

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No.1141 of 1997

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

Hon'ble Mr. G. S. Maingi, Administrative Member

Nitya Nanda Sarkar, S/o Late Gourango
Chandra Sarkar, r/o C/o Indrani
Mukherjee, Lottery Kalibari, P.O.
Nabapally, Barasat, Dist.North 24-
Parganas (West Bengal), pin-743203

... Applicant

VS

1. The Union of India, owning and representing South Eastern Railway, Chakradharpur, through General Manager
2. The Divisional Railway Manager (Optg. Staff), South Eastern Railway, Chakradharpur, Dist.Singhbhum, P.O. Chakradharpur, State of Bihar, Pin-833 102
- iii) The Sr. Divisional Personnel Officer, Chakradharpur, South Eastern Railway
- iv) The General Manager, South Eastern Railway, Garden Reach, Kidderpore, Calcutta, West Bengal

... Respondents

For the Applicant(s): Mr. N. Mukherjee, counsel

For the Respondents : Mr. A.K. Dutta, counsel

Heard on 8.11.1999 : : Date of order: 8.11.1999

O R D E R

D. Purkayastha, JM

The question before us for decision is that whether the respondents were justified to deny the benefit of arrears of pay on fixation of pay of the applicant vide order dated 19.02.98 (Annexure 'B' to the supplementary application) in pursuance of the Hon'ble Supreme Court's judgment dated 14.5.93, reported in AIR 1991 SC 27 (S. B. Sarkar and others vs. Union of India and others) with effect from 1.8.83. According to the applicant, he retired from the post of Dy. S.S./Mou with effect from 30.6.86 and during his service period a restructuring scheme of Station

Masters has came into effect vide memorandum dated 12.5.97, but the applicant was not given the benefit of the said scheme till the date of his retirement. Mr.S. B. Sarkar and others filed an application before this Tribunal seeking for the benefit of the restructuring scheme, which has came into effect with retrospective effect and that application was rejected by this Tribunal. Thereafter the applicants filed an SLP before the Hon'ble Supreme Court, which has been numbered as Civil Appeal No. 2054 of 1990 and that application has been disposed of by the Hon'ble Supreme Court by a judgment on 30.4.90, wherein the Hon'ble Apex Court had directed the respondent authorities to grant all promotional benefits to those 204 Station Masters who had exercised option before 1983 in the same manner as it would have been if option had not been abolished in accordance with the earlier procedure provided they fulfilled the other requirements. While doing so those who had been promoted shall not be disturbed. Further if as a result of this exercise posts in higher grade fall short, the authorities shall create adequate number of additional posts to overcome the difficulty. The authorities further directed to complete all this exercise within six months. Persons promoted in pursuance of this order shall be entitled to all consequential benefits from the due dates. After passing of the judgment by the Hon'ble Apex Court, reported in AIR 1991 SC 27, the authorities did not act accordingly. Thereafter the applicants filed a contempt petition against the Chairman, Railway Board which has been numbered as Contempt Petition Nos.130 and 195 of 1991 (in Civil Appeal No.20543 of 1990) and the said contempt petition has been disposed of by giving the following directions:

"We, therefore, direct opposite parties to implement the order of this Court in respect of 204/206 employees by applying alternative-II to them for purposes of determining their placement and promotion. After their placements and promotions are so determined under alternative-II then they may be governed by the present alternative for future promotions. Six months' time was

granted in 1990. The opposite parties have delayed it by nearly two and half years. We direct the opposite parties to finalise it within two months from today. The promotions and all benefits shall be given retrospectively. No application for further extension by opposite parties shall be entertained. Failure to comply with the directions shall not be treated lightly in future."

After passing of the aforesaid judgment the respondents granted the applicant the benefit of promotion from the post of Dy. S.S. to the post of S.S.II in the scale of Rs.700-900/- (RPS) with effect from 1.8.83 with proforma fixation from 1.8.82 against the restructuring scheme of SMs vide office memorandum No.E4/646/SM/SLP.CL/Restructure/83 dated 12.5.97. Accordingly, the respondents by an order dated 19.2.98, Annexure 'R-II' to the reply fixed the pay of the applicant, but he has not been paid the arrears of pay as per direction of the Hon'ble Apex Court in the judgment mentioned above. The applicant has also filed several representations to the authorities for granting the benefit of arrears in the light of the judgment of the Hon'ble Apex Court. Feeling aggrieved by the inaction on the part of the respondents in granting the benefit of arrears, the applicant filed this application with the prayer for granting such benefit.

2. The respondents filed a reply denying the claim of the applicant. It is stated by the respondents that the serving Station Masters in grade Rs.550-750/- (RS) who qualified in the prescribed promotional test have been promoted as Station Superintendent (SS) Grade-II in the scale Rs.700-900/- (RS) with effect from 1.8.83 with proforma benefit from 1.8.82 against upgraded post under Railway Board's letter dated 29.7.83. It is also stated that the above promotions were given in compliance of the judgment of the Hon'ble Supreme Court in CA No.2054/90 and issued under orders dated 28.2.97 and 12.5.97. It is further stated that amongst the promotees under Order dated 28.2.97 there are a number of juniors to the applicant but the applicant could not be considered for such promotion as he had already retired from service on the date of implementation on 28.2.97. But after

getting the representation from the applicant for promotion as S.S. in the grade of Rs.700-900/- (RS) vis-a-vis his juniors, the respondents considered the same and it has since been decided that the applicant was also entitled to get proforma fixation in the higher grades which should be counted for the purpose of retirement benefits only. Accordingly office orders were issued on 19.1.98 and 19.2.98. It is also stated by the respondents that the applicant is not entitled to get monetary benefit of promotion in the grade of Rs.700-900/- (RS) as he had already retired. The respondents have, therefore, submitted that the application has become infructuous and hence it should be dismissed.

3. Mr. Mukherjee, learned advocate appearing for the applicant has drawn our attention to the judgment passed by the Hon'ble Apex Court, reported in AIR 1991 SC 27 and subsequent contempt petition which has been disposed of by the Hon'ble Apex Court by a judgment on 14.5.93, reported in AIR 1994 SC 1281. By citing these judgments Mr. Mukherjee submits that the applicant is entitled to get the arrears of pay.

4. Mr. Dutta, learned advocate appearing for the respondents submits that since the applicant retired from the service, therefore, he is not entitled to get the benefit of the scheme in view of the Circular dated 17.9.86 Annexure 'R-III' to the reply.

5. We have considered the submissions of the learned advocates of both sides and have gone through the records of the case and the judgments cited. We find that the Hon'ble Supreme Court in the aforesaid judgments had categorically decided the matter and gave direction upon the respondents to promote the officers with retrospective effect under the same scheme and direction was also given that the persons promoted in pursuance of that order shall be entitled to all consequential benefits from the due dates. In spite of that direction the respondents did not act and subsequently a contempt petition has been filed, which has been

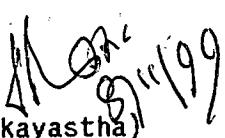
disposed of by a judgment reported in AIR 1994 SC 1280. In the said judgment it has been categorically mentioned that the promotion and all benefits shall be given retrospectively and no application for further extension by opposite parties shall be entertained and failure to comply with the direction shall not be treated lightly in future. On the face of the judgment we are *prima facie* satisfied that the applicant is entitled to get the benefit and he should not be differently treated for the purpose of granting the benefit of arrears in the light of the judgment of the Hon'ble Apex Court. However, the applicant made representations to the authorities and the said representations still remain pending for decision by the authorities. Therefore, we find that the applicant sought for direction upon the respondents to consider the representations. In Sub-para (b) of para 8, where the applicant sought for various reliefs, it is mentioned that several representations are still pending.

6. In view of the aforesaid circumstances we direct the respondents to consider the representations of the applicant dated 14.3.97, 15.4.97, 15.5.97, 11.6.97 and 28.7.97 in the light of the decision of the Hon'ble Apex Court and to pass appropriate and reasoned order in accordance with the observation made above. The respondents are also directed to pass the reasoned and speaking order within three months from the date of communication of this order and they shall communicate the decision to the applicant within 15 days from the date of taking such decision and liberty is given to the applicant to approach this Tribunal, if he is aggrieved by the said decision. The application is disposed of accordingly. No costs.



(G. S. Maingi)

MEMBER (A)



(D. Purkayastha)

MEMBER (J)