

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
CCPA No. 108/2011
[Arising out of OA 161/2006]

Date of Order: 4th September, 2012

C O R A M

HON'BLE MR. AKHIL KUMAR JAIN, MEMBER[A]
HON'BLE MRS. URMITA DATTA(SEN) , MEMBER[J]

S.K. Sheetal S/o Late Santosh Kumar Sheetal, Ex. A.C.M., E.C. Railway, Danapu
R/O- Sheetal Kunj, Haru Ganj, Hazaribagh.

..... Petitioner.

By Advocate: - Shri M.P. Dixit

-Versus-

1. Shri Varun, Bharthuar, General Manager, EC Railway, Hajipur.
2. Shri J.S.P. Singh, the General Manager(P), EC Railway, Hajipur.
3. Shri L.M. Jha, the Divisonal Railway Manager, East Central Railway, Danapur Dist., Patna.

..... Respondents.

By Advocate: -Shri P.K. Tiwary

O R D E R

Akhil Kumar Jain, Member [Administrative] : This CCPA has been filed by the petitioner for non-compliance of the order dated 29.08.2007 passed by this Tribunal in OA 161/2012. In the said OA, the applicant prayed for granting him the benefit of upgradation of post in the pay scale of Rs. 8000-13500/- which was given to officials below him in the seniority list but was denied to him. Thereafter, senior scale was also granted to the officials junior to the petitioner vide order dated 24.04.2004 which was again denied to the applicant. Soon thereafter the applicant superannuated but before that he filed a representation before the authorities but the relief eluded him. The Tribunal vide its order dated 29.08.2007 in OA 161/2006 directed as follows:-

"In that view of the matter, this application is disposed of by directing the respondents to get the DPC held within a period of three months from the date of receipt of a copy of this order in which the case of the applicant would be placed for his promotions at par with his juniors, and pass order according to the

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recommendation of the DPC. If the applicant is found fit for promotion at par with juniors, that will also follow grant of consequential benefits to the applicant in accordance with law, and the arrears would be paid to him within two months of the passing of the order of promotion/promotions.


With the aforesaid directions, this application is disposed of. In case of promotion/promotions, if the arrears are not paid within this period of two months, it would then be payable with interest @ 9% p.a which will be calculated from the date of expiry of the aforesaid period of two months, till the arrears are paid. No costs."

2. The respondents filed Writ Petition before Hon'ble High Court vide CWJC No. 10587 of 2008 which was dismissed on 20.03.2010. Thereafter, a representation was sent by the petitioner to the respondents on 25.11.2010. As no action was taken by the respondents for compliance of the order of the Tribunal even after the dismissal of the Writ Petition, the applicant filed the CCPA.

3. In the reply to show cause notice, the respondents have stated that benefit of upgradation of the post in the grade of Rs. 8,000-13,5000/- was granted to the applicant w.e.f. 25.04.2003 vide order dated 11.03.2008 as contained in Annexure R/1. Furthermore, after disposal of the Writ Petition filed before the Hon'ble Patna High Court, a speaking order dated 08.03.2011 was passed by the GM, ECR, Hazipur. A copy of the said order has been annexed as Annexure R/2 to the reply. The respondents have claimed that the order of the Hon'ble Patna High Court passed in CWJC No. 10587 of 2008 arising out of OA No. 161 of 2006 has been complied with.

4. Heard the learned counsel for the rival parties.

5. The l/c for the petitioner submitted that the Hon'ble High Court did not pass any separate order. In fact the Hon'ble Court dismissed the Writ Petition and directed the concerned authorities not to delay the matter of consideration of the case of the applicant for promotion to Senior Scale and to consider the case in accordance with law and the observations made in the order of the Tribunal as early as possible, preferably within a period of three months. Thus the High Court only allowed some more time for compliance of the order of the Tribunal.



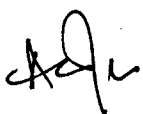
6. As regards the speaking order, the l/c counsel for the petitioner stated that the same could not be treated as compliance of the order of the Tribunal.

7. The l/c for the respondents, on the other hand, stated that the direction of the Tribunal was only for holding the DPC and consider his case for promotion. The respondents have complied with the same direction as was clear from the speaking order. Hence, there was no case of contempt of the order of the Tribunal.

8. We have perused the records and considered the submissions made by the parties.

9. We note that so far as financial upgradation to the scale of Rs. 8,000/- to 13,5000/- is concerned, the respondents have issued the order. In fact, during the hearing of the Writ Petition by the Hon'ble High Court the l/c for the petitioner in the instant case, who also represented him before the Hon'ble High Court in the said writ petition, admitted that the benefit of financial upgradation was granted and dues of the applicant were paid. This issue, therefore, stands settled.

10. Regarding the other issue of promotion to Senior Scale, on perusal of speaking order, it clearly transpires that review DPC was held and the applicant was found fit for promotion to Sr. Scale. It has, however, been stated that while considering his promotion at par with his juniors, it was found that para 228 of Indian Railway Establishment Manual Code Vol. II restrain railway administration to grant monetary benefits to the applicant since he retired from railway service on 31.01.2006 and did not shoulder higher grade responsibility. On a query raised during hearing of CCPA, the learned counsel for the applicant reiterated that no order of promotion of the applicant has been issued nor has his pension been fixed on the basis of his promotion to the senior scale even though there was a clear direction in the order of the Tribunal. Even the respondents have not claimed that



the applicant has been given promotion at least on proforma basis and refixed his pension.

6. On perusal of the speaking order we note that the ground for not giving the applicant the benefit of promotion is that he did not shoulder responsibility of higher post while in service. In this connection, para 228 of IREM Vol. I and para 1313 of IREC Vol. II have been referred to in the speaking order.

7. We note that Para 228 of IREM Vol. I (1989 Edition) deals with "Erroneous Promotion" and reads as follows:-

"228. Erroneous Promotions:- (1) Sometimes due to administrative errors, staff are over-looked for promotion to higher grades could either be on account of wrong assignment of relative seniority of the eligible staff or full facts not being placed before the competent authority at the time of ordering promotion or some other reasons. Broadly, loss of seniority due to the administrative errors can be of two types:-

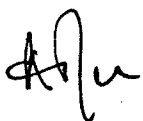
(i) Where a person has not been promoted at all because of administrative error, and

(ii) where a person has been promoted but not on the date from which he would have been promoted but for the administrative error.

Each such case should be dealt with on its merits. The staff who have lost promotion on account of administrative error should on promotion be assigned correct seniority vis-a-vis their juniors already promoted, irrespective of the date of promotion. Pay in higher grade on promotion may be fixed proforma at the proper time. The enhanced pay may be allowed from the date of actual promotion. No arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher posts."

8. Para 1313 (FR, 22) of the IREC Vol. II (First Reprint 1990) deals with fixation of initial substantive pay.

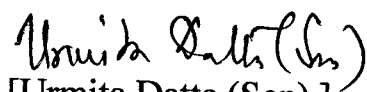
9. On a plain reading of Para 228 of IREM Vol. I it prima facie appears that it does not prohibit promotion on proforma basis and assigning seniority viz- viz juniors in the event someone is overlooked for administrative reasons. It only states that payment of enhanced pay on actual basis be allowed from the actual date of promotion and no arrears on this account shall be payable. In para 1313 of IREC Vol. II (First Reprint 1990) also prima facie we do not find any bar to give notional/ proforma promotion. The Tribunal's direction in its order dated 29.08.2007 is also quite clear that if the applicant is found fit for promotion at par



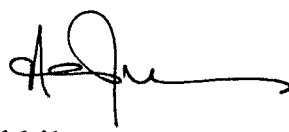
with juniors, that will follow grant of consequential benefits as per rules and arrears would be paid to him within two months of passing of order of promotion/promotions.

10. On careful consideration of the matter, we are of the view that when the consideration for promotion of the applicant as per order of the Tribunal/Hon'ble High Court was done after his retirement, obviously the applicant could not have held the post involving higher responsibility. Admittedly, the non consideration of applicant at appropriate time was due to administrative lapses. Thus the matter of granting notional/proforma promotion to the applicant viz-a-viz his juniors at least for refixation of his pension and other retiral dues deserved a reconsideration by the respondents. In fact, the l/c for the applicant who appeared on behalf of the applicant before the Hon'ble High Court in the writ petition referred to above, during the course of hearing of the writ petition, stated that even if monetary benefit of senior scale was denied to the applicant for the period he was in service on the ground of no work no pay, the applicant would be lawfully entitled for notional grant of scale to the benefits of his retiral dues and pensionary benefits.

11. We, therefore, dispose of this CCPA with direction to the respondents to comply with the order of the Tribunal in the light of observations made hereinabove within a further period of four months from the date of communication of this order.


[Urmita Datta (Sen)]
Member (J)

srk.


[Akhil Kumar Jain]
Member (A)