

(9)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH: JODHPUR.

O.A. No. 23/1996

Date of Order: 23.4.1998

Shri Mala s/o Shri Agarji, aged 65 years, R/o Subhaspura Mataji ka Mandir, Near Lalgarh, Bikaner, last employed on the post of Sr. Pointsman under S.S., Lalgarh, Bikaner, N/Rly.

... Applicant

VERSUS

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Bikaner Division, Bikaner.
3. Bansilal s/o Shri Nanu Ram (Shunting Master Gd. I Retd.), Vill. and P.O. Bamanwali, Distt: Bikaner.

... Respondents

Mr. J.K. Kaushik Counsel for the applicant.

Mr. Ravi Bhansali, Counsel for the respondents No. 1 and 2.

None present for respondent No. 3.

CORAM:

Hon'ble Mr. A.K. Misra, Judicial Member

Hon'ble Mr. Gopal Singh, Administrative Member

O R D E R

Per Hon'ble Mr. A.K. Misra

The applicant has filed this O.A. with the prayer that the

...2...

*[Signature]*

13

.2.

respondents No. 1 and 2 may be directed to allow due commutation of pension alongwith interest at the market rate, to pay salary for the period from 16.2.1981 to 1.8.1982 alongwith interest and they may be further directed to consider the case of the applicant for promotion to the post of Shunting Master Grade II and Shunting Master Grade - I, in the pay scale Rs. 1200-2040/1400-2300 respectively from the date when applicants next junior was ~~was~~ given promotion and to give notional promotion with all consequential benefits.

2. Notice of the O.A. was issued to the respondents. Official respondents have filed their reply, whereas private respondent No. 3 has not filed any reply in spite of service.

3. The respondents have stated in their reply that commutation value of pension has been paid to the applicant, interest on delayed pension and gratuity has also been paid to the applicant, vide order Annex.R/2, , notional pay of the applicant has been worked out and pension has been fixed accordingly and paid. The respondents have further stated that the applicant is not entitled for promotion to the post of Shunter Master Grade II and Shunter Master Grade I because promotion on these posts can only be made after due selection.

4. We have heard the learned counsel for the parties and gone through the record.

5. It appears from the facts of the case that at the relevant time, the applicant was working as a senior ~~points~~ Pointsman. He had participated in a strike and in consequence thereof, the applicant was removed from service. His removal from service was stayed by the Hon'ble High Court. Thereafter, the Writ Petition of the applicant came to be transferred to this Tribunal and in due course of time, was decided by the Tribunal. In the meantime, the applicant superannuated. While disposing of the Transferred Application No. 65 of 1986, the Tribunal had ordered that pensionary benefits be paid to the applicant within a period of three months alongwith interest

2/2

... 3

at the rate of 12% p.a. It was further observed that the applicant would not be entitled for salary for the period of removal till superannuation apart from what has been ordered to be paid by the Hon'ble High Court.

6. It was argued by the learned counsel for the applicant that before the decision rendered by the Tribunal, a person junior to the applicant was promoted. The claim of the applicant was ignored. Therefore, he is entitled for promotion on notional basis. On the other hand, the learned counsel for the respondents has argued that the position on which the applicant is seeking promotion, ~~is~~ <sup>one</sup> a selection post and without due process of selection, no employee can claim to be promoted as a matter of routine. In the instant case, the applicant was not in service so as to enable the Railway Administration to consider his candidature for further promotion. The applicant, in any case is not entitled to promotion.

7. We have considered the rival arguments of the parties. Due to participation in strike, the applicant was removed from service. Though, the Hon'ble High Court stayed the operation of removal yet the applicant was not taken on duty and was being paid salary as per the rate last paid. This position remained in existence till the applicant finally superannuated. Since the applicant was not in service, therefore, his case for further promotion was not considered. As narrated earlier, the applicant superannuated in the meantime. The applicant had at no point of time was ~~being~~ subjected to any selection, therefore, he cannot claim promotion as a matter of right and in a routine manner from the date applicant's junior was given promotion. Applicant's claim in this respect cannot be accepted on this ground alone. Even otherwise, the applicant cannot say with certainty that in case he had ~~appeared in~~ the selection he would have come out as a successful candidate. When there are chances both ways, the applicant cannot be directed to be promoted on notional basis. At the time of disposal of the earlier O.A., the Tribunal had not ordered that the case of the applicant be considered for promotion. Even payment of salary was also

restricted to only what was paid to him or was payable to him, as per the order of the Hon'ble High Court. Therefore, in our opinion, consequential benefit of promotion to the higher post can be said to have been refused by the Tribunal in the past and same point now cannot be agitated. The pay of the applicant on the post on which he was working earlier, was calculated and his pension has been fixed accordingly. We do not find any irregularity in the same. So far as the claim of salary for the period begining from 16.2.1981 to 1.8.1982 is concerned, we are of the opinion that the claim relating to pay for that period is quite belated. In fact, the claim relating to salary for the aforesaid period should have been agitated in the previous petition which was instituted by the applicant and was subjudicato. It seems that applicant has not pressed his claim regarding salary, therefore, he cannot be allowed to claim the same after a lapse of almost fifteen years. The prayer in this respect is liable to be rejected.

8. The claim of the applicant in relation to interest due to delayed payment has been satisfied by making him payment of interest, as narrated in para No. 4.1 of the reply. The applicant has not challenged the correctness thereof. Therefore, the claim of the applicant in our opinion stands satisfied on this count.

9. The applicant has been permitted to commute his pension and commutation pension has been ordered to be paid vide Annex.R/4. There is also no dispute in this respect that the applicant had ~~not~~ received the commuted value of the pension.

10. From the foregoing discussions, we come to the conclusion that the claim of the applicant in respect of interest for delayed payment and for payment of commutation value of pension, has been satisfied. ~~The applicant~~ is not entitled for salary for the period in question, as discussed above. The applicant's prayer in respect of these two grievances stands satisfied. So far as the applicant's prayer in respect of promotion is concerned, the matter is discussed above and in view of the discussions, he is not entitled to notional

13

.5.

promotion. The O.A. therefore, deserves to be dismissed.

11. The Original Application is, therefore, dismissed with no order as to costs.

Gopal Singh

(GOPAL SINGH)  
Administrative Member

A.K.MISRA  
( A.K.MISRA )  
Judicial Member

.....  
MEHTA