

13

**Central Administrative Tribunal  
Principal Bench**

**OA No. 2328 of 2003**

New Delhi, this the 6<sup>th</sup> day of August, 2004

**Hon'ble Shri V.K. Majotra, Vice Chairman (A)  
Hon'ble Shri Shanker Raju, Member (J)**

Shri Chittal, Aged 54 years,  
Working as Fitter Grade-I  
I.O.W. Estati Nizamuddin,  
New Delhi in the office of the  
Divisional Railway Manager,  
Northern Railway, State Entry Road,  
New Delhi.

And resident of  
C-24, Railway Colony,  
Lajpat Nagar, New Delhi – 110 024.

...Applicant

(By Advocate: Shri R.R. Ahlawat )

-versus-

1. Union of India through  
General manager,  
Northern Railway,  
Baroda House,  
New Delhi-110 001.
2. The Divisional Railway Manager,  
Northern Railway, State Entry Road,  
New Delhi – 110001. ...Respondents

(By Advocate: Shri M.S. Anwar proxy for Shri A.K. Shukla)

**O R D E R (ORAL)**

**By Mr. Shanker Raju, Member (J):**

1. Applicant assails respondents' order dated 3.4.2003 with the following reliefs:
  - (i) The Hon'ble Tribunal may be pleased to direct the respondents to give benefit of promotion to the applicant as Fitter MCM Grade from the date of promotions of his juniors w.e.f. 5.5.1996, with all consequential benefits including arrears, seniority etc. keeping in view the judgment of this Hon'ble Tribunal in the similar & identical case of Sh. Ram Karan and others.
  - (ii) The Hon'ble Tribunal may be pleased to direct the respondents to make the payment of arrears of pay and allowances to the applicant from the date of his retrospective notional promotion as Skilled Fitter Grade-I 01.03.1993, keeping in view of the judgment of the similar and identical cases.
  - (iii) The Hon'ble Tribunal may be pleased to direct the respondents to pay the interest on the arrears @ 18% as per judgment/orders of this Hon'ble Tribunal in many similar & identical such cases.

- (iv) The Hon'ble Tribunal may be pleased to pass any other/others order as may deem fit and proper in the lights of the facts and circumstances of the case.
- (v) The cost of the application may kindly also be awarded as the applicant to being deprived from his legal rights of promotions by the respondents.

2. Applicant was appointed as Works Khalasi on 4.3.1962 and promoted as Skilled Fitter Grade III w.e.f. 25.7.1981. Applicant, who was considered for promotion in the general category, in fact belongs to SC category and entry to this effect had been made in his record in the year 1991.

3. Being aggrieved, seeking promotion from the date of his junior, applicant had earlier approached this Tribunal by filing O.A. No. 1982/2000, which was disposed of by an order dated 10.07.2001 with a direction to take a decision on the representation of the applicant.

4. In compliance thereof the applicant's promotion, on proforma basis in Grade-II and Grade-I, had been ante-dated from 15.7.1990 and 1.3.1993 without any actual benefits.

5. The aforesaid decision led to filing of OA No. 2719/2002, which was disposed of on 28.10.2002 with a direction to dispose of applicant's representation. By an order dated 3.4.2003 denial of actual benefits as per FR 17(1) gives rise to the present OA.

6. Learned counsel of applicant states that the applicant's status of Scheduled Caste has nothing to do with his notional promotion as his case was to be compared with that of his immediate junior in general category, namely, Kanahiya Lal. The denial of promotion is attributable to the respondents and by non-promotion at due dates has prevented the applicant from shouldering higher responsibilities of the post. Hence, he cannot be deprived of the actual benefits.

7. The following cases have been relied upon to substantiate the claim:

- (i) **Union of India vs. K.V. Janakiraman, AIR 1991 SC 2910.**
- (ii) **State of Andhra Pradesh vs. K.V.L. Narsimah, 1994(4)SCC181**

8. On the other hand, respondents' counsel vehemently opposed the contentions. According to the respondents, as the applicant had not shouldered higher responsibilities on the post on notional promotion, denial of pay and allowances, is justifiable under FR 17(1).

9. We have carefully considered the rival contentions of the parties and perused the material on record.

10. It is trite law that if promotion has been illegally and without any justification is denied at an appropriate stage when it was due but granted retrospectively, flow of consequential benefits is natural.

11. The Apex court in K.V.Janakiraman (supra) has observed as under:

“The normal rule of ‘no work no pay’ is not applicable to such cases where the employees although he is willing to work is kept away from work by the authorities for not fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for his reason that FR-17(1) will also be inapplicable to such cases.”

12. In K.V.L. Narsimah, the Apex Court has observed as under:

“In normal circumstances where retrospective promotions are effected, all benefits following therefrom, including monitoring benefits must be extended to an officer who has been denied promotion earlier.”

13. In Shaikh Mehaboob vs. Railway Board, 1982 (1) SLR 453, Karanataka High Court made the following observations:

“If a Civil servant was denied promotion as proper time, he was not entitled to arrears of salary on the ground that he did not shoulder the duties and responsibilities of the higher post. In my view, the denial of arrears of salary to the petitioner can be supported. The petitioner had a right to be considered for promotion on the date when it was due in view of the right to equality generated under Article 14 of the constitution and right to equal opportunity in matters relating to employment guaranteed under Article 16(1) of the Constitution. The said valuable rights generated by the Constitution cannot be denied in the first instance and thereby deny the civil servant the opportunity to render service in the higher post and subsequently make it a ground for justifying the arrears of salary even after according retrospective promotion, at some parent of time later.

14. If one has regard to the above, admittedly the applicant’s junior in general category, namely, Kanhaiya Lal, had been promoted in Grade II and Grade I at the due time but the case of the applicant was not considered by the respondents. The applicant was otherwise eligible and there was nothing adverse against him. Denial of promotion

due at the relevant point of time has prejudiced him. Had the applicant been offered the promotion, he would have certainly shouldered the higher responsibilities. Accordingly, the illegal action of the respondents has kept off the applicant and prevented him from shouldering higher responsibilities, which is attributed to the respondents and the applicant has no role to pay in it. Therefore, the application of FR 17(1) is misconceived.

15. Accordingly, O.A. is allowed. The impugned order is quashed. Respondents are directed to accord to the applicant actual benefits including pay and allowances i.e. difference in Grade II as well as Grade I from the date of notional promotion till the date of shouldering the higher responsibilities. Applicant shall also be considered in accordance with rules if his junior is promoted for the post of Fitter MCM. However, the applicant shall not be entitled to the interest as claimed by him. No costs.

*S. Raju*  
 (Shanker Raju)  
 Member (J)

*V.K.Majotra*  
 (V.K.Majotra) 6.8.04  
 Vice Chairman (A)

/na/