

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

(2)

ORDER SHEET

ORDERS OF THE TRIBUNAL

16.01.2014

OA No. 231/2013 with MA 333/2013

Dr. S. Roy, Counsel for applicant.
Mr. Anupam Agarwal, Counsel for respondents.

Heard the learned counsel for the parties. The OA is disposed of by a separate order.

Anil Kumar

(Anil Kumar)
Member (A)

✓

(Dr. K.B. Suresh)
Member (J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION No. 231/2013
WITH
MISC. APPLICATION NO. 333/2013

Jaipur, the 16TH day of January, 2014

CORAM :

HON'BLE DR. K.B. SURESH, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Parmanand Bhagtani son of Late Shri Tharumal Bhagtani, aged about 78 years (Ex. Chief Draftsman, Jaipur Division), 403 Parth Apartment, Ambaari, Char Rasta, Opp. Sunder Gopal Apartment, Behind Balam Dairy, Ahmedabad – 380006.

... Applicant
(By Advocate: Dr. S. Roy)

Versus

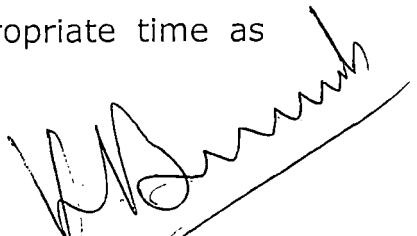
Union of India through General Manager, North Western Railway, Rail Bhawan, Near Jawahar Circle, Jaipur.

... Respondents
(By Advocate: Mr. Anupam Agarwal)

ORDER

PER HON'BLE DR. K.B. SURESH, JUDICIAL MEMBER

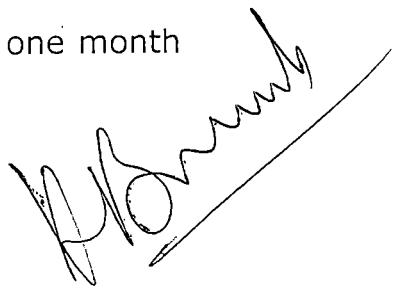
Heard. The learned counsel for the respondents focused our attention to order dated 30.07.2012 (Annexure R/1). The last paragraph of the said order says that the applicant has been given proforma promotion on 30.11.1989 and the actual benefits of his promotion was extended from the date his junior actually assumes the charge on 08.01.1993 but because the applicant had been working as Chief Draftsman on the post which became vacant as Shri S.N. Mathur, Chief Draftsman, went on medical leave much before this. Due to some reason, the respondents could not hold DPC at appropriate time as



bifurcation of Western Railway was under process. But he had actually shouldered the responsibility of the promoted post and even under the circular became eligible for arrears under Annexure A/2.

2. The respondents would say that they have given proforma promotion to the applicant w.e.f. 30.11.1989 to the date of the actual promotion. Therefore, in normal situation, the applicant would be entitled to the benefits as laid down in **Union of India vs. K.V. Jankiraman**, AIR 1991 SC 2010. He has the legitimate expectation to get the benefit of promotion as Chief Draftsman as it is only normal promotion as there was nothing adverse against the applicant and normal DPC could not held at that time was the only impediment. Even getting a promotion and thereby enhancing ones prospect is also part of constitutional promise.

3. The applicant has been continuously sending representation. The applicant was the employee of the Western Railway. The respondents say that there is non-joinder of parties as the Western Railway is not a party here. The North Western Railway is the current successor in interest of the Western Railway and, therefore, correct jurisdictional authority. Therefore, we hold that the applicant is entitled to the arrears w.e.f. 30.11.1989 till the date of actual date of granting promotion. The respondents are directed to provide Due & Drawn Statement within one month so that the applicant can file representation within one month thereafter and one month



thereafter, the arrears shall be calculated and may be made available to the applicant. 30

4. The learned counsel for the respondents invited our attention to the Railway Board's Circular dated 02.07.2003 which indicates that arrears on notional fixation shall not be made as staff who actually did not shoulder the duty of the actual post is not entitled to arrears. Annexure A/2 indicates that at that point of time, the applicant had been virtually holding the post of Chief Draftsman. By this circular, Railway seeks takes away property which had legitimately become vested upon the employee. Promotions are also a part of legitimate expectation. Simply because of the failure of the Railways, it cannot be said that an employee's preferential rights has gone away. Therefore, the Circular is not applicable to this case. Besides, applicant had actually shouldered the responsibility of Chief Draftsman. Also his junior was allowed ^{Completed ✓} the benefit. Therefore, applicant has conflated his claim.

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

6. The MA No. 333/2013 for taking documents on record is allowed.

Anil Kumar
(Anil Kumar)
Member (A)

[Signature]
(Dr. K.B. Suresh)
Member (J)

AHQ