

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00379/2014

Reserved on: 05.04.2018

Date of Order:11.04.2018

C O R A M
HON'BLE MRS BIDISHA BANERJEE, JUDICIAL MEMBER
HON'BLE MR. A.K. UPADHYAY, ADMINISTRATIVE MEMBER

Arun Prakash, Son of Sri Nathun Prasad, Loco Pilot (Electric), East Central Railway, Danapur, District- Patna. **Applicant.**

- By Advocate:- Shri M.P. Dixit

-Versus-

1. The Union of India through the Secretary, Ministry of HRD, New Delhi.
2. The Commissioner, Navodaya Vidyalaya Samiti, B-15, Institutional Area, Sector-62, Noida.
3. The Joint Commissioner (Pers.), Navodaya Vidyalaya Samiti, B-15, Institutional Area, Sector-62, Noida.
4. The Deputy Commissioner, Navodaya Vidyalaya Samiti, Regional Office, Boring Road, Patna-13. **Respondents.**

- By Advocate(s) :- Shri B.K. Choudhary
Shri Kumar Sachin

O R D E R

Per Mr. A.K. Upadhyay, A.M.:- This case has been filed for grant of actual benefit of promotion to the post of Loco Pilot (Goods)/Electric w.e.f. 28.01.2005 or 13.06.2005, i.e. from the date of his junior, namely, Shri Pramod Kumar and consequential benefits including arrears of salary and interest thereon.

2. Heard the learned counsel for the parties and perused the records.

3. The brief fact of the case is that while the applicant was working as Assistant Loco Pilot, an examination for promotion to the post of Loco Pilot (Goods), Electric was conducted in the year 2004. The final result was published on 28.01.2005 in which the applicant's name did not appear among the successful candidates. The applicant believed that he had done very well in the examination; hence he filed OA No. 730/2006 before the Tribunal. In the meanwhile, he had filed representation under RTI Act and the authorities by letter dated 02.11.2007 (Annexure A/1) and letter dated 05.02.2008 (Annexure A/2) informed him that because of some error in the list the applicant's name was not included in the panel. He had obtained 64% marks. Accordingly, action to amend the panel and disciplinary action against guilty employees was being initiated. This OA was disposed of by order dated 14.10.2011 with direction to the respondents to pass a speaking order. The applicant filed CCPA No. 87/2012 when the aforesaid order was not complied. During the pendency of the contempt petition the respondents filed a speaking order with the show cause in which the applicant was granted promotion from retrospective date on proforma basis but his seniority was fixed from 2007 instead of 2004 as claimed by the applicant. The CCPA was dropped by order dated 10.01.2013 (Annexure A/6) with liberty to the applicant to approach appropriate forum if he had any further grievance against the order passed by the respondents. Accordingly, this OA has been filed.

4. Now the applicant’s grievance is that though he has been placed senior to Shri Pramod Kumar but his salary was fixed w.e.f. 19.04.2007 and not on 13.06.2005 from which date Shri Pramod Kumar was getting the higher salary.

5. The respondents have filed a written statement in which they have drawn attention to the speaking order dated 20.07.2012 (Annexure A/5) in which the corrected position of the seniority has been shown as follows:-

“ Thus, the corrected positions as Loco Pilot (Goods) Elect. will now be as under:-

S.No.	Name	Design.	Stn.	D.O.B	D.O.A as ALP	D.O.P in LP (Goods)/E	S.N. of S. list of LP(G)/E published on 24.11.09
01	S/Shri A.L. Raut	LP(G)	JAJ	02.02.64	28.08.01	08.04.07	84
02	Arun Prakash	LP(G)	DNR	01.01.72	04.09.01	<u>10.12.09</u> <u>19.04.07</u>	84(A)
03	Pramod Kumar	LP(G)	GHZ	01.03.79	07.09.01	<u>13.06.05</u> <u>19.04.07</u>	45 now corrected as 84(B)
04	Md. Shokt Miya	LP(G)	DNR	15.09.68	27.09.01	19.04.07	85

6. It transpires from the above that the applicant has been given seniority at Sl. 84A and his junior Shri Pramod Kumar who had been earlier given seniority at sl. 45 has now been corrected to 84B. Therefore, as far as seniority is concerned that has been rectified. The date of promotion of Shri Pramod Kumar has now been revised from 13.06.2005 to 19.04.2007. The applicant’s date of promotion was earlier 10.12.2009 which has been rectified to 19.04.2007. The question is whether the applicant is entitled to salary for the period

13.06.2005 to 18.04.2007. We may mention here that the date 28.01.2005 mentioned by the applicant in the OA has no relevance as it does not figure anywhere in the promotion list.

7. It is not clear from the above whether any recovery is being effected from Shri Pramod Kumar for the admittedly erroneous promotion between 13.06.2005 to 18.04.2007. The question of making payment to the applicant for that period will only arise if Shri Pramod Kumar has enjoyed this benefit and the authorities do not intend to make recovery from him. The written statement is silent on this. However, we propose to discuss and adjudicate the issue whether in such cases actual benefits shall be admissible.

8. The respondents have placed circular No. 1030 dated 08.04.1965 (Annexure R/1) regarding denial of promotion because of administrative error. In such a case the circular states that correct seniority shall be assigned but pay has to be fixed on proforma basis from the due date and enhanced pay may be allowed from the date of actual promotion. No arrears on this account shall be payable as he did not shoulder the duties and responsibilities of the higher post.

9. The principle of 'no work no pay' is not meant to condone administrative errors. The applicant was already in the Railways. It is not the case of a fresh recruitment. Had the error not taken place the applicant would have got his promotion on the due date with actual salary.

10. A number of such cases have been decided by the courts. The Hon'ble Supreme Court in the matter of **Ramesh Kumar Vs. Union of India & Ors.** (AIR 2015 SC 2904) held that while the normal rule is 'no work no pay', in appropriate cases the court of law may take into account all the facts in their entirety and pass appropriate order in consonance with law. The principle of 'no work no pay' would not get attracted where the respondents are in fault in not considering the case of the applicant for promotion. A similar case was decided in favour of the applicant by the Tribunal vide order dated 24.11.2016 in OA No. 892/2012. This was affirmed by the Hon'ble Patna High Court vide order dated 27.07.2017 in CWJC No. 5803 of 2017.

11. The present case is exactly of this type in which it has been admitted by the authorities that there was a mistake on their part. Therefore, it is held that the applicant shall be entitled to actual salary from the date of promotion of his junior subject to our observation in para-7 of this order. Arrears, if any, shall be paid within a period of three months of receipt of a copy of this order. The OA is allowed with the above observations. No order as to costs and interest.

[A.K. Upadhyay]
Administrative Member
Srk.

[Bidisha Banerjee]
Judicial Member