

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW**

Original Application No. 275 of 2010

Order Reserved on 21.7.2015

Order Pronounced On 30-7-2015

HON'BLE MR. NAVNEET KUMAR, MEMBER(J)

HON'BLE MS. JAYATI CHANDRA, MEMBER(A)

Ochin Kumar Banerjee, aged about 64 years, son of Late B.N. Banerjee, resident of 82/13, Guru Govind Singh Marg, Lucknow.

Applicant

By Advocate Sri.Raj Singh.

VERSUS

1. Union of India through General Manager, N.E. Railway Gorakhpur.
2. Secretary, Railway Board, Rail Bhawan, New Delhi.
3. The DRM N.E. Railway, Ashok Marg, Lucknow.
4. The Sr. D. P.O. NE Railway, Lucknow.
5. The General Manager (P), NE Railway Gorakhpur.

Respondents

By Advocate Sri Rajendra Singh.

ORDER

HON'BLE MR. NAVNEET KUMAR, MEMBER(J)

The present Original Application is preferred by the applicant under Section 19 of the AT Act, 1985 with the following reliefs:-

“(a) The Hon'ble Tribunal be pleased to pass appropriate order to the respondents to make payment of difference of pay from 10.5.1998 to 09.10.2001 with interest from the date of payment of Sri O.P. Sehgal and others.

(b) Consequent upon payment of arrear, respondents be directed to amend the promotion order dated 10.10.2001 and provide amended copy to the applicant on the basis of O.P. Sehgal's promotion order.

(c) Any other relief as considered proper by this Hon'ble Tribunal be granted to the applicants.

(d) Heavy cost be imposed upon respondents for compelling the applicants to approach this Hon'ble Tribunal again and again.

2. The brief facts of the case are that the applicant joined the respondents organization. After serving for a long time, retired from North Eastern Railway, Lucknow Division on 31.10.2005 from the post of Chief Office Superintendent (Commercial) in pay scale of Rs. 7450-11500. The applicant preferred an O.A. No. 495 of 1999 which was decided on 21.11.2000 with a direction to decide the representation dated 27.8.1999 and 8.9.1999 in the light of the Hon'ble Apex Court decision in Ajit Singh -II case reported in 1999 SCC(L&S) 1239. Subsequently, the respondent authorities decided and recommended for implementation of the judgment and referred the matter to the Zonal Head Quarter, Gorakhpur.

3. The another similarly situated person preferred O.A. No. 430/1999. The said application was decided on 22.2.2001 and in pursuance thereof, the respondents reviewed all the promotion made and issued notice dated 1.6.2001 and proposed to recast the seniority. The learned counsel for the applicant categorically indicated that the respondents wilfully has not followed certain paragraphs of Ajit Singh II case which caused discrimination depriving the applicant of his right of financial benefit. The applicant submitted number of representations to the authorities for proper implementation of orders of the Tribunal as well as for granting him the required pay scale but when nothing was heard, he preferred the present O.A.

4. On behalf of the respondents, reply is filed and through reply, it is indicated that the question of payment of difference of pay w.e.f. 10.5.1998 to 9.10.2001 is not correct as the applicant was promoted subsequently and his representation for arrears of salary was already decided by means of an order dated 26.11.2006 and the same has already been communicated to the applicant. Apart from this, the respondents have also indicated that the case of O.P. Sehgal is different then the case of the applicant as the applicant was never promoted, as there was no vacancy and Shri Sehgal on the strength of the Tribunal's

order was given the benefit. Apart from this, the respondents have also indicated that there is no vacancy for promotion as such it cannot be said that in any manner, the applicant was discriminated as the circumstances of both the cases are different and both the cases belong to separate seniority list.

5. The learned counsel for the respondents also vehemently argued and submitted that at the relevant time, Chief Office Superintendent in the pay scale of Rs. 7450-11500 was a headquarter controlled post as such, the orders have to be obtained from headquarters. The respondents also relied upon para 228 of the Indian Railway Establishment Manual and indicated that no benefit of arrears of pay is admissible to an employee and only the benefit of proforma fixation will be admissible to him and the actual payment of the promoted post will be made from the date he shoulders the responsibilities of the said posts.

6. On behalf of the applicant, rejoinder is filed and through rejoinder mostly the averments made in the O.A are reiterated and the contents of the counter reply are denied.

7. Heard the learned counsel for the parties and perused the record.

8. The applicant was initially appointed on the post of Clerk w.e.f. 4.12.1964 and he has been promoted on the post of OS-Grade-I in the year 1995 prior to promotion of one Sri Satish Kumar in higher grade. The Railway Board vide letter dated 10.5.1998 upgraded the post of OS Grade-I and created one post of Chief OS in the scale of Rs. 7450-11500 w.e.f 10.5.1998 providing one time relaxation in promotion and delegating powers to DRM for promotions.

9. The claim of the applicant is that the respondents concealed the material fact and assigned wrong seniority to the reserved group candidates and promoted one Sri Satish Kumar against above newly created post ignoring rules No. 319-A of Indian Railway Establishment

Manual-I. Feeling aggrieved by the above act, the applicant preferred O.A. No. 495 of 1999 which was decided through order dated 21.11.2000 wherein, it is directed to the respondents to decide the representation of the applicant in the light of the decision of the Hon'ble Apex Court in the case of Ajit Singh-II and in case, the applicant has any grievance, he would be free to approach the Tribunal again.

10. The claim of the applicant is that the respondents slept over the matter deliberately and never placed the same before the competent authority. The applicant also claims that the respondents under garb of headquarters controlled post referred the matter again and again to the headquarters ignoring the letter dated 10.5.1998 which provides for one time relaxation in promotion on the post of Chief Office Superintendent by division itself. Finally a direction was issued to consider the applicant for promotion to the post of Chief Office Superintendent by the Division itself but once again and just to give benefit to one Sri Satish Kumar the respondents kept the matter pending for a long time and finally, the applicant has been granted the actual benefit of promotion w.e.f. 10.5.1998 vide its order dated 27.1.2005. One Sri O.P. Sahgal similarly situated person also preferred O.A. No. 430/99 and after the judgment of the Tribunal, the respondents promoted Sri O.P. Sahgal and others as per the direction, but in the case of the applicant they did not promote the applicant on the garb of non availability of vacancy. It is also to be indicated that the applicant submitted number of representations to the authorities for making payment of difference of pay from 10.5.1998 to 9.10.2001 but the same are still pending for final adjudication.

11. As per the counter reply, the representations submitted by the applicant has already been decided in the year 2006 and 2008 but the applicant has not filed the O.A. at the relevant time, as such, the present O.A. is liable to be dismissed on the ground of limitation alone and as there was no vacancy for promotion of the applicant, therefore, it

cannot be said that in any manner, the applicant was discriminated. Apart from this, as per Para 228 of the Indian Railway Establishment Manual provides that no benefit of arrears of pay is admissible to an employee and only the benefit of proforma fixation will be admissible to him and the actual payment of the promoted post will be made from the date he shoulders the responsibilities of the higher post, as such, he is not entitled for the benefit as claim for. Apart from this, the applicant has approached this Tribunal nearly after 9 years for redressal of his grievance, as such, the present O.A. is liable to be dismissed on the ground of limitation as well as provided under Section 21 of the AT Act.

12. Considering the submissions made by the parties and on the basis of the facts of the case, we do find any reason to interfere in the present O.A.

13. Accordingly, the O.A. is dismissed. No order as to costs.

J. Chandra
 (Ms. Jayati Chandra)
 Member (A)

Navneet Kumar
 (Navneet Kumar)
 Member (J)

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