

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Date of order: 06.02.2008

O.A. No.95/2001

AshokKumar Sanyal ... Applicant

versus

Union of India & Ors. ... Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the CAT or not?

(C.R.MOHAPATRA)
MEMBER(A)

(DR.K.B.S.RAJAN)
MEMBER(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Date of order: 06.02.2008

PRESENT:

THE HON'BLE DR.K.B.S.RAJAN, MEMBER(J)

A N D

THE HON'BLE MR. C. R. MOHAPATRA, MEMBER (A)

In the Matter of

O.A. No.95/2001

Ashok Kumar Sanyal ... Applicant

versus

Union of India & Ors. ... Respondents

(For Full details, see the enclosed cause title)


For Applicant: : M/s.K.Ray, A.K.Baral, R.K.Kar, Counsel.

For Respondents: M/s.S.Ray, A.A.Khan, Counsel.

ORDER


Per DR.K.B.S.RAJAN, MEMBER(J):

The question involved in this case is as to whether the applicant, who was treated to have been continuously serving, could be deprived of the financial up-gradation on the basis of what is called Miyabhoy Tribunal Award dated 01-08-1972 on the ground that when it was in vogue the applicant was



not in service (though his entire absence from service had later on been regularized).

2. The facts: The applicant was appointed as Apprentice Mechanic on 19-05-1965 and on 16-07-1974, on account of his involvement in the Railway Strike, he was, on his conviction, dismissed from service. However, in the appeal preferred, the applicant was acquitted and was taken back to duty from 12-12-1974. The period of absence was treated as duty for all purposes. It was during the above said period that the Respondents had implemented an award called Miyabhoy Tribunal Award, whereby certain individuals were promoted to the higher post. Some of the juniors were promoted to such higher post. As the applicant was not at that material point of time in service, he was not promoted. However, though on reinstatement, his case was to have been considered, the respondents had not considered him for promotion at par with his juniors. On 01-01-1984, the post of the applicant was upgraded and the scale was fixed at Rs 1600 – 2660 and on 28-01-1991 the applicant was promoted as Assistant Electrical Foreman in the scale of Rs2,000 – 3,200/- and his pay was fixed at Rs 2,375/- p.m. The applicant noticed that his junior's pay at that time was Rs 2,600/- and as such he preferred a representation dated 14-06-1991, vide Annexure A-1. There was no immediate consideration of his representation and as such, reminders were sent. However, by an order dated 29-10-1997 vide Annexure A-6, the respondents had re-fixed the pay of



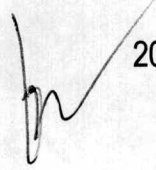
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the applicant initially on proforma basis and actually from 01-10-1997. The applicant is aggrieved on the ground that when the applicant's seniority had been accepted from 01-08-1972 and when the respondents had granted pay parity, they had made the parity in pay on notional basis and not on actual basis up-to 01-10-1997. Hence, his claim is for the arrears of pay and allowance for the period when his pay increase was treated on notional basis.

3. Respondents have contested the OA. According to them the applicant's pay had already been fixed at par with the junior and at the time the junior was promoted, the applicant was not available for such promotion and now the same had been done, of course on notional basis up-to 30-09-1997. In the additional counter they had referred to the provisions of para 228 of the IREM which provides that the staff who lose promotion on account of administrative lapse should on promotion be assigned correct seniority vis-a-vis their juniors already promoted, irrespective of the date of promotion. However, pay in the higher grade on promotion may be fixed proforma at the proper stage but no arrears on this account shall be payable as ~~on~~ the concerned staff did not actually shoulder the duties and the responsibilities of higher post.

4. In his rejoinder, the applicant had stated that it is wrong to state that the applicant had not shouldered higher responsibilities. With effect from 20-03-1980 he had certainly shouldered higher responsibility. Again, he

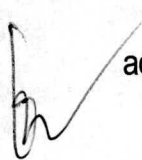


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contended that provisions of Para 228 may not be strictly applicable to his case.

5. Counsel for the applicant argued that when the applicant was treated as on duty without any conditions, there was no reason for not considering him for promotion when the Award was implemented.

6. The only reply the counsel for the respondent gave was that the applicant was not in service at the material point of time.

7. Arguments were heard and documents perused. With the acquittal in the criminal matter coupled with the fact that the applicant's absence had been treated as on duty for all purposes, there is nothing that came in the way of the applicant for consideration for any promotion at par with his juniors. Here is the error committed by the respondents. While promoting the applicant at par with his junior, the respondents had omitted to grant him the promotion on actual basis, whereas, only notional promotion was granted till 30-09-1997. The period the applicant was out of service was for five months i.e. from July to December, 1974. Thereafter, the applicant was in service. He got his up-gradation in 1984; got his promotion subsequently and save for a few month's difference he had been shouldering higher responsibilities from the beginning. As such, there is absolutely no justification in denying him actual promotion at par with his junior Shri Roy.




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8. In view of the above, the OA is allowed. It is declared that the applicant is entitled to the payment of salary at the rates as already calculated vide Annexure A-6. All the arrears are to be paid to him within a period of two months from the date of communication of this order. Under the circumstances, there shall be no orders as to cost.


(C.R. MOHAPATRA)
MEMBER(A)


(DR. K.B.S. RAJAN)
MEMBER(J)