashok Johri, Divisional Railway
Manager, West Central Railway, DRM
Office, Jabalpur (M.P.)

Respondents

(By Sr.Advocate – Shri P.S.Nair assisted by Shri M.N.Banerjee)

O R D E R(Oral)

By Dr.G.C.Srivastava, Vice Chairman.-

This petition for initiating contempt of court proceedings against the respondents has been filed on the ground that directions given by this Tribunal in its order dated 26-04-2005 in O.A.No.530 of 2004 have been disobeyed willfully by the respondents. The petitioner has also prayed that the respondents be directed to pay him the arrears of pay and allowances with effect from 08-05-

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2003 as Technician Grade-III up to the actual date of promotion i.e. 06-07-2005.

2. Through O.A.No.530 of 2004, the petitioner had sought for the following main relief:

"(b) Quash the impugned order dated 8.6.2004 (ANN.A-1) holding the same to be arbitrary, illegal & void.

(c) Direct the respondents to promote the applicant as Technician Grade III in pay scale of Rs.3050-4590(RSRP) either on Bhopal or Jabalpur Division, for which the applicant has already given his consent as desired by the Respondent No.1 during personal interview.

(d) Allow all consequential benefits including fixation of pay & seniority from the date his juniors were promoted".

The Tribunal in its aforesaid order dated 26-04-2005 directed respondent no.1 i.e. General Manager, West Central Railway "to issue necessary directions for promotion of the applicant (petitioner) on the post of Technician Grade-III consequent to his aforesaid selection and grant him all consequential benefits within a period of two months from the date of communication of this order". Consequent to these directions, office order no.13/ TRS/2005 (annexure A/3) was issued by the office of the Divisional Railway Manager, Jabalpur on 06-07-2005, promoting the petitioner to the post of Technician Grade-III with effect from 08-05-2003 being the date when a person junior to him was promoted. It was further ordered that he will get the benefit of proforma seniority and pay fixation with effect from 08-05-2003. The case of the petitioner is that he should have got arrears of pay and allowances with effect from 08-05-2003 in terms of the direction of this Tribunal to "grant him all consequential benefits".

3. Notices were issued and reply was submitted by the respondents. In their reply, they submitted that they have fully complied with the orders of the Tribunal and since the petitioner had not shouldered the duties and responsibilities of the higher



post, he was given proforma promotion resulting in notional fixation of pay and seniority.

4. The learned counsel for the petitioner cited an order of this Tribunal in O.A.No.694 of 2005 decided on 02-02-2006 in support of his contention that consequential benefits will include payment of arrears of back wages. A perusal of the said order shows that the said OA related to an employee who had challenged the penalty awarded to him as a consequence of disciplinary proceedings and the Tribunal had ordered that the employee was entitled for "all consequential benefits as if the aforesaid orders (impugned orders) were never passed". By the impugned order, in the aforesaid OA the original penalty of reduction to lower time scale was modified to reduction of pay by two stages for three years without cumulative effect, which was quashed by the Tribunal. The instant case, on the other hand, relates to the promotion of the petitioner and nowhere the Tribunal has given any specific direction that the petitioner will be entitled to back wages.

5. The details of the present case show that the petitioner was denied promotion on the ground that although he had successfully undergone the required training and had passed the trade test, his lien had been terminated from the Bhopal division (where he had qualified in the selection for promotion as Technician Grade-III) by the time he had completed the training and the trade test. The Tribunal was of the view that since his lien could have been retained in the parent division for another two years, the petitioner should have been promoted by the Bhopal division and then transferred to the Jabalpur division, where he could have continued in the promoted position. The Tribunal felt that the denial of promotion was on technical grounds and, therefore, the petitioner deserves promotion with retrospective effect.

6. By the promotion order issued on 06-07-2005, the petitioner has retained his seniority despite belated promotion and would, therefore, be eligible, in future, for all the consequential benefits

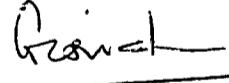
like consideration for promotion to a higher post, on the basis of revised seniority etc. Since there is no specific direction, by the Tribunal, specifying the nature of promotion, we do not think that grant of proforma promotion is not in conformity with the orders of the Tribunal. Similarly, there is no specific mention about payment of back wages, therefore, the denial of back wages because of proforma promotion is also not considered to be not in conformity with the order of the Tribunal. It has been held by the apex Court in the case of **A.P.S.R.T.C. & another Vs.B.S.David Paul, AIR 2006 SC 961** that when an order of a court only directs reinstatement, it cannot be presumed to confer right to claim back wages.

7. In view of the above, we find that the petitioner has not made out any case of willful disobedience of this Tribunal's order dated 26-04-2005 in O.A.530/2004.

8. Before we may part, we may observe that a relief cannot be sought for by the petitioner by way of a direction to the respondents to pay the arrears of pay and allowances in the contempt proceedings.

9. In the result, the CCP is dismissed. Notices issued are discharged.

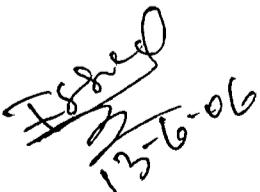

(Ms. Sadhna Srivastava)
 Judicial Member


(Dr. G.C. Srivastava)
 Vice Chairman

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मूलांकन संग ओ/वा
 पत्रिका का दाता वा उपर्युक्त व्यक्ति का नाम
 (1) राज्यपाल, राज्य सभा/लोकसभा, राज्यसभा
 (2) राज्यसभा विधायक सभा/लोकसभा, राज्यसभा
 (3) प्रत्येक राज्य सभा/लोकसभा, राज्यसभा
 (4) राज्यपाल, राज्य सभा, राज्यसभा, राज्यसभा
 सूचना प्रवं आवश्यक संगवाही हेतु

L. S. Rajput
 D. 20. 7. 2006
 P. C. Meir
 D. 20. 7. 2006


 13-6-06