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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY 400 614

OA Nos. 222, 374 and 508/88

1. Shri M.P.Kulkarni & Others.
2. Shri D.G.Wani & Others.
3. Shri K.S.Rami & Others.

C/o. C.Nathan,
High Court Advocate,
17, Dalvi Building,
Dr.Ambedkar Road,
Parel, Bombay- 400 012.

... Applicants

V/S.

Union of India
through the Divisional Railway
Manager (E), Western Railway,
Bombay Central, Bombay.
And Others.

... Respondents

CORAM: Hon'ble Member (A) Shri M.Y.Priolkar

Appearances:

Mr.C. Nathan
Advocate
for the Applicants

Mr.A.L.Kasturey
Advocate
for the Respondents

ORAL JUDGMENT

Dated: 20.11.1989

(PER: M.Y.Priolkar, Member (A))

The five applicants in OA. 222/88 are all Station Masters of the Bombay Division of the Western Railway. They have the grievance that Respondent No. 2 who is a Station Master working at Bandra Marshalling Yard of the Bombay Division of the Western Railway, though junior to them, is drawing more pay than the applicants since 1.1.1986. The seven applicants in OA. 374/88 also have the same grievance. The seven applicants in OA. 508/88 have a similar grievance, namely, that Respondent No. 2 in that application, who is a Station Master serving at Vile Parle of the Bombay Division, is drawing more pay than these applicants since 1.1.1986, though junior to them. Since their repeated representations to departmental authorities from 1986 onwards for stepping up

the pay of the applicants at par with their juniors were rejected, the applicants have approached the Tribunal, praying for directions to the respondents for stepping up of their pay to the level of that of their juniors, viz. Respondents Nos. 2 in the respective applications, with effect from the date from which this alleged anomaly arose, with consequential benefits.

2. Since the issues involved and the reliefs prayed for in all these applications are essentially the same, these three applications were heard together and are being disposed of by this common order. The applications were finally heard today when the learned advocates Mr.C.Nathan and Mr.A.L.Kasturey concluded their arguments on behalf of the applicants and respondents, respectively.

3. Mr. Nathan argued that since the applicants were admittedly senior to respondents No. 2 in the respective applications, there is a clear anomaly arising from the fixation of pay of juniors at a higher level than their seniors and the applicants are, therefore, entitled to stepping up of their pay at par with their juniors in terms of Railway Board's letter dated 19.3.1966, reproduced at pages 7 to 9 of OA. 222/68. Mr. Kasturey, however, stated and the applicants' advocate also conceded today that the higher pay drawn by the juniors has not arisen as a direct result of the application of FR 22-C (Railway rule 2018-B-9-R II of Railway Establishment Code), which is one of the three essential conditions laid down in Railway Board's letter dated 19.3.1966 for stepping up the pay of the Seniors, but as a result of earlier adhoc promotions of the juniors to the higher posts. The service in such adhoc promotion counts for increments, though not for seniority, and such increments are also taken into account for the purpose of pay fixation on

regular or officiating promotions. Mr. Kasturey also drew attention to the Railway Board letter dated 19.5.1979 to the effect that the benefit of stepping up of pay should not be granted where juniors are drawing more pay than their seniors due to earlier promotion of juniors on adhoc basis, and also where it is due to delay in holding selections for promotion. In view of this, the contention of the applicants that they are entitled to stepping up of their pay at the level of that of their juniors in terms of Railway Board's letter dated 19.3.1966 has to be rejected.

4. Mr. Nathan's second contention was that the lower pay drawn by the seniors was as a result of the adhoc promotions of the juniors in preference to the applicants, who were admittedly seniors, which was in violation of the Railway Board's orders from time to time regarding adhoc promotions, namely that such promotions should be on the basis of seniority and suitability. Mr. Nathan, therefore, contended that there was clearly an administrative error in promoting Respondents No. 2 who were juniors, in preference to the applicants, and therefore the applicants were entitled to compensation for loss of pay in terms of Railway Board's letter dated 15/17.9.1964. The respondents have, however, contended that the adhoc promotions of the juniors were done on the basis of their local seniority, i.e. seniority at the station at which they were working at the time of their promotion, and that there has been no administrative error or violation of any rules or instructions in reckoning such local seniority for the purpose of adhoc promotions.

5. Evidently, in an operating department like the Railways, particularly in case of categories of employees like Station Masters, who are entrusted with the duty of safe and punctual running of trains, it may create difficulties for the administration if even adhoc promotions have to be made only on the

basis of divisional seniority, which might mean waiting for arrival of the senior most person from some other distant station. In any case, the applicants never represented against such adhoc promotions of their juniors nor are they able to show any rules or instructions prohibiting grant of such purely adhoc promotions on the basis of local seniority as distinct from divisional seniority. This contention of the applicants, therefore, that it is due to an administrative error that adhoc promotions on the basis of local seniority had been granted is also to be rejected.

6. Mr. Nathan then cited two judgments of Central Administrative Tribunal where, according to him, stepping up of pay was ordered in similar situations. As pointed out by Mr. Kasturey however, in one case, which was decided by a Single Member Bench at Calcutta (1988 (7 ATC 226), the challenge was to the cancellation of an earlier order by which stepping up of pay of the senior had already been sanctioned. In the second case decided again by a Single Member Bench here at New Bombay, (Balwant Singh v. Union of India and others- not reported), the decision appears to have been taken more on compassionate grounds, since the applicant in that case had already taken voluntary retirement and was not in service at the relevant time. What is more important, however, is that a Division Bench of this Tribunal (New Bombay) in the case of Iqbal Mohammad Khan v. Govt. of India, Deptt. of Tourism (unreported) has decided in its circuit sitting at Panaji, Goa on 16.12.1988 that "when a junior is getting more pay because of his adhoc but continuous appointment to a higher post, that will not entitle his senior to ask for stepping up of his pay under FR 22-C". I am in respectful agreement with this finding of our Division Bench.

7. Lastly, Mr. Nathan cited yet another case decided by a Single Member Bench at New Bombay, (D.L.Dighe v. Director General Posts, 1988 (1)(CAT) SLJ 647) in which officiating promotions were stated to have been granted to the junior beyond the maximum period stipulated in the relevant Rules by an authority not competent to do so. In this case, which was concerning postal employees, the Tribunal rejected the claim for stepping up of pay on the ground of irregular adhoc promotion of the juniors as alleged by the applicants in that case, holding that one wrong theory cannot justify another. The Tribunal observed that the claim of the applicants therein for stepping up of pay was not justifiable, since the anomaly did not arise as a result of direct application of FR 22-C but by virtue of earlier officiating promotions granted to the junior. The Tribunal held that the right course of action for the respondents in that case would be to re-examine strictly in accordance with the rules and delegation of powers prevailing at the relevant time as to whether any of the 8 applicants *therein* was eligible to be considered for the vacancies in question, and if so, regulate their promotion accordingly and fix their pay notionally, by giving them incremental benefits, strictly according to the above rules, without however giving them arrears of salary on this account as they did not actually shoulder responsibility in the higher post to which they would have been promoted at the material time.

8. Mr. Nathan submitted that at least a limited relief, as in the above case, should be granted to the applicants in the present applications since there has been an administrative error in continuing these adhoc promotions for an abnormally long period. The respondents have, however, pointed out that adhoc promotion of respondent No. 2 in the first two applications was ordered as early as 1971 and he has been continuing

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to officiate since then as various orders from time to time posting his seniors in this vacancy could not be implemented, as the concerned officials did not join this post. Mr. Nathan could not give any convincing explanation as to why the applicants did not represent against continued adhoc promotion of respondent No. 2 on the ground of failure of his seniors to join in his place after their posting orders had been issued. His only explanation was that the applicants had come to know of such adhoc promotion only in 1986 or thereabout. I find it difficult to believe that the applicants, who are all working in the same division, namely, Bombay and some of whom are stated to be office bearers of their Association should be completely in the dark about continued adhoc officiating promotion of one of their juniors for such a long period as 15 years. I am rather inclined to accept Mr. Kasturey's statement that posting at Bandra Marshalling Yard ~~post~~ is generally considered to be a hard posting by employees, and therefore, unpopular and all the officers who are posted there do somehow manage to avoid this posting on some pretext or the other.

9. On the basis of foregoing discussions, I see no merit in any of the contentions raised by the applicants in these three applications, which are, accordingly, dismissed but with no order as to costs.