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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

Registration O.A.NO. 448 of 1987

B.S Sharma

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Applicant

Vs.

Union of India & Others

Respondents

Hon'ble Mr. Justice U.C.Srivastava, V.C.

Hon'ble Mr. A.B. Gorthi, Member (A)

(By Hon. Mr. Justice U.C.Srivastava, V.C.)

The applicant approached this Tribunal praying that a mandamus be issued directing the respondents to give the benefit of promotion etc to the applicant on the higher post on which juniors have been promoted ignoring the applicant from date on which, ^{as} he had not been ignored, would have been promoted and the respondents be further directed to give effect to its order dated 10.5.83 (order No. 754-E/148-III/EIIA in its entirety).

2. Thus according to the applicant there was in action on the part of the respondents in giving effect to their order as recognised in the provisional seniority list dated 22.9.1984 which has propelled him to approached the Tribunal after making various representations. The applicant started his service career in the Railway Administration as Electrical Estimator/Draughtsman in the pay scale of Rs.150-205/- in the year 1960. In the year 1971 he was promoted as Electrical Foreman Grade-B in the pay scale of Rs.370-475/- after intervening promotion. As a result of Mian Bhai award to which certain disputes were referred in the year 1969 which was accepted by the Government effect to the same was given, and in view of the said award it was decided that all posts of Foreman-B in the grade of Rs.370-475/- in the Mech. Electrical Signal and Tele-communication Workshops and in Civil Engineering Workshop Foreman in the pay scale of Rs.335- 485/- should be upgraded to the scale of Rs. 450-575/- and be designated as Asstt. Shop Supdt. w.e.f. 1.2.1970, and the pay of incumbents of the upgraded post be fixed proforma from 1.8.70 under rule 2018-B of the Railway Establishment Code, Volume-II.

It appears that thereafter selection process started and the applicant who, as a result of award as stated above was placed in the higher pay scale challenged the selection process. The writ petition filed by the applicant and others was allowed by the High Court and the Special Leave Petition against the same was dismissed by the Supreme Court. Thereafter the respondents vide an order dated 10.5.83 directed that the applicant alongwith 17 other persons shall be considered as posted against upgraded post in the grade of Rs.450-575(AS), Rs.700-900/- (RS). But during this period of litigation referred to above certain juniors to the applicant were promoted and placed in a higher pay scale, and even they have got another promotion, and the name of such persons who were juniors to the applicant and placed in higher pay scale have also been mentioned by the applicant as G.R.Diwan, S.K.Chopra and B.R.Prasad. Even after the decision of the Supreme Court, the grievance of the applicant is that these persons were promoted and the claim of the applicant was ignored and ultimately promotion was given to him w.e.f. 1.1.84 as such he is entitled for the promotion w.e.f. date earlier to when his juniors were promoted in the grade of Rs.840-1040/- and entitled to arrears for the same. Similarly for higher promotions also the claim of the applicant was not considered and S.K.Chopra who was promoted in the grade of Rs.3000-4500/- and the applicant was also entitled for the same.

3. The respondents have opposed the application later on when the amendment was made and they have pleaded in their Written Statement that the above 3 persons appeared in the selection and that is why they were placed in the panel, and the applicant did not appear in the selection. Obviously there was no occasion for the applicant to appear and it has been stated by him in the Rejoinder Affidavit as a

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matter of fact he was not called. Subsequently it has been stated by the respondents that the seniority of the applicant as E.F.O. in the grade of Rs. 700-900/- was assigned vide letter No. 847 dated 22.9.84, the selection of A.E.E. was held next on the dated 26.3.88 and the applicant was called in accordance with seniority to appear in the selection, but neither he appeared in the same nor he gave any reasons for his non appearance in the selection. It has been further stated that after the receipt of the representation of the applicant, his salary has been fixed and that he has been given the arrears due to him in accordance with the judicial decisions and that the applicant has personally received the statements of salary on 27.6.88 and had acknowledged the same.

4. The applicant has denied the holding of any supplementary examination/selection for giving him benefit from the due date and he was directed to appear in the selection in the year 1988 although the juniors were promoted much earlier to the applicant in the year 1979. In view of the fact that applicant during this period has been promoted from the date which he is claiming and the notional promotion has been given. The grievance of the applicant only confined to the question as to whether he is entitled to pay scale with effect from that date and the arrears.

5. On behalf of the Railway Administration it has been contended as the due seniority has been given to the applicant in pursuance of the judicial decision, and the notional promotion too has been given, and the applicant not having worked on the said promoted post he is not entitled to monetary benefit including arrears. While raising this argument learned counsel relied on the case of P. Ramakrishnan decided by the Supreme Court but no reference to the latter decision has been made.

(12)

In the case of Union of India Vs. K.V.Janaki Raman etc Judgment Today, Vol.II, dated 31st August, 1991. Although no specific reference to the Pallu Ramkrishna case has been made but the issue laid down in the said case appears to be ~~in~~ considered and we are not much impressed by the contention on behalf of the authority. The normal rule of "no work, no pay" is not applicable to the cases such as the present one, that the employee is willing to work is kept away from work by the authorities for no fault of his. It is not the case where the employee remains away from the work for his own reasons although work is offered to him. The same situation arises in this case also. There was no fault on the part of the applicant and he never refused to work and never refused to get the selection post. As a matter of fact they have been agitating from the very beginning that they are entitled to the higher pay scale on the promotion, and it is the respondents ~~to~~ deprived ^{the} ~~them~~ of the same and agreed to give them only when they ~~should~~ succeed in the highest Court of law, and as such in these circumstances the Janaki Raman case applied. Accordingly this application is allowed and the respondents are directed to make the actual payment to the applicant with effect from the date ~~to have~~ ^{the last} been given notional promotion and arrears also may be paid to ^{them} ~~them~~ within a period of 4 months from the date of communication of this order. No order as to costs.

Janabegs
Member(A)

[Signature]
Vice-Chairman.

26th November, 1991, Alld.

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