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**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

19.07.2012

OA No. 475/2010 with MA 287/2010 & 189/2010

Mr. Punit Singhvi, Counsel for applicant.
Mr. V.S. Gurjar, Counsel for respondents.

MA No. 189/2010

Heard on this MA. Learned counsel for the respondents submits that this MA is not maintainable as in service matters, legal heirs cannot be impleaded as party.

Having heard the rival submissions of the parties, the MA is allowed subject to just & valid objections to be raised by the respondents at the time of final hearing.

The MA stands disposed of accordingly.

OA No. 475/2010 with MA 287/2010

List it on 07.08.2012.

Anil Kumar
(Anil Kumar)
Member (A)

ahq

07-8-2012

Mr. Punit Singhvi, Counsel for applicant
Mr. V.S. Gurjar, Counsel for respondents

Heard. The OA is disposed of by

a separate order.

Anil Kumar

(Anil Kumar)
M (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

Jaipur, the 07th day of August, 2012

ORIGINAL APPLICATION No. 475/2010
With
MISC. APPLICATION NO. 287/2010

CORAM :

HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

1. Hanuman Prasad son of Shri Girdhari Lal, aged around 74 years, of Ward No. 10, Dhani Karigaran, Phulera, District Jaipur. Retired Shunter, Loco Shed, Western Railway, Phulera (Dead).
- 1/1 Ravi Shankar son of Late Shri Hanuman Prasad, aged about 55 years, resident of Plot No. 7-B, New Colony, Sambhar Road, Phulera.
- 1/2 Bhagwati Prasd son of Late Shri Hanuman Prasad, aged about 50 years, resident of Power House Road, Shriram Nagar, Phulera.
- 1/3 Manju Devi wife of Shri Roop Chand daughter of Late Shri Hanuman Prasad, aged about 45 years, resident of Kishangarh, Rajasthan

... Applicants

(By Advocate : Mr. Punit Singhvi)

Versus

1. Union of India through General Manager, North Western Railway, Office of General Manager, Jaipur.
2. Divisional Rail Manager, North Western Railway, Office of Divisional Railway Manager, Jaipur.

... Respondents

(By Advocate: Mr. V.S. Gurjar)

ORDER (ORAL)

During the pendency of this OA, the original applicant, Shri Hanuman Prasad, has expired and he was substituted by his legal representatives, Shri Ravi Shanker & two others. The present OA has been filed by the applicant claiming for the following reliefs:-

- "(i) Respondents be directed to give actual benefits on the post of Shunting Driver with salary on the post along with all consequential benefits w.e.f. 01.01.1984 and further to modify the order dated 15.05.2003 accordingly.

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- (ii) Respondents be directed to give pensionary benefits on the promotion already given on the post of Shunting Driver with arrear and other consequential benefits.
- (iii) Any other order or direction which this Hon'ble Tribunal deems proper in the facts and circumstances of the case, may also be passed in favour of the applicant.

2. Learned counsel for the applicants submitted that the grievance of the applicant is that vide order dated 15.05.2003 (Annexure A/1) rather giving actual promotion, proforma promotion on the post of Shunting Driver w.e.f. 01.01.1984 was given. The applicant is further aggrieved by the decision dated 3/4.9.2003 (Annexure A/2) taken in P.N.M. meeting by which pensionary benefits, on the promotion already given, were denied.

3. He further argued that the applicant was acquitted by the Hon'ble Rajasthan High Court, Jaipur Bench in Writ Petition No. 262/1982. After his acquittal by the Hon'ble High Court, the applicant submitted a representation to the respondents, requesting them to give him promotion, which was due to him w.e.f. 01.01.1984. The respondents granted him partial relief as he was given proforma promotion on the post of Shunting Driver w.e.f. 01.01.1984. Being aggrieved by the non-promotion on the post of Goods Driver and thereafter on the post of Passenger Driver and Driver Grade-A, the applicant preferred OA No. 426/2007. The said OA was decided with the permission to withdraw the OA with liberty reserved to the applicant to file substantive OA thereby claiming pensionary benefits on account of promotion granted vide order dated 15.05.2003. Learned counsel for the applicant argued that in OA No. 426/2007, the applicant did not claim the actual promotion rather giving proforma

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promotion and the applicant also did not claim the pensionary benefits on proforma promotion granted vide order dated 15.05.2003. Learned counsel for the applicant argued that he is not aggrieved by the action of the respondents that he has not been given actual pay since 01.01.1984 to the date of his retirement but he is aggrieved by the respondents that he is not entitled to pensionary benefits on the basis of fixation of his pay after proforma promotion vide order dated 15.05.2003 (Annexure A/1). He submitted that once the respondents have given him proforma promotion vide order dated 15.05.2003 then his pay be fixed accordingly and his pension may also be revised.

4. On the contrary, learned counsel for the respondents raised the preliminary objection that this OA is time barred. He argued that the proforma promotion was granted to the applicant vide order dated 15.05.2003 and the present OA has been filed in 2010. Even the earlier OA No. 426/2007 was filed after a delay of four years. While passing the order in that OA, the learned Tribunal did not specifically condone the delay. He drew my attention to Para No. 7 of the order dated 05.04.2010 passed in OA No. 426/2007, which reads as under:-

"7. In view of what has been stated above, the applicant is permitted to withdraw the OA in the aforesaid terms. It is made clear that it will be open for the respondents to raise all permissible objections in the OA to be filed by the applicant."

Therefore, he argued that this OA be dismissed on the ground of limitation alone.

5. The learned counsel for the respondents further submitted that the claim of the applicant in the present OA is also barred by the principle of constructive res-judicata. The applicant should have

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claimed these reliefs when he had filed his earlier OA No. 426/2007.

The reliefs claimed in the present OA was not claimed in earlier OA, though these facts and grounds were available to the applicant when he preferred OA No. 426/2007 alongwith MA No. 276/2007 for condonation of delay. He further argued that there is no room for any doubt that the present OA preferred by the applicant is between the same parties and the subject mater involved is directly and substantially the same.

6. He further argued that after acquittal of the applicant on his appeal by the Hon'ble High Court in criminal case, the applicant has been accorded proforma promotion on the post of Shunting Driver vide order dated 15.05.2003 (Annexure A/1). The applicant retired from Railway Service on 30.09.1991 on account of superannuation from the post of Shunter. The applicant was allowed to participate in the selection for the post of Good Driver but his name did not find place in the panel as the applicant failed in the selection whereas junior persons to the applicant were successful. Therefore, he could not be promoted to the post of Good Driver. He further submitted that the applicant is not entitled for actual pay from 01.01.1984 till his retirement as he has not actually worked on that post. He drew my attention to the judgment of the Hon'ble Supreme Court in the case of **Union of India vs. B.M. Jha**, 2007(11) SCC 632 wherein at Page 633, the Hon'ble Supreme Court has held that the arrear of salary cannot be granted to the respondent in view of the principal of "no work no pay" in case of retrospective promotion. Therefore, he argued that the present OA has no merit and be dismissed with costs.

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7. Heard the rival submissions of the parties and perused the relevant documents on record. The applicant has filed a Misc. Application No: 287/2010 for condonation of delay. Since the relief claimed by the applicant is with regard to the pensionary benefits, I deemed it proper to condone the delay in the interest of justice as pensionary benefit is a continuous claim. The MA is disposed of accordingly.

8. With regard to the objection of the respondents on the ground of constructive res-judicata, I am of the view that this Tribunal in OA No. 426/2007 had allowed the applicant to withdraw that OA with liberty reserved to him to file substantive OA thereby claiming pensionary benefits on account of proforma promotion granted vide order dated 15.05.2003. Therefore, I am of the view that the principle of constructive res-judicata will not be applicable in the facts & circumstances of the present case.

9. Learned counsel for the applicants submitted before the Tribunal that he is only claiming that the respondents be directed to give pensionary benefits to the applicant after fixation of his pay on proforma promotion and he is not pressing for actual pay benefit on the post of Shunting Driver w.e.f. 01.01.1984 till the retirement of the applicant. The Tribunal asked the learned counsel for the respondents to show any rule under which the respondents have taken a view that pensionary benefits would not be applicable on the basis of proforma promotion but he was not able to show me any rule on the subject. It

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is not disputed that the applicant has been given proforma promotion on the post of Shunting Driver w.e.f. 01.01.1984 in the scale of Rs.330-560(R) (Annexure A/1). Once the applicant has been given proforma promotion then his pay will have to be fixed at least notionally on the post on which he has been promoted. The applicant is not entitled to draw actual dues of pay between 01.01.1984 and 30.09.1991, the date of his retirement but once the pay of the applicant is fixed in compliance of order dated 15.05.2003 (Annexure A/1), then he will be entitled to consequential pensionary benefits, if any. The respondents are, therefore, directed to undertake this exercise expeditiously but not later than a period of four months from the date of receipt of a copy of this order.

10. With these observations, the OA is disposed of with no order as to costs.

Anil Kumar
(Anil Kumar)
Member (A)

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