

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.513 OF 1994

Cuttack this the 17th day of May, 1996

MURALIDHAR MOHARANA

...

APPLICANT

VRS.

UNION OF INDIA & OTHERS.

...

RESPONDENTS

(FOR INSTRUCTIONS)

1. Whether it be referred to the reporters or not? Yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not? No.

N. SAHU
(N. SAHU)
MEMBER (ADMINISTRATIVE)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

ORIGINAL APPLICATION NO. 513 OF 1994

Cuttack this the 11th day of May, 1996.

C O R A M:

THE HONOURABLE MR. N. SAHU, MEMBER (ADMINISTRATIVE)

....

SHRI MURALIDHAR MOHARANA,
aged about 60 years,
Son of late Birabhadra Moharana,
2110/4718 Rameswar Patna, PS. Old Town,
Bhubaneswar-751 002, Dist. Khurda.

.... Applicant

-V E R S U S-

1. Union of India represented through Chairman, Railway Board, New Delhi.
2. Divisional Railway Manager, South Eastern Railways, Khurda Road Division, PO. Khurda Road, Dist. Khurda.
3. Senior Divisional Personnel Officer, Khurda Road Division, South Eastern Railway, PO. Khurda Road, Dist. Khurda.
4. Senior Divisional Accounts Officer, South Eastern Railway, Khurda Road, PO. Khurda Road, Dist. Khurda.

... Respondents

FOR THE APPLICANT : M/s. A.K. Mishra, S.B. Jena, S.K. Das
J. Sengupta, B.B. Acharya,
R.D. Misra, S. Moharana, Advocates.

FOR THE RESPONDENTS : M/s. B. Pal, & O.N. Ghosh, Standing
Counsel for Railways.

O R D E R

MR. N. SAHU, MEMBER (ADMINISTRATIVE)

This application filed under section 19 of the Administrative Tribunals Act, 1985 challenges the non-implementation of the Order No. P.3/20/CCS(G)/98/9 dated 12.2.1993 passed by the S.D.P.O, Khurda Road Division, South Eastern Railway, Respondent No.3. The back ground facts are that the applicant joined as Commercial Clerk on 21.3.1957 and after completion of training at SINI was posted as temporary Assistant Coaching Clerk from 22-5-1957. He retired on superannuation on 28-2-1993 as Chief Goods Superintendent-II at the Bhubaneswar Railway Station under Respondent No.2. In November, 1960, the applicant was directed by the SDPO, Khurda Division, Respondent No.3 to exercise his option either for joining in the Goods Branch or the Coaching Branch. The applicant, exercised the goods Branch option. He was given his seniority in the goods branch w.e.f. 14.9.1958 but his earlier seniority from 22.5.1957 was ignored. However, the Railway Board, satisfied about the correctness of his claim, by an order dated 12-2-1993 assigned applicant's seniority with effect from 21-3-1957 as Goods Clerk and allowed proforma promotions to different

grades w.e.f. different dates. While proforma fixation of pay was made in the specified grades, he was allowed monetary benefits only from the date he shouldered higher responsibility in terms of Establishment Sl.No. 278/64. The promotion of the applicant was fixed from the date of promotion of his immediate junior Shri M.P.Rout and his pay was fixed on the date of his retirement on 28.2.1993 at Rs. 2,100/- per month. His grievance is that the salary was not paid to him for the different periods in the past during which he was given proforma promotion in higher scales in accordance with Annexure-1. Annexure-2 is a tabular statement showing particulars of arrear salary due for such proforma promotion and this aggregated to Rs. 59,000/-.

2. In the counter, it is admitted that the competent authority decided the seniority of the applicant w.e.f. 21.3.1957 as Goods Clerk, i.e. from the date he joined at SINI as trainee Commercial Clerk or probationary Commercial Clerk. It is stated that as per Establishment Sl.No.273/64 monetary benefits have to be given to the applicant in respective grades from the date he actually shouldered higher responsibility. It is stated that the applicant having accepted proforma fixation, can not now

challenge the computation of monetary benefits in accordance with Establishment Sl.No.273/64. It is urged that this application is contrary to his own acceptance of consequential benefits based on the decision of the Competent Authority as per Annexure- R/2. With regard to payment of Over Time from 4.12.1977 to 9.5.1987, it is stated that the applicant's claim was accepted but the delay in payment was due to compliance with procedural formalities. Certain Vouchers were not readily traceable because of expiry of preservation period. They sent up proposals for sanction of the Railway Board for waiver of internal checks. Another contention is that the applicant never questioned his option and seniority before he retired. The dispute had arisen on 22.5.1957. This Tribunal has no jurisdiction to adjudicate in a matter where cause of action arose prior to 1-11-1982. It is secondly urged that factually the applicant never shouldered higher responsibility except the period indicated in Annexure-R/2.

3. The fact remains that the competent authority decided to assign the seniority of the applicant w.e.f. 21.3.1957 as a Goods Clerk. The elaborate case made

in the counter-affidavit about second option ~~are~~ ^{is}, therefore, irrelevant. While the applicant was given proforma promotion in other grades, he was given promotion to Chief Goods Clerk against an existing vacancy by the Office Order dated 11.2.1993. As he did not shoulder higher responsibility in the grades from the dates shown against each as per Annexure- 2, he was not paid arrears of salary.

4. In the rejoinder, to the counter affidavit it is stated that the applicant never exercised two options, first in 1957 to remain in the Coaching Branch and again in 1960 to change over to the Goods Branch. He was ~~never~~ given only one opportunity in November, 1960 to exercise option and he did so choosing to be allotted to the Goods Branch which was accepted by the Respondents.

5. The counsel for the applicant has brought to my notice (1992) 19 Administrative Tribunals Cases 839 (P. THYAGARAJAN AND OTHERS VS. UNION OF INDIA AND OTHERS). The policy to deny monetary benefits to the staff who have lost the promotion on account of administrative errors is against equity which would amount to double punishment. In that case, it is held that the provision in Railway Board's Circular

dated 15/17-9-1964 for denying arrears of pay in case of proforma promotion without actually holding the promotional post is bad in law. In that case one 'S' was promoted without selection to a non-selection post. Because of revision of seniority list, the applicant became senior to 'S' in the feeder post. Accordingly, applicant claimed promotion without selection from the date of promotion of 'S'. Meanwhile, this promotional post had become a selection post. Notwithstanding that by this time the promotional post had become a selection post, it was held that the applicant's claim was justified and his arrears pay should be paid. In Tyagarajan's case, the candidate was superseded due to wrong assignment of seniority. He was allowed to hold promotional post only on adhoc basis. A few of the other candidates retired while the rest continued in service. The Respondents exempted the retirees from selection but subjected the serving officials to selection for retrospective proforma promotion. This discrimination has been held to be illogical. In that decision, the provisions of the Railway Board's Circular dated 15/17.9.1964 in the following terms were held to be inoperative and set aside;

"No arrears on this account shall be payable, as he did not actually shoulder the duties and responsibilities of the higher posts".

6. In the second celebrated case of Union of India vs. K.V. Jankiraman AIR 1991 SC 2010 it is held as under:

"When an employee is completely exonerated in Criminal/disciplinary proceedings and is not visited with the penalty even of censure indicating thereby that he was not blame worthy in the least, he should not be deprived of any benefits including the salary of the promotional post. The normal rule of 'no work no pay' is not applicable to such cases where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that FR 17(1) will also be inapplicable to such cases".

There may be cases where the proceedings whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence. Then arrears of pay for the period of notional promotion preceding the date of actual promotion will be decided by the concerned authorities by taking into consideration all the facts and circumstances of the disciplinary proceedings.

7. In the case before me, it is a clear case of administrative error. The highest body in the Railway Administration by its order dated 11.2.1993 rectified its mistake and promoted the applicant *in situ* to the vacancy of Chief Goods Clerk and gave him proforma promotion with regard to the different grades in different scales from different dates. The question at issue is whether or not the applicant is entitled to salary for the notional period of promotion. As the mistake was not on the part of the petitioner but was admittedly of the Respondents, he is entitled to the entire salary for the period of proforma promotion which he would have shouldered if the mistake had not been committed by the competent authority. To say that there was laches and that the applicant remained silent till he retired is again missing the point. The cause of action of the applicant had arisen on 12.2.1993 when the Railway Board approved his claim of seniority and promoted him in various grades. It is clear that in such circumstances, 1964 circular is inapplicable and it has also been held by the Court to be inapplicable. Establishment Sl.No.273/64 dated 15/17-9-1964 with regard to operative part last sentence has been struck down as inoperative by the Ernakulam Bench of the Central Administrative Tribunal. A similar point

has arisen in Prem Singh Vs. Commissioner of Police - Central Administrative Tribunal, New Delhi Bench - O.A. No.1726 of 1991. In that case, the applicant was promoted in pursuance of the judgment dated 14.11.1990 in O.A. No. 434 of 1987 from 1981. By a fiction, he was deemed to have been qualified ⁱⁿ written test. Accordingly, he was granted proforma promotion as S.I. from 27.4.1982 to 16.2.1986 and as Inspector from 5.6.1989 to 21.3.1991 without financial benefits. His representations having been turned down, he approached the Principal Bench of the Central Administrative Tribunal. Following its own decision in Roshan Lal vs. Union of India (AIR 1987 (1) CAT 21) the Delhi Bench held that if an employee is wrongly not promoted and later on found entitled to that promotion, it can not be contended that the pay of the higher post will not be admissible on the ground that he had not worked against the higher post.

8. In view of the above discussion, the applicant is entitled to succeed.

9. The arrear of salary ^{legally due} in the promotional grades after proper verification and the over time allowance as due and eligible shall be paid to the applicant within 60(sixty) days from the date of receipt of a copy of this order.

..... 17/5/96
(N. SAHU)
MEMBER (ADMINISTRATIVE)