

Central Administrative Tribunal
Principal Bench, New Delhi.

V

O.A. No.1781 of 1989

15th day of April, 1994

Shri N.V. Krishnan, Vice-Chairman(A)

Shri C.J. Roy, Member (J)

Shri S.K. Venkatachalam,
D-89, Anand Vihar,
Delhi-110092.

Applicant

By Advocate Shri K.N.R. Pillai.

Versus

Union of India through
the Secretary,
Ministry of Railways,
Railway Board, Rail Bhavan,
New Delhi-110001.

Respondent

By Advocate Shri N.S. Mehta.

O R D E R (Oral)

Shri N.V. Krishnan, Vice-Chairman(A)

The applicant is aggrieved by the Annex.1 order dated 29.5.1985 by which, though he has been given proforma promotion as Section Officer w.e.f. 30.6.1980, it has been stipulated that no arrears of pay on this account would accrue to him prior to the date of actual taking over charge as Section Officer.

2. The facts are not in dispute. The promotion to the post of Section Officer is governed by the

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Railway Board (Secretariat) Rules, 1969. At the relevant time, 1/6th of the substantive vacancies were to be filled up by direct recruitment. The remaining 5/6ths of the substantive vacancies as well as temporary vacancies were to be filled up by three methods in equal proportions. The three methods are as follows:-

- a) Assistants with 8 years' approved service, on the basis of seniority subject to rejection of the unfit;
- b) Permanent Assistants with longest period of continuous service in that grade, and assessed by a Selection Committee on the basis of merit.
- c) Persons selected on the result of Limited Departmental Competitive Exam. held by UPSC from time to time.

3. Clause b) referred to above, was challenged before a Hon'ble Single Judge of the Delhi High Court, who struck it down. An appeal filed by the Govt. was allowed by the Division Bench of that Court and the operative part of the judgement of the Division Bench is as follows:-

"For the aforesaid reasons, the appeal and Civil Writ No.378 of 1982 are allowed. The order of the learned Single Judge is set aside and Civil Writ No.935 of 1972 is dismissed. We were informed that after the judgement of the learned Single Judge, no promotions were made under clause (b). As the validity of clause (b) has been upheld by us, the Government would be free to make promotions under clause (b) with effect from the date when they stopped making such promotions. The parties are however, left to bear their own costs."

4. In pursuance of this judgement, a D.P.C. was constituted and separate panels for promotion of persons under clause (b), which could not be done between 1978 and 1981, was prepared. The applicant's name was included in the 1979 panel. He, along with certain others, was appointed as Section officer by the notification dated 5.3.1983 (Annex.A2) w.e.f. 14.2.1983. Four persons out of this list, were appointed from 15.2.1983. Subsequently, the impugned order (Annex.A-1) was passed on 29.5.1985. By this order, the applicant as well as 20 others, were given proforma promotion from retrospective dates between 30.6.1979 and 30.6.1982. The applicant was assigned 30.6.1980 as the date of proforma promotion. There was a stipulation that no arrears of pay will accrue to the incumbents prior to the date of actual taking over as Section Officers which, in the case of the applicant, is 14.2.1983. The applicant is aggrieved by this stipulation.

5. He submitted a representation on 17.7.1987 (Annex.A5) in respect of issue of post retirement First Class passes as he had retired on 30.9.1984, claiming the benefit of promotion from 30.6.1980. He also submitted a representation (Annex.A7) dated 26.7.1988 claiming arrears of pay and allowances grant of additional increments and grant of passes after giving effect to the promotion from 30.6.1980. As there was no response, this O.A. has been filed

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seeking the following reliefs:-

- (i) Payment of arrears of salary and other allowances retrospectively from 30.6.1980 after refication till retirement with interest due thereon.
- (ii) Grant of one additional increment as per extant Rules on completion of 3 years' service in the grade of Section Officer which fell due on 1.6.1983 and payment of arrears till the date of retirement on 30.9.1984 along with interest due thereon.
- (iii) Issue of three sets of post-retirement I class 'A' Free Passes as admissible to the Gazetted Officers in accordance with the extant Rules on the subject after refixation of pay retrospectively from 30.6.1980 as prayed for.

6. The respondents have filed a reply contesting the claims. It is stated that the promotions could not be made under clause (b) of the relevant Rule because that clause had been declared invalid in 1978 by a decision of the Delhi High Court of a learned Single Judge. It is only when the Govt. preferred an appeal and this decision was set aside and the validity of clause (b) was declared that further promotions could be made under clause (b). In the meantime, the Government has appointed on ad hoc

basis 15 persons to work as Section Officers and, when persons like the applicant were promoted after clause (b) was declared valid, by the Annex.R1 order, the persons who were given ad hoc promotions were also reverted simultaneously. It is stated that the Government reconsidered the question of giving retrospective effect to the promotions and decided that the retrospective promotions on a proforma basis be given, making it clear that this will not entitle any of the persons to any arrears of pay, etc. This decision has been justified on the ground that it was not Government's fault that no promotion was made under clause (b) for the years 1978 to 1981. Secondly, the vacancies on this account were also filled up by ad hoc arrangements and thus one set of persons had already been paid for having worked as Section Officers during this period. Thirdly, the applicant and other persons were only working as Assistants till their actual promotion as Section Officers in 1983.

7. Therefore, the only question is whether the stipulation made in the Annex. A1 order is valid or not.

8. We have heard the learned counsel for the applicant who claims that he has a right to receive pay and allowances and other benefits as a Section Officer from the date of his proforma promotion, i.e., 30.6.1980. The learned counsel for the applicant has drawn our attention to the judgement of the Chandigarh

of the Tribunal in Roshan Lal Vs. Union of India, A.T.R. 1987 (1) 121 and the decision of the Punjab and Haryana High Court in 1980 (3) SLR 702 in Charan Das Chadha Vs. State of Punjab. He contends that if, for any reason, the legitimate promotion due to an employee is withheld, the respondents are bound to pay all the arrears of salary with effect from the date on which promotion was due to be given, though the promotion took effect from a subsequent date on account of the respondent's own action. We are of the view that this is not a general principle to be applied in all cases. This principle holds good where the promotion is not granted because of Govt.'s own action. In the present case, the Govt. was willing to hold a D.P.C. for promotion, but it is because of the decision of the Single Judge of the Delhi High Court holding clause (b) invalid, that such action could not be taken. In the circumstance, the Government cannot be faulted for not ordering the promotion at the appropriate time. The learned counsel for the applicant has not been able to cite any authority to cover a situation where the Government was prevented by a decision of a competent Court from ordering promotion which could be only later ordered when that decision was reversed. We are of the view that in such a circumstance, the Govt. is bound to grant promotion from the retrospective dates whenever they are due, ~~but~~ they have every right to treat it as proforma promotion and stipulating

that the promotees would not be entitled to any arrears of back wages. In other words, while the pay on the promoted post could be notionally fixed with effect from the date of proforma promotion, the actual benefit of such pay fixation, will accrue only from the date on which the incumbent assumed charge of the post of promotion. Thus, in so far as the applicant is concerned, it is clear that his pay as Section Officer has been notionally fixed from 30.6.1980 but the benefit of that fixation has been given to him only from 14.2.1983, which is the date on which he was actually promoted. It is not as if that there has been any discrimination in this regard as between the applicant and others who are similarly promoted.

8. In the circumstance, we are of the view that this application has no merit and, therefore, without advertizing to the question of limitation, which was also a point reserved for consideration at the stage of final hearing, we find no merit in this O.A. and accordingly, it is dismissed.

urby
(C.J. Roy)
Member (J)

✓ 15.4.83
(N.V. Krishnan)
Vice-Chairman (A)

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