

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

**C.P. No.52/2016 In
O.A No.1137/2013**

**Reserved On:06.02.2018
Pronounced on:08.02.2018**

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Ms. Nita Chowdhury, Member (A)**

Shri Rajender S/o Shri Madan
Aged 60 years +
Working under CHI (Malaria)
Divisional Hospital
Delhi,
R/o 126/1, Railway Colony
Kishan Ganj, Old Rohtak Road
Delhi-110007.

..Petitioner

(By Advocate: Shri K K Patel)

Versus

1. Shri A.K. Puthia
General Manager
Northern Railway,
Baroda House
New Delhi.
2. Shri Arun Kumar Arora
Divisional Railway Manager,
Northern Railway, State Entry Road
Kashmeri Gate, New Delhi. ...Respondents

(By Advocate: Shri S.M. Arif)

ORDER

By Mr. V. Ajay Kumar, Member (J)

O.A. No.1137/2013 filed by the petitioner was disposed of by this Tribunal on 27.04.2015 and the relevant paragraphs of the same read as under:-

"The applicant is aggrieved by the impugned Annexure A-1 letter No.220-E/554/Regularisation/P6 dated 23.11.2011 by which the respondents, in supersession to their earlier letter of even no.501-E/85-132/EIID(Losse) dated 11.02.1991, revised the date of regularisation of the applicant as Clerk cum Typist from 29.05.1987 to 29.03.2011. According to the applicants counsel, the applicant was regularised w.e.f. 29.05.1987 vide the respondents letter dated 23.11.2011 based on their decision dated 11.02.1991 that those MCCs who are working on ad hoc basis for more than 3 years in Construction Organisation will be regularised by their respective parent department.

XXX

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XXX

4. The respondents have filed their reply. They have not refuted the aforesaid facts. Accordingly, we allow this OA and quash and set aside the impugned order dated 23.11.2011 revising the date of regularisation of the applicant from 29.05.1987 to 29.03.2011. Consequently, we restore the earlier order of the respondents dated 29.03.2011 granting regularisation to the applicant as MCC w.e.f. 29.05.1987. The consequential benefits shall follow. The Respondents shall also pass appropriate orders in compliance of the aforesaid directions within a period of two months from the date of receipt of a copy of this order".

2. Alleging violation of the aforesaid orders, the petitioner filed the instant CP.

3. The respondents vide their compliance affidavit submitted that they have fully complied with the orders of this Tribunal and accordingly prays for dismissal of the CP.

4. However, the learned counsel for the petitioner while drawing our attention to the operative part of the order in the OA submits that the OA was allowed by restoring the date of regularization as 29.05.1987 with all consequential benefits. The respondents though implemented the orders of this Tribunal notionally, but not granted monetary benefits. The learned counsel further submits that once the OA was allowed with all consequential benefits, the

respondents were under obligation to grant the monetary benefits also and not granting the same is a clear contempt of the orders of this Tribunal.

5. On the other hand, the learned counsel for the respondents, while drawing our attention to the order dated 03.08.2015, submits that in compliance of the orders of this Tribunal, they have restored the date of regularization of the petitioner to 29.05.1987 and accordingly granted promotions to the post of Senior Clerk, Office Superintendent and Chief Office Superintendent from due dates and fixed the pay scale of the petitioner accordingly.

6. It is further submitted that as per IREM 228, if due to any administrative errors, staff are over looked for promotion to higher grades could either be on account of wrong assignment of relative seniority of the eligible staff or full facts not being placed before the competent authority at the time of ordering promotion or some other reasons, the staff who have lost promotion on account of said administrative error should on promotion be assigned correct seniority vis-à-vis their juniors already promoted, irrespective of the date of promotion and pay in the higher grade on promotion may be fixed proforma at the proper time and the enhanced pay may be allowed from the date of actual promotion but no arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher post and in terms of the said rule

applicable to all the railway servants including the petitioner, the respondents have not paid any back wages/arrears to the petitioner. Accordingly, he submits that their action is in terms of the orders of this Tribunal and also in accordance with the applicable rules.

7. It is true that the OA of the petitioner was allowed with all consequential benefits, but whenever court grants the reliefs, as prayed for with all consequential benefits, the said consequential benefits are in accordance with law and as per rules, unless specified by the court while allowing the case to the effect that the petitioner is entitled for arrears or any other benefit with effect from a particular date.

8. In the instant case, the issue is pertaining to granting of arrears on restoring the seniority of the petitioner and by granting promotions from time to time as per rules. As per the settled principles of law, the normal rule is that when a public servant has not shouldered the responsibilities of a higher post, though he was promoted from a back date, he is not entitled for the arrears. The exception to the said rule would be a specific direction by a court of law.

9. In the instant case, there was no specific direction from this Tribunal that the petitioner would be entitled for arrears from any particular date. On the other hand, in respect of the respondent-

Railways, there is specific rule for non-payment of arrears in case of granting of notional promotions. Therefore, it cannot be said that the action of the respondents in denying arrears to the petitioner is either in violation of the orders of this Tribunal or against the settled principles of law or the rules in force.

10. In the circumstances, the CP is dismissed and the notices are discharged. No costs.

(NITA CHOWDHURY)
MEMBER (A)

(V. AJAY KUMAR)
MEMBER (J)

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