

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ADDITIONAL BENCH, CALCUTTA  
O.A. No. 89 of 1997

Dated, Calcutta the 13<sup>th</sup> June 2002

~~Biswas~~ Chakraborty, s/o Late Bhuban Mohan Chakraborty,  
retired O.S.Gr.II, Commercial Dept. Eastern Railway, Calcutta,  
at present residing at "Chakraborty Nagar", PO Barabahera,  
Dist. Hooghly.

.. Applicant

-versus-

1. Union of India through General Manager, Eastern Railway, F.P., Calcutta-1.
2. Chief Personnel Officer, E.Rly, F.P., Calcutta-1.
3. Chief Comm. Manager, E.Rly, Koilaghat St., Calcutta-1.

.. Respondents

Counsel for the applicant ... Mr. B.C. Sinha

Counsel for the respondents ... Mr. R.K.De

P R E S E N T: The Hon'ble Mr. L.R.K. Prasad, Member (A)  
The Hon'ble Mrs. Meera Chibber, Member (J)

O R D E R

L.R.K. Prasad, Member (A):

1. This application has been filed with the prayer to direct the respondents to grant proforma benefit of O.S. Grade I in scale of Rs.2000-3200 (RPS) with effect from 1.7.1986 to 31.5.1989 and consequential retiral benefits along with interest and costs.

2. Heard the learned counsel for the parties and perused the materials on record. No W.S. has been filed. Shri R.K.De appeared on behalf of the respondents and stated that based on his oral submissions, the matter can be disposed of. We agree with his suggestion so that necessary order can be passed in that light as the matter relates to 1997.

3. The applicant was appointed in the Eastern Railway on 18.4.1956 and in due course promoted to the post of O.S. Grade II in the scale of Rs.1600-2660(RPS). He retired from

service on 31.5.1989. He has already received pension and other retiral benefits as per P.F.O. dated 1.8.1991 as O.S. Grade II (Annexure-A2). The applicant states that he was declared successful in the suitability test for promotion to the post of O.S. Grade I in the scale of Rs.2000-3200 on the basis of test held on 15.3.1989. The result was declared on 29.3.1989. However, he was not given promotion before his retirement to the post of O.S. Grade I as one Shri Ashok Kumar Das Gupta was retained in service as O.S. Grade I beyond the age of superannuation from 1.7.1989 to 18.1.1990. The retention of Shri Ashok Kumar Das Gupta was done in irregular manner. However, his retention was sanctioned by the order of the President of India vide letter dated 12.3.1991 (Annexure-A3). The order clearly shows that Shri Gupta was not allowed the scale of O.S. Grade I from 1988, meaning thereby that he was treated in the scale of Rs.1600-2660 with effect from 1.7.1986, the date on which Shri Gupta would have retired in normal course. It was pointed out on behalf of the respondents that even though Shri Gupta was allowed lower scale of pay vide order dated 12.3.1991 (Annexure-A3), he performed the functions of O.S. Grade I. Nevertheless, the fact remains that during the period of re-employment, Shri Gupta was allowed the scale of Rs.1600-2660, which is the pay scale of O.S. Grade II. It was also ordered in the said letter that necessary recovery of excess payment may be made from the settlement dues of Shri Gupta.

4. It is the claim of the applicant that if Shri Gupta would have retired in normal course, a post of O.S. Grade I would have fallen vacant with effect from 1.7.1986 and there was a possibility of the applicant getting promoted to that scale from 1.7.1986. It is further the

submission of the applicant that for the fault of the Administration, the applicant cannot be penalised. It appears that the applicant also submitted a representation on 20th August 1990 claiming promotion from 1986 to O.S. Grade I.


5. It may be pointed out at this stage that the promotion to O.S. Grade I is made on the basis of suitability test which the applicant passed only in March 1989. ~~We were told during the course~~ of hearing that the representation of the applicant (Annexure-A4) has not yet been disposed of by the concerned respondent.

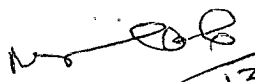
6. While making oral submission Shri R.K.De, learned counsel for the respondents, opposed the above application on the ground that the applicant could not have been given promotion to O.S. Grade I before his retirement, as one Shri Ashok Kumar Das Gupta continued to discharge the functions of the said post even after his retirement from 1.7.1989 to 18.1.1990. As there was no vacant post of O.S. Grade I before his retirement, the applicant could not be promoted to the said post.

7. We have considered the matter in the light of submissions made on behalf of the parties and materials on record. It appears that the applicant passed the suitability test for promotion to the post of O.S. Grade I in March 1989 and he superannuated from service with effect from 31.5.1989. In spite of his passing the suitability test, he could not be given promotion to the post of O.S. Grade I since the said post was occupied by one Shri Ashok Kumar Das Gupta, who continued to hold the said post even after his retirement, which was, in a way, irregular. It appears that Shri Gupta was retained in service as O.S. Grade I beyond the age of superannuation from 1.7.1989 to 18.1.1990 for which necessary sanction for

re-employment was given later on. If the post would have been vacant, the applicant could have at least got promotion to the post of O.S. Grade I after March 1989 when he cleared the suitability test and before his retirement, but due to one reason or another, the same could not be done. There is no indication as to what action was taken by the Railway authorities against the concerned officer, who allowed Shri Gupta to be retained in service beyond the age of superannuation.

8. In view of the above position and the fact that the applicant cleared the suitability test in March 1989 for promotion to the post of O.S. Grade I, we are of the opinion that the respondents should take a lenient view in the matter and grant due promotion to the applicant in accordance with law in March 1989 after he has cleared the suitability test, by giving him proforma promotion to O.S. Grade I for the purpose of determining his pensionary benefits to which he may be entitled on account of such promotion. The respondents are directed to act, accordingly, and pass suitable order in this regard within a period of four months from the date of communication of this order. This O.A. stands disposed of accordingly. No order as to the costs.

  
(Meera Chibber)  
Member(J)

  
13.6.02  
(L.R.K. Prasad)  
Member(A)