

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.915 OF 2003

New Delhi, this the 12th day of April, 2004

HON'BLE SHRI SHANKER RAJU, JUDICIAL MEMBER
HON'BLE SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER

Shri D. Thomos,
Senior Clerk
Under Sr. Sectional Engineer (TL),
Northern Railway,
Railway Station, New Delhi.

(By Advocate : Shri B.S. Mainee)

.....Applicant

Versus

Union of India: through

1. The General Manager
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway State Entry Road,
New Delhi.

(By Advocate : Shri B.S. Oberai)

.....Respondents

ORDER (ORAL)

SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER :-

This Original Application under Section 19 of the Administrative Tribunals Act, 1985 has been filed seeking a direction to the respondents to release the arrears of pay from the date of promotion granted to the applicant.

2. It is stated by the applicant that he had filed OA No.1854/1996 which was disposed of by order dated 30.3.2000. The applicant had claimed regularisation with reference to the date of his engagement as casual Khallasi on 28.2.1981 followed by promotion as Material Chaser on ad hoc basis from 31.5.1989. He continued to work as on ad hoc basis

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from 31.5.1989 to 9.5.1994. Thereafter he was regularised as Khallasi on 14.7.1995. This Tribunal observed that the applicant was to be regularised in accordance with the decision arrived at in the Permanent Negotiation Machinery meeting of 5.5.1987 and seniority was to be given taking into account the earlier period of service as Material Checking Clerk/Clerk within the quota. Accordingly, the OA was allowed. Subsequently, the applicant filed OA 2773/2001 claiming his promotion from the date when his junior was promoted with all consequential benefits. This Tribunal by order dated 4.4.2002 disposed of the OA with the following directions:-

"Respondents should take necessary steps to complete the suitability test in accordance with the rules as early as possible and in any case within two months from the date of receipt of a copy of this order. Thereafter the respondents shall pass an appropriate order in accordance with law, rules and instructions with intimation to the applicant."

3. The respondents vide their order dated 4.4.2002 (Annexure A/5) stated that on having been declared suitable for the post of Senior Clerk Grade Rs.4500-7000, the applicant ^{was} promoted as Senior Clerk Grade Rs.4500-700 (RPS). He was extended the benefit of proforma promotion w.e.f. 23.6.1997, that is from the date of promotion of his junior. Accordingly, he was given pay fixation. It appears that the applicant was not satisfied with the decision of the respondents and again filed OA 2316/2002 which was disposed of by order dated 16.9.2002 directing the respondents to consider the claim of the applicant as

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per his representation and decision taken in this regard should be communicated to the applicant. In pursuance of this order dated 16.9.2002, the impugned order dated 26.3.2003 (Annexure A/1) has been passed.

4. The respondents have stated that the representation for claim of arrears payment for the period from 23.6.1997 to 8.4.2002 has been considered but the same has been refused on the ground that the applicant ".....assumed duties of the post of Sr Clerk on 8/4/2 though proforma promotion has been granted to you wef 23/6/97 (date of actual promotion of your junior), your claim for arrears payment is not tenable in terms of FR 17(1)".

5. The claim of the applicant is that the respondents failed to promote the applicant as Senior Clerk from the date of his junior was promoted. Therefore, the applicant cannot be made to suffer on account of the delay of the respondents. Reliance has been placed on Full Bench decision of the Jodhpur Bench of this Tribunal in the case of Devi Lal and Ors. Vs. Union of India 2002 (1) ATJ 485. The learned counsel has also placed reliance on the decision of the Hon'ble Supreme Court in the case of State of Andhra Pradesh Vs. K.V.L. Narsimha Rao and Others, JT 1999 (8) SC 205 wherein Hon'ble Supreme Court has held that when retrospective promotion is effected monetary benefit flowing therefrom has to be extended to the concerned employee.

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6.. Respondents have contested this OA. It is stated that the Hon'ble Supreme Court in the case of Union of India and others Vs. P.O. Abraham and Others in Civil Appeal No.8904/1994 has approved the principle of 'No Work No Pay'. The learned counsel also invited attention to the provisions of F.R. 17 (1) which provides that the pay and allowances have to be paid from the date when the employee assumes duty of that post.

7.. We have heard the learned counsel of both the parties. There is no dispute that the applicant was given benefit of promotion only after he was compelled to approach the Court. There is nothing on record to suggest that he would have refused to discharge the higher responsibilities of Senior Clerk, if he was promoted on time. The Full Bench of this Tribunal in the case of Devi Lal (supra) has held that an employee not promoted earlier due to administrative lapse but subsequently given notional promotion retrospectively with effect from the date of his juniors is held entitled to arrears of pay and allowances with effect from the retrospective date. Further Para 228 of IREM insofar as the same denies to an employee pay and allowances on the principle of 'No Work No Pay' even if an employee has been erroneously denied the actual work on account of the fault of the management is invalid and violative of Articles 14 and 16 of the Constitution. The Hon'ble Supreme Court in the case of State of Andhra Pradesh and Others vs. K.V.L. Narsimha Rao (supra) has held that "In normal circumstances when retrospective promotion are

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effected, all benefits flowing therefrom, including monetary benefits, must be extended to an officer who has been denied promotion earlier." This principle of law has been explained by the Hon'ble Delhi High Court in CWP No.5952/2002 in the case of Union of India and Anr. - Vs. Shri C.N. Sahai and Ors. as per their judgement dated 20.9.2002. We, respectfully following these judgements, direct the respondents to accord financial benefits of pay & allowances from the date of retrospective promotion of the applicant.

8. In the result, this Original Application is allowed without any order as to costs.


(R.K. UPADHYAYA)
ADMINISTRATIVE MEMBER


(SHANKER RAJU)
JUDICIAL MEMBER

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