

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 6th day of August, 2009

OA No.465/2005

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)
HON'BLE MR. B.L.KHATRI, MEMBER (ADMV.)

D.K.Shrivastava,
s/o Shri J.P.Shrivastava,
r/o RE/V/10, Mala Road, Kota.
Presently posted as Deputy Chief Material Manager,
West Central Railway,
Kota.

.. Applicant

(By Advocate: Shri Shailendra Shrivastava)

Versus

1. Union of India through Secretary, Ministry of Railway Board,
Rail Bhawan, New Delhi.
2. General Manager, West Central Railway, Indra Market,
Jabalpur, M.P.

.. Respondents

(By Advocate: Shri S.S.Hasan)

ORDER

Per Hon'ble Mr. M.L.Chauhan.

The applicant has filed this OA thereby praying for the
following reliefs:-



- i) That this Hon'ble Tribunal may graciously be pleased to direct the respondents to pay the differential salary for the post of Senior Scale in terms of arrears to the petitioner alongwith interest for the period (06.03.93 to 04.05.99) his promotion as Senior Scale was treated on pro-forma basis.
- ii) Any other relief which this Hon'ble Tribunal may deem fit and proper as per the facts and circumstances of the case.
- iii) Award the cost of the petition.

2. Briefly stated, facts of the case are that the applicant started his career as an officer of the Indian Supply Service cadre. The Government of India took a decision vide OM dated 30.12.1991 regarding decentralization of certain procurement functions from office of Directorate General of Supplies and Disposal (for short, DGS&D) to various Ministries/Departments along with the officers and staff of the DGS&D dealing with such work. Pursuant to such policy decision taken by the Government, the six officers were transferred to the Ministry of Railway along with work and post with the intention to absorb them in equal grade and cadre. Accordingly, the applicant was transferred to Indian Railway w.e.f. 11.5.1992. It is the case of the applicant that the respondents did not take steps in time for their absorption in the Railway till the year 1995 and option was called for vide order dated 6.10.1997 (Ann.A/6) and in fact the applicant was absorbed in the IRSS cadre in the Railway vide order dated 13.10.1998. The applicant has further stated that during the interregnum period certain junior persons to the applicant were promoted in the senior scale w.e.f.

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6.3.1993 and thereafter in JA grade w.e.f. 8.12.1997 . Although the applicant was given proforma promotion but the period w.e.f. 6.3.1993 till 4.5.1999 was treated on proforma basis without actual benefit when the applicant was promoted to the senior scale vide order dated 12.12.99 and he has been denied the arrears on account of promotion to the senior scale for the period w.e.f. 6.3.1993 to 3.5.1999.

Feeling aggrieved, the applicant filed OA No.622/2001 before the Ahmedabad Bench which was disposed of on 7.7.2004 with direction to the respondents to pass speaking order within a period of two months from the date of receipt of the order after examining whether the arrears on account of senior scale was paid to six officer who were absorbed in railway while working in DGS&D department. Pursuant to the order passed by the Ahmedabad Bench, the respondents vide order dated 2.2.2005 (Ann.A/1) have stated that no arrear was paid to six other officers of DGS&D who have been finally absorbed in the railways on account of promotion to the Senior Scale. It has been further recorded in the order that the applicant is not entitled to arrear of salary for the period of his proforma promotion as he has not shouldered duties of the senior scale post during the said period and on the principle of 'no work no pay'. It is this order which is under challenge before this Tribunal.

3. The respondents in the reply have opposed the averments made by the applicant.

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

5. The learned counsel for the applicant argued that the applicant cannot be held responsible for the inaction on the part of the respondents whereby they did not take steps for absorption of the applicant till the year 1995 and in fact the option was asked from the applicant in October, 1997 and consequently, absorbed him vide order dated 13.10.1998. As such, the applicant is entitled for the arrears of salary for the period from 6.3.1993 to 4.5.1999 even if he has not shouldered duties of the senior scale post.

6. On the contrary, the learned counsel for the respondents while drawing our attention to the reply, argued that the applicant was transferred to the Ministry of Railway w.e.f. 11.5.1992 along with five other officers in the cadre with an intention to absorb them in IRSS. However, the Railway Board had issued an OM dated 10.7.1995 to that effect whereby the applicant and other IRSS officers of the DGS&D had been deployed in the Ministry of Railway alongwith their post in pursuance of the Government of India decision to decentralize procurement function of the DGS&D and the concerned Ministry was requested to furnish particulars of the officers so deployed with a view to get them all absorbed in the Indian Railway. It is further argued that there was some administrative delay in finalizing absorption and granting seniority to the applicant and proforma fixation has been granted to the applicant but his claim for arrears of pay on that count cannot be accepted on the principle of 'No work, no pay' and also as per

instructions contained in Para 288 of the Indian Railway Establishment Manual (IREM) as well as in terms of Railway Board letter dated 17.9.1964. It is further argued that there was no intentional delay in finalizing the seniority of the applicant. The delay was on account of various court cases filed by the IRSS officers in other benches of the Tribunal.

7. We have given due consideration to the submissions made by the learned counsel for the parties.

8. It is not in dispute that applicant and five other officers were subsequently absorbed in the Indian Railway Stores Service pursuant to the policy decision taken by the Government of India whereby on account of decentralization, staff of Directorate General of Supply and Disposal was transferred to other Ministries/Departments alongwith purchase function. In fact the Railway Board issued an OM on 10.7.1995 whereby the applicant and other IRSS officers of the DGS&D were deployed in the Ministry of Railways alongwith post in pursuance of the Government of India decision as noticed above. From the material placed on record, it is also evident that in fact the applicant was absorbed in IRSS cadre of Railway on 13.10.1998. So long as the applicant was not absorbed in the IRSS cadre of Railway, he could not have been granted promotion in that cadre. After absorption of the applicant and five other persons who were similarly situated in the IRSS cadre, they have been granted proforma promotion in the senior scale from the date junior persons were granted such benefit and from the material placed on record, it is also evident that none of the persons who were

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transferred alongwith the applicant and were similarly situated and absorbed subsequently were not granted arrear of pay on account of promotion to senior scale from back date. Thus, according to us, the applicant is not entitled to any relief on the ground of discrimination as well as on the ground that the applicant was absorbed in IRSS cadre only on 13.10.1998 and in order to do justice to him when certain persons in the said cadre were granted senior scale from earlier date, the applicant has also been extended such benefit by granting proforma promotion from the date juniors were granted such benefit. As such, we see no infirmity in the impugned order.

9. That apart, the matter is also covered by the judgment of the Rajasthan High Court in the case of Union of India and Ors. vs. C.A.T. & Ors., 2004 (1) ATJ 141. The issue in the aforesaid case before the Hon'ble High Court was whether an employee who was not promoted earlier due to administrative lapse, on his retrospective promotion on higher post subsequently w.e.f. the date his junior has been promoted would be entitled to the arrears of pay and allowances with retrospective date. The Hon'ble High Court While relying upon Para 228 of the IREM which provides that when a particular person does not work on a particular post, he cannot be granted the actual pay of the post as he had not discharged the duties on that post and it is held that decision rendered by the Full Bench whereby this Para was held to be invalid and violative of Article 14 and 16 of the Constitution of India is not correct and Para 228 of the IREM was held intra vires of the Constitution. For that



purpose, the Hon'ble High Court has relied upon the decision of the Apex Court in the case of Virendra Kumar, General Manager, Northern Railways, New Delhi vs. Avinash Chandra Chadha and ors., 1990 (3) SCC 472; State of Haryana and Ors. v. O.P.Gupta and Ors., 1996 (7) SCC 553 in order to hold that where a person has not actually worked on the post, on the principle of 'no work, no pay' he is not entitled to the arrears of higher scale. In the instant case also, delay in granting senior scale has occurred due to late absorption of the applicant and other persons and also finalization of seniority list for which lapse the applicant has also contributed. In case the administration has not taken any steps for absorption of the applicant in IRSS cadre, it was also open for the applicant to agitate the matter before the appropriate forum. Facts remain that applicant took no steps for ventilating his grievances regarding his transfer to Indian Railway w.e.f. 11.5.1992 till 13.10.98 when he was finally absorbed. Thus, it cannot be said that it is the respondents who are responsible for this administrative lapse and applicant is entitled to arrear of salary from the date when he has been given retrospective promotion and has not shouldered the responsibility of the said post.

10. According to us, the case of the applicant is squarely covered by the decision rendered by the Hon'ble High Court in the case of Union of India vs. C.A.T. (supra). Accordingly, the OA is bereft of merit, which is dismissed with no order as to costs.


(B.L. KHATRI)
Admv. Member


(M.L. CHAUHAN)
Judl. Member