

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No.OA 4 of 1997

Date of order : 25.11.2004

Present : Hon'ble Mr.Mukesh Kumar Gupta, Judicial Member
Hon'ble Mr.M.K.Mishra, Administrative Member

AJIT KR. CHATTERJEE

VS

UNION OF INDIA & ORS.

For the applicant : Mr.B.Mukherjee, counsel

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

O R D E R (ORAL)

Mukesh Kumar Gupta. J.M.

The relief sought for in this application are as follows :

- a) direct the respondents to release and pay the arrear balance salary and allowances along with all consequential benefits thereto for the posst of DSK Grade I fixing his pay actually in the pay scale of Rs.2000-3200/- at par with Shri Sudhansu Bhusan Das with effect from 16.6.86 to 30.6.87.
- b) direct the respondents to release and pay the applicant at a higher rate of pension actually fixing his last pay as on 30.6.87 in the pay scale of Rs.2000-3200/- (RP) alike and at par with Sudhansu Bhusan Das, and also direct the respondents to release and pay the arrear amount of higher rate of pension and also current pension accordingly.
- c) direct the respondents to release and pay all retirement benefits with arrear arising out of the higher fixation of pension to be fixed in terms of para (b) mentioned above at a higher amount and also pay the arrear higher amount of insurance money and provident money thereto accordingly.
- d) direct the respondents to pay the applicant and interest at the rate of 18% per annum on the whole amount mentioned in para (a) to (c) above from the date of accrual to the date of actual payment.
- e) any order and/or further order or orders as the Hon'ble Tribunal may deem fit and proper.

2. The admitted facts are the applicant was posted as DSK Grade II in the pay-scale of Rs.1600-2600/- in Liluah Stores and retired from the service on attaining the age of superannuation w.e.f. 30.6.87. At that stage his basic pay was Rs.2300/- and therefore his pension was fixed with relief on pension at Rs.1232/- per month. In the seniority list of the said cadre, he was at Sl. No.1 as unreserved candidate, while Shri Sudhanshu Bhusan Das was appearing at

Sl.No.2 and thus junior to him. He appeared in the suitability test for promotion to the post of DSK Grade I, in the pre-revised pay-scale of Rs.700-900/- revised to Rs.2000-3200/-. He appeared in the suitability test. On 18.5.86 vide memorandum dated 26.2.86, a charge sheet was issued alleging certain misconduct and he was exonerated and informed vide communication dated 15.6.88. By that time since he has retired from service and therefore his name was included in the panel and suitable candidates above Shri Sudhanshu Bhusan Das, vide communication dated 15.12.89 (Annexure A/6). It is contended that said Sudhanshu Bhusan Das and other juniors from unreserved candidates besides other juniors declared suitable for promotion vide order dated 16.6.86 and accordingly promoted, ignoring the applicant's just and legal claim. To support his contention that the applicant was senior to said Sudhanshu Bhusan Das, our attention was drawn to seniority list of DSK Grade II communicated on 8.2.87 (Annexure A/3) wherein the applicant's name figures at Sl.No.18 and Sudhanshu Bhusan Das at Sl.No.19. The grievance of the applicant is despite the fact that the applicant was senior to Sudhanshu Bhusan Das, he was not promoted to the post of DSK Grade I due to his implication in Disciplinary Proceeding, from which he was exonerated subsequent to his retirement. It is contended that the applicant ought to have been promoted to the said post of DSK Grade I from the date his said junior was so promoted and accordingly his terminal benefits should have been revised. This being not done he has been made to suffer in his pension and pensionary benefits, which provides continuous cause of action. Despite repeated representations made to the respondents, the respondents failed to provide justice to him. Strong reliance was placed by the ld.counsel for the applicant on order dated 17.1.97 passed in OA 20/96 (Sudhanshu Kr. Talukdar -vs- Union of India & Ors.) of this Bench to contend that the applicant was entitled to get benefits of salary from the date of his actual promotion. Reliance was also placed on Union of India & Ors. -vs- K.V.Jankiraman °1991(4) SCC 109¶ as well as Sudha Srivastava -vs- Controller & Auditor General of India °1996(3) SCC 259¶.



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It was further contended that principle of no work no pay, in such circumstances would not be applicable as held in the aforementioned judgment of K.V.Jankiraman. Once sealed cover procedure was adopted and the official was exonerated without awarding any penalty, there was no justification in the respondents' action of depriving him of the benefit of promotion as well as salary of the promotional post.

3. The respondents contested the applicant's claim. Though the facts that the applicant retired on attaining the age of superannuation, as well as the date of charge sheet and his subsequent exoneration of charges were not denied. It was contended that the applicant on being empanelled to the post of DSK Grade I in the pay-scale of Rs.2000-3200/- w.e.f. 16.6.86 was allowed fixing his pay on proforma basis but said proforma fixation of pay was not counted in terms of Rule 501, Manual of Railway Pension Rules, 1950, as per the decision communicated by the CPO, E.Rly. vide letter dated 8.3.99. Since the charge sheet was finalised only on 13.6.88, i.e. after the retirement of the applicant on 30.6.87, the benefit of proforma fixation of pay was not granted to the applicant in terms of the aforesaid communication. The aforesaid major penalty charge sheet was issued against the applicant for supervisory lapse.

4. We have heard the ld.counsel for the parties at length and perused the pleadings. It is an admitted fact that the applicant was senior to said Sudhanshu Bhusan Das and further that sealed cover procedure was adopted because the applicant had been facing departmental enquiry as per memorandum dated 26.2.86. It is undisputed fact that the applicant was exonerated completely without visiting even the penalty of censure. The Hon'ble Supreme Court in the case of Union of India & Ors. -vs- K.V.Jankiraman reported in (1991) 4 SCC 109 in specific observed that "when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with penalty even of censure, he has

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to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings." The contention raised by the Union of India in the said case about the non-entitlement of the salary of the promotional post unless and until he assumed the charge of the said post, by placing reliance on FR 17(1), was in specific rejected. In paragraph 25 of the said judgment it was held that the normal rule of 'no work no pay' is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not the case where the employee remains away from the work for his own reasons, although the work is offered to him. It is for this reason that FR 17(1) will be inapplicable to such cases.


5. On bestowing our careful consideration to the afore-mentioned judgment which had been the basis of the order dated 17.1.97 passed in OA 20/96 by this Bench, we find that the applicant's case is squarely covered by the afore-mentioned judgment. The respondents' plea that the applicant was not entitled to his emoluments despite the fact that he was promoted w.e.f. 16.8.86 the date of his junior's promotion, in terms of Rule 501, Manual of Railway Pension Rules, 1950 in our considered view would be in contrary with the law laid down by the Hon'ble Supreme Court. If a person is promoted on notional and proforma basis from an earlier date, and the said benefit is not counted for the purpose of calculating the emoluments for determination of pensionary benefits, the benefit of proforma promotion would lose its object and the purpose and reasons behind such proforma fixation of pay, etc. would lose its significance too. Thus in our considered view because of the respondents' action, the applicant indeed has suffered in fixation of his emoluments for the purpose of pensionary benefits, which certainly has a continuous cause of action. Such injustice cannot be allowed to be perpetuated and continued.

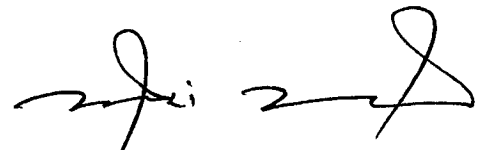


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6. In view of the above we direct the respondents to calculate the terminal benefits based on his notional promotion w.e.f. 16.8.86 till 30.6.87 when he attained the age of retirement as if he was in receipt of the emoluments instead of notional fixation. This exercise will certainly enhance the applicant's terminal benefits as well as pension. We also direct that this exercise shall be carried out by the respondents within a period of 3 months from the date of receipt of this order.

7. Accordingly the OA is allowed. No order as to costs.


MEMBER(A)


MEMBER(J)

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