

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No.O.A.489 of 1996

Present : Hon'ble Dr.B.C.Sarma, Administrative Member.

Hon'ble Mr.D.Purkayastha, Judicial Member.

Smt.Arati Roy w/o Late Saroj Kumar Roy, superannuated from the office of the Development Commissioner for Iron & Steel as L.D.C. and residing at quarter No.82/4, Indian Institute of Management, Calcutta Campus, Joka, D.H. Road, 24 Parganas (South).

... Applicant

Vs.

1. Union Of India service through the Secretary to the Govt. of India, Ministry of Steel & Mines, Udyog Bhawan, New Delhi-110 011.
2. Development Commissioner for Iron & Steel, Nizam Palace, 234/4, AJC Bose Road, Calcutta-20.

... Respondents

For the applicant : Mr.R.K.De, counsel.

For the respondents: Mrs.Kanika Banerjee, counsel.

Heard on : 23.7.1997 & 31.10.1997

Judgment on : 01.11.1997

J U D G M E N T

D.Purkayastha, J.M.

One Smt.Arati Roy, wife of Late Shri Saroj Kumar Roy filed this application before the Tribunal seeking following

directions upon the respondents :

"For giving promotion to her husband, Late Sh. Saroj Kumar Roy to the post of U.D.C. w.e.f. 12.7.67 and to the post of Assistant w.e.f. 7.10.77 and to the post of Superintendent (Non-gazetted) w.e.f. 17.10.1987 to 30.9.1982 when junior officers of Late Shri Saroj Roy were allowed to be promoted ignoring the case of Shri Roy due to pendency of the departmental proceeding w.e.f. 18.10.1966 to 30.4.1991 though her husband went on to retirement on superannuation on attaining the age of 58 years on 30.9.1982."

2. It is stated in the application that her husband Late Shri Roy and another employee one Shri Hiran Chandra Mukherjee, L.D.C. were involved in a criminal case and they were placed under suspension from October 1966. The criminal case was decided on 21.2.1991 in favour of them acquitting both of them from the charges against them and, thereafter, by an order dated 1.7.1992, they were reinstated in the service. The period of suspension of Shri Roy from 18.10.1966 to 30.9.1982 was treated on duty. After that, by office order dated 10.9.1992, all dues payable to Shri Roy was paid. Thereafter Shri Roy expired on 27.6.1993. Now on 15.4.1996, the applicant filed this application claiming the aforesaid reliefs on the ground ^{that} the co-employee, Shri Hiran Chandra Mukherjee was granted notional promotion with arrears of pay and allowances as per direction of the Tribunal in O.A. No.543 of 1993. Hence, ~~she claimed that she is entitled to get benefit of promotion of her husband.~~

3. The case is contested by the respondents by filing a written statement by which they denied all the claims of the applicant. They submit he was acquitted from the criminal case on 21.2.1991. A categorical stand taken by the respondents is that the benefit of promotion as claimed by the widow wife of the applicant could not be extended to the applicant's husband since he had superannuated during the pendency of the case and his suspension order was withdrawn w.e.f. 30.9.1992. It is also stated that the applicant's deceased husband had neither challenged

the said office order nor raised any claim of promotion before institution of the case by the applicant. So, the application is liable to be dismissed as it is devoid of merit.

4. The applicant also filed rejoinder stating inter alia that her husband vide his representation dated 21.6.1991 (annexure 'A' page 25 of this O.A.) claimed all service dues including promotion. But the respondents vide office order dated 1.7.1992 granted some benefits, but promotional benefits were not granted and the representation of her husband dated 21.6.1991 was still not finally disposed of. In view of the said position, there was nothing to show that the applicant's husband had abandoned his claim. In fact, ^{from} in the case of Shri Hiren Chandra Mukherjee vs. Union of India & Ors., the applicant came to know that her husband was illegally denied his dues, service benefits, and she persuaded the same by giving Advocate's notice to the applicant. Now, respondents cannot evade their responsibility of payment of dues of her deceased husband including promotion.

5. We have heard the submissions of both the parties and perused the records. Regarding the maintainability of the application filed by the applicant as widow wife of the employee deceased, Shri Saroj Roy, it is submitted by the ld. Advocate, Mr. R.K. De that wife of the deceased employee has legal right to seek relief in respect of promotion and financial benefits for the reason that all rights of ~~promotion and financial benefits~~ promotion and financial benefits had devolved upon the widow wife after the death of her husband and the respondents being a welfare state, are bound to act in accordance with the principle of natural justice as enshrined in Articles 14 and 16 of the constitution, since the promotional benefits and arrears of pay and allowances were granted to the co-employee, Shri Hiren Mukherjee on the basis of the direction given by the Tribunal in O.A. 543 of 1993 filed by Shri Mukherjee. The applicant is also entitled to get similar benefits in respect of her husband.

6. The ld. Advocate, Mr. R.K. De had relied on the judgment reported in 1996 SCC (L&S) 259 (Sudha Srivastava vs. Comptroller and Auditor General of India and Ors.), the judgment reported in (1993) 24 ATC 611 (T.N. Bhargava, IPS vs. Union of India & Ors.) and the judgment reported in AIR 1991 SC 201 (Union of India & Ors. vs. K.V. Janakiraman and Ors.), where their Lordship of the Hon'ble Apex Court held that the Govt. cannot deprive any benefit including salary of promotional post on the principle of 'no work no pay' basis when the employee is exonerated from the charge levelled against him. The ld. Advocate Mr. Deff further relies on a decision reported in 1990 (12) ATC 643 (S. Samson Martin vs. Union of India & Ors.), where Full Bench of the Tribunal held that an employee who was suspended earlier on criminal proceedings is reinstated in service, he is entitled to get full pay and allowances for a period of suspension. ~~In view of the aforesaid decision,~~ The ld. advocate, Mr. Deff, had cited another decision reported in (1994) 27 ATC 155 (Indrani Bai vs. Union of India in which the Hon'ble Apex Court in respect of the relief sought for in the application, ~~entertained the~~ ^{entertained the} claim of the widow of the deceased employee though the deceased employee did not file any case before his death.

7. Ld. Advocate, Mr. R.K. De further submits that due to inaction on the part of the respondents in granting relief as claimed for in this application, the applicant as the widow wife is getting less pay towards pension every month, so the cause of action is a running one since the respondents did not grant the benefit including the retiral benefits as claimed in this application. ~~entertained the~~

8. Mrs. Kanika Banerjee, ld. advocate for the respondents stated that the applicant's husband, deceased Saroj Roy before his death, did not claim any promotion on the ground of supersession as alleged by the applicant i.e. wife of the deceased employee in this case. Mrs. Banerjee further submits that the legal representative of the deceased employee is not entitled to the

relief as prayed for as regards the claim of promotion and cause of action thereof were entirely personal to Shri Saroj Roy and that did not survive after his death. So the application is liable to be dismissed.

9. Mrs. Banerjee had cited a decision of the Hon'ble Apex Court reported in 1989 (10) ATC 378 (Paluru Ramkrishnaiah vs. Union of India) in which it has been held by the Hon'ble Apex Court that the back wages for the period for which a person actually did not work in the promotional post is not payable. Mrs. Banerjee further submits that the post of U.D.C. and Assistant are non-selection posts but the post of Superintendent is a selection post and the husband of the applicant could not claim promotion as a matter of right to the higher grade of service. Mrs. Kanika Banerjee further submits that the applicant's husband did not file the case before his death. The case of the applicant would have been otherwise if the applicant's husband after filing of the case had died during the pendency of the case and thereafter the applicant could be substituted. So the petition is liable to be dismissed on the grounds stated above.

10. Regarding maintainability of the application by the widow wife of the deceased Saroj Roy, a question is to be decided by us as to whether legal representative of the deceased Saroj Roy has right to sue in respect of service matters including promotion and back wages. We first take up the case of Smt. Sudha Srivastava vs. Comptroller and Auditor General of India (1996 (2) ATJ 285)(SC) where a similar question was framed by the Hon'ble Apex Court which runs as follows :-

"Whether the heir of a civil servant who was prosecuted in a court of law but was ultimately acquitted, though by that time he had died, can be permitted to continue the proceedings before the court and claim the grant of retrospective promotion to the deceased and the consequential monetary benefits."

In that case, the husband of the appellant was a member of the

Indian Audit & Accounts Service (Class I) and criminal proceeding was started against her husband and Special Judge convicted Shri S.S. Shrivastava and sentenced him to imprisonment of 2 years and a fine of Rs.10,000/-. He preferred an appeal before the Hon'ble High Court of Patna against the conviction and sentence and during the pendency of the appeal Shri Shrivastava died. On an application being made, the wife of Late Shrivastava as his heir was permitted to be substituted in the proceedings. Ultimately, by judgment dated 13.4.1983, the said appeal was allowed and the conviction and sentence was set aside. Thereafter the wife of Shri Shrivastava sent a representation to the State claiming retrospective promotion and consequential benefits to her husband, but that representation was rejected by an order dated 10.7.1987. After the rejection of the representation filed by the appellant, the widow wife of Shri Shrivastava filed an application before the C.A.T. Patna Bench, Patna. But the 1st Tribunal of the Patna Bench by a judgment dated 5.10.1989 rejected the application of the appellant by holding that the right for enforcement of promotion accrued only on the acquittal of the appellant's husband and as before such acquittal he had died, then his personal right of enforcement of promotion did not actually accrue and, therefore, nothing survived to his legal heirs. In coming to this conclusion, the Tribunal was of the view that a civil servant could not claim promotion as of right and any benefit which would have arisen as a result of the promotion could only have accrued to the officer himself and not to his legal heirs if he had died before the judgment for acquittal was delivered. The Tribunal also came to the conclusion that the application was barred by limitation. ^{That was also not accepted as} it is found that after the acquittal of the appellant's husband, a representation claiming the ^{promotion and retirement} benefit was submitted by the appellant in January, 1984, which was followed by a reminder in April, 1984, but by letter dated 29.6.1984, the representation was rejected. The mere fact that the appellant received a letter dated 10.7.1987 rejecting her fresh application dated 4.3.1987 could not, it was held, ^{it} give her a fresh cause of action and the period of

limitation had to be reckoned from 29.6.1984. Therefore, the application which was filed before the Tribunal in May, 1988, was not barred by limitation as well. But Hon'ble Apex Court, relying on the judgment of K.V.Jankiraman (1991) 4 SCC 109) held that the claim of the appellant was rejected by the Tribunal on the ground that right to promotion was a personal right and heirs of the deceased have no right to make any claim in regard thereto. The Tribunal fell in error in as much as the process for promotion to the post of Accountant General (Gr.II), regarding Late S.S. Shrivastava had already been undertaken and the "sealed cover" procedure followed. Whatever the rights the deceased had, as a result of this "sealed cover" the procedure having been followed, stood established as on that date. Along with the right to work in the higher post, if he was to be promoted, he would have also got a right to salary in the higher scale. The effect of the acquittal of the appellant's husband must be regarded as if he had been wrongly convicted. He, therefore, would have had a right to have been placed in the higher scale of pay, if he had been selected for promotion and this is a right which would devolve on the legal heirs, if during the pendency of the proceedings, the said employee expired.

11. In Prabhavati Devi vs. UOI (1996 (2) ATJ 284 (SC), leave was granted to the applicant who was the widow of a temporary railway servant who died while working as a substitute in the Railway, but the railway servant died before getting the temporary status in the Railway department. This judgment indicates that the right of promotion may be a personal one and can be claimed by a widow wife, so submitted ^{made} by the la. Advocate, Mrs. Kanika Banerjee. is not sustainable.

12. From the aforesaid judgments of the Hon'ble Apex Court, it is found that right of salary and promotional benefits of the employee would devolve on legal heirs, even if the employee expires. In the instant case at our hand, admittedly,

the applicant's husband, Saroj Roy was placed under suspension in 1966 and he went on retirement from service on superannuation in the year 1982, but criminal case which was started against him ended in his acquittal from the charges levelled against him on 21.2.1991 and Saroj Roy died on 27.6.1993. It also remains undisputed that after acquittal from the criminal charge on 21.2.1991, the applicant was reinstated in service and his period of suspension from 18.10.1966 to 30.4.1981 was treated as period spent on duty by an order dated 1st July, 1992 (annexure 'A/3' to the petition). Saroj Roy was paid arrears of pay and allowances by a letter dated 10th September, 1992. According to the present applicant, her husband submitted a representation to the authorities on 21.6.1991 (annexure 'A/2' to the petition). That representation, according to the applicant had been partly disposed of, where the applicant made an application for promotion which would have been due to the ~~dismissal~~ ⁱⁿ employee normally had he not been ~~in suspension~~ for that period. It is also an admitted fact that no departmental proceeding has been initiated against the husband of the applicant during the criminal proceeding and before his death.

13. The Rajasthan High Court in the case of Gul Mohammed vs. UOI (1973 (2) SLR 35) held the view that legal representatives was not entitled to the relief which was claimed against the dismissal from service and during the pendency of the case the petitioner having died.

14. The Hon'ble Allahabad High Court in AIR 1965 Allahabad 114 (J.P. Mathur vs. UP Govt.) held :

"In this view of the matter it is important for us to say that with the death of the plaintiff, the suit died and the court could not give any relief to the legal representative before the court continued the appeal and on behalf of and in absence of the plaintiff. We, therefore, hold that although the legal representatives would not have been entitled to seek the declaration, which the plaintiff sought after his death, they are entitled to our finding that dismissal of the plaintiff was wrongful and as a result they are entitled to such consequences that flow from such a finding."

From the judgment of the Allahabad High Court it is found that consequential relief which followed from the setting aside of

the dismissal order was available to the legal representatives of the deceased.

15. The Hon'ble Apex Court in para 10 of the Judgment of Smt. Sudha Srivastava's case had further held :

"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 alongwith the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings. 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 in 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 employee etc."

So in view of the decision of the Hon'ble Apex Court as enunciated in paragraph 10 of the judgment referred to above, we are of the view that Smt. Arati Roy as widow wife of the deceased Saroj Roy, is entitled to make an application before the Tribunal for

granting retrospective promotion to the deceased Saroj Roy and

In adverting to the claim of retrospective promotion it the consequential monetary benefits thereof. It is found in the inst-

ant case ^{that} the applicant's husband, Saroj Roy, was placed under suspension

and that period of suspension after his acquittal from the

criminal case was regularised treating the period of suspension by an order dated 10.9.1992

as on duty and he was granted some arrears of pay/after revocation

of his suspension order in 1992 and Shri Saroj Roy expired on

27.6.1993. But before his death Saroj Roy submitted a representation

to the authorities by annexure 'A/2' to the application claiming

some benefits including promotion during the period from 1966

to 1982. Ld. Advocate appearing on behalf of the respondents,

could not show any paper that they maintained sealed cover

procedure during the period of Saroj Roy's suspension when the

question of Saroj Roy's junior came up for consideration for

promotion to the higher grade.

16. The applicant's ~~husband~~ ^{her husband} claimed promotion with retrospective effect in the cadre of U.D.C. w.e.f. 12.7.1966 and to the post of Assistant w.e.f. 7.10.1977 when the juniors ^{her husband} were promoted to the respective grades mentioned above. The applicant also claimed promotion of her husband to the post of Superintendent in the scale of Rs.700-900 (gazetted), w.e.f. 7.10.1977 to 30.9.1982. Admittedly, the post of Superintendent is a selection post and the posts of U.D.Clerk and Assistant are non-selection posts. Since the applicant was under suspension, his right of promotion to the higher grade also remains suspended till the revocation of the suspension order or till acquittal from the criminal case. ^{Bul} It has been stated earlier that Saroj Roy was reinstated by an order dated 1st July, 1992, and the period of his suspension from 18.10.1966 to 30.9.1982 was treated as period spent on duty, which would be evident from annexure 'A/3' to the application. It is a fact that co-employee, Shri Hiron Chandra Mukherjee was given retrospective promotion and salary etc., after reinstatement in service, as per direction of the Tribunal in O.A.543 of 1993 disposed of on 9.6.93. (Annexure A5 to the application)

17. In view of the circumstances, since Saroj Roy was ^{exonerated} from the criminal charge and no departmental proceeding was instituted against him and also against Shri Hiron Chandra Mukherjee during the continuance of the suspension period, the applicant's husband was wrongly denied promotion in the higher grades when his juniors were promoted during the suspension period, without following sealed cover process. The suspension in contemplation of the departmental proceeding or criminal proceeding against them cannot be deemed to be a punishment under the provisions of DCS (Conduct & Appeal) Rules, 1965. The respondents could have maintained "sealed cover" process for giving Saroj Roy the benefits of promotion in case he was acquitted from the criminal case. The department, as per the instructions of the Govt. of India from time to time could have also easily reviewed the order of suspension for the purpose of reinstatement as the criminal case was pending for a long time since 1966. The respondents also could have reinstated the applicant's husband ^{They} ~~did not~~ follow the procedure of review of suspension nor ~~procedure~~ for the purpose of consideration for promotion to the higher grade when his junior was promoted to the respec-

tive grades, as stated in the application, nor was he reinstated. The claim of promotion was made by Saroj Roy on 21.6.1991 (annexure 'A/2' to the application) and that representation has not been disposed of by the respondents in this case till date. So employment of a Government servant may be of status not an agreement of contract yet as per the judgment of the Hon'ble Apex Court, as referred to above, it is clear that right of the deceased employee in respect of promotion and monetary benefits would devolve ^{upon} the legal heirs and the judgment of the Allahabad High Court and the Rajasthan High Court, as referred to above, were decided long ago and those judgments are no longer a good law in view of the judgment of the Hon'ble Apex Court where it is found that it is open to the heirs and representatives of the civil servants to get the matter agitated or decided in a court of law in respect of promotions and monetary benefits even after the death of the employee. Basing on the judgments of the Hon'ble Apex Court reported in Smt. Sudha Shrivastava and Prabhavati Devi, it can be said that the maxim "actio personalis moritur cum persona" operates to a limited purpose ^{in service jurisprudence} and that maxim by itself does not take away the right of a legal representative or heir to pursue the matter in service jurisprudence. Hence, we are of the view that the application is maintainable in the facts and circumstances of the case.

18. Regarding the claim of promotion during the suspension period as claimed due to acquittal from the criminal case pending against him, it is admitted by the respondents that they did not review the period of suspension from time to time. The authorities could have reviewed the order of suspension from time to time. Instead of doing that, they allowed continuance of the suspension order till 1991 though it is known to the authorities that Saroj Roy would go on superannuation in 1982. Under the pension rules, age of superannuation is treated as a compulsory retirement from service. A civil servant has not right to continue in service on attaining the age ^{of superannuation} /

as prescribed by the rules. It is not denied by the respondents that some of the juniors were not promoted to the post of U.D. Clerk and thereafter to Assistant and to the post of Superintendent. In between the period 1966 to 1982 i.e. the date of superannuation, 30.9.1982, and in view of the circumstances, it is obvious that the applicant's husband would have been promoted to the respective higher grades had there been no criminal case and order of suspension. So on acquittal from the criminal charges, the applicant's husband cannot be held responsible for non-consideration of his promotion to the higher grade. ~~as it was done in respect of Shri Mukherjee~~ Since he was also ~~and such acquittal from criminal case~~ completely exonerated from the criminal charge, ~~clearly indicate~~ that the applicant's husband was not found blame-worthy and he was not visited with any penalty even that of censure.

19. The Hon'ble Apex Court in K.V. Janakiraman (1991 (4) SCC 109) has explained the doctrine of 'no work no pay' theory when an employee is acquitted of the criminal charges against him. The applicant's husband, Shri Saroj Roy, therefore, could not perform his duties since he was placed under suspension on the basis of the criminal case started against him. ~~It remains undisputed in this case that the posts of U.D. Clerk and Assistant are non-selection posts. So question of suitability test did not arise for the purpose of promotion to the post of U.D. Clerk and to the post of Assistant respectively from the grade of L.D. Clerk because in case of non-selection posts, seniority-cum-merit is the criteria for the purpose of promotion to the higher grade. But this theory is not applicable in respect of selection posts. Selection posts are to be filled up on the basis of merit-cum-seniority and thereby the applicant's husband could not have faced any test of suitability for the post of Superintendent, which is a selection post. So in view of the peculiar circumstances, we have no hesitation to hold that since Saroj Roy's period of suspension from 1966 to 1982 was treated as on duty, he was also entitled to be considered for promotion to the selected post~~

as per seniority only.
non-selection post. / We do not find impediment on the part of the Govt. to give notional promotion to Saroj Roy to the higher grades of U.D.Clerk and subsequently to Assistant when juniors to him were promoted to the grades of U.D.Clerk and Assistant during the period from 18.10.1966 to 30.9.1982 i.e. till the date of his superannuation.

20. In Indranibai vs. UOI reported in 1994 (27) ATC 755, the decision also supports the case of the applicant. The judgment reported in 1989 (10) ATC 378 (Paluru Ramkrishnaiah & Ors. vs. UOI), has no manner of application in view of the judgment of Janakiraman's case which is a ^{distinguishable} ~~one~~ and also in view of the judgment of the Hon'ble Apex Court in Smt. Sucha Shrivastava's case.

21. We are of the view that the post of Superintendent is a selection grade post. Thereby the applicant's husband could not claim to have been promoted on the basis of seniority alone. As such, we do not grant any relief to the applicant's husband, Saroj Roy, in respect of retrospective promotion in the cadre of Superintendent but we are of the opinion that the applicant would be entitled to get benefit of the retrospective promotion of her husband notionally in the cadre of U.D.Clerk and Assistant from the date when the junior of Saroj Roy was promoted as per the seniority list maintained by the department and the applicant is also entitled to get the consequential benefits of promotion of her husband, in view of the observations made above.

22. Regarding the question of limitation as raised by the ld. advocate for the respondents, we find that the applicant, Smt. Arati Roy, being the wife of a deceased employee, Saroj Roy, claimed retrospective promotion of her husband and the financial benefits due to Saroj Roy while in service. It is found from the representation (annexure 'A/2' to the application) that the applicant's husband Saroj Roy, made representation to the authorities claiming financial benefits and also for promotion due to him during the period of suspension.. Since it was decided by the Hon'ble Apex

court in Smt. Sudha Shrivastava that it is open to the legal representatives of the deceased to have the matter decided in respect of promotion as well as for retiral benefits in the competent court of law as legal representatives of the civil servants the benefit of promotion would have devolved upon her. Before the decision of Sudha Shrivastava's case, we find the matter was unsettled in respect of claim for promotion and financial benefits of the employee who died without filing any case before any court of law. It is also averred in the rejoinder of the applicant that her husband submitted representation and part of the relief was granted to her but the claim of promotion of her husband has not yet been disposed of by the respondents. It is true that after the representation submitted by her husband, the applicant's husband remained silent till ^{his} the death of ~~her~~ ~~husband~~ and due to such silence it cannot be said that the claim of promotion has been abandoned by her and her husband on the face of the representation submitted by him while he was alive. Even after the death of the applicant's husband, the respondents failed to consider the case of promotion of Sarej Kumar Ray, when the case of promotion of Shri Hiren Chandra Mukherjee was considered as per the direction of the Tribunal in O.A.543 of 1993.

23. The pension rules confers some right upon the applicant to get some family pension and retiral benefits, the quantum of pension which are directly dependent upon the retrospective promotion and fixation of pay of Sarej Ray. Since we have held that the applicant's husband, Sarej Ray, cannot be found to be blame-worthy for denial of promotion as he was acquitted from the criminal charge, the applicant as legal heir, can be said to have been aggrieved by the ^{m-}action of the respondents who did not follow the procedure of maintaining 'sealed cover' for the purpose of consideration of the case of Sarej Ray, while he was in service and after granting benefit to Shri Mukherjee, the entitlement of family pension and gratuity etc., to the applicant would derive from the fixation of pay scale of the applicant's husband on promotion. Due to the wrong action and laches on the part of the respondents, the husband of the applicant, was denied promotion to the higher

grade in the rank of U.D.Clerk and Assistant as stated above. As a result of denial of promotion to her husband, the entitlement of quantum of family pension and retirement gratuity, ~~he~~ has been adversely affected and the applicant is getting less pension every month than that which she would have been entitled to on account of the death of her husband or due to the retirement of her husband if her husband had not been ~~debarred~~ placed under suspension and was duly promoted to the respective grades when his juniors were promoted overlooking the case of her husband. Moreover, retrospective promotion was given to the co-employee, Shri Hiron Chandra Mukherjee and arrears of pay was paid, but the applicant's husband was denied though they were similarly circumstanced. That inaction attracted Articles 14 & 16 of the Constitution and the cause of action still subsists.


24. In AIR 1977 SC 2050 (Sualal Yadav vs. State of Rajasthan), it was held by the Hon'ble Apex Court "when the representation has been entertained by the competent authority, then the limitation should be reckoned from the date of the order passed on the said representation."


25. It is further stated by the applicant in her application that her husband's representation was partly disposed of. The question of promotion, as claimed by the applicant's husband, has yet to be disposed of by the respondents, though it was done in respect of the co-employee, Shri Mukherjee, as per direction of this Tribunal. Moreover, claim of denial of family pension and other retiral benefits cannot be denied by the respondents on the ground that the claim is a belated one. Since we have held that fixation of family pension on retirement of the husband of the applicant cannot be said to be barred by limitation as the cause of action is a continuing one, we do not find any merit in the submission made by Mrs. Kanika Banerjee, ld. advocate appearing on behalf of the respondents on that score.

26. In view of the aforesaid circumstances, we think it would be appropriate to direct the respondents to consider the case of promotion of the applicant's husband, Sarej Roy, in the cadre of U.D.Clerk and Assistant when he was found eligible for

promotion from a particular date when his juniors were promoted overlooking the eligibility of the applicant wrongfully. The applicant's husband, Late Shri Sarej Roy, it is ordered, should be deemed to have been promoted accordingly and his pay be refixed notionally till the date of his retirement from service on superannuation and no arrears of pay shall be paid to the legal representative of Sarej Roy for the period upto the date of filing this O.A. But the applicant shall be paid her husband's leave salary, gratuity, etc., during the said period from the date he was entitled to be promoted and to grant her all retiral benefits within four months from the date of communication of this order.

27. The case is accordingly disposed of awarding no costs.


(D. Purkayastha)
Judicial Member


(B.C. Sarma)
Administrative Member

1/12/97