

11
6

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 302 of 1988.

Date of decision : June 19, 1989.

Jeya Krushna Behera, aged about 35 years,
son of late Raghbab Behera working as
Accounts Officer, Telecommunication Department,
At P.O. & Dist-Sambalpur ...

Applicant.

Versus

1. Union of India, represented by its
Secretary, Department of Communications,
New Delhi.
2. Director of Telecommunications,
New Delhi.
3. General Manager,
Telecommunication Department,
At & P.O. Bhubaneswar, Dist.Puri.

...

Respondents.

For the applicant ... M/s. Devanand Misra
Deepak Misra,
R.N. Naik, A. Deo,
Advocates.

For the respondents ... Mr. A. B. Mishra,
Senior Standing Counsel (Central)

C O R A M :

THE HON'BLE MR. B. R. PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR. K. P. ACHARYA, MEMBER (JUDICIAL)

-
1. Whether reporters of local papers may be allowed to
see the judgment ? Yes.
 2. To be referred to the Reporters or not ? Yes
 3. Whether Their Lordships wish to see the fair copy
of the judgment ? Yes.
-

JUDGMENT

B.R.PATEL, VICE-CHAIRMAN, In this application filed under section 19 of the Administrative Tribunals Act, 1985, (hereinafter to be referred as the **Act**) the applicant who is working as an Accounts Officer at Sambalpur under the Department of Telecommunication, Orissa Circle, has prayed for a direction to be issued to the Respondents for reckoning his promotion to the cadre of Accounts Officer with effect from 12.6.1986, to give him the consequential financial benefits from 12.6.1986; to grant interest on the amounts of back wages and costs of the litigation.

2. The background of this case is that when the applicant was a Junior Accounts Officer, an order was passed by the competent authority promoting him to the rank of Accounts Officer with effect from 12.6.1986. This order was subsequently cancelled on 8.9.1986 as a sequel to a departmental proceeding started against him. Being aggrieved by that order and the institution of the departmental proceeding the applicant filed an application under section 19 of the Act which formed the subject matter of Original Application No.88 of 1987. The judgment in that case was delivered on 18.9.1987. In that judgment, the order cancelling the promotion of the applicant to the rank of Accounts Officer was quashed. As regards the plea for arrear financial benefits, the order passed was as follows :

8
V

" Mr. Deepak Misra, learned counsel for the applicant urged before us that the applicant should be made entitled to all arrear financial benefits which is due to him under the rules. We have no objection if rules permit. We would therefore direct that the competent authority would consider this aspect and give financial/consequential benefits to the applicant as per rules. "

(underlining is for emphasis)

3. The respondents in their counter affidavit have maintained that the applicant is entitled to the pay and allowances of an Accounts Officer from 7.12.1987 i.e. the date on which he joined the post of Accounts Officer at Aizawl and no arrear is admissible prior to this date.

4. We have heard Mr. Deepak Misra, learned counsel for the applicant and Mr. Tahali Dalai, learned Additional Standing Counsel (Central) for the respondents. Mr. Misra has vehemently pressed for back wages from 12.6.1986 to 7.12.1987 i.e. the difference between the pay of Junior Accounts Officer and the Accounts Officer for the aforesaid period and for counting the service of the applicant in the grade of Accounts Officer, from 12.6.1986. Mr. Dalai, on the other hand has argued that the applicant is entitled to back wages according to Rules which was also the judgment of this Bench and placed reliance on F.R.17(1) and Government of India's order No.8 on F.R.27. F.R.17(1) reads as follows :

" F.R.17(1) Subject to any exceptions specifically made in these rules and to the provision of sub-rule(2), an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes

Amritpal

the duties of that post, and shall cease to draw them as soon as he ceases to discharge those duties : "

Government of India's Order No.8 deals with benefit of notional fixation of pay on revision of seniority and this was conveyed to all concerned in Government of India, Ministry of Home Affairs, Office Memorandum No.200/1/1/77-Estt(D), dated 19th April, 1978. Relevant portion of this decision is reproduced below.

" (8) Benefit of Notional fixation of pay in seniority revision case- It has been decided that the pay of those Govt. employees who have been promoted after 4th January, 1972 pursuant to the instructions contained in this Department's O.M.No.9/3/72-Estt(D) dated the 22nd July, 1972 (determining seniority on length of service basis instead of with reference to date of confirmation in respect of those appointed prior to 22-12-1959) may be notionally fixed with effect from 4th January, 1972 and their pay on the date of actual promotion, fixed accordingly under F.R.27, provided the administrative Ministries/Departments satisfy themselves that the Govt. employee in question would have been considered for promotion at the appropriate time, had they been assigned their rightful seniority ab-initio. This benefit will however, not be admissible if the Govt. employee concerned was not found suitable when he was considered for promotion on the first occasion after 4th January, 1972 but was promoted on consideration of his case on the second or subsequent occasions. The arrears arising out of such notional fixation of pay with effect from 4th January, 1972 would, however, be admissible from the actual date of promotion only. The benefit of this pay fixation will not entitle the employees to any further benefits such as seniority in the grade to which he is promoted etc. "

This decision is applicable to cases where seniority has been revised on the basis of the new order that seniority will be determined with reference to total length of service i.e. from the date of appointment and

Amritpal

not with effect from the date of confirmation. So far as payment of back wages was concerned, a similar order was issued by the Railway Board in their letter No.E (NG) 63P.M.1/92 dated 15/17.9.1964 addressed to the General Managers/ All Indian Railways and others. The Railway Board had been receiving representations from various quarters that some-time due to administrative errors cases of promotion of the staff to higher grades were overlooked by the administration due to wrong assignment of relative seniority of eligible staff or fullfacts not being placed before the competent authority at the time of ordering promotions. After considering various aspects the Board decided that the staff who had lost promotion on account of administrative errors should, on promotion, be assigned correct seniority vis-a-vis their juniors already promoted, irrespective of the date of promotion. It ordered that;

" Pay in the higher grade on promotion may be fixed proforma at the stage which the employee would have reached if he was promoted at the proper time. The enhanced pay may be allowed from the date of actual promotion. No arrears on this account shall be payable, as he did not actually shoulder the duties and responsibilities of the higher grade Posts. "

This order of the Railway Board was challenged in the Karnataka High Court in the case of Shaikh Mehaboob v. Railway Board and others reported in 1982(1)SLR455. The judgment in that case was delivered on 1.9.1981. The learned Judge held as follows :

Handwritten signature

" In my view, the denial of arrears of salary to the petitioner cannot be supported. The petitioner had a right to be considered for promotion on the dates when it was due in view of the right to equality guaranteed under Article 14 of the Constitution and right to equal opportunity in matters relating to employment guaranteed under Clause (1) of Article 16 of the Constitution. xx xx xx

The giving effect to the circular as against the petitioner having regard to the facts and circumstances of the case, would amount to the violation of the fundamental rights guaranteed to the petitioner under Article 14 read with Clause (1) of Article 16 of the Constitution. "

In that case, the petitioner who was a railway employee demanded difference of salary from 17.7.1971 as H.S.K.II and from 1.8.1972 as H.S.K.I. A writ of Mandamus was ordered to be issued to the respondents to pay difference of salary to the petitioner.

The view taken by the Kerala High Court in the case of *Alappat Narayana Menon v. State of Kerala* reported in 1977 (2) SLR656 is not different :-

When the gradation list of non-gazetted ministerial staff was prepared on the formation of Travancore-Cochin State, by some oversight, the name of the petitioner did not find place in the said list. Upon representation, much later, the Chief Secretary to the Government of Kerala by his orders dated 14.10.1963 recognised his seniority and ordered that he should be deemed to have been promoted to the U.D.cadre with effect from the date on which his junior was so promoted, but did not allow the petitioner any retrospective material benefit. It was against this part of the order of the Chief Secretary that the

Ramachandran

petitioner moved the Kerala High Court. Learned Judge of the High Court in paragraph 9 of the judgment has observed as follows :

" Before advertiring to the authorities cited at the Bar, I would like to observe that no one can be penalised for no fault of his. Suppose a Government servant was reverted illegally or his services wrongly terminated and such reversion or termination is subsequently held to be wrong by a court of law and he is directed to be promoted or reinstated, could it be contended that such government servant is not entitled to the remuneration for the period during which he was under illegal reversion or illegal termination. The Government cannot take advantage of a mistake committed by them or an order passed by them in illegal exercise of their power. "

After analysing the relevant judgments cited at the Bar learned Judge in paragraph 15 of the judgment has observed as follows :

" The foregoing discussion with reference to the pronouncements of the Supreme Court and the Gujarat, Allahabad and Mysore High Courts clearly establish that a Government servant cannot be said to have forfeited his claim for arrears of salary when he did not get his due promotion for no fault of his. The Government's plea that the petitioner was given only a notional promotion is not sustainable in law. What the petitioner got was not a notional promotion and it is wrong to call this promotion as 'notional' in the context of the peculiar facts and circumstances of this case. The concept of notional promotion cannot enter the realm of discussion in this case. Notional promotion is one which a Government servant gets under particular exigencies of situation, which he cannot claim as of right. Here the petitioner is entitled as of right to get his promotion from 1-4-1955 and therefore his claim for arrears of salary and other material benefit cannot be denied to him on the plea that what was given to him was only a notional promotion and the policy of the Government is not to give the arrears of salary in such cases. It is no argument to say that many have been promoted ignoring the petitioner's claim. I therefore hold that the petitioner is entitled to succeed. "

In another case before the Punjab & Haryana High Court namely Shri Charan Dass Chadha v. The State of Punjab and another, which was decided on 13.10.1980 and has been reported in 1980 (3)SLR 702, the petitioner, consequent upon the revision of seniority, was promoted as Assistant Secretary to Government of Punjab with effect from 1.10.1961. But in paragraph 2 of the Government order it was written that he would not be entitled to any arrears of pay and allowances as a result of this promotion for the period he had not actually worked as Assistant Secretary i.e. from 1.10.1961 to 25.4.1968. It was this part of the order of the Punjab Government which was challenged before the High Court and the learned Judge quashed this part of the order. While arriving at this conclusion the learned Judge has referred to the judgment of the Supreme Court in the case of State of Mysore v. C.R.Seshadri and others reported in AIR 1974 SC 460. The Learned Judge has held that the facts of the case before him were analogous to those in the case before the Supreme Court and observed :

" In that case too, the petitioner was held to be entitled to promotion with retrospective effect and a direction was given to Government to make the payment of arrears of pay, etc. within a specified period. "

For better appreciation of the case, we would like to quote paragraph 8 of the judgment of the Hon'ble Supreme Court in the case of State of Mysore v. C.R.Seshadri and others, reported in AIR 1974 SC 460 :

" The length of this litigation has really disappointed the petitioner by denying him the enjoyment of likely promotion. He retired

Ans

the day before the judgment of the High Court. No one in service would be affected by the allowance of the petitioner's claim and what was a service issue has now been reduced to one of money payment. A retired government official is sensitive to delay in drawing monetary benefits. And to avoid posthumous satisfaction of the pecuniary expectation of the superannuated public servant- not unusual in government- we direct the appellant to consider promptly the claim of the petitioner in the light of our directions and make payment of what is his due- if so found, on or before April 15, 1974. The Government's inexplicable indifference in not placing before the Court the relevant rule regarding promotion to the post of Deputy Secretary merits the order that the appellant pay the costs of the petitioner first respondent, for, the wages of winner's sloth is denial of costs, and something more."

The Learned Judge also has referred to the case of K.K.Jaggia v. The State of Haryana and another reported in 1972 S.L.R.578, where it had been held : -

" Once an employee is promoted with effect from a retrospective date, he cannot be deprived of the pay and other benefits to which he would have been entitled had he in fact been promoted to the said post on the date on which he has been later promoted. "

The Learned Judge has also held :

" Any condition imposed to the effect that the said employee would not be entitled to the pay and allowances as a result of the promotion as has been imposed in paragraph 2 of the impugned order in this case would be illegal, the reason being that the Government by not promoting such an employee on the date on which he was entitled to be so promoted, cannot take advantage of its own wrong or illegal order in not promoting him, and then while conceding the claim of the employee for promotion with retrospective effect it cannot withhold what is due to the said employee on account of such promotion in the matter of pay and allowances. "

W.M.

Similar principle was enunciated by a Division Bench of the Mysore High Court in B.S.Bhima Rao v. The State of Mysore and another reported in 1970 SLR 190. Learned Judge of the Punjab and Haryana High Court has further held :

" There is no dearth of authority to hold that once an order of the Government is found to be void or unsustainable in law and is quashed, the relief, may be a monetary relief, which flows from such a setting aside of the order has to be allowed to the successful petitioner. "

This decision has been followed by the same High Court in another case i.e. Mrs. Asha Rani Lamba, Headmistress v. State of Haryana and another reported in 1983 (1)SLR 400. In this case, the petitioner was promoted as Headmistress with effect from 15.11.1961. However, in that order it was stipulated that the promoted Headmistresses including the petitioner would get their pay fixed in the grade of Rs.260-350/- (since revised to Rs.300-25-450/600) with effect from the date noted against each, but with the rider that they would not get arrears of pay etc. for the period they had not actually worked as Headmistresses. Since the petitioner was allowed to act as Headmistress with effect from 28.11.1969 was given the benefit of pay and allowance of the said post only from 28.11.1969, thus depriving her of the pay and allowance for the period between 15.11.1961 and 28.11.1969. The learned Judge quashed the impugned order to the extent and so far as it stated that the petitioner should not be paid her pay

M.M.L.

and allowances for the period from 15.11.1961 to 28.11.1969 and allowed the petition with costs.

Basing on the judgments of the Punjab and Haryana High Court, some of which we have mentioned above, the Chandigarh Bench of the Central Administrative Tribunal have held in the case of **Roshan Lal v. Union of India** reported in 1987 (1) ATR CAT 121 that the applicant was entitled to back wages with effect from theearlier date on which his junior was promoted by virtue of revision of inter se seniority even though he had not actually worked in the intervening period.

This Bench had ordered in Original Application No.88 of 1987 that the applicant who was also the applicant in that case should be given promotion with effect from 12.6.1986. There is nothing in that judgment to connote that the applicant will be given notional promotion.

The facts of the case before us are similar to those in the cases cited above. These judgments have persuaded us to hold that the applicant is entitled to the pay of an Accounts Officer with effect from 12.6.1986 even though he did not actually do the work of an Accounts Officer till 7.12.1987. F.R.17(1), provisions of which we have quoted above, does not prohibit payment of back wages in the circumstances ~~which have held of~~ of the present case. As such, we allow the prayer of the applicant and direct

XIV

12

that the amount due to him should be calculated and payment made within two months from the date of receipt of a copy of this judgment.

5. No information has however been placed before us that the non-payment of the back wages was due to any laches or malafide intention on the part of the departmental authority. We hold that the non-payment was due to the way in which the Department interpreted the Rules. The department's interpretation may be wrong but it cannot be said that the Department deliberately gave a wrong interpretation of the Rules in order to harass the applicant. We therefore, reject the applicant's prayer for payment of interest.

We also direct that his promotion to the cadre of Accounts Officer should count with effect from 12.6.1986 for all other service benefits. In the circumstances of the case, we hold that the cost of the litigation should be borne by the parties.

6. Thus, this application stands partly allowed.

.....19.6.89
Vice-Chairman

K.P. ACHARYA, MEMBER (J)

I agree.

*K. Sarangi
19.6.89*

.....
Member (Judicial)

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
June 19, 1989/Sarangi.

