

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

D.A. No. 20 of 1996.

Present : HON'BLE MR. D. PURKAYASTHA, JUDICIAL MEMBER.

SUDHANGSHU KR. TALUKDAR

... ... Applicant.

vs.

1. Union of India  
service through the  
General Manager,  
E. Rly, Calcutta.
2. Chief Accounts Officer (Admn),  
E. Rly, 17, N.S. Road,  
Calcutta.
3. Sr. Divl. Accounts Officer,  
E. Rly, Sealdah Divn.  
Sealdah.

... ... Respondents.

For Applicant : Mr. B. Mukherjee, Counsel.

For Respondents : Mr. P.K. Arora, Counsel.

Heard on : 17.1.1997.

Date of Order : 17.1.1997.

O R D E R

The applicant by an application under Sec. 19 of the CAT Act, 1985 approached this Tribunal for having a direction upon the respondents to cancel and/or set aside the impugned Order dated 9.2.1994, 21.3.1995 and 30.3.1995, as set out in Annexure 'A-8' to the application, and also for a direction upon the respondents to cancel or modify the Order dt. 5.1.1993 treating as actual pay of the applicant at Rs. 1440/- w.e.f. 27.9.89 and next increment at Rs. 1480/- w.e.f. 27.9.89 with usual actual increment on 1.9.91 at Rs. 1600/- instead of proforma fixation, and also for

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a direction on them to pay the arrear balance fixation along with all other admissible allowances thereof and consequential benefits.

2. The case of the applicant is that-

While he was holding the post of 'Junior Accounts Assistant' a disciplinary proceeding was started against him. A charge-sheet was issued on 17.8.88 and inquiry Officer was appointed to hold inquiry against the alleged charges levelled against him by the disciplinary authority. During the pendency of the proceedings, one Junior to the applicant was promoted to the post of Accounts Assistant on 27.9.1989. However, after holding the departmental inquiry, the Enquiry Officer did not find any material to hold him guilty of the charges and by an Order dated 28.4.1992 (Annexure 'A-1' to the application) the disciplinary authority conveyed the applicant about the report of the E.O. Thereafter, the applicant filed a reply to the Report & Findings before the disciplinary authority and after considering the entire facts and circumstances of the case on merit the disciplinary authority exonerated the applicant from the charges levelled against him. Thereafter, as per contention of the applicant, the respondents had considered his case of promotion and issued Order accordingly on 5.1.1993, vide Annexure 'A-5' to the application. Since the actual benefit of promotion was given only with effect from 30.12.1992, the date of holding higher responsibility, instead of 27.9.1989, the applicant had filed a representation before the appropriate authority for getting relief. The applicant had also filed an application before the Financial Adviser and Chief Accounts Officer on 18th August, 1994, vide Annexure 'A-7' to the application. The applicant accordingly was conveyed by the respondents by a letter dated 30.3.1995, ~~xx~~ copy of which annexed as 'A-8' to the application, the decision to the effect that - "As advised by CAO/Admn vide his letter under ref. you are hereby informed that your case is to be decided

in the light of Rly Bd's instruction dt. 21.9.1988 communicated vide CPO/CCC's Sl. No. 198/88 where there is no provision for payment of such arrears."

Being aggrieved thereby, the instant application has been filed with the prayer as mentioned hereinbefore.

3. The case of the applicant has been resisted by the railway authorities by filing a reply, wherein they have, inter alia, stated that - the application is not maintainable and it is barred by limitation. It is the further stand of the respondents that the claimant is not entitled to get any arrear of salary as stated in the petition in view of the Board's direction mentioned above, thereby, they have prayed for dismissal of the application since it is devoid of merit.

4. I have gone through the submission made by the learned advocates for both the parties. During hearing, Mr. Mukherjee has assailed that the claim of the applicant is entertainable and sustainable in view of the Judgement of the Hon'ble Apex Court in the case of - Union of India Vs. K.V. Janakiraman, reported in 1991 SCSL] Vol.15 203, particularly, he invited my attention to Para 26 of the said Judgement, which runs as follows :-

"...We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings..."

Mr. Mookerjee, therefore, submits that the disciplinary proceeding alleged to have been drawn against the applicant could not be substantiated by the department on merit. The applicant was fully exonerated from the charges levelled against him and, admittedly, during the pendency of the departmental proceedings before the

inquiry authority, one junior officer was promoted to the post of Accounts Assistant ignoring the seniority of the applicant. He submits that reasons for denial of benefit of promotion from due date i.e. 27.9.89 when his junior was promoted are not substantiable in view of the provisions laid down by the Hon'ble Apex Court, thereby, the applicant is entitled to get full salary benefits from the date of actual promotion i.e. 27.9.89 and not from the date of assumption of the charge in the promotion post as fixed by the authority as per Annexure 'A-5' to the application.

5. Contrarily, the ld. advocate Mr. P.K. Arora, appearing for the respondents submits that the railway Board Circular was issued after taking into consideration of the Hon'ble Apex Court's Judgement in said Jankiraman's case supra and said the Railway Board's decision came into effect w.e.f. 21.1.1993 while the case of the applicant relates prior to that date and thereby, his case was considered in the light of the Rly. Board's instruction dated 21.9.1988 and, as such, he is not entitled to any arrear pay and allowances in view of the Board's Circular dated 21.1.1993 as contained in Annexure 'R-3' to the reply. Mr. Arora also drawn my attention to para 3.5 of the said Circular the relevant portion of which runs as follows :-

"...In case his junior in the selection panel/suitability list gets promoted before the disciplinary proceedings/court proceedings are finalised, he should be promoted by reverting the junior-most person if necessary, and his pay on promotion should be fixed by allowing the intervening period during which he could not be promoted due to suspension etc, to be counted for increment in the higher grade. Such benefit of proforma fixation of pay in the higher grade should also be given to such a person if he is junior most and it could be clarified that but for his suspension etc. he would have been promoted to the higher grade. However, whether the Railway servant concerned will be entitled to any arrears of pay for the period of notional promotion proceeding the date of actual promotion, and if so to what extent, will be decided by the promotion authority by taking

into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so. It is not possible to anticipate and enumerate exhaustively all the circumstances under which such denials of arrears of salary or part of it become necessary. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example delayed at the instance of the employee or the clearance of the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employees etc. These are only some of the circumstances where such denial can be justified..."

6. Referring to the said decision of the Railway Board, the ld. Advocate, Mr. Arora submits that the applicant is not entitled to get arrears since it is not admissible as per prevailing Rly. Board's instruction. Another point raised by the ld. Advocate for the respondents that the Single Bench should not decide this case since question of promotion is involved in this case and the case should be referred to the Division Bench for proper adjudication of claim of the applicant.

7. In view of the divergent arguments advanced by the ld. Counsel for both the parties, I first take up the question of jurisdiction as raised by Mr. Arora in this case. I have gone through the Order dated 3.10.1996 and it is found that the matter has been referred to the Single Bench for adjudication since subject matter of this case relates to the Single Bench. Moreover, it is found that the applicant had already been promoted by the department w.e.f. 27.9.1989 i.e. on due date of promotion as claimed, which was withheld by the deptt. due to pendency of the departmental proceeding. So, question of promotion is not at all involved in this case for decision. In the instant case, as appears from the application as well as the Written Statement, the dispute arose regarding the date of fixation of pay on promotion

of the applicant. According to the applicant he is entitled to get the back salary as arrears from the date of promotion w.e.f. 27.9.1989 and according to the respondents, the applicant is <sup>not</sup> entitled to get back salary w.e.f. the date of actual assumption of charge and not from the date of actual order of promotion, thereby, I find no cogent reason to hold that Single Bench has no jurisdiction to hear the case as pointed out by Mr. Arora and, as such, that plea is rejected.

8. The next question comes up for consideration as to whether the applicant is entitled to get arrears of salary from the date of promotion or from the date of actual assumption of the charge as raised by the ld. Advocate Mr. Arora before me. I have gone through the said Judgement of the Hon'ble Apex Court rendered in the case of - K.V. Jankiraman and I find that in that case the Hon'ble Apex Court had clearly emphasised that where the employee concerned is completely exonerated from the charge, he be given salary of higher post along with other benefits from the date of his actual promotion. However, it was further observed that - this rule is not applicable in cases where the acquittal was on benefit of doubt or on technical grounds or if he delayed the proceedings, under such circumstances the authority concerned will decide whether the employee at all deserves any salary for the intervening period and if he does, to what extent. In the instant case admittedly promotion was given on due date when his junior was promoted superseding the seniority of the applicant due to pendency of the proceeding before the authority.

9. In the instant case it is not the stand of the respondents that the applicant was not fully exonerated from the charges levelled against him or the applicant is faulty for delay in the matter of conclusion Enquiry. It is clear from the Board's letter

that the authority has been delegated with the power to determine the question of payment of salary for the intervening period under the contingencies viz. where the proceedings, whether disciplinary or criminal are delayed at the instance of the employee or the clearance in the disc. proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee concerned, where such denial can be justified. But in the instant case, none of the said contingencies is found to exist against the applicant rather he is found to have been completely exonerated by the disciplinary authority after considering the findings of the report of the Enquiry Authority. Therefore, the concerned employee is entitled to get the benefit of salary from the date of promotion because the principle of no work no pay cannot be applied when the employee concerned or delinquent officer cannot be blamed for delay of the proceedings or for any other reasons mentioned above.

10. The case of - K.V.Jankiraman was decided by the Hon'ble Apex Court on 27.8.1991. Recently, the same Hon'ble Court had decided another case as reported in 1996(3) SCC L&S 259 (Sudha Shrivastava (Smt) Vs. Comptroller & Auditor General of India). In the said Judgment Their Lordships held that - "the Sealed cover will have to be opened and if it transpires that he was fit for promotion, then he is to be deemed to have been promoted to the post of Accountant General (Grade II) in the pay scale of Rs. 2250-2500 and, thereafter, he is also to be considered for promotion to the post of Accountant General (Grade I) in the higher scale of Rs. 2500-2750.". In the instant case, question of determining promotion did not arise since the applicant had already been promoted on due date of his promotion as claimed by the applicant. Therefore, I do not find any justification on the part of the Rly. Authorities denial of benefits as claimed by the applicant on the basis of Rly. Circulars/Instructions issued thereof as relied upon by them.

11. After having considered the facts and circumstances of the case I am of the view that the applicant is entitled to get the benefit of salary from the date of his actual promotion w.e.f. 27.9.1989 with arrears salary and allowances, if not paid at all. Accordingly, the Petition is allowed. The letters dated 9.2.1994, 21.3.1995 and 30.3.95 (Annexures 'A8') and the letter dated 5.1.1993 (Annexure 'A5') are hereby quashed and set aside. I direct the respondents to refix the salary of the applicant as claimed in the petition within a period of 3 months from the date of communication of this Order. No order is passed as regards costs.

  
( D. Purkayastha )  
Member (J)

P/K/C.