

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No. 700 of 1996

Present : Hon'ble Mr. Justice S.N. Mallick, Vice-Chairman

Hon'ble Mr. B.P. Singh, Administrative Member

Laxman Singh Thakur, s/o Late B.S.Thakur,
Retired Deputy Station Superintendent,
Chhindwara Railway Station, S.E. Railway,
Now residing at..
C/o. S.N.Bhattacharjee,
Near Raymond Builders,
Buxrah, Dist. Howrah, West Bengal

..... Applicant

-vs-

1. Union of India, through General Manager,
S.E. Railway, Garden Reach, Calcutta ;

2. General Manager, S.E. Railway,
Garden Reach, Calcutta ;

3. Senior Divisional Operations Manager,
South Eastern Railway, Nagpur

..... Respondents

For applicant : Mr. S.N. Mitra, counsel
Mr. P.K. Ghosh, counsel

For respondents : Mr. S. Choudhury, counsel

Heard on : 3.02.2000

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Order on : 18-02-2000

O R D E R

S.N. Mallick, VC

In this O.A., the petitioner, a retired employee under the railway respondents has prayed for the following reliefs :-

8.(a). A declaration that of the words, "treating his promotion order as refusal" as used against column No.9 of the serial No.19 in Divisional Personnel Officer, Nagpur's Memorandum No.P/Genl/Admn/Optg/92/SS/SM-Dy.SS/ASM/56/190 dated 7/14.7.92 and the words, "Promotion of Sri L.S.Thakur, Dy.SS in scale of Rs.1600-2660(RPS) as SS in scale Rs.2000-3200(RPS) issued vide this office Memo.No.P/Genl/Admn/Optg/92/SS/SM-Dy.SS/ASM/100/364 dated 8.10.91 is treated as cancelled. As such Sri L.S.Thakur is debarred for such promotion for one year for 2nd time as used against serial No.12 of the note in the Divisional Personnel Officer, South Eastern Railway, Nagpur's Memorandum No.P/Genl/Admn/Optg/92/SS/SM-Dy.SS/ASM/56/192 dt.

07/14.7.92 are arbitrary and contrary to law and contrary to facts, hence are liable to be struck down and an order striking down the same as if those are non-est.

(b) A declaration that the applicant is eligible for all the benefits of his promotion against promotional grade post of Station Superintendent in scale Rs.2000-3200(RPS) with effect from 8.10.91 and an order directing the respondents to give the applicant all the attending and consequential benefits of his promotion as Station in scale Rs.2000-3200(RPS) with effect from 8.10.91, e.g. Fixation of Pay, Payment of arrears of back wages, Payment of difference of pay on account of Leave Salary, DCRG, Commuted value of Pension, Pension etc. together with an interest @ 15% per annum from the date it became due to the date the amount is actually paid. "

2. Although the aforesaid reliefs appear to be argumentative and also taking the nature of broad statement of facts, the grievance of the petitioner clearly appears from the averments made in the O.A. While the petitioner was working at Chhindwara Railway Station, S.E. Railway in Nagpur Station in the post of Dy.Station Superintendent in scale Rs.1600-3200(RPS) ~~xxxxxxxxxxxxxxxx~~ ~~xxxx~~ he was promoted to the post of Station Superintendent in scale Rs.2000-3200/- in Rajnandgaon Railway Station, South Eastern Railway in Nagpur Division w.e.f. 8.10.91 under the respondent authorities' order dt.8.10.91 as per Annexure A-1. But the Senior Divisional Operating Superintendent(now Divisional Operations Manager), S.E. Railway, Nagpur being the Controlling Officer of the aforesaid posts of Dy.Station Superintendent, Chhindwara Railway Station and Station Superintendent, Rajnandgaon Railway Station, issued an order as per Annexure A-2 dt.24.12.91 retaining the petitioner at Chhindwara Railway Station till further advice as per order of Sr.D.O.S., Nagpur. Accordingly, being prevented by such order of retention at his original place of posting, the petitioner could not report at Rajnandgaon Railway Station for joining his promotional post of Station Superintendent on a higher grade in compliance with the order of promotion dt.8.10.91. It appears from

Remarks column of Annexure A-1 that the petitioner was transferred on promotion to Rajnandgaon in a vacant post on the retirement of the erstwhile incumbent on superannuation. Although there was no fault on his part in joining his promotional posting at Rajnandgaon, the respondent authorities, by their letter dated 07/14.7.92 recorded that the petitioner was being retained at Chhindwara Railway Station in the post of Dy. Station Superintendent treating his promotion order as refusal (vide Annexure A-4 - Srl.No.14). But before such order was issued, the petitioner as per Annexure A-3 dt.6.1.92 submitted a representation to the authorities stating that as he was not spared to join his promotional post by the order of the Sr. D.O.S. as contained in Annexure A-2, he should not be deprived of his promotional privileges and his service benefits should be reckoned on such promotion with effect from the date of issue of the order dt.8.10.91. In the order dt.07/14.7.92, as per Annexure A-4 at Srl.No.12 of the Note, it was stated that the promotional order in favour of the petitioner dt.8.10.91 was to be treated as cancelled and that the petitioner would be debarred for such promotion for one year for second time. This action on the part of the respondent authorities, according to the petitioner, is wholly malafide, unjust and arbitrary as at no point of time the petitioner expressed his unwillingness to join his promotional post in compliance with the order of promotion dt.8.10.91. He filed a number of representations for redressal of his grievance without any effect. Thereafter, without giving him any promotion to the higher post, the respondent authorities, by an order dt.27.5.93 as per Annexure A-5, restructured the cadre of Deputy Station Superintendent and upgraded the pay for such post to a scale of Rs.2000-3200(RPS) w.e.f. 1.3.93 and gave the benefit of higher scale of pay with effect from the said date while he was working in the

same station i.e. Chindwara. According to the petitioner, this restructural benefit of scale of pay with effect from 1.3.93 has not remedied the initial wrong committed against him on the part of the respondent authorities by not giving effect to his original order of promotion contained in their order dt.8.10.91. According to the petitioner, he is entitled to get the benefit of promotion to the post of Station Superintendent in terms of the order dt.8.10.91 from the said date. This having been denied, the instant O.A. has been filed.

3. The respondent authorities in their reply have sought to vindicate their action that the order of promotion dt.8.10.91 had to be cancelled as the petitioner refused or was unwilling to join his new place of posting as Station Superintendent in Rajnandgaon Station. It is also their case that by the restructuring order dt. 27.5.93 as per Annexure A/5, the petitioner got the benefit of higher scale of pay equal to that of Station Superintendent, although it is conceded by them that the restructuring of cadre had nothing to do with the normal promotion of the staff. According to the respondents, the petitioner is not entitled to get the benefit of promotion and fixation of pay from 8.10.91 as he had never carried out the order of promotion and transfer dt.8.10.91, for which the said order had to be cancelled.

4. We have heard Mr. S.N.Mitra, Ld.Counsel leading Mr.P.K. Ghosh, Ld.Counsel appearing for the petitioner and Mr.S.Choudhury, Ld.Counsel appearing for the respondents. The connected departmental records have also been produced before us.

5. After going through the materials on record, we are of the view that the respondent authorities' plea that the petitioner was unwilling or refused to carry out the promotional order dated 8.10.91 as per Annexure A-1, for which the said order of promotion

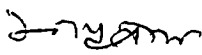
had to be cancelled, is a figment of their imagination. On the other hand, Annexure A-2 clearly shows that the petitioner was retained at Chhindwara Railway Station in the lower post of Deputy Station Superintendent until further orders as per order of the Sr. DOS, Nagpur. This document has not been challenged by the respondent authorities in their reply. Under such circumstances, it has been rightly contended by Mr. Mitra that when the petitioner was not in any way responsible for not joining his promotional posting in compliance with the order dt.8.10.91 and he being retained at his original place of posting by his authorities, the respondent authorities had no lawful reason to cancel his order of promotion treating the petitioner's not joining at Rajnandgaon Station as refusal or unwillingness on his part. There is also nothing to show that the respondent authorities considered the petitioner's representation dt.6.1.92 as per Annexure A/3 before passing the order of cancellation dt.07/14/7/92(Annexure A-4).


6. Mr. Mitra has referred to a decision of the Supreme Court, reported in 1996(2) SCSLJ 130(M.L.Mahna vs. Union of India & Ors.). The facts of the reported case are almost similar to ~~that~~ those of the present case. The relevant part of the judgment of the Apex Court is quoted below :-

"5. We are disinclined to accept the argument on behalf of the respondents, which was accepted by the Tribunal, that the appellant's retention in the earlier posting was in public interest and that this was an incident of service which did not give him a right to claim the stepping-up of pay. It is not as if the appellant voluntarily reported to his new posting on 21.2.83. He could not report to his new posting till that date because of the requirement of the respondents themselves. It does not appear to us just that the respondents should now say that the appellant is not entitled to have his pay stepped up to the level of Sharma who, because no exigency of service came in his way, could report to the new posting earlier.

6. The appeals are allowed. The judgment and order under appeal is set aside and the application of the appellant before the Central Administrative Tribunal is allowed. Since the appellant has retired, his pension and other consequential retiral benefits shall be calculated upon the basis of the stepped-up pay. "

7. In view of the facts and circumstances of the case as discussed above and in the absence of any document annexed to the respondents' reply or in the connected departmental records and also in view of the principles laid down by the Apex Court in the above cited case, we are of the view that the present petitioner should be deemed to have been promoted with effect from 8.10.91 to the post of Station Superintendent in terms of the order dated 8.10.91 and he is entitled to have his pay stepped-up in the aforesaid grade with effect from such date. He cannot be asked to find solace from the fact that he got the restructural benefit of higher pay scale to that of Station Superintendent with effect from 1.3.93 as contained in the order dated 27.5.93 (vide Annexure A-5). We also find that the respondent authorities most illegally and arbitrarily cancelled the order of promotion in his favour on an imaginary ground that the petitioner refused or was unwilling to accept the aforesaid promotional post.
8. Accordingly, we allow this O.A. We direct the respondent authorities to deem the petitioner to have been promoted to the post of Station Superintendent w.e.f. 8.10.91 and to release him all consequential benefits regarding arrears of pay and other ancillary benefits including pension and other consequential retiral benefits as per extant rules calculated on the basis of the scale of pay attached to the post of Station Superintendent adjusting the higher pay he has obtained in the post of Deputy Station Superintendent. Arrears must be disbursed to the petitioner within a period of four months from the date of communication of this order bearing 10% interest on the same ^{from the date the same fell due} till the date of actual payment.
9. No order is made as to costs.


(B. P. Singh)
Member(A)


(S. N. Mallick)
Vice-Chairman