

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI
**

O.A. No. 1063/92.

Date of decision 17/12/92

Shri Gurdarshan Singh ... Applicant

v/s

Union of India & Ors. --- Respondents

CORAM:

The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman (J)

The Hon'ble Member Mr. I.P. Gupta, Member (A)

For the Applicant ... Shri R.K. Kamal, counsel.

For the Respondents ... Shri Romesh Gautam, counsel.

(1) Whether Reporters of local papers may be allowed to see the Judgement ?

(2) To be referred to the Reporter or not ?

J_U_D_G_E_M_E_N_T

Delivered by Hon'ble Shri I.P. Gupta, Member (A) 7

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the short point that has been raised is that while by order dated 22.2.1991 Annexure A-1) the respondents have allowed promotions to the applicant, such promotions have been treated as

~~notional/proforma for fixation of pay but the arrears~~
have not been allowed. The applicant has contended
that all the arrears should be paid right from 16.5.1979
to 30.11.1990, when the applicant retired from service.

2. The applicant was working as Travelling Ticket
Examiner in the scale of Rs. 300-560. It is contended
that he had three avenues of promotion to higher scale
i.e. Rs. 425-640 -

(i) As conductor.

(ii) As Special Ticket Examiner.

(iii) As Head Ticket Collector.

The Administration required all the staff to exercise option
for further avenues of promotion in one of the above
streams. The applicant gave his option for promotion as
Conductor on 9.12.1976 (Annexure A-2). He alleges that
he was wrongly treated as optee for Senior Ticket Examiner.
The applicant made a representation in July, 1978. A
number of officials junior to the applicant were promoted
as conductor. The matter remained under consideration
for quite some time. The final outcome was given by
issue of order dated 22.2.1991 where notional promotions
were allowed.

10

3. The Learned Counsel for the applicant contended that since the notional promotion was given to rectify error, he was entitled to arrears of salary. He cited the case of Union of India v/s K.V. Jankiraman I 1992(1) ATJ 371₇ where it was held that where the employee concerned was willing to work and is kept away from work by the authorities for no fault of his, the principle of 'no work no pay' would not be applicable. He also cited the case of S.K. Chibber & Others II 1990 ATLT (CAT) 273₇ where it was held that on revision of seniority, Government servants so affected are legally entitled to the financial benefits from the retrospective date of promotion. He further supported the same point by quoting the case of P.N. Tandon & Another v/s Union of India I 1988 ATLA (CAT) 295₇.

4. The Learned Counsel for the respondents said that the application was barred by limitation. It has further been alleged in the counter that the applicant submitted his option for the Special Grade TTE/Conductor and accordingly he was considered as a Special Grade Ticket Examiner optee. His representation dated 27.7.1978 was planted through some one years after his original option for

taking undue advantage. During his tenure he had represented for other staff on a number of occasions as he was a trade unionist but surprisingly his own case was not represented. However, it was finally decided that he should be treated as conductor optee in compliance with the decision taken by the respondents on 11.9.1990 in the PNM. A notice dated 30.11.1990 was issued saying that he is deemed to have exercised his option vide his application dated 9.12.1976 and thereafter the applicant observed all formalities which were to be fulfilled before promotion and finally the orders dated 22.2.1991 issued.

5. The Learned Counsel for the respondents also drew attention of the Bench to the Railway Board's letter dated 22.8.1986. Paragraphs 2, 3 and 4 from the said letter are reproduced below :-

" A question has been raised whether the benefit of these restructuring orders should be extended to Railway Servants who were in service on the date of effect of restructuring orders but retired from service or died before the restructuring orders could be implemented.

The question has been under consideration of

the Ministry of Transport (Dept. of Railways),

for quite sometime. It has now been decided that the benefit under the restructuring orders may be allowed to such of the Railways servants who were in service as on the crucial date for restructuring.

The benefit in terms of restructuring orders will be in respect of promotion to the immediate higher grade i.e. the benefit will be extended only for the first promotion and not for any subsequent promotion, even if a person was due, therefore, in terms of the relevant restructuring orders. This is subject to the condition that the employee is otherwise eligible and suitable for and due promotion to the immediate higher grade as per the provisions in the restructuring orders.

Since a person who is eligible to get the benefit in terms of these instructions, would have quit service before the implementation of the restructuring orders, the benefit will be only in the form of notional or proforma fixation of pay. "

6. The Learned Counsel for the respondents

therefore argued that in terms of the aforesaid memo, the benefit was to be in the form of notional or proforma fixation of pay only.

7. At this stage the Learned Counsel for the

applicant contended that the applicant was in service on the date of restructuring i.e. 1.1.1984. The order should have been implemented before his retirement on 30.11.1990 but was delayed intentionally.

He further contended that the afore^{said} letter dated 22.8.1986 was not relevant in the case of the applicant.

8. On an analysis of this case we find that the

order dated 22.2.1991 contained promotions in two parts.

The first part related to promotion as Conductor from

16.5.1979 and consequent fixation of pay. The second

part related to promotion as CIT from 1.1.1984 conse-

quent upon restructuring of the cadre. The Railway

Board's letter dated 22.8.1986 relates to implementation

of restructuring order. It is true that the applicant

was in service on the date of restructuring but he

retired before restructuring orders could be implemen-

ted in his case.

9. The pleadings, however, show that the General Manager by his letter dated 17.9.1990 gave necessary directions to implement the decision by providing him appropriate seniority in the cadre of conductor well before his retirement i.e. 30.11.1990. The order dated 30.11.1990 also said that the applicant should be treated as conductor optee from the date of his option and he would be deemed to have exercised his option vide his application dated 9.12.1976. Other formalities had to be completed and these formalities were required to be fulfilled by other Staff also.

The final order regarding fixation of pay issued on 22.2.1991. In terms of the Railway Board's letter of 22.8.1986 the applicant had retired before issue of the order dated 22.2.1991 and, therefore, would be entitled to only national promotion. As contended by the Learned Counsel for the respondents, every employee in whose case the implementation was done after retirement, got national benefit only.

10. So far as promotion from 16.5.1979 ^{is concerned} this was not given under the purview of the letter dated 22.8.1986 and

the law is settled that the promotee is entitled to arrears of salary from the date of notional promotion

if notional promotion is given to rectify any arrear

Binod Bihari Sahu v/s Union of India & Another -

1990 (14) ATC 422⁷. The applicant would therefore be

entitled to arrears from 16.5.1979 to 31.12.1983.

11. So far as promotion from 1.1.1984 under re-

structuring scheme is concerned, the applicant would

not be entitled for arrears in terms of the aforesaid

letter of 22.8.1986 since he had retired on 30.11.1990

prior to the issue of the letter dated 22.2.1991 and

no legal direction to pay arrears can be given. But

keeping in view the facts that a decision to give

him the benefit of option exercised in 1976 was taken

in a meeting as late as of 17.9.1990 and if the process

were expedited, the implementation could have been possibly

done before 30.11.1990, the respondents are expected to

consider his case for paying him the arrears in respect

of promotion from 1.1.1984 onwards keeping in view the

special features of his case.

12. With the aforesaid directions and observations in

paras 10 & 11 the case is disposed of with no order as

to costs.

I.P. Gupta
Member (A)

17/12/92

Lambh (7.XII.92)
Ram Pal Singh
Vice-Chairman (J)