

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

(22)

CONTEMPT PETITION NO. 91 of 1991

IN

O.A.NO.602 of 1990

DATE OF JUDGEMENT: 8.1.1992.

BETWEEN:

Mr. Mathai Chacko .. Applicant

AND

1. Mr. Madan M.L. Sharma,
General Manager,
South Central Railway,
Secunderabad.
2. Mr. S.K. Gupta,
Divisional Railway Manager (BG),
S.C.Railway,
Secunderabad. .. Respondents

COUNSEL FOR THE APPLICANT : Mr. M.C. Pillai

COUNSEL FOR THE RESPONDENTS : Mr. J.Siddaiah, SC for Rlys.

CORAM:

HON'BLE SHRI R. BALASUERAMANIAN, MEMBER (ADMN)

HON'BLE SHRI T. CHANDRASEKHAR REDDY, MEMBER (JUDL.)

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JUDGEMENT OF THE DIVISION BENCH DELIVERED BY
THE HON'BLE SHRI T.CHANDRASEKHAR REDDY
MEMBER (JUDL.)

The present contempt petition is filed by the petitioner herein for non-implementation of the orders of this Tribunal dated 27.3.1991 as against the respondents 1 and 2 herein who are, (1) Mr Madan M.L. Sharma, General Manager, South Central Railway, Secunderabad, and (2) Mr S.K. Gupta, Divisional Rail-way Manager (Broad Gauge), South Central Railway, Secunderabad.

2. The petitioner herein filed OA 602/90 to promote him to the higher post of Head Clerk from the date on which his juniors were promoted and for the arrears of pay and allowances in the said post of Head Clerk from the date his immediate junior was promoted. This Tribunal on 27.3.1991 disposed of the said OA 602/90. Following are the main directions given in para 7 of the Judgement dated 27.3.1991.

"On the basis of fixation of his position in such a seniority list, the respondents are directed to consider the applicant for promotion as Head Clerk from the date his immediate junior was considered for promotion w.e.f. 1.4.1984 (the date of upgradation). In considering the applicant for promotion, the same criteria/rules/instructions as applied to his juniors will be applied to the applicant. If the applicant on such consideration is found suitable, he will be entitled to consequential benefits of promotions and fixation of salary in the

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higher post of Head Clerk, consequential consideration and promotion to higher posts from the dates on which his juniors were promoted and arrears of salary in the post of Head Clerk and higher posts if entitled from the date of eligibility. The applicant had claimed seniority over respondents 10 and 11 in M.G. Division. This prayer is an alternate prayer in the event of the applicant's prayer to treat him as belonging to the B.G. Division being rejected. Since we have allowed his prayer that he belongs to the B.G. Division, the question of his claiming rights over respondents 10 and 11 would not arise.

8. For the reasons given in the preceding paragraphs, the application is allowed. The respondents are directed to implement the directions given in paragraph 7 above within a period of three months from the date of receipt of this order."

In pursuance of the directions of this Tribunal, the respondents 1 and 2 have given notional promotion as Head Clerk with effect from 15.4.1985 without monetary benefits and with monetary benefits as Head Clerk from the date of actual working as Head Clerk as permitted by the rules. It is the grievance of the applicant that with effect from the date on which notional promotion had been given to the applicant as Head Clerk, i.e. with effect from 15.4.1985 onwards that the applicant

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is entitled for all monetary benefits and arrears of pay and allowances and as the said arrears of pay and allowances are not paid to the applicant, he had come forth with the present contempt petition with the plea that the order of the Tribunal dated 27.3.1991 passed in OA 602/90 is not implemented in toto and that the respondents 1 and 2 are liable to be punished for contempt of Court for disobeying the orders of the Tribunal.

3. The operative portion of the said Judgement dated 27.3.1991 passed in OA 602/90 clearly reads as follows:

"If the applicant on such consideration is found suitable, he will be entitled to
xxxxx xxxxxx xxxxxxx and arrears of
salary in the post of Head Clerk and higher
posts 'if entitled' from the date of
eligibility." (underlining is ours)

Admittedly, in this case, the applicant is claiming arrears of salary with effect from 15.4.1985 even though from that date, the applicant had not actually worked in the post of Head Clerk. Admittedly, the applicant is working on promotion as Head Clerk with effect from 25.6.1991. Now the question before this Tribunal is whether the applicant is entitled for arrears of salary with effect from 15.4.1985 (which is the date of the notional promotion of the applicant) upto 25.6.1991 which is the actual date the applicant is working as Head Clerk. It may be convenient to here to refer to two decisions of the Supreme Court.

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The first decision that may be referred to is the case of "Paluru Ramkrishnaiah and others Vs. Union of India and another" (AIR 1990 SC 166) wherein the Supreme Court confirmed the Judgement of Madhya Pradesh High Court, wherein the Madhya Pradesh High Court had held as follows:

"It is the settled service rule that there has to be no pay for no work i.e. a person will not be entitled to any pay and allowance during the period for which he did not perform the duties of a higher post although after due consideration he was given a proper place in the gradation list having deemed to be promoted to the higher post with effect from the date his junior was promoted. So the petitioners are not entitled to claim any financial benefit retrospectively. At the most, they would be entitled to refixation of their present salary on the basis of the notional seniority granted to them in different grades so that their present salary is not less than those who are immediately below them."

The second case that we may refer to is, "Virender Kumar General Manager, Northern Railways, New Delhi Vs. Avinash Chandra Chadha and others" (AIR 1991 SC 958) wherein it is observed that neither equity nor justice was in favour of employees to award them emoluments of higher posts with retrospective effect when employees not working in said posts and the principle of "no work no pay" will be attracted".

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4. ^{Also,} ~~Above all,~~ the Full Bench decision of the Central Administrative Tribunal, Madras Bench consisting of the Hon'ble Shri Justice Amitav Banerji, the Hon'ble Shri Justice B.C. Mathur and the Hon'ble Dr Justice David Annoussamy, in O.A. Nos.767 and 842 of 1989 (in NP Bhat and N.R. Natanam Iyer Vs Union of India and others) in the Judgement dated 27.11.1991 had dealt with the question of giving pay and allowances in promotional post where the Government servant had not worked in the promotion post. In the said Judgement dated 27.11.1991, it is laid down as follows:

"For the reasons stated above, we are of the view that the applicants are not entitled to enhanced pay and allowances for the period from 5.11.1976 to the date of their superannuation when they did not actually work in the post of Executive Engineer and consequently they are also not entitled to the difference in pay and allowances between the two posts of Assistant Executive Engineer and Executive Engineer. Hence, the question of payment of arrears of pay and allowances does not arise."

The Full Bench of the Central Administrative Tribunal in the said case also dealt with the case with regard to payment of arrears of pay and allowances from 5.11.1976 i.e., on the date on which the applicants therein were notionally appointed to the promotional post of Executive Engineers from the posts of Assistant Executive Engineers. So, from the said Judgement, it becomes amply evident that a person who has not worked in promotional post where seniority had been in dispute, is not entitled for the pay and allowances.

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To

1. Mr. Madan M.L. Sharma, General Manager,
S.C.Rly, Secunderabad.
2. Mr. S.K. Gupta, Divisional Railway Manager (BG)
S.C. Railway, Secunderabad.
3. One copy to Mr. M.C. Pillai, Advocate, CAT. Hyd. Bench.
4. One copy to Mr. A. Siddaiah, SC for Rlys, CAT. Hyd. Bench.
5. Copy to All Reporters as per standard list of CAT. Hyd. Bench.
6. One Copy to Hon'ble Sri. T. Chandramohan Reddy, CAT. Hyderabad.
7. One Spare Copy.

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J. S. Rao
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5. So, from all the said three decisions, it is quite evident that in cases of this nature, unless Government servant had worked in promotional post that he will not be entitled to arrears of salary on the principle "no work no pay". The learned counsel appearing for the applicant relied on a Judgement of this Tribunal dated 7.11.1988 in OA 149/88 (M.C. Pillai Vs. General Manager SC Railway, Secunderabad and another) wherein this Bench had directed the respondents therein to pay arrears of pay for the period between 17.8.1984 and 12.3.1987. The facts reported in the said case would disclose that the applicant in OA 149/88 had not worked in the promotional post for the said period. Whatever might be the observations in the said OA 149/88, we are bound by the Full Bench Judgement of the Central Administrative Tribunal and the Supreme Court Judgements. So, as all the ~~above~~ three Judgements referred to above are against the petitioner herein, the petitioner will not be entitled to arrears of pay as claimed by him. We see no disobedience on the part of the respondents in implementing the orders of this Tribunal passed in OA 602/90 dated 27.3.1991. So, as the respondents have not committed any contempt, this contempt petition is liable to be dismissed and is accordingly dismissed. The parties shall bear their own costs in this contempt petition.

R. Balasubramanian
(R. BALASUBRAMANIAN)
Member (Admn)

T. Chandrasekhar Reddy
(T. CHANDRASEKHAR REDDY)
Member (Judl.)

Dated: 8-1-1992.

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By *Registered (5)*
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ASK
9/1/92
TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

To be typed

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.

V.C

AND

THE HON'BLE MR.

M(J)

AND

THE HON'BLE MR. R. BALASUBRAMANIAN: M(A)

AND

THE HON'BLE MR. T. Chandra Sekhara Reddy M(J)

DATED: 8 - 1 - 1992

ORDER/ JUDGMENT:

M.A./R.A./C.A. No.

91/91 ✓

in

O.A.No.

602/90 ✓

T.A.No.

(W.P.No.)

Admitted and Interim directions
Issued.

Allowed.

Disposed of with directions

Dismissed. ✓

Dismissed as withdrawn.

Dismissed for Default.

M.A. Ordered/Rejected

No order as to costs.

