

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH: CALCUTTA.

O.A. No. 987/96

Date of decision: 17-12-04

Hon'ble Mr. M.K. Gupta, Judicial Member.

Hon'ble Mr. M.K. Misra, Administrative Member.

Nakul Chandra Biswas, S/o late Haripada Biswas, residing at 289, Kabi Mukubdas Road, PO Rabindra Nagar, Calcutta 700 065 and working for gain as. Assistant Welfare Officer, E. Rly, Kancharapara.

: Applicant.

None present for the applicant.

-versus-

1. Union of India service through the General Manager, Eastern Railway, Fairlie Place, Calcutta 700 001
2. General Manager, Eastern Railway, Fairlie Place, Calcutta 700 001
3. Chief Personnel Officer, E.Railway, Fairlie Place, Calcutta 700 001
4. Chief Works Manager, Eastern Railway, Kancharapara
5. Shri A.K. Mukherjee, Asstt. Secretary, Office of the General Manager, Eastern Railway, Fairlie Place, Calcutta 700 001

rep. by Mr. P.K. Arora : Counsel for the respondents.

ORDER

Per Mr. M.K. Gupta, Judicial Member.

None appeared for the applicant despite the notice dated 29.09.2004, was issued to him intimating the death of his advocate and also requesting him to engage another lawyer of his choice or to appear before this Tribunal on 13.12.2004. Since it was a case of the year 1996, being an old matter, we decided to proceed on merits as per Rule 15 (1) of the C.A.T.(Procedure) Rules, 1987.

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2. By the present application, the applicant seeks to extend the benefit of the judgement of the order dated 21.02.1995 in O.A. No. 25/94 ( Dilip Kr. Mukherjee & o rs vs. Union of India and ors ) and fixation of his pay at the stage of Rs.2600/- from Rs. 2240/- at par with respondent No. 5 ( Shri A. K. Mukherjee ) being his junior with all consequential benefits.

3. The applicant's contention is that he was initially appointed as Commercial Clerk on 09.06.61 and thereafter he was promoted as Welfare Inspector Gr. III, Gr.II and Gr.I with effect from 17.02.1982, 28.03.1984 and 20.07.1988 respectively. He was further promoted to the post of Assistant Welfare Officer on 06.04.1994. A panel for the purpose of giving promotion to the post of Welfare Inspector Gr. II was prepared on 05.10.83 and vide order dated 28.03.84, such promotion was accorded to the applicant. Though the applicant was appointed earlier to the said post, the respondent No.5 ( Shri A.K. Mukherjee ) was granted better pay on the said post based on the judgement dated 21.02.95 in O.A. No. 25/94 (supra). It is contended that respondent No. 5 being junior to the applicant under no circumstances the pay of the applicant can be fixed at a lower stage than that of the respondent No. 5. For this purpose it was stated that the applicant was initially appointed on 09.06.1961, whereas respondent No.5 was appointed in the year 1964. It was further contended that based on the aforesaid judgement dated 21.02.95 in O.A. No. 25/94, the respondents had fixed the pay of the applicants in O.A. No. 25/94, but they did not extend the said benefit to the applicant which in turn is arbitrary, illegal and violative of principles of natural justice as well as mala fide. Under no circumstances, junior can be allowed to

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draw higher pay than the senior. It was further stated that the applicant has submitted a representation seeking extension of the benefit which remains unattended.

4. The respondents have strongly opposed the applicant's claim stating that one B.C. Mishra Clerk. Gr.I was empanelled for the post of Welfare Inspector Gr. III along with others in the pay scale of Rs. 1400-2300 in the year 1979 vide panel published on 24.07.79. Shri Mishra was promoted to officiate as Welfare Inspector Gr.III with effect from 01.02.81, whereas the applicant, who belongs to SC category being junior in the aforesaid panel was promoted with effect from 17.02.81. Subsequently in the order of seniority Shri Mishra was promoted as Welfare Inspector Gr.II with effect from 01.01.84 against restructured vacancy in the Welfare Inspector Cadre and the applicant was promoted as Welfare Inspector Gr.II in the scale of pay of Rs. 1600-2660 with effect from 28.03.84 against normal vacancy. By virtue of communal roster, the applicant got accelerated promotion as Welfare Inspector Gr.I with effect from 20.07.88 and Shri Mishra was promoted as Welfare Inspector Gr.I in the scale of pay of Rs. 2000-3200 with effect from 13.01.93. Therefore the applicant's claim for stepping up of pay was not justified.

5. We have perused the application and heard Mr. P.K. Arora learned counsel for the respondents. The learned counsel for the respondents strongly relied upon the order and judgement dated 14.05.97 passed by a Bench of this Tribunal in O.A. Nos. 1511/95 and 1514/95 (Mohan Lal Sinha and another vs. UOI and others), wherein after noticing the law laid down by the Hon'ble Apex Court in State of Andhra Pradesh and ors. vs. G.Sreenivasa Rao and ors. (1989) 10 ATC 61, it was held that

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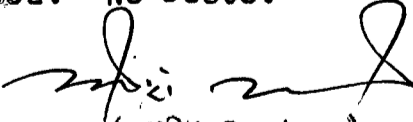
stepping up of pay is not permissible particularly when a junior was promoted to a higher post for certain reasons including adhoc promotion etc. In such circumstances it was contended that merely because a person was senior could not claim parity in fixation of pay.

6. We have bestowed our careful consideration to the facts of this case and find that Shri Dilip Kr. Mukherjee applicant in O.A. No. 25/94 is not similarly placed like the applicant. Similarly, Shri B.C. Mishra, whose case had been the basis for the grant of benefit to Dilip Kr. Mukherjee is also not similarly placed like that of the applicant in this O.A. It is well settled that as per law laid down by the Apex Court in the case of Chandigarh Administration and another vs. Jagjit Singh and Another ( 1995 (1) SCC 745 ), if the order in favour of other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent authority to repeat the illegality or to pass another unwarranted order.

7. There is no comparison between Shri B.C. Mishra and the applicant. A perusal of the judgement in O.A. No. 25/94 indeed would go to show that it was based on the case of Shri B.C. Mishra and therefore it has no application in the facts and circumstances of this case.

8. In view of the above discussion, the present application is bereft of any merits and is dismissed. No costs.

  
( M.K. Misra )  
Administrative Member

  
( M.K. Gupta )  
Judicial Member