

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 158/1992
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199

DATE OF DECISION 30.11.1992

Bhaskaran Nair.T., _____ Applicant (s)

Shri P.Sivan Pillai _____ Advocate for the Applicant (s)

Versus

Union of India
through the General Manager, _____ Respondent (s)
Southern Railway, Madras-3 and three others.

Smt. Sumathi Dandapani _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. A.V.HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 23rd January, 1992 the applicant a retired Chief Travelling Ticket Inspector of Trivandrum Division of Southern Railway has sought the benefits of the judgment of this Tribunal dated 28.6.1991 in O.A.254/90 at Annexure A6 and has prayed that the respondents be directed to promote him to the grade of Rs.700-900 (Revised Rs.2000-3200) with effect from 1.8.1979 with all consequential benefits of arrears of pay and revision of pension as also the arrears of pay based on his retrospective promotion to the scale of Rs.425-640 with effect from 29.6.76 and to the scale of Rs.550-750 with effect from 26.11.76. The brief facts of the case are as follows.

2. The applicant joined the Railway Service on 17.10.52 and retired on 30.9.1987. He was working in Madurai Division upto 2.10.79 after which he

was transferred to Trivandrum Division. On the merger of the cadres of Travelling Ticket Examiners and Ticket Collectors, in the integrated seniority list published as on 30.7.65 he was shown junior to one Shri Sivasubramaniam. On the basis of the judgment of the Karnataka High Court in a Writ Petition, the seniority list of ticket checking staff as on 1.1.1965 was revised and the applicant was placed at Sl.No.73 in the revised seniority list much above the said Shri Sivasubramaniam who was placed at Sl.No.101. This seniority list was published on 20.5.82. Before this date, however, Shri Sivasubramaniam had already been promoted to the scale of Rs.425-640 with effect from 29.6.76, to the scale of Rs.550-750 on 26.11.76 and to the scale of Rs.700-900 with effect from 1.8.1979. One Shri Raman who, like the applicant before us, had also become senior to Shri Sivasubramaniam, moved the Madras Bench of the Tribunal seeking similar reliefs of retrospective promotion to the aforesaid three grades with effect from the dates Shri Sivasubramaniam was promoted to those grades. The Tribunal allowed the application and in terms of the orders of the Tribunal, the Southern Railway by the letter dated 19.1.87 directed that proforma promotion should be given to all those Travelling Ticket Examiners on the basis of their revised seniority. Accordingly, the applicant before us, was given notional promotion to the scales of Rs.425-640 and Rs.550-750 with effect from 29.6.76 and 26.11.76 respectively, that is the dates on which Shri Sivasubramaniam had been promoted to those grades. This was done by the order dated 29.2.88 at Annex.A1. The applicant is, however, aggrieved on two counts. Firstly, his grievance is that he was not promoted to the scale of Rs.700-900 with effect from 1.8.79 and his pay in that scale to which he was promoted subsequently had not been refixed on that basis. Secondly, his grievance is that arrears of pay in the aforesaid three scales on the basis of notional promotion with retrospective effect have not been paid. The applicant has referred

52

to a number of judgments given by the Madras and this Bench of the Tribunal and especially the common judgment at Annexure-A6 dated 28.6.91 delivered by this very Bench of the Tribunal in which persons similarly situated like the applicant before us and even those who had already retired and had not been even considered for promotion or qualified for selection to the higher grades, have been allowed retrospective promotion and arrears of pay to the aforesaid three grades with effect from the date Shri Sivasubramaniam, to whom they were senior by the revised seniority list, had been promoted.

3. The grounds taken by the respondents in this application were all considered in the aforesaid common judgment.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. Since the respondents admittedly have given notional promotion to the applicant before us in the scale of Rs.425-640 and Rs.550-750 with effect from the dates Shri Sivasubramaniam was promoted, we see no reason why they should deny the applicant, promotion to the scale of Rs.700-900 with effect from 1.8.79 when the applicant retired as late as on 30.9.1987. The rationale for retrospective promotion to the lower two grades of Rs.425-640 and Rs. 550-750 applies with equal force to the claim of applicant's promotion to the scale of Rs.700-900 with effect from 1.8.79. In our aforesaid judgment dated 28.6.91 we observed as follows:-

" Accordingly we find no justifiable ground whatsoever in denying retrospective promotion to the scale of Rs.700-900 (Rs.2000-3200) to some of the applicants before us with effect from 1.8.1979 merely on the ground that they had since retired though long after 1.8.1979, while at the same time giving them notional promotion to the other two higher grades of Rs.425-640 and Rs.550-750 from 1976. In any case, the matter seems to have been clinched by the judgment of the Madras Bench of the Tribunal in O.A. 466 etc. of 1987 copied at Annexure A5 in O.A.254/90. Even though

22

the applicants in those cases had not been selected to the higher grades, the Tribunal directed that the pay of the applicants entitled to be promoted with effect from 1.8.1979 to the scale of Rs.700-900 also should be fixed with effect from 1.8.1979 and consequential arrears and revision of pensionary benefits allowed to them. The claims of the applicants before us are even better than those appearing before the Madras Bench in as much as while the latter were considered but not promoted to the grade of Rs. 700-900, the applicants before us were never considered and left out for promotion to the grade of Rs.700-900. Though some of the applicants were given adhoc promotion to Rs.700-900 before retirement, the promotion was from a later date and not from 1.8.1979. The respondents themselves in the counter affidavit indicated that the applicants will be considered for notional promotion to the grade of Rs.700-900 if their juniors are later promoted to that grade. Since the applicants have produced the order dated 13.9.1990(Annexure A8 in O.A 254/90) promoting their juniors to that grade, the respondents are now on their assurance bound to consider the applicants also for promotion with effect from 1.8.1979 despite the fact that they have retired. The plea therefore cannot be sustained by the respondents own assurance as indicated above.

"13. Even though a direction to the respondents to consider the applicants for retrospective promotion to the grade of Rs.700-900(Rs.2000-3200) would have sufficed, keeping in view the fact that the Madras Bench of the Tribunal had directed retrospective promotion even to those who had been considered and not promoted to that grade, it will not be fair to the applicants before us who had never been considered for such promotion if a direction of promoting them with effect from 1.8.1979 is not given in their cases also. It will be also impractical at this stage to subject the applicants, who have already retired, to a selection process for promotion to the grade of Rs.700-900 with effect from 1.8.79."

In the light of the above observations, we are fully convinced that the applicant also is entitled to retrospective promotion to the grade of Rs. 700-900 with effect from 1.8.79. As regards payment of arrears of salary in the three grades on the basis of retrospective promotion, in our

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aforesaid judgment we had gone into in great details and discussed the rulings of the Hon'ble Supreme Court and High Courts and found as follows:

"11. In view of the unequivocal and consistent rulings of the Supreme Court, High Courts and this Tribunal, we hold that the applicants on their retrospective notional promotions to the higher grades of Rs.425-640 with effect from 29.6.76, Rs.550-750 with effect from 26.11.1976 and Rs.700-900 with effect from 1.8.1979 cannot be denied the arrears of pay in those grades calculated from the respective dates of promotion and that the following provision in the Railway Board's letter No.E(NG)63 PMI/92 dated 15/17 September, 1964 is not legally sustainable.

"No arrears on this account shall be payable, as he did not actually shoulder the duties and responsibilities of the higher posts."

Accordingly the applicant is entitled to arrears of pay and allowances also based on his notional promotion.

5. As regards the contention of the respondents that they have filed SLPs before the Hon'ble Supreme Court, it is not their contention that the judgments of this Tribunal in the aforesaid cases have been set aside. The established law is that so long as the judgments are not set aside, even a Stay order will not take away the binding nature of those judgments. In *Roshan Jagdish Lal Duggal and others vs. Punjab State Electricity Board, Patiala and others*, 1984(2) SLR 731, the High Court of Punjab and Haryana observed that pendency of an appeal before the Supreme Court does not render an order of the High Court 'non est' even where the High Court's order in appeal had been stayed by the Supreme Court. The order of the High Court was still to be treated as a binding precedent. The Delhi High Court also in *Jagmohan v. State*, 1980 Criminal Law Journal 742 observed that mere pendency of appeal before the Hon'ble Supreme Court does not take away the binding nature of the High Court's decision unless and until it is set aside by the Hon'ble Supreme Court. In *Alpana V.Mehta vs. Maharashtra State Board of Secondary Education and another*, AIR 1984 SC 1827, the Supreme

52

Court upheld the contention of the appellant that the Bombay High Court was not justified in dismissing her writ petition on the sole ground that operation of the earlier judgment of that High Court on the basis of which the writ petition had been filed, had been stayed by the Supreme Court. The above view has been upheld by the Full Bench of the Principal Bench of the Tribunal in its judgment dated 13th February, 1991 in O.A.184/1990(Shri Ganga Ram & Another v. Union of India) and 3 other O.As. In those cases the issue before the Full Bench was whether the judgment delivered by another Full Bench in Rasila Ram's case about the jurisdiction of the Tribunal which had been stayed by the Supreme Court in an S.L.P filed by the Government, remains valid as a binding precedent or whether the interim order passed by the Supreme Court nullified the judgment of the Full Bench or its effect was to be confined only in respect of the judgment pronounced in the case of Rasilaram. The Full Bench observed that the interim order passed by the Supreme Court in the S.L.P in Rasilaram's case not being a speaking order does not make any declaration of law and "consequently, it is not a binding order under Article 141 of the Constitution". The Full Bench further observed that until the decision of the Full Bench in Rasilaram's case is set aside, reversed or modified by the Supreme Court it remains effective. In view of unambiguous finding of the Full Bench of the Tribunal, we have no hesitation in following the dicta of our judgment dated 28.6.1991 in 254/90 at Annexure-A6 ✓
O.A/ ✓, in this case also, so long as that judgment has not been set aside, modified or reversed by the Hon'ble Supreme Court.

6. In the light of the above discussion and analysis, we allow the application and direct that the applicant should be promoted to the grade of Rs.700-900(Revised Rs.2000-3200) with effect from 1.8.79 and arrears of pay and allowances on the basis of retrospective promotion to the scale of Rs.425-640 with effect from 29.6.76, Rs.550-750 with effect from 26.11.76 and Rs.700-900(Revised Rs.2000-3200) with effect from 1.8.79

shall be paid to him. We also direct that the applicant's pension should be revised on the above basis with effect from the date of his retirement and arrears of pension and pension relief also should be paid to him on that basis. Arrears of pay , allowances and pensionary benefits should be determined, sanctioned and disbursed by the respondents within a period of six months from the date of communication of a copy of this judgment.

There will be no order as to costs.


(A.V.HARIDASAN)
JUDICIAL MEMBER


(S.P.MUKERJI)
VICE CHAIRMAN

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