

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

CIVIL SIDE

ORIGINAL JURISDICTION

DATED ALLAHABAD THE :25.03.2014

PRESENT

THE HON'BLE ARUN TANDON,
THE HON'BLE ARVIND KUMAR MISHRA-I,

JUDGE.

JUDGE.

CIVIL MISC. WRIT PETITION NO.42708 OF 2011.

ORDER ON THE PETITION OF UNION OF INDIA & OTHERS.

.....Petitioners.

IN RE:

- 1.Union of India through General Manager, Northern Railway,
Headquarters Office, New Delhi.
- 2.Divisional Railway Manager, North Central Railway, DRM's Office,
Allahabad.
- 3.Senior Divisional Engineer-II, North Railway, DRM's Office, North
Central Railway, Allahabad.

.....Petitioners.

VERSUS

- 1.Raj Kumar Pathak, S/o Late Jai Narain Pathak, Northern Railway,
Headquarters Office, New Delhi.
- 2.Central Administrative Tribunal, Allahabad.

.....Respondents.

Counsel for the Petitioners :Sri A.K. Gaur

Counsel for the Respondents :S.K. Bharti, Sri K.S. Srivastava.

BY THE COURT

Typed By: *AP*

Court No. - 10

Case :- WRIT - A No. - 42708 of 2011

Petitioner :- Union Of India Thru G.M.,N.Railway,New Delhi And Others

Respondent :- Raj Kumar Pathak And Another

Counsel for Petitioner :- A.K.Gaur

Counsel for Respondent :- S.K. Bharti,K.S. Srivastava

Hon'ble Arun Tandon,J.

Hon'ble Arvind Kumar Mishra-I, J.

Heard Sri A. K. Gaur on behalf of petitioner and Sri K. S. Srivastava on behalf of respondent no.1.

Union of India and the Divisional Manager, North Central Railway have filed this writ petition against the order of the Central Administrative Tribunal, Allahabad dated 17.05.2011 whereby the Tribunal has proceeded to issue a direction upon the Railway Authorities to the effect that applicant/respondent no.1 has shouldered the higher responsibility of the Grade of Rs.2375-3500 but was not paid salary as applicable. He is entitled for a sum of Rs.1,47,648/- along with interest with effect from 31.03.1995 till the date of actual payment and his pension be revised accordingly Rs.10,000/- has also be awarded for the mental agony suffered by the original applicant.

Facts in short leading to the present writ petition are as follows :

Raj Kumar Pathak (i.e. respondent no.1) was employed with the Indian Railways. Because of misconduct during the period 12.12.1980 to 18.01.1983 he was punished under an order dated 11.07.1984, whereby he was reduced in the

grade of pay for the period of 3 years from the date of the order or till the date of his retirement, whichever was earlier.

Not being satisfied with the order of punishment he filed an appeal, which was dismissed on the date of his retirement i.e. 31.03.1995.

Raj Kumar Pathak filed Original Application No.447 of 1996 before Central Administrative Tribunal and prayed for quashing of the order of punishment as well as the appellate order and a direction upon the Railway Authorities to promote the petitioner on the post of Chief Inspector of Works with effect from 1.03.1993.

The original application came to be decided by means of the order dated 8.08.2003. The Tribunal proceeded to quash the order of punishment as well as the appellate order and directed that the financial loss, which has been caused to respondent no.1 because of the punishment order, shall be paid to him within a period of 4 months from the date of receipt of the order. The operative part of the judgment of the Tribunal is quoted herein below :

“The O.A. Is allowed. The punishment order dated 18.7.94 (Annexure A-17) and the appellate order dated 31.3.95 (Annexure A-1) are quashed. The applicant shall be paid the financial loss, which have occurred to him on account of punishment order, within a period of four months from the date of receipt of a copy of the order.

No order as to costs.”

From the aforesaid it is apparently clear that the Tribunal did not grant the prayer made by the

applicant/respondent no.1 for his being promoted as Chief Inspector of Works with effect from 1.03.1993. Therefore, it is to be held that the relief in that regard was denied.

The only relief granted by the Tribunal was to set aside the order of punishment and the appellate order with a further direction to the Railways to pay the financial loss, which has been caused to respondent no.1 on account of the punishment order. No other relief/benefit was granted to respondent no.1.

It appears that the monetary loss, which was caused to respondent no.1 because of the punishment order was not paid to the petitioner to his satisfaction. He filed Original Application No.1167 of 2004 i.e. after nearly 9 years of his retirement and for the first time he came up with a prayer contrary to the prayer made in his first Original Application i.e. O. A. No.447 of 1996 to the effect that he be promoted as Chief Inspector of Works with effect from 1.01.1991 and further for promotion on the post of Assistant Engineer with effect from 9.07.1991 in the alternative from 1.01.1992 and for monetary benefits being paid to him accordingly. The respondent no.1 also calculated that he was entitled to difference of Rs.1,47,678/- towards retiral benefits after fixing his salary in the pay scale of Rs.2375-3750/- on the date of retirement i.e. 31.03.1995.

We may record that this pay scale of Rs.2375-3750 according to prayer no.(iii) of the original application was applicable to the post of Assistant Engineer, the promotion whereof was being claimed for the first time under the Original Application made in the year 2004 i.e. after more than 9 years of the retirement of the respondent no.1 (i.e. the

applicant). This original application was also decided vide order dated 8.10.2004 and the only relief granted by the Tribunal was that the applicant/respondent no.1 may be paid the entire financial loss suffered by him as per the order passed by the Tribunal dated 8.08.2003, which has already been quoted herein above. A direction was issued to the competent authority to consider his representation accordingly by means of a reasoned order.

It may be recorded that under the order dated 8.08.2003 the Tribunal did not deem it fit and proper to grant the relief prayed for in the matter of promotion as Chief Inspector of Works with effect from 1.01.1991, or for promotion as Assistant Engineer with effect from 9.07.1991 in the alternative from 1.01.1992 as was prayed by applicant/respondent no.1.

The Railways made the payment qua in terms of the order of Tribunal dated 8.08.2003 on 11.03.2005 towards the financial loss, which had been caused to respondent no.1 because of the order of punishment.

Not being satisfied respondent no.1 filed third Original Application No.1040 of 2006. The Tribunal by means of the order impugned has gone into the issue as to whether respondent no.1 should have been promoted from the date his juniors were so granted promotion and has thereafter proceeded to direct that he was entitled to notional promotion from the date it was due and has accordingly directed the grant of arrears of salary in terms of the notional promotion.

The Tribunal has proceeded to direct that the applicant may be paid a sum of Rs.1, 47, 648/- along with interest with effect from 31.03.1995 till the date of actual payment.

This sum of Rs.1,47, 648/- as already noticed above has been calculated with reference to the pay applicable to the post of Assistant Engineer qua which respondent no.1 claimed promotion after 9 years of his retirement by means of Original Application No.1167 of 2004, which relief was infact not granted by the Tribunal while deciding the original application as noticed above.

Sri A. K. Gaur, Advocate on behalf of Railways points out that the Tribunal has misdirected itself in re-opening the issue of promotion under the order impugned specifically in the circumstance when the prayer made by respondent no.1 in his first Original Application No.447 of 1996 qua promotion on the post of Chief Inspector of Works with effect from 1.03.1993 stood refused. The order of the Tribunal was accepted by the respondent no.1.

The prayer for grant of the promotion on the post of Chief Inspector of Works with effect from 1.01.1991 and that of Assistant Engineer with effect from 9.07.1991 in the alternative from 1.01.1992 as made in the 2nd Original Application No.1167 of 2004 was also not granted by the Tribunal as per the order dated 8.10.2004. He further submits that from the records it is apparent that whatever promotions were claimed by the respondent no.1 on the plea that such promotions had been vis-a-vis granted to his juniors, had infact taken place much prior to the retirement of respondent no.1. Therefore, if any relief had to be prayed for it should have been so prayed in Original Application No.447 of 1996. Whatever relief of promotion was infact prayed for was not granted. Therefore, the chapter of promotion of respondent no.1 stood closed with the passing of the order in Original Application No.447 of 1996 for all practical purposes. The

said issue could not have been re-opened in original application made after more than 11 years of the retirement of respondent no.1, that too in the garb of non compliance of direction of the Tribunal as contained in the order dated 8.08.2003 qua payment of financial loss, which was caused to respondent no.1 on account of the order of punishment whereby he was reduced to one stage lower in the pay scale.

Sri A. K. Gaur, Advocate submits that only the issue of computation of money in terms of the order of Tribunal dated 8.08.2003 after the punishment i.e. reduction in pay scale had been quashed could have been examined in the 2nd Original Application No.1167 of 2004. No other issue could have been gone into.

Counsel for the respondent desperately attempted to take the Court through various orders, which were passed by the Railway Board while entertaining his grievance in the matter of non-payment of financial loss in terms of the orders of Tribunal dated 8.08.2003 referred to above and it was sought to be contended that the issue of promotion from the date when persons junior to respondent no.1 were so promoted, was kept alive by the Railways and, therefore, the Tribunal has not committed any error in directing notional promotion and payment of Rs.1, 47, 648/- as was claimed by respondent no.1 after granting such promotion as Assistant Engineer.

Having heard counsels for the parties and having examined the records of the present writ petition we are of the considered opinion that the contentions raised on behalf of the Railways has substance.

The relief in the matter of promotion, on the plea that

persons junior to respondent no.1 had been so promoted, were all based on facts, which had taken place prior to retirement of respondent no.1 i.e prior to filing of Original Application No.447 of 1996. Therefore, all such reliefs had to be prayed for by respondent no.1 in Original Application No.447 of 1996. The respondent no.1 had prayed for promotion being granted as Chief Inspector of Works with effect from 1.03.1993 in the said original application with all consequential benefits, but the relief stands denied because of no order having been passed by the Tribunal in that regard. The chapter of promotion, therefore, stood closed with the passing of the order dated 8.08.2003. It is legally not permissible under law to re-open the said issue of promotion by means of an original application made in the year 2006 as the principles enshrined under Order 2 Rule 2 would be attracted in the facts of the case. This aspect of the matter has been completely ignored by the Tribunal while passing the order impugned.

From the directions issued by the Tribunal in the Original Application No.447 of 1996 it is apparently clear that the only relief granted was to compute and pay the financial loss, which has been caused to respondent no.1 because of the order of punishment and nothing further.

There is no finding by the Tribunal under the order impugned that the payment actually made by the Railways towards financial loss in terms of the order of Tribunal was not correctly calculated. The Tribunal has travelled beyond the directions issued under the order dated 8.08.2003 while directing the notional promotion and for permitting payment of Rs.1,47, 648/- on the basis of such notional promotion as Assistant Engineer claimed by respondent no.1.

The order dated 17.05.2011 passed by the Tribunal
cannot be legally sustainable and is hereby quashed.

The writ petition is allowed.

Order Date :- 25.03.2014

M. Himwan

By
R
11/04/14

Sy- Aman Tandon, J.
Sy- Arvind Kumar Mishra - E, J.

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Tipatti 11/04/2014
Section Officer
Copying 'A' Section
High Court, Allahabad