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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

ORIGINAL APPLICATION NO. 457 of 2015

Date of Arguments : 21st July, 2016.

Date of Order : 18.08.2016

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HON'BLE SHRI R.C.MISRA, MEMBER(A)

HON'BLE SHRI S.K.PATTNAIK, MEMBER(J)

Boddepalli Ramu aged about 39 years S/o Shri B. Tirupati Rao at present working as a Senior Clerk, Office of Divisional Personnel Officer, East Coast Railway, Waltair, Andhrapradesh.

...Applicant

By the Advocate(s)-Mr.N.R.Routray

1. Union of India represented through the General Manager, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, District Khurda.
2. Chief Personnel Officer, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, District Khurda.
3. Divisional Railway Manager, East Coast Railway, Waltair Division, At/PO Dondapathy, Waltair, Andhrapradesh.
4. Senior Divisional Personnel Officer, East Coast Railway, Waltair Division, At/PO Dondapathy, Waltair, Andhrapradesh.

...Respondents

By the Advocate(s)-Mr. S.K.Ojha

ORDER

PER R.C.MISRA, MEMBER(A):

The applicant, who is a Railway employee and is at present working as Senior Clerk in the Office of Divisional Personnel Officer, East Coast Railways at Waltair, has approached this Tribunal with a prayer that respondents be directed to pay arrears to him from 23.02.2001 to 14.07.2007 while fixing his pay in the scales of Rs. 5000-8000, from 17.07.2007 to 03.06.2008 in Rs. 5500-9000 and further, fix him in the Pay Band - II with Grade Pay of Rs. 4600/- from 12.02.2009 to till date. Consequently, he has prayed to quash the order dated 24.03.2015 passed by the respondent No. 2 i.e. Chief Personnel Officer of the East Coast Railway, Chandrasekharpur, filed as Annex.A/6 to this O.A.

2. Briefly the facts of this Original Application are stated below:



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The applicant was promoted to the post of Junior Clerk in the scale of Rs. 3050-4590 vide order dated 28.11.2000. The applicant while working as a Junior Clerk, was posted as Head Clerk in the scale of pay of Rs. 5000-8000 vide order dated 20.02.2001. Further, vide order dated 12.02.2009 he was posted as Office Superintendent-II. The applicant made a representation on 10.08.2014 (Annex.A/5) to respondent No. 1 intimating his grievance i.e. for payment of higher remuneration for the responsibilities shouldered by him as Head Clerk and as Office Superintendent Grade-II. The representation of the applicant was disposed of by the respondent no. 2 vide impugned order dated 24.03.2015 (Annex.A/6) which is under challenge, whereby, his claim was rejected on the ground that he was never promoted 'even on ad hoc basis to any higher post'. The applicant relied on the RBE No. 137/2007 which pertains to *Grant of Officiating pay to the staff who shoulder higher responsibility*. The submission of the applicant is that from 23.02.2001 he has been working against sanctioned post(s) which remained vacant because of transfer/sickness of concerned staff and, therefore, he is eligible for higher remuneration meant for the higher posts under the provisions made by the respondents under RBE No. 137/2007.

3. The respondents have filed a counter-affidavit in which they have made following submissions :

The applicant was initially appointed as a Diesel Cleaner against a Group 'D' post and later on, he was promoted to the post of Junior Clerk vide Office Order dated 28.11.2000. The respondents while giving detailed description of the case of the applicant, have submitted that he had earlier approached Hyderabad Bench of this Tribunal in **O.A. No. 1456 of 2014** with a prayer that 'he may be posted in the equivalent grade in a vacancy which he is holding at the material point of time i.e. Senior Clerk to deal with duties allotted to that post he was holding'. The



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- ▼ Tribunal had dismissed this **O.A. on 18.06.2015** (Annex.R/1) by observing that the Bill Section can be handled by persons right from Junior Clerk to Chief Office Superintendent and apparently, their duties were identical irrespective of their designation. The Tribunal, therefore, held that no injustice had been caused to applicant by the impugned order transferring him in the place of one Shri Uday Kiran, Junior Clerk. The respondents have contended that the issues in the present O.A. are more or less identical and since this issue was decided earlier by the Hyderabad Bench of the Tribunal, this O.A. is not maintainable being hit by the principle of res judicata.

Regarding the present claim made in this O.A., the main contention of the respondents is that applicant was never promoted even on an ad hoc basis to any higher post and his suitability also was never tested. Posting of a staff/employee in another Section against a vacancy caused due to retirement/leave/sickness of persons who were holding higher post, cannot be considered as promotion to a higher post as the rules governing promotion are separate and, therefore, applicant cannot make claim for higher remuneration attached to the higher post. Although, there are some other submissions in the counter affidavit, however, we do not find them directly relevant to the present issue and, therefore, would desist from mentioning the same.

5. The applicant has also filed a rejoinder reiterating the claim made by him and the grounds made therefor.

6. Having heard the learned counsels for both parties in extenso, we have also perused the documents.

7. First of all, although, respondents have made a claim that this O.A. is not maintainable being hit by res judicata, we do not accept this submission since respondents have not conclusively submitted that exactly the same issues, as

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involved in the present O.A., were dealt with by the Hyderabad Bench of this Tribunal. Having rejected this prayer, we now come to analysis of merits of this case.

The Documents which are crucial for examination to resolve this controversy, are placed as Annexs. A/1 and A/2 dated 20.02.2001 and 12.02.2009 respectively, which are Office Orders issued by the respondent authorities, the contents whereof, are quoted hereunder :-

Order dated 20.02.2001

"Sri B. Ramu, Jr. Clerk in Scale (3050-4590) of Personnel Branch, who reported this Office on dated 30.11.2000 Vide DRM(P)/WAT'S O.O. No. Estt./Per./44/2000 dtd. 28.11.2000, is now posted in place of Sri K. Mutyala Rao, Head Clerk, in scale (5000-8000), who is going to be retired on his Superannuation wef:31.03.2001, till further orders. This has the approval of the competent authority".

Order dated 12.02.2009

"With the approval of the Competent Authority, the following orders are issued to have immediate effect -


Sri B. Ramu, Jr. Clerk working in Pass Section is posted temporarily in Bill Section-IX in place of Sri U. Ramajoga Rao, OS-II who is under sick list, till further orders."

8. It is clearly revealed from the aforesaid Office Orders that by Annex.A/1 respondents have "Posted" the applicant in place of Shri K. Mutyala Rao, Head Clerk, who is going to be retired on his superannuation from 31.03.2001 till further orders. On the other hand, vide Order at Annex.A/2, he was "**posted temporarily**" in place of Shri U. Ramajoga Rao, Office Superintendent - II who is in sick list till further orders. The respondents are correct when they say that it is neither a promotion order nor a promotion, issued on ad hoc basis. However, it cannot be denied specially in case of order at Annex.A/1 that the applicant was posted as a Head Clerk which enjoyed a higher scale of pay. It is clearly indicated that he was posted as a Head Clerk not for a short period but for a long period of more than seven years. Therefore, even though, it was neither a promotion nor an ad hoc promotion, it cannot be denied that he worked against a higher post

involving higher responsibilities for a very long period and only on 05.07.2007 he was transferred back to parent department as Junior Clerk. The applicant has pressed his claim under RBE No. 137/2007 dated 31.10.2007 on the subject - 'Grant of Officiating Pay to the Staff who Shoulder Higher Responsibilities', as stated above. The respondents in the counter affidavit have mentioned that there is no dispute with regard to the Railway Board's direction contained in RBE No. 137/2007 and they have only submitted that applicant has failed to point-out that he has been assigned or posted against any higher post on the basis of any specific order. But apparently, this submission of the respondents goes against the facts of the case, since as has already been discussed above at Annexs. A/1 and A/2 of the O.A., that applicant has been posted against a sanctioned post. It would be essential to reproduce the relevant portion of the RBE Circular bearing No. 137 of 2007 dated 31st October, 2007 which clearly lays down the relevant provision on which the applicant strongly relies. The same is quoted hereunder :-

"Accordingly, in cases where staff in lower grades are made to shoulder responsibilities of higher grade posts, where the posts are actually not in existence, it is reiterated that the instructions contained in Board's letter dated 13.12.2006, *ibid*, should be complied with. However, in cases where staff working in lower grades are made to shoulder responsibility of higher grade sanctioned posts, such staff would be eligible for officiating pay in terms of instruction contained in Board's letter No. F(E)II/89/FR1/1, dated 12.12.1991."

9. It is crystal clear from a bare reading of the aforesaid quoted provision enacted by the Railway Board that in cases where staff working in lower grades are made to shoulder responsibilities of higher grade sanctioned posts, such staff would be eligible for officiating pay in terms of the instructions contained in the Board's letter F(E)II/89/FR1/1 dated 12.12.1991. Thus, it is quite clear that respondent-authorities have not properly examined the case of applicant in terms of the RBE No. 137/2007 which squarely covers his grievance. On the other hand, in the impugned order dated 24.03.2015 (Annex.A/6), they have taken a plea that



“working against higher grade vacancies, as has been contended by you, is not same as working in the grade”. The respondents have further intimated to the applicant that he has never been promoted even in ad hoc manner to work in the higher grade post. He has also not been given any officiating allowance at any point of time and, therefore, he was not eligible for regularization of the service as Head Clerk / Office Superintendent Grade-II. Regularisation against the higher post is not the issue here. However, the claim of payment of higher remuneration for the period in which applicant worked against a higher post which was sanctioned, cannot be overlooked in view of the explicit provisions contained in RBE No. 137/2007 which governs the field. There of course is an issue, which goes against the applicant in the sense that he should have claimed Officiating Pay against a higher level post earlier particularly since he had worked for a long time against the post. In our view, he should have made a clear prayer after being asked to function against a higher level post or at least sometime thereafter. But, we cannot take a view that because of this failure, his right for receiving a higher remuneration will be wiped out. The lacunae that has come to our notice is that RBE No.137/2007 has not been properly applied while respondents had disposed of the representation/case of the applicant.

10. On the matter of principle, equal pay for equal work is a dictum which cannot be ignored by the employers. The Hon'ble Apex Court in a three judges Bench in the case of **Randhir Sihnggh Vs. UOI & Ors.**, reported in (1982) 1 SCC 618, has made following observations with regard to the “Principle of Equal Pay for Equal Work” which reads as under :-

“It is true that ‘the principle of equal pay for equal work’ is not expressly declared by our Constitution as a fundamental right. But it certainly is a constitutional right. Article 39(d) of the Constitution proclaims “equal pay for equal work for both men and women” as a Directive Principle of State Policy. Equal pay for equal work for both men and women means equal pay for equal work for everyone and as between the sexes. Directive Principles as has been pointed out in some of judgments of this Court have to be read into the fundamental rights as a matter of interpretation.



Article 14 of the Constitution enjoins the State not to deny any person equality before the law or the equal protection of the laws, and Article 16 declares that there shall be equality of opportunity for all citizens in matter relating to employment or appointment to any office under the State. These equality clauses of the Constitution must mean something to everyone. To the vast majority of people the equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay that they get. To them the equality clauses will have some substance if equal work means equal pay."

11. We have considered the facts and the law with regard to the case in totality and come to an inescapable conclusion that the applicant has a case for getting a higher pay for shouldering higher responsibilities that he had discharged and the matter needs to be reviewed in the light of RBE No. 137 of 2007 issued by the Railway Board on 31.10.2007. As per said provision, the General Manager of the Railway i.e. respondent No. 1 is required to take a view and also take an appropriate decision with regard to the case of the applicant praying for higher remuneration against higher responsibilities that he had discharged under the specific and clear orders passed by the respondents themselves. We, therefore, quash the impugned order of rejection dated 24th March, 2015 (Annex.A/6) and remit the matter to the General Manager i.e. Respondent No. 1 to take into account all the observations made in this order and, decide the claim of the applicant in conformity with the extant guidelines and release the financial claims that accrued to him within a period of 120 days from the date of receipt of a copy of this order.

12. With the aforesaid directions, the O.A. stands allowed to the extent as stated above, with no order as to costs.


(S.K.PATTNAIK)
MEMBER(J)


(R.C.MISRA)
MEMBER(A)