

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. 252 of 1996

Present : Hon'ble Mr. Justice S.N. Mallick, Vice-Chairman
Hon'ble Mr. B.P. Singh, Administrative Member

1. Subhankar Dey, s/o. Late J.C. Dey,
aged about 38 yrs. D.Asst. of L-Kharagpur,
S.E. Railway, residing at Block No.1/06/34,
Old Settlement Unit 18, P.O. & PS:Kharagpur,
Dist. Midnapore ;
2. S.Akhter Khan, s/o Mr. Raja Khan, aged
about 42 years, D.Asstt. of L.Kharagpur,
S.E. Railway, residing at MQ.6, Unit No.6,
Old Settlement PO & PS: Kharagpur, Dt.Midnapore

-vs-

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Applicants

1. Union of India, service through General Manager, S.E.Rly., Garden Reach, Cal-43 ;
2. General Manager, S.E. Rly., GRC, Cal-43 ;
3. Divl.Rly. Manager, S.E. Rly., Adra ;
4. Divl. Rly. Manager, S.E. Rly., Kharagpur.

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Respondents

For applicants : Mr. B.C. Sinha, counsel

For respondents : Mr. P.Chatterjee, counsel

Heard on : 30.6.99, 26.8.99
and 4.10.99

Order on : 15-10.1999

O R D E R

S.N. Mallick, VC

This O.A. has been filed by two applicants, namely, Subhankar Dey and S.Akhter Khan, presently working as Diesel Assistants, Loco Shed, Kharagpur praying for the relief as quoted below :

- * Be pleased to direct the respondents to implement the judgment/order passin OA 1337 of 1993 duly giving proforma fixation of pay and other consequential benefits as contemplated under order No.50/95 dated 28.2.95 issued by DPO/ADA. *
2. The facts alleged in the application may be briefly stated as follows :

The applicants are at present working as Diesel Assistants, Loco Shed, Kharagpur. It is further alleged that before working as

such, they were working as Fitter Gr.III, C/BKSC and were promoted to the post of Fitter Gr.II on their passing the necessary trade test along with others in 1986. It is further stated that suddenly they were reverted along with others to the post of Fitter Gr.III by the respondent authorities' order dt.26.10.87. Some of the ^{who} Fitters/were so reverted along with the present two applicants filed an O.A. before this Tribunal in 1987(M.C.Mondal & Ors. v. UOI) challenging such order of reversion. The said OA was disposed of by this Tribunal under its order dt.27.11.92, wherein it was directed that the applicants therein should be deemed senior to the private respondents and their seniority would be fixed in accordance with the decision of the Supreme Court in Civil Appeal Nos.642, 652A of 1988 and SLPs 7158 of 1988 and 14907 of 1988. The present two applicants being similarly situated like the applicants in the aforesaid OA, they applied to the authorities for granting them the same benefits of the judgment dt.27.11.92. Their representation being not considered, they filed O.A. No.1397 of 1993 along with others before this Tribunal praying for a direction upon the respondents to extend the benefits of the judgment to them also. An earlier Bench said OA on 17.12.93 by directing the respondent No.2 thereinto consider of this Tribunal disposed of the representation of the applicants in the light of a judgment, which was annexed as Annexure-E and it was further directed that if the applicants were really similarly circumstanced like the applicants of the aforesaid case, they should be given the benefit of the judgment within the time as specified therein. It was further directed that if the concerned respondent was of opinion that the applicants were not similarly circumstanced, then he shall dispose of the representation and communicate the decision to the applicants through a speaking order within the specified period. Thereafter, in compliance with the aforesaid direction of the Tribunal dt.17.12.93, the respondent authorities issued an office order dt.28.2.95 as per Annexure A/2. The order dt.28.2.95 has been

implemented in respect of others but not in respect of the two applicants working at Kharagpur, inspite of their representation as per Annexure A/3. Hence, the instant O.A.

3. The instant O.A. has been contested by the respondent authorities, who have filed a reply. The case of the applicant No.1 has been conceded in the last paragraph of the reply at page-4 and it is stated that the applicant No.1 has been paid all the monetary benefits arising out of the order No.50/95 dt.28.2.95 as per Annexure-A/2. Regarding the case of the applicant No.2, the respondents' defence is that the applicant No.2 was promoted to the post of Fitter Gr.III w.e.f. 1.7.83. While he was working as such, he was declared surplus at Adra Division and according to his option for reemployment at Kharagpur Division for the post of Diesel Assistant, he was released by the DRM(P)/Adra under his office order dt.6.11.91 and he joined at Kharagpur Division under the order of the Sr. DMF/Kgp on 10.11.91 as Trainee Diesel Assistant. Thereafter, he took over independent charge as Diesel Assistant w.e.f. 4.2.92 under office order dt.12.3.92 and since then he has been working as such under Loco Foreman, Kharagpur. It is the specific case of the respondents that the applicant No.2 while working as Fitter Gr.III in Adra Division, was never promoted to the post of H.S. Fitter Gr.II and he did never shoulder higher responsibility for the said post. As such there was no question of his reversion to the post of Fitter Gr.III along with the applicant No.1 under office order dt.26.10.87. Under such circumstances, on the basis of the order dt.28.2.95(Annexure A/2) issued in compliance of the Tribunal's order dt.17.12.93 in O.A.1397/93, his pay was fixed only on proforma basis for the post of Fitter R.II for which post he never worked. Accordingly, he could not be given any actual pay benefit like applicant No.1.

4. The applicants have not denied the above averments made by the respondents in their reply by filing a rejoinder.

5. Before we consider the case on merits, we think it necessary to point out the following facts. No copy of the judgment dated 27.11.92 passed by this Tribunal in 1987 in the case of M.C. Mondal & Ors.-vs- Union of India, as referred to in para-4.2 of the instant O.A. has been filed. Although it is stated that the present applicants were also co-applicants in the aforesaid case, there is nothing to support such contention. Furthermore, in paragraph 4.3, it is alleged that the present applicants being similarly circumstanced filed a representation for extension of benefit of the said judgment. If they were parties to the aforesaid case, there was no question of filing another representation to the respondent authorities on the ground that they are similarly circumstanced employees. It is also alleged that the present two applicants were parties to O.A. 1397 of 1993. No material has, however, been furnished to support this. But we have checked up the records of O.A. 1397 of 1993 and we have found that the present applicants were not parties to the same. Be that as it may, the order dated 28.2.95 as per Annexure A/2 was admittedly issued in compliance with the Tribunal's order dt.17.12.93 passed in O.A. 1397 of 1993. We must note here that the applicant No.1 is not proceeding with this O.A. so far as his case is concerned. It has been recorded in our order dt.26.8.99 that as per submission of Mr. B.C. Sinha, Id. Counsel appearing for the applicants, all actual pay benefits have been given to the applicant No.1 on the basis of the order dated 28.2.95, but the same has not been given to the applicant No.2. The aforesaid order dt.28.2.95 records in respect of the applicant No.1 as follows :-

* He was reverted from Fitter Gr.II to Fitter Gr.III on 26.10.87 and his pay as well as seniority to be fixed from 13.11.86 as Fitter Gr.II and now posted at L/BKSC as DDA vide O.C. No.618/133/90 dt.18.9.90."

Regarding the applicant No.2, the entry is as follows :-

- " i) May be promoted to Fitter Gr.II with effect from 26.10.87 and his pay as well as seniority to be fixed from 26.10.87 ;
- ii) Now working as DDA at KGP vide O.G.No.618/187/91 dt.6.11.91. "

6. It has been contended by Mr. Sinha, Ld. Counsel appearing for the applicants that the applicant No.2 has been illegally discriminated by the respondent authorities as against the applicant No.1, who has been given all the pay benefits attached to the post of a Fitter Gr.II, although both of them are now working as Diesel Assistant. Apparently, this contention appears to be substantial but on proper scrutiny of facts, it appears to us that the applicant No.2 has no case at all, there being no question of discrimination as alleged by him. Admittedly, the applicant No.1 was at a point of time promoted to the post of a Fitter Gr.II and was reverted to the post of Fitter Gr.III with effect from 26.10.87. In pursuance of the Tribunal's order dt.17.12.93(Annexure A/1), he got the benefit under the respondent authorities's order dt.28.2.95. It is the specific case of the respondent authorities that the applicant No.2 was never promoted to the post of Fitter Gr.II at any point of time. It has been alleged in para-4.2 that both the applicants were promoted to the post of Fitter Gr.II on their passing the necessary trade test along with others in 1986 and that they were reverted along with others to the post of Fitter Gr.III under the respondent authorities' order dt.26.10.87. It is worthwhile to note that there is no basis in this contention so far as the applicant No.2 is concerned.

7. We have already noted that the respondents' plea is that the applicant No.2 was never promoted to the post of Fitter Gr.II from the post of Fitter Gr.III at any point of time. This has not been denied by the applicant No.1 or by applicant No.2 by filing any rejoinder or by producing any materials to the contrary. We are

convinced that there has been material suppression of facts or gross mis-representation of facts on the part of the applicant No.2 in this regard. It seems that the applicant No.2 wants to take advantage of the remarks made in Col.No.7 of the order dated 28.2.95. The fact stands that before this order was passed, he was already declared surplus in the post of Fitter Gr.III and he joined as Diesel Assistant at Kharagpur on 6.11.91 about four years before the order dt.28.2.95 was passed. Under such circumstances, we cannot but accept the contention of Mr. Chatterjee, Ld. Counsel appearing for the respondents that the applicant No.2 is not entitled to get any actual pay benefit on the basis of the order dated 28.2.95 as he was never given any promotion to the post of Fitter Gr.II and he never shouldered any higher responsibility in the said post and that at best he could get only notional fixation of pay described as pay on proforma basis which was given to him.

8. The Service Book of the applicant No.2 has been produced before us. It shows that he was never promoted to the post of Fitter Gr.II at any point of time before the order dt.28.2.95 was issued. On the basis of the Tribunal's judgment dt.17.12.93, he was given a proforma promotion to the post of Fitter Gr.II and he was given pay on proforma or notional basis. As he had already joined in the post of Diesel Assistant without taking over higher responsibility for the post of Fitter Gr.II, there cannot be any question for giving him any actual pay benefit as was given to applicant No.1.

9. Mr. Chatterjee, Ld. Counsel for the respondents has drawn our attention to Para-228 of I.R.E.M. Vol.I, 1989, which ~~principles~~ deals ~~with~~ with the cases of erroneous promotion. In our view, this provision has no application to the facts and circumstances of the present case.

10. As the applicant No.1 has already got his benefits and is not interested to proceed with the instant O.A. and as the applicant No.2 has no legal merit in support of his claim for the reasons given above, the O.A. is liable to be dismissed. The O.A. is accordingly dismissed. No order is made as to costs.

B.P. Singh
(B.P. Singh)
Member (A)

S.N. Mallick
(S.N. Mallick)
Vice-Chairman