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CENTRAL ADMINISTRATIVE TRIBUNAL,
CALCUTTA BENCH, KOLKATA

O.A. No. 350/00962/2011

Present : Hon'ble Justice Shri Vishnu Ch. Gupta, Judicial Member
Hon'ble Ms Jaya Das Gupta, Administrative Member

Shri Himadri Narayan Datta,
Son of Late Prangobinda Datta,
Retired on 31.12.2009 from
Railway service from the post of
Senior Divisional Safety Officer,
Eastern Railway, Sealdah Division, Sealdah,
Kolkata
And residing at "Gaurav Apartment",
4th Floor, Flat No. D-4;
372, Dum Dum Road (Surer Math),
Kolkata – 700 074.

..... Applicant.

Versus

1. Union of India,
Service through the General Manager,
Eastern Railway,
17, N.S. Road,
Kolkata – 700 001.
2. The Chief Personnel Officer,
Eastern Railway,
17, N.S. Road,
Kolkata – 700 001.
3. The Divisional Railway Manager,
Eastern Railway,
Sealdah Division, Sealdah,
Kolkata – 700 014.
4. The Senior Divisional Personnel Officer,
Eastern Railway,
Sealdah Division, Sealdah,
Kolkata – 700 014.

..... Respondents.

For the Applicants : Mr. K. Sarkar, Counsel

For the Respondents : Mr. A.K. Guha, Counsel

Date of hearing : 19.09.2016

Date of order: 27.09.2016

ORDER

JUSTICE V.C. Gupta, JM

Heard learned counsel for the applicant and learned counsel for the respondents and perused the record.

2. The applicant in this case has claimed the following reliefs :

- "a) To issue direction on the respondents to cancel, quash, set aside the impugned order dated 01.10.2009 forthwith.
- b) To issue further direction upon the respondents and their men and agents to consider the case of the applicant for higher fixation of pay with effect from his junior Shri S.N.Bhowmick, who got the posting order in Station Superintendent (Grade-I) with effect from 10.08.1989.
- c) To pass necessary order for consequential benefit like pay pension, other salaries benefits and pensionable benefits forthwith."

3. Earlier the O.A was dismissed by an order dated 06.03.2013 mainly on the ground of limitation. The order was challenged before the Hon'ble High Court by the applicant. The Hon'ble High Court set aside the order in WPCT No. 200/2013 vide order dated 11.06.2013 and remanded the matter with a direction to the Tribunal to decide the application filed by petitioner de novo on merit without raising the point of limitation. Thereafter, this application was re-heard and is going to be decided on merit.

4. The brief facts for deciding this application are that the applicant was appointed as a Temporary Trainee Assistant Station Master (ASM for short) in the Eastern Railway on 15.06.1971. In a departmental examination for the post

of Station Superintendent Grade-I he appeared and selected for the post and was empanelled in the select list published on 05.09.1986. In this select list he was placed at Serial No.26. The post of Station Superintendent was in the pay scale of Rs.2375-3500/- Out of these 26 persons 14 persons were found suitable against the then existing vacancies and were given appointment/posting on 30.03.1989. In the final suitable selection list out of which 14 candidates were appointed the applicant came on top who was in list at S.No.15 Shri S.N Bhowmik was the next at Sl.No.16. The applicant also appeared in departmental examination for the post of ATO/AOS in Class-II against 25% quota through Limited Departmental Competitive Examination (LDCE for short). He was selected therein and put in the panel of successful candidates on 07.03.1989. As the applicant is also in the select panel for the post of Station Superintendent but could not get the chance of posting, hence he joined the post of ATO/AOS. The applicant handed over charge on 20.04.1989 and then taken over charge of promotional post of ATO/AOS on 29.04.2016. After taking over charge of the post of ATO/AOS, which was in the pay scale of Rs.2200-3500/- Shri S.N Bhowmick was given posting on 10.08.1989, as the applicant had already joined the post of ATO/AOS. The applicant thereafter, claimed the benefit of fixation of higher pay on the basis of selection of the applicant on the post of Station Superintendent Grade I. He made representations. The claim of the applicant was first rejected on 24.04.2006 which has been annexed as Annexure A-25, which is extracted herein below:

"Your above mentioned appeal was sent to CPO/KKK for his consideration and the views of CPO/KKK vide his letter No.E.839/Trans/Line/Pt.I/HND dt. 12.4.06 are as "The case has been examined and it is opined that as Sri H.N.Dutta had not taken

the higher responsibility he is not eligible to get the promotional benefit for the post of SM Gr.I in scale Rs.2375-3500/- as per extant rules."

This is for your information."

Thereafter, he again represented and sought review of this order. The authorities reviewed the situation and again rejected the claim of the applicant on 16.01.2009, which was annexed as Annexure-A-29 and reproduced herein below:

"On the above subject, CPO/KKK's opinion vide his letter No.

839/Trans/Line/Pt.I/HND dt. 21.5.09 is as under.

"The above case has been reviewed. There is no provision to give such benefit under fixation Rule."

Thereafter he again made representation asking to re-consider the matter and the authorities again considered the matter and passed a detailed order rejecting the claim of the applicant vide order dated 01.10.2009, which is annexed as Annexure A-31 to the O.A. which is reproduced herein below for ready reference :

"To

Sri H.N. Dutta

*Sr. Divnl. Safety Officer,
Eastern Railway
Sealdah*

Sub: Prayer for fixation of pay in Scale Rs. 2375-3500/-(RP) of Gr. 'B' post taken into account of promotional effect in the scale Rs. 2375-3500/-(RP) as SS Gr.-I.

Ref: Your appeal dated 16/03/2009.

In reference to your appeal under reference, it is stated that you have submitted earlier appeal dt. 04/04/05 which was

forwarded by Sr. DPO vide her letter no. EG-76/OPTG/Panel/Class-III/Pt.II(E-2) dated 05/16.01.2016 the same has been disposed of by this office letter no.E.839/4/trans/Line/Pt.I/IIND dt. 12/04/2006.

However, on receipt of your appeal under reference the case has been thoroughly examined by this office and para-wise remarks of your appeal are given as under:-

Para-1: It is a fact that your name has been reflected against Sl.No.26 of the select list for the post of Station Supdt. In scale Rs. 2375-3500/-(RP). According to the select list the candidates whose merit position was above 26 were posted as Station Supdt. (NG) in scale Rs. 2375-2500/-(RP) according to the vacancies at the material time. As your turn has not come as per vacancies, you have not been posted as Station Supdt. in scale Rs. 2375-3500/-(RP).

Para-2: Subsequently, you have been selected as AOS vide CPO's Office Order No.G1/24/TT&CD/1989 Docket No. E.838/Jr.Scale/TT&CD/Pt.II dt. 29/03/89 and posted as AOS, Garhara. You have taken over the charge for the post of AOS/GHZ on and from 21/04/1989(FN) before your posting as SS in scale Rs. 2375-3500/-(RP).

Para-3: As you have selected for the post of AOS and joined as AOS/GHZ on 21/04/1989 before your turn has come for your posting as Station Supdt. (NG) in scale Rs. 2375-3500/-(RP) due to non-availability of vacancy, as you can not claim to get the opportunity regarding fixation of pay in scale Rs. 2375-3500/-(RP) without shouldering the higher responsibility for the post of SS Gr.-II as per extant rules.

Para-4: Your junior Sri S.N. Bhowmick in the select list was posted as Station Supdt.(NG)-in scale Rs. 2375-3500/-(RP) vide Office Order No. E.839/4/Trans/Line dt. 10th August 1989 when you have already accepted and joined as Gr. 'B' for the post of AOS and posted as GHZ. When you have already joined in Gr. 'B' category there is no question for taking any willingness/unwillingness from the candidate before posting of your junior from the selection list as because you have accepted the post of Gr. 'B' and joined as Gr. 'B' on 21/04/1989.

Para-5: The allegations made in this regard is not acceptable as because your earlier appeal has been disposed of stating that you have not taken the higher responsibility as such your are not eligible to get the financial benefit for the post of Station Manager Gr.-I in scale Rs. 2375-3500/-(RP) as extant rules. If you were interested for the post of SS Gr.I in scale Rs. 2375-3500/-(RP) you have not accepted the Gr. 'B' post. As you have not

given such declarations at the material time and you have accepted the posting as AOS duly selected for Gr. 'B' post, your claim for giving the benefit of fixation of pay for the post of SS Gr.I cannot be accepted without shouldering the responsibility for the post of SS Gr.-I.

As per CPO's Sl. No. 8685, Chief Controller who was promoted in Class-II from the date prior to 01.01.73 and whose pay fixed in revised scale as Chief Controller is higher than his pay in Class-II would be entitled to the protection of his pay as Chief Controller.

As per CPO's Sl. No. 6004 the staff who is working in the same cadre is deprived from his seniority due to administrative lapse within the same cadre he will get the pay fixation at par with his junior who is working in the same cadre.

The above two CPO's Sl. Nos. Are not applicable in your case as because you were working as SM/SDAH in scale Rs. 2000-3200/- (RP) and empanelled for the post of SS in scale Rs. 2375-3500/- (RP) but not shouldering the responsibility for the post of SS in scale Rs. 2375-3500/- (RP). Before your posting as per availability of vacancies for the post of SS., you have been promoted in Gr. 'B' and joined as Gr. 'B' w.e.f. 21/04/09. ' w.e.f. 21/04/09. Your pay has been fixed up as Gr. 'B' based on the pay scale Rs. 2000-3200/- (RP) from where you have promoted as Gr. 'B'.

In view of the above your claim had not been accepted for giving the benefit for the post of SS-I in scale Rs. 2375-3500/- (RP) at par your junior Sri S.N. Bhowmick who has joined latter as SS-I after you have joined as Gr. 'B'.

Your appeal is disposed of accordingly.

(Dr. K.C. Bal)
Chief Personnel Officer

This is the order which is sought to be set aside in the present OA.

The applicant retired from service after attaining the age of superannuation on 31.12.2009.

5. Reply has been filed by the respondents supporting the order impugned and stated that after selection for the post of Station Superintendent Grade I in

the scale of Rs.2375-3500/- the applicant is also selected for promotion to the post of ATO/AOS in the scale of pay of Rs.2000-3500/- in Group B Gazetted post and joined on 21.04.1989. The applicant has not shouldered the responsibility of Station Superintendent Grade-I and had not joined the post of Station Superintendent Grade-I but joined the post of ATO/AOS. Therefore, he cannot claim the advantages for the post of Station Superintendent Grade-I against which he never worked. The applicant voluntarily joined on the post of ATO/AOS and did not wait for his turn for promotion on the post of Station Superintendent Grade-I therefore, he cannot be granted the pay scale of Station Superintendent Grade-I. The order passed by the authority is strictly in accordance with law.

6. It has been submitted by the learned counsel for the applicant that the applicant has applied for extension of time to join the post of ATO/AOS but he was not granted any extension. It is worth notice that applicant's letter seeking extension of time for joining has neither any endorsement of receipt nor any receipt of it has been brought on record. More over any order passed on the same was also not placed on record.

7. The rejoinder affidavit has also been filed reiterating the stand taken in the O.A. The applicant also filed supplementary affidavit bringing on record what difference of pay and what promotions he would be entitle if promoted against the post of Station Superintendent Grade-I.

8. This Tribunal by order dated 24.08.2016 directed the applicant to implead Shri S.N.Bhowmick, the person against his place he is claiming benefit of posting

as Station Superintendent Grade-I but he failed to implead him as party respondent.

9. On perusal of the pleadings and hearing the submissions of the counsels of parties it is clear that applicant had joined the post of ATO/AOS voluntarily so he cannot claim the benefit of promotion on the basis of placement in the select list of Station Superintendent Grade-I . It is well settled principle of law that merely a person find place in the select list would not have a right to be appointed. In this case 14 persons were selected against the than existing vacancies, if the applicant was so confident that he would have been promoted positively against the post of Station Superintendent Grade-I he may refuse to join the post of ATO/AOS and forgo his promotion to that post but he did not do so and prefer to join the lower post voluntarily on 21.04.1989. Consequently Shri S.N.Bhowmik, who was at Sl.No.16, just below the applicant in the select panel of Station Superintendent Grade-I, was given promotion against the post of Station Superintendent Grade-I. Since the applicant joined the post of ATO/AOS his candidature for the post of Station Superintendent Grade-I stand automatically comes to an end.

10. The applicant also relied upon Rule/para 1316 of IREC Vol.2 for grant of benefit of the higher pay. But the same is not at all applicable in this case. This rule applies where a Railway servant holding a post in substantive, temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity to another post carrying duties and responsibilities of greater importance his initial pay in the pay scale of higher post would be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of

the lower post by one increment at the stage at which special pay has approved. The applicant in this case is seeking the benefit of that post on which he never promoted nor worked, so the benefit of this rule cannot be extended to the applicant.

11. Consequently, we are of the view that the application lacks merit. No interference is required in the impugned order. Accordingly OA is dismissed.

There shall be no order as to costs.

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Jaya Das Gupta
Administrative Member

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(Justice V.C.Gupta)
Judicial Member

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