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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK

O.A.NO. 515 OF 2001

Cuttack, this the 16<sup>th</sup> day of April, 2004

D. Bhagaban Das - ers  
.....

Applicants

Vrs

UOI & ors. ....

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 Tribunal or not? Yes

  
(S.K. NAIK)  
MEMBER(A)

  
(B. PANIGRAHI)  
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH  
CUTTACK

O.A. 515/2001

Present : Hon'ble Mr. Justice B. Panigrahi, Vice-Chairman.  
Hon'ble Mr. S.K. Naik, Administrative Member.

D. Bhagaban Das & 14 Ors.

- v e r s u s -

1. Union of India, through the  
General Manager, S.E. Railway,  
Garden Reach, Calcutta-43.
2. Divisional Railway Manager,  
S.E. Railway, Khurda Road,  
P.O. Jatni, Dist. Khurda.
3. Sr. Divisional Personal Officer,  
S.E. Railway, Khurda Road,  
P.O. Jatni, Dist. Khurda.

...Respondents.

For the applicants : Mr. G.R. Dora, counsel.  
For the respondents : Mr. A.K. Mohanty, Sr. Counsel.

Date of order: .04.2004

O R D E R

Per Justice B. Panigrahi, VC

This is an application filed jointly by 15 persons claiming actual monetary benefit for their notional promotion to the post of Chief Ticket Inspector w.e.f. 16.6.95.

2. The applicants at the material point of time were working as TTE (Travelling Ticket Inspector) in the scale of Rs.1600-2600/-/Rs.5500-9000/-. Their next promotion was to the post of Chief Ticket Inspector (CTI) in the scale of Rs.2000-3200/-/Rs.6500-10,500/-. 19 candidates including the applicants appeared for the written test for empanelment for promotion to the posts of CTI in the month of January 1995. Thereafter they were called to the viva-voce test held on 16.6.95. However, before the result could

be published the authorities cancelled the selection and called the applicants as well as other unsuccessful candidates in fresh selection process. Being aggrieved the applicants approached before this Tribunal by filing O.A. 15/1996 seeking quashing of the order of cancellation of the selection already held. This Tribunal by its order dated 26.6.98 held that the decision of the respondent authorities to cancel the selection was not justified and directed respondents as follows:-

" For the reasons discussed above, we are of the view that the written test and the viva-voc held could not have been taken as cancelled and the Railway Administration was not legally right in calling for a fresh selection. We, accordingly, quash Annexure-A/4 dated 28.12.1995 cancelling the selection and Annexure-A/5 of the same date calling for fresh selection. Since Annexures-A/4 and A/5 have been quashed, we direct respondents 1 to 3 to publish the list of successful candidates appearing in selection process within 60 days from the date communication of this order and fill up the vacant posts of Chief Ticket Inspectors pursuant to that list of successful candidates within 30 days thereafter. The application is disposed of accordingly. There is no order as to costs."

3. It appears that some unsuccessful candidates who were called to the fresh selection process approached the Hon'ble High Court against this decision of the Tribunal. But eventually they withdrew that writ petition subsequently.

4. Pursuant to the above direction of the Tribunal the authorities finally published the result of the selection already held in 1995 vide order dated 19.5.2000 (Annexure-R/2 to the reply). By order dated 8.6.2000 (Annexure-A/3 to the O.A.) the respondents granted promotion and posting to the 18 successful candidates including the applicants to the posts of CTI. The grievance of the applicants is that even though they were granted such promotion retrospectively from 16.6.95 but actual monetary benefit was not given from that date, rather their pay was

only fixed on notional basis and actual monetary benefit was granted from the date of shouldering higher responsibility. Claiming actual monetary benefit from the date of their promotion from 16.6.95 they have filed this O.A.

5. The respondents have contested the application by filing reply in which they have mainly contended that since the applicants did not shoulder higher responsibility for the post of CTI they could not be granted actual monetary benefit retrospectively. However, they have been given proforma promotion and notional fixation benefit w.e.f. 16.6.95.

6. The Id. counsel for the applicants has very strongly argued that the applicants were not responsible for their non-promotion from due date and, therefore, they cannot be denied actual monetary benefit when subsequently on the basis of decision of this Tribunal they were ultimately given promotion from their original due date for promotion i.e. on 16.6.95. It is contended by the Id. counsel that the applicants were prevented from discharging higher responsibility and, therefore, the respondents cannot take the plea that <sup>as</sup> the applicants did not shoulder higher responsibility, they cannot be allowed pay and allowances of the post retrospectively. He has also argued that the duties of CTI and those of TTI are more or less the same and, therefore, there is no reason to deny the applicants their due monetary benefits. Id. counsel for the applicants has also relied on a decision of the Hon'ble High Court in the case of Narasingha Charan Mohanty Vs. Orissa Small Industries Corporation Ltd. reported in 1998 (1) OLR 283. There the Hon'ble High Court has held that once the notional promotion is given the authorities cannot put a rider and interpret that due to the notional promotional,

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the promotees would be deprived of getting any financial benefit such an order, the High Court held, is not sustainable being not just and fair.

7. The Id. counsel for the respondents, on the other hand, has contended that the earlier selection process had to be cancelled because of some complaints, but on the basis of the decision of the Tribunal the authorities published the panel on 19.5.2000 and gave promotion to the empanelled candidates including the applicants in June 2000. However, the authorities were generous enough to give effect to the promotion of the applicants from 1995 when the selection took place. They could have easily given the promotion prospectively from the date of empanelment after the decision of the Tribunal. However, the applicants cannot take advantage of such generosity of the respondent authorities and claim pay and allowances from that date, especially when they did not admittedly shoulder higher responsibility for the post. He has contended that the posts of TTI and CTI are not the same because the post of CTI is a supervisory post. He has relied on the Railway Board's circular dated 1.10.64 in which it was provided that when due to administrative error promotion could not be given in time, pay in the higher grade on promotion may be fixed on proforma basis at the stage which the employees would have reached if he was promoted at proper time. The enhanced pay may be allowed from the date of actual promotion and no arrears on this count shall be payable as such promotees did not actually shoulder the duties and responsibilities of the higher grade post. Thus, according to the Id. counsel, the applicants have no case and the application should be dismissed.

8. We have given our thoughtful consideration to the rival contentions and the facts and circumstances of the case. Admittedly,




the applicants appeared in the selection test in 1995. But the selection was cancelled which was subsequently held to be illegal by this Tribunal in an earlier O.A. filed by these applicants. The Tribunal directed to publish the select list and to fill up the vacant posts of CTI in accordance with the said select list. Admittedly, the respondent authorities published the select list on 19.5.2000 vide Annexure-R/2 to the reply. The Tribunal nowhere directed the respondent authorities to give promotion to the empanelled candidates from back date. The respondents, however, while issuing promotion order vide Annexure-A/3 to the O.A. dated 8.6.2000 gave proforma fixation benefit to the promotees including the applicants from 16.6.95 but directed that actual monetary benefit will accrue from the date of shouldering higher responsibility. Normally a person is entitled to claim the pay and allowances of a post from the date he assumes charge of that post. In the instant case, however, although the Tribunal in its earlier order did not issue any direction to the respondent authorities to give promotion from an earlier date, the respondents on their own gave such notional promotion to the applicants so that they may not be deprived of their fixation benefit in the promotional post. The decision of the Hon'ble High Court cited by the Id. counsel for the applicants, in our opinion, cannot be applied to the facts of the present case. In the cited case, the petitioner's service was terminated which was ultimately set aside by the Hon'ble High Court with a direction to re-instate him in service with all consequential financial and service benefits that he would have been entitled to had his service not been terminated. In that context, the Hon'ble High Court held that non payment of back wages to the petitioner therein was not proper. However, the Hon'ble High Court also took note of the fact that petitioner therein did not actually perform any duty during the intervening

period and, therefore, directed for payment of 50% of back wages and not the full back wages. It is now well settled that the High Court has its inherent power under Art. 226 of the Constitution which the Tribunal, which is a creature of statute, does not possess. Therefore, the Tribunal has its own limitation and cannot pass an order directing payment of 50% back wages even when the employee does not shoulder higher responsibility of the higher post.

9. In this context, we may refer to the decision of the Hon'ble Supreme Court in the case of Paralu Ramkrishnaiah and Ors. Vs. UOI reported in 1989 (10) ATC 378 (SC) where the Hon'ble Supreme Court has held that though promotion may be given from back date but salary will be paid from the date of actual promotion. In that case, the Apex Court was examining the decision of M.P. High Court in that regard.

10. In view of the above discussions we are of the considered opinion that the applicants cannot claim back wages for the period they did not shoulder higher responsibility merely because the respondents were generous enough to grant them promotion from back date. They were granted proforma fixation benefit of pay and we find no infirmity or arbitrariness in the decision of the respondent authorities.

11. For the reasons stated above, we find no merit in this application and it is accordingly dismissed without any order as to costs.

  
Member (A)

  
Vice-Chairman.