

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

No. O.A. 1209/1997

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

Hon'ble Mr. B.P. Singh, Administrative Member

MANIK LAL BANERJEE

VS.

UNION OF INDIA AND OTHERS

For the applicant : In person

For the respondents : Mr. R.M. Roychoudhury, counsel

Heard on : 15.6.99 and 22.6.99

Order on : 13.08.99

O R D E R

D. Purkayastha, J.M.

In this application, the applicant, Manik Lal Banerjee sought for direction upon the respondents to grant him the benefit of fixation of pay from 1.10.93 instead of 1.3.93 as per order of the DPO, Sealdah vide his order dated 6.6.95 (Annexure 'A' to the app.) ^{and} for fixation of pay by way of stepping up of his pay on promotion in scale of of Rs. 2375-3500/- (RP) at par with the pay of his junior, A.K. Roy as a proved case of "administrative error" being mandatory under IREM 228(I) and order the Hon'ble ~~High Court~~ of Kerala dated 9.9.91 reported in 1992(1)CSJ(HC)-368 and to pay interest on the amount of arrears of pay and allowances and pensionary benefits at the rate of Rs. 18% from the date of accrue till the date of tendering payment.

2. The case of the applicant in short is that, he retired on 31.1.95 as Station Manager, Sodepur, North 24 pgs. under the Eastern Railway in the scale of Rs. 2600-3200/- (RP). Thereafter, he was promoted in the scale of Rs. 2375-3500/- (RP) w.e.f. 1.3.93 under the cadre restructuring order of the Railway Board dated 27.1.93 (Annexure 'B' to the application), but the benefits of that promotion was not given while he was in service despite the order of this Hon'ble Tribunal dated 8.4.94 (Annexure 'E' to the app.). It is also stated by the applicant that on the verge of his retirement when pension papers for on date payment was in

process, he was called by the Administrative Officer, Sr. DOM
the
Sealdah vide / letter dated 19.10.94(Annexure 'G' to the app.).
Accordingly he met the Sr. DOM, Sealdah as per direction of
DPO, Sealdah and he was threatened indirectly by them that
his retiral benefits would not be paid on the date of retirement
unless he accepts the difference of pay from 1.3.93 to 30.9.93
in the scale of Rs.2375-3500/- (RP) and was forced to give a
written declaration of forgoing arrears of fixational benefits
from 1.3.93 to 30.9.93. It is further stated by the applicant
that from the said declaration it would crystalise that he
has forgone only the arrears but not the mandatory administrative
obligation to fix pay once on 1.3.93 as per Railway Board's
order dated 27.1.93 and then again on 1.8.93 as per option
under F.R.22. Being aggrieved by the actions of the respondents
the applicant submitted a representation to DRM, Sealdah vide
letter dated 2.11.94(Annexure 'H' to the app.) requesting him
to consider his case. It is alleged by the applicant that
the concoctive plea of want of vacancy in Sealdah Division
vide CPO's letter dated 22.1.96(Annexure 'I' to the app.)
would not stand in test vide DRM's letter dated 23.3.94 because
juniors to the petitioner under serial No.27 to 30,32 and 34 to
38 in the CPO's approved panel No.E839/4/Trans/Line dated
22.2.94(Annexure 'J' to the app.) were retained in Sealdah
Division by extending the restructuring benefits superseding
the seniors including the petitioner by disobeying the directive
of the Railway Board dated 27.1.93 to implement cadre-restructuring
order basing upon seniority after scrutiny of service record at the
ratio of 1:1(i.e.one post, one candidate) as well as promotion
under cadre-restructuring order/which is nothing but upliftment in
pay structure retaining in the same post. The applicant stated
that the cadre-restructuring order dated 27.1.93(Annexure 'B')
is specific and reads as "This restructuring of cadres will be
with reference to the sanctioned cadre-strength on 1.3.93. The

staff who will be placed in higher grades as a result of implementation of these orders will draw pay in higher grade w.e.f. 1.3.93! The applicant further stated that the benefits of fixation of pay was not received by him while he was in service but one order for fixation of pay from 1.10.93 instead of 1.3.93 was issued by the DPO, Sealdah vide letter dated 6.6.95. It is evident from the said letter that the said fixation was contrary to the not only contrary to FR 22 but also/the Railway Board's order dated 27.1.93. It is also stated by the applicant that the Hon'ble Calcutta Bench of CAT on 8.4.94 in O.A.566/92, directed the applicant to submit a representation to the concerned authority within one month from the date of communication of that order, claiming benefit of promotion in the scale of Rs.2375-3500/-(RP) w.e.f. 1.3.89 i.e. the date on which his junior A.K. Roy was promoted and the respondents were directed to consider such representation in accordance with the rules and to dispose of the same after giving personal hearing to the applicant, with a speaking order. In pursuance of the order of the Tribunal, he made representation to the authorities which was rejected by the CPO, Eastern Railway with an order vide letter dated 5.8.94(Annexure 'F') which did not constitute a speaking order. Thereby the applicant approached this Tribunal again with the aforesaid claims.

3. Respondents filed written statement denying the claim of the applicant. In the written reply the respondents stated that the applicant had been given the scale of Rs.2375-3500/- w.e.f. 1.3.93 by the order dated 22.2.94 as a result of cadre restructuring and this fact was noted by the Tribunal in their judgment dated 8.4.94 in O.A.No.566/92. Incidentally, since no post in the scale of Rs.2375-3500/- was available in Sealdah Division, he was transferred to Howrah Division against which the applicant preferred an appeal and accordingly he was given the benefit from the date of posting against a post available due to normal attrition. It is also stated by the respondents

that the post of Station Manager in the scale of Rs.2375-3500/- is a head quarter controlled post and accordingly the applicant could have joined at Howrah on promotion to avail of the benefit. The applicant gave declaration at his own accord. But inspite of that factor, the respondents considered his appeal and accordingly the applicant was accommodated at Sealdah Division against a post available due to normal attrition w.e.f.1.10.93. The respondents further stated in the reply that while issuing the order of posting of Sri Banerjee, the Chief Personnel Officer, Eastern Railway clearly stated that the scope of restructuring/ benefit w.e.f. 1.3.93 could not be given to the applicant as per extant rules and he would get only promotion/posting in the scale of Rs.2375-3500/- in Sealdah Division , vide office order dated 3.4.95. It is also stated that the order of this Tribunal dated 8.4.94 in O.A. No.566/92 has been implemented in letter and in spirit and since the post of S.S.. Gr.I is a selection post, the mode of selection being both written and oral, it was not possible to promote anybody without ~~any~~ selection as claimed by the applicant. So, the applicant was advised to appear in the selection test for the purpose of promotion to the said post in the scale of Rs.2375-3500/- alongwith Mr. A.K. Roy who was also eligible for the same being next in position in respect of seniority. Accordingly selection was held but the applicant did not appear in the said test whereas his junior appeared and was selected for the said post and thus Mr. A.K. Roy became senior to the applicant. But subsequently after considering his appeal, the applicant was allowed such benefit w.e.f.1.10.93 vide office order dated 11.5.95 and was accommodated against a post at Sealdah according to his own request. It is also stated by the respondents that as the applicant refused to appear in the selection test, no question of giving promotion in the said scale can be raised by the applicant w.e.f. 1.3.93.

So, the application of the applicant is liable to be dismissed as it is devoid of any merit.

4. Mr. Manik Lal Banerjee, appearing in person, submits that in pursuance of the order of this Tribunal dated 8.4.94 in O.A.No.566/92, he made representation to the authorities but the respondents did not consider his case as per the observations made by the Hon'ble Tribunal for the purpose of disposal of such representation. So, the order ~~regarding disposal of~~ of his representation ~~as~~ communicated to him vide letter dated 10.8.94 (Annexure 'F' to the app.) is arbitrary and an instance of non-application of mind by the respondents and is liable to be quashed. It is submitted by the applicant that his promotion was denied by the department erroneously and he should not be punished for the laches of the respondents in the matter of giving promotion on seniority basis. It is also submitted by him that as the mistake was committed by the respondents, thereby no selection is required for the purpose of his promotion in the scale of Rs.2375-3500/- and thus the respondents violated the provisions of Rule 228(d) of IREM. He further submits that he is entitled to get promotion to the post of Station Superintendent Gr.I in the scale of Rs.2375-3500/-(RP) as per rules w.e.f.1.3.89 at par with his junior A.K. Roy who was promoted in the year 1989.

5. Mr. R.M. Roychoudhury appearing on behalf of the respondents, submits that the respondents had rightly considered the representation of the applicant in respect of promotional benefits and it was disposed of with a reasoned and speaking order in accordance with the judgment of this Tribunal. The said decision was communicated to the applicant vide letter dated 10.8.94 and the applicant was given full opportunity to state his case at the time of disposal of his representation, as per the order of this Tribunal. Mr. Roychoudhury further submits that the post of S.S. Gr.I is a selection post and

selection was held as per normal procedure. The applicant was asked to appear in the said selection test but he did not appear. Mr. A.K. Roy who was next in position to Mr. M.L. Banerjee, in respect of seniority, appeared in the said selection test and was selected for the said post. Accordingly he was granted the benefits of promotion and Mr. Banerjee was subsequently promoted to the scale of Rs. 2375-3500/- w.e.f. 1.3.93 due to restructuring of cadre as per his seniority position in terms of the office order dated 22.2.94. He draws ^{our} attention to para 5 of the judgment of this Tribunal dated 8.4.94 in O.A. 566/92 and submits that in view of the para 5 of the said judgment, the application appears to be devoid of any merit and thereby it is liable to be dismissed.

6. Mr. Banerjee further submits that after refixation of his seniority by virtue of the order of the Tribunal in CCP. 17 of 1991 (T.A. 1277/86) dated 4.9.91, he should get promotion in the scale of Rs. 2375-3500/- (RP) in accordance with the rule 228(1) I.R.M since promotion to A.K. Roy was erroneous. He relied on the judgment reported in 1997 vol. 35, ATC-33 (M.P. Kamalraj vs. Union of India & Ors.) and the judgment reported in I (1992) CSJ (HC) 368 Kerala High Court in the case of Soman vs. State of Kerala.

7. In view of the divergent arguments advanced by the 1d. counsels for both sides and on a perusal of the records available with us, we find that the respondents promoted Mr. A.K. Roy ignoring the seniority of the applicant in the year 1982 and thereafter the applicant was granted restructuring benefits of promotion to the post of Station Superintendent, Grade-II in the scale of Rs. 2000-3200/- (RP) by virtue of the order dated 31.8.84 ^{passed} by the Tribunal in CCP. 17/1991 (T.A. 1277/86) w.e.f. 1.8.82. But again in the year of 1989, A.K. Roy was given promotion to the post of S.S.Gr.I in the scale of Rs. 2375-3500/- (RP) ignoring the seniority of the applicant and

the applicant was asked to appear in a selection test for the purpose of his promotion after fixation of his seniority as per direction of this Tribunal, in the year of 1991. It is found that the applicant did not appear in the selection test held in the year of 1991 on the plea that for the rectification of erroneous promotion of A.K. Roy, no selection test was required as per rule. ~~Since~~ due to erroneous promotion of A.K. Roy, the applicant being senior to him, has been deprived of the opportunity of getting higher pay scale than his junior. It is evident from the records that the promotion of A.K. Roy in the year of 1989 ignoring the seniority of the applicant in the scale of Rs. 2375-3500/- was treated to be erroneous promotion. On the basis of the said erroneous promotion, A.K. Roy got higher pay than his senior till the date of regularisation of his appointment by holding the selection test in the year 1991 in which test, the applicant did not appear and on the basis of such selection test, Sri A.K. Roy's appointment was regularised with effect from 1989. So, on the face of the said admitted facts it is clear that Sri A.K. Roy enjoyed higher pay scale than his senior i.e. the present applicant till 1991. It is a fact that junior person was given promotion ^{erroneously} in the year 1989. For such erroneous promotion in the year of 1989, the applicant cannot be blamed and he cannot be penalised for the fault of the respondents. The case reported in I(1992)CSJ(HC) 368 Kerala High Court in the case of Soman Vs. State of Kerala, supports the claim of the applicant. In the instant case, the applicant did not appear in the selection test held in the year 1991 for regularisation of appointment of his junior, Sri A.K. Roy.

8. In view of the facts stated above, we are of the view that the applicant had reasonable and legitimate claim to have the pay scale at par with his junior, Sri A.K. Roy w.e.f. 1989 in the cadre of S.S. Gr.I till the date of regularisation of appointment of A.K. Roy on 27.9.91 since the promotion of the

applicant was denied in the year 1989 erroneously. For the said reason, we are unable to accept the reasons disclosed in para 3(ii) of the speaking order of the authorities passed in pursuance of the direction of the Tribunal in O.A.No.566/1992 (Annexure 'F' to the app.). In our opinion, the reasons disclosed in para 3(ii) of the speaking order enclosed with the letter dated 10.8.94(Annexure 'F' to the app.) is unsustainable. Accordingly, we hold that the applicant's pay is required to be stepped up in the grade of S.S.Gr.I in the scale of Rs.2375-3500/-from the date of erroneous promotion of Sri A.K. Roy till the date of regularisation of such erroneous promotion of A.K. Roy i.e. 27.9.91. Having not done that, injustice has been caused to the applicant denying him pay at par with his junior.

9. In view of the abovementioned circumstances, the contents of para 3(ii) of the speaking order contained in the letter dated 10.8.94(Annexure 'F' to the app.), is hereby quashed. Regarding the claim of fixation of pay w.e.f. 1.10.93 instead of 1.3.93 as per order of the DPO, we find that the applicant was asked to exercise option and accordingly he exercised option and his pay as per the said option has been fixed by the authority. We find no irregularity in the matter of fixation of pay of the applicant w.e.f. 1.3.93 as per the order of the DPO and hence the claim of the applicant in this regard is not sustainable. Accordingly, we hold that the applicant is entitled to get benefit of the pay and salary at par with the pay of A.K. Roy from the date of erroneous promotion of A.K. Roy w.e.f. 1989 to 27.9.91. His pay should be fixed accordingly and the difference of pay and salary ~~within 3 months from the date of receipt of this order~~ should be paid to him after fixation. The application stands disposed of with the above directions, without passing any order as to costs.

MEMBER(A)
MEMBER(A) 13/8/99

S.M.

13/8/99
MEMBER(J)