

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

.....

Date of Order : 27.3.2002.

O.A.NO. 290/1998

1. Mahesh Chandra S/o Shri Khunni Ram aged about 47 years By Caste Scheduled Caste, R/o C/o Shri Nandlal, Plot No. 51, Rajendra Marg, Masuria, Jodhpur, presently working on the post of Personnel Assistant to Divisional Superintending Engineer/Coordination, Northern Railway, Jodhpur.
2. Sukumar Dandapath, S/o Shri Sudhir Chandra Dandapath, aged about 43 years, By Caste Scheduled Caste, Railway Quarter No. 2114, New D.S.Colony, Jodhpur, presently working on the post of Personnal Assistant to Divisional Signal and Telecom Engineer, Northern Railway, Jodhpur.

.....Applicants.

versus

1. Union of India, through the General Manager, Northern Railway, Headquarters Office, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Jodhpur.
3. Divisional Personnel Officer, Northern Railway, Jodhpur.

.....Respondents.

.....

COMAM :

Honourable Mr. Gopal Singh, Administrative Member

.....

Mr. S.K.Malik, Counsel for the applicants.
Mr. S.S.Vyas, Counsel for the respondents.

.....

BY THE COURT :

In this application under section 19 of the Administrative Tribunals Act, 1985, applicants, Mahesh Chandra and Sukumar Dandapath, have prayed for quashing the impugned order dated 31.7.1998 (Annex.A/1) and for direction to the respondents to pay arrears of pay and allowances to the applicants w.e.f. 1.1.1984 in the grade of Rs. 1600-2660/640-2900/ 5500-9000 and from 14.8.1987 in the grade of Rs. 2000-3200/6500-10500, along with interest at the rate of 18% per annum.

Signature

1/8
20

2. Both the applicants were initially appointed as Stenographer in the grade of Rs. 330-560. Applicants were promoted on the post of Confidential Assistant under the scheme of Best amongst failure candidates in terms of Railway's Circular dated 6574 dated 31.8.1974 wherein, it has been provided that Scheduled Caste and Scheduled Tribe candidates who have been so ear-marked may be promoted on ad hoc basis for a period of six months against vacancies reserved for them. During the said six months period the Administration should give all facilities to them for improving their knowledge and come up to the requisite standard, if necessary by organising subject coaching classes. At the end of six months, a special report should be obtained on the working of these candidates and case put up by the department concerned to the General Manager through their Senior Personnel Officers for review. The continuance of Scheduled Caste and Scheduled Tribe candidates on the higher grade would depend upon this review. If the candidates are found to have come upto the requisite standard their names would be included in the panel and same finalised, otherwise their names should not be included in the panel and the vacancies de-reserved and filled in the usual manner by candidates from other communities. Though, special reports on the performance of both the candidates for the in service training period of six months were satisfactory. However, they were put to short-hand test wherein they failed and, therefore, they were reverted to the post of Stenographer. This happened three times before they were ultimately regularised as Confidential Assistant. In their earlier applications No. 128/94 and 129/94 decided on 19.7.1995, both the applicants claimed promotion and seniority as Confidential Assistants from the date they were initially appointed as such on ad hoc basis. Both the O.As were allowed by this Tribunal with the following observations :-

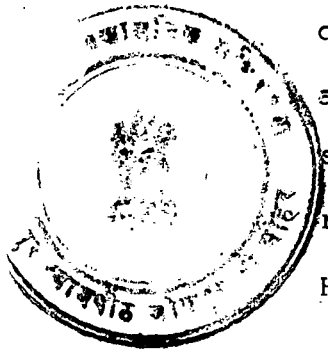
"11. In view of what has been discussed above, we are convinced that the applicants deserved to be empanelled and thereafter regularised in terms of the relevent Circular No. 6574 six months after their initial promotion on ad hoc basis on 17.8.1981 and 24.10.1981 in respect of S/Shri Sukumar Dandapath and Mahesh Chandra respectively. The O.A. therefore, succeeds and it is hereby directed that the regularisation orders shall be issued in the

C. P. S. - 9

DPH

terms of above observation within three months of the receipt of this order. However, their inter se seniority in the cadre of Confidential Assistant will have to be determined in terms of the prevalent rule on the subject. There will be no order as to costs.

In compliance to the orders dated 19.7.1995, passed in O.A. No. 128 and 129 of 1994, by this Tribunal, names of both the applicants were interpolated in the seniority list with reference to their juniors vide respondents order dated 25.11.1997 (Annex.A/4) and their pay fixation was done vide respondents order dated 11.3.1998, Annex.A/6 (in respect of Sukumar Dandapath) and order dated 17.3.1998, Annex.A/7 (in respect of Mahesh Chandra). It was also provided in these pay fixation orders that they will not be entitled to any arrears up to 9.2.1998. The representation of the applicants against non payment of arrears from the initial date of promotion, was rejected by the respondents vide their letter dated 31.7.1998 (Annex.A/1). In this letter dated 31.7.1998, it has been pointed out by the respondents that in terms of Para 228 of the Indian Railway Establishment Manual, Vol. I, 1989, the enhanced pay is only admissible from the date the staff actually shouldered the duties and responsibilities of the higher post. Since they had not actually shouldered the duties and responsibilities of the higher post, their request for giving arrears with retrospective effect, was rejected. Hence, this application.

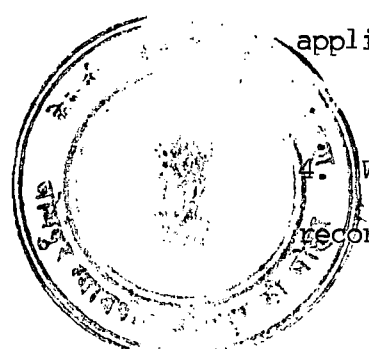


3. In the counter, the case of the applicants has been denied by the respondents. It is argued that the applicants have been denied the arrears of pay and allowances for retrospective promotion as per provisions of Para 228 of the Indian Railway Establishment Manual, Volume I. The Provisions of Para 228 have not been challenged by the applicants. It is also pointed out by the respondents that both the applicants in their earlier O.As No. 128 and 129 of 1994, had prayed for regularisation of their services as Confidential Assistant from the initial date of their promotion on ad hoc basis with all consequential benefits. It is contended by the respondents that the clause 'with all

Confidential

7/8
12/1

consequential benefits' would also include pay and allowances due on promotion to the post of Confidential Assistant. Though, the Tribunal allowed promotion and seniority w.e.f. the initial date of their promotion on ad hoc basis as Confidential Assistant, they did not pass any order in regard to pay and allowances on promotion as Confidential Assistant from their initial date of appointment on ad hoc basis. In the circumstances, it has been argued by the learned counsel for the respondents that the relief claimed and not given by the Tribunal, is deemed to have been rejected by the Tribunal and in that case the applicants are estopped from agitating for the same relief. It is also pointed out by the respondents that in terms of Para 1011 of the Indian Railway Establishment Manual, Volume I all orders refixing the pay of a Railway servant from a retrospective date take effect from the date of issue and no arrears of pay in such cases are generally permissible. In these circumstances, it has been urged by the respondents that the applicants have no case and the application is liable to be dismissed.



4. We have heard the learned counsel for the parties and perused the record of the case carefully.

5. It is a fact that both the applicants, who have been empanelled on receipt of a satisfactory report on completion of six months in service should have been regularised as such. training period / However, the respondent-department insisted that the applicant should also pass the stenography test for regularisation as Confidential Assistant. This Stenography test was nowhere provided. The performance of the candidates was required to be reviewed in terms of the performance report given by the superior officers for the in service training period of six months and if their performance was found satisfactory, they were required to be empanelled in the original panel against the vacancies reserved for Scheduled Castes and Scheduled Tribes. It is not the case of the respondents that performance report on conclusion of the six months period was unsatisfactory in respect of the any of the applicants. It, therefore, follows that both the

Upheld

J/K
23

applicants should have been empanelled and should have been given promotion on regular basis as per their panel position against the reserved vacancies. This has not been done. Thus, this is an administrative lapse which has delayed the promotion of the applicants. The respondents have also in their letter dated 31.7.1998 (Annex.A/1), pointed out that the applicants are not entitled to higher pay and allowances on their promotion to the post of Confidential Assistant in terms of Para 228 of the Indian Railway Establishment Manual, Volume I since they have not shouldered higher responsibilities. In our view, both the applicants could have been regularised on the post of Confidential Assistant on conclusion of in service training of six months on the basis of their performance report. Had the respondents followed the procedure, they would have been appointed regularly on the post of Confidential Assistant with effect from their initial date of appointment on ad hoc basis as such. It was only the administrative lapse in not following the prescribed procedure that resulted in delaying the promotion of the applicants. Thus, in our view, the applicants would be entitled to arrears of pay and allowances on their promotion to the post of Confidential Assistant from a retrospective date. Denial of arrears of pay and allowances on promotion to higher post from a retrospective date, under Para 228 of the Indian Railway Establishment Manual, Volume I, has been considered by a Larger Bench in O.A. No. 543 of 1995 Devi Lal Vs. UOI and Ors. and the batch, decided on 11.02.2002, with the following observation :-

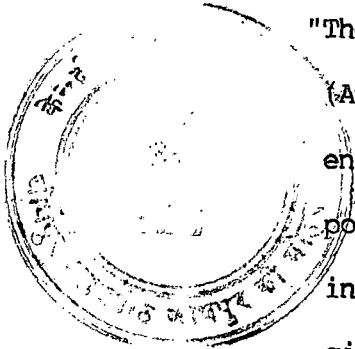
"7. Having regard to the aforesaid reasons, we answer the reference as under :-

- (a) An employee who was not promoted earlier due to administrative lapse, on his retrospective notional promotion to the higher post subsequently with effect from the date his juniors have been promoted, would be entitled to arrears of pay and allowances with retrospective date, and
- (b) Para-228 of IREM in so far as the same denies an employee pay and allowances on the principle of 'no work no pay' even if an employee has been erroneously denied the actual work on account of the fault of the management is invalid and violative of Articles 14 and 16 of the Constitution of India.

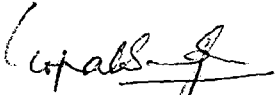
Copied by

194

6. Denial of pay and allowances on the principle of no work no pay, under Para 228 of the Indian Railway Establishment Manual, Volume I, has been held as invalid and violative of Articles 14 and 16 of the Constitution of India. It has also been held that an employee who was not promoted earlier due to administrative lapse, on his retrospective notional promotion to the higher post subsequently w.e.f. the dates his juniors have been promoted, would be entitled to arrears and pay and allowances with retrospective date. Thus, in my view, the applicants are entitled to arrears of pay and allowances with effect from the date of their initial appointment on the post of Confidential Assistant on ad hoc basis. Accordingly, I pass the order as under :-



"The O.A. is allowed. The impugned order dated 31st July, 1998 (Annex.A/1), is quashed and set aside. The applicants would be entitled to arrears of pay and allowances on their promotion to the post of Confidential Assistants with effect from their date of initial appointment as such on ad hoc basis. The respondents are given three months time from the date of receipt of a certified copy of this order, to comply with these orders. No costs."


(Gopal Singh)
Administrative Member

mehta

Reand copy
on 2/4/02
gh

rel for
2/4/02