

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/00869/2015

Date of Reserve:23.01.2019

Date of Order: 11.02.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Jaydev Sarkar, aged about 58 years, S/o. Late K.C.Sarkar – at present working as Tech.I, Department of Elect/TRS/BNDM, Sector-B, Qr.No.230,At/PO-Bondamunda, Dist-Sundargarh, Odisha.

...Applicant

By the Advocate(s)-M/s.P.K.Nayak
A.K.Mohapatra
S.Mishra
S.K.Panigrahi

-VERSUS-

Union of India represented through:

1. The General Manager, South Eastern Railway, Garden Reach, Calcutta-43, West Bengal.
2. Senior Divisional Personnel Officers, South Eastern Railway, Chandrasekharpur, District-Singhbhum, Jharkhand.
3. Senior Divisional Electrical Engineer(TRS), Bondamunda, Rourkela-770 032, District-Sundargarh.
4. Assistant Personnel Officer, South Eastern Railway, Chandrasekharpur, District-Singhbhum, Jharkhand.

...Respondents

By the Advocate(s)-Mr.S.K.Ojha

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

2. Applicant is presently working as Tech.-I in the Electrical Department under the East Coast Railways. In this Original Application under Section 19 of the A.T.Act, 1985, he has sought for the following reliefs:

- i) To quash the order dated 04.06.2015 under Annexure-A/7.
- ii) To declare that Clause-5 of the office order dated 24.11.2009 under Annexure-A/5 is non est in the eye of law.
- iii) To modify the order dated 12.10.2009 under Annexure-A/4.
- iv) To direct the Respondents to release the revised scale of pay of the applicant from 01.11.2003 to 4.12.2009 in promotional post.
- iv) To direct the respondents to pay all consequential service benefits including all arrears of pay & allowances along with interest within specific time limit.
- v) To pass any other order/orders as deemed fit and proper.

2. Facts of the matter in a nutshell are thus: Applicant while working as Khalasi Helper, a disciplinary proceeding was initiated against him which culminated in dismissal of the applicant from service in the year 1993. This order was challenged by the applicant in O.A.No.327 of 1999 and this Tribunal, vide order dated 25.04.1993 dismissed the said O.A. as barred by limitation. Aggrieved with that the applicant preferred OJC No.10619/01 and the Hon'ble High Court remitted the matter to the Tribunal for a decision on merit. In the above backdrop, this Tribunal considered the O.A.No.327 of 1999 on merit and disposed of the same vide order dated 04.11.2004 by quashing the order of dismissal of the applicant from service. The Tribunal directed reinstatement of the applicant in service and to treat the period from 20.02.1994 to 15.05.1999 as medical leave on the strength of medical certificate submitted by the applicant and the remaining period till the date of his reinstatement as leave, as due and admissible. In compliance with the aforesaid direction, the applicant was reinstated in service with effect from 01.09.1993 vide order dated 10/11.12.2004. While the matter stood thus, the applicant submitted a representation for promotion at par with his juniors, to

convert the period from 20.02.1994 to 15.05.1999 as medical leave and remaining period as leave as due and admissible. In response to this, the Sr.DEE vide his letter dated 15.06.2005 communicated to the applicant that his leave has been converted as per the direction of this Tribunal. Further, it was stated therein that in the order dated 4.11.2004 passed by this Tribunal in O.A.No.327 of 1999 no direction had been given to interpolate his name in proper place in the seniority list and to promote him to higher post at par with his juniors and to extend the consequential benefits thereof. Aggrieved by this order the applicant filed O.A.No.709 of 2006 wherein he had prayed to direct the respondents to accord him proper seniority and promote him to the higher post with effect from the date his juniors have been promoted with financial benefits. This Tribunal vide order dated 23.06.2009 disposed of the said O.A. with the following observation and direction:

"5.Admittedly, the disciplinary proceeding initiated against the applicant has been quashed by this Tribunal as there was no evidence to proceed against him and to award punishment as had been imposed by the disciplinary authority. If so, it is the obligation of the Department to consider the case of the applicant for restoration of his seniority over his juniors. The applicant is also entitled for all his service benefits including promotion to the higher posts. However, as per the contention raised in the counter, since the applicant has not made none of his juniors as party to the O.A., it is only proper for this Tribunal to give direction to the Respondents to consider the applicant's representation for fixation of his seniority and promotional benefit on giving notice to his juniors who have got promotion. However, it is seen that as per the order of this Tribunal the applicant has to submit leave applications along with medical certificates for regularizing the period of absence and the Respondents have to duly consider the same

6.With the above observation and direction, this O.A. is allowed by setting aside Annexure-A/6 order. Respondents shall consider the entire case within a reasonable time, at any rate within 90 days on giving sufficient notice to juniors of the applicant who have already been promoted regarding restoration of seniority of the applicant. Ordered accordingly. No costs".

3. In compliance with the aforesaid direction, the respondents issued a Memorandum dated 31.07.2009 and subsequently, vide order dated 12.10.2009, applicant's seniority position was fixed keeping in view the promotion of his immediate junior Shri Jogeswar, as Tech.I. Resultantly, the promotion of the applicant to the post of Tech.-II was antedated to 02.11.1996. He was further promoted to Tech.I with effect from 01.11.2003 vide order dated 24.11.2009. Accordingly, the pay of the applicant in the higher grade on promotion was fixed on proforma basis vide office order dated 7.1.2010 and the arrears were paid to him from the date actually he had shouldered the duties and responsibilities of the higher post.

4. Claiming differential arrears dues from the date of his promotion to Tech.I at par with his junior till the actual date of holding the post, the applicant submitted representation dated 15.3.2010 and it did not yield any fruitful result, he approached this Tribunal in O.A.No.729 of 2010. This Tribunal vide order dated 17.01.2015 disposed of the said O.A. in the following terms:

"...Taking into account the submission made by Mr.Tripathy, Ld. Counsel for the applicant, without expressing any opinion on the merit of the case, we dispose of this O.A. at this admission stage by directing Respondent No.2 to consider and dispose of the representation, if the same has been filed and is still pending consideration, as per the rules in force and pass a well reasoned order communicate the same to the applicant within a period of 60 days from the date of receipt of a copy of this order. However, if in the meantime the said representation has already been disposed of then the result thereof be communicated to the applicant within a period of two weeks from the date of receipt of a copy of this order".

5. In obedience to this order, the respondents passed order dated 04.06.2015 (A/7) the relevant portion of which reads as under:

"Your representation dated 15.03.2010 has already been disposed of vide Sr.DEE (ELS)/BNDM's letter No.E/TRS/BNDM/38/2011

dated 03.03.2011 and reply has been given to your. Sr.DEE (TRS)/BNDM has informed this office vide letter No.E/TRS/BNDM dtd. 27.05.2015 stating that the representation dated 15.03.2010 of Sri J.D.Sarkar, Tech.I has been disposed of by allowing him the pay of his juniors and his pay has been revised at Rs.13190/- w.e.f. 01.07.2009 and the actual from 04.12.2009 i.e., the date of shouldering higher charge of Tech.I vide this office order No.E/TRS/BNDM/38/2011 dated 03.03.2011 (Copy is enclosed).

However, in obedience to Hon'ble CAT/CTC's order, Sr.DEE (ELS)/BNDM's letter No.ETRS/BNDM/38/2011 dated 03.03.2011 is sent herewith for your information please.

The receipt of this speaking order may please be acknowledged".

6. Aggrieved with this, the applicant has approached this Tribunal praying for the reliefs as quoted above.

7. Resisting the claim of the applicant, the respondents have filed their counter. They have submitted that the O.A. being devoid of merit is liable to be dismissed.

8. We have heard the learned counsels for both the sides and perused the records. We have also gone through the rejoinder filed by the applicant as well as the various decisions cited by the parties to substantiate their respective contentions.

9. In support of his the arrear salary, applicant has relied on the decision of the Hon'ble Supreme Court in Ramesh Kumar vs. Union of India & ors. (AIR 2015 SC 2904) and the decision of CAT, Principal Bench New Delhi in O.A.No.2344/2008 (Chhedi Lal vs. Union of India) decided on 25.09.2009. On the other hand, the respondents have placed reliance on the decision of the Hon'ble Supreme Court in Union of India & another vs. Tarsem Lal & ors. [(2007) 1 SCC (L^S) 63] and Food Corporation of India & Another vs. Ram Kesh Yadav & Another [(2007) 2 SCC (L&S) 559].

10. We have perused the above cited decisions. In Ramesh Kumar case (supra), the DPC held on 01.08.1997 did not consider him for promotion to Naib Subedar as he did not meet the discipline criteria for such promotion by the reason of he having been given two red ink entries during preceding five years. On the presentation preferred, his claim was considered by the DPC held on 15.03.2000 and he was granted promotion with effect from 01.01.2000 with ante-dated seniority with effect from 01.08.1997 along with his batch mates. Since there was no direction issued regarding any pay and allowance to Shri Ramesh Kumar with effect from 01.08.1997, this gave rise to filing of Writ Petition (C) No.6466 of 2002 before the Hon'ble High Court of Delhi. The Hon'ble High Court dismissed the said Writ Petition by observing that the appellant had no legitimate claim for payment of pay and allowance from retrospective date on the principle of "no work no pay". Subsequently, the matter was carried in appeal to the Hon'ble Supreme Court and the Hon'ble Supreme Court in Para-10 of the judgment held as under:

"Considering the genuineness of the representations made by the appellant, DPC again considered the claim of the appellant and granted him promotion with effect from 01.01.2000 to the rank of Nab Subedar with a further direction that the seniority of the appellant will be maintained along with his batch mates from 01.08.1997. When appellant was granted ante-dated seniority w.e.f. 01.08.1997 along with his batch mates, we find not reason as to why he should be denied pay and allowances in the promotional post as Naib Subedar w.e.f. 01.08.1997 till the date of his actual promotion on 13.11.2000. The High Court has not properly appreciated these aspects and erred in holding that on 01.08.1997, the appellant was not eligible to be considered for promotion. When the respondents themselves have taken the view that the Order of the Government would be deemed to have taken from the date of original sentence was passed i.e., 03.06.1992 and not from 17.08.1994, the date on which commutation/remission was granted by the Government, the High Court was not right in holding that the appellant was not eligible to be considered for promotion on 01.08.1997 and the impugned order cannot be sustained".

11. In the fitness of things, we would like to quote herein below the observations made by the Hon'ble Supreme Court in Paragraphs-12 and 13.

"12.In normal circumstances when retrospective promotions are effected, all benefits flowing therefrom, including monetary benefits, must be extended to an employee who has been denied promotion earlier. So far as monetary benefits with regard to retrospective promotion is concerned that depends upon case to case. In State of Kerala & ors. Vs. E.K.Bhaskaran Pillai (2007) 6 SCC 524 : (AIR 2007 SC 2645), this Court held that the principle of "no work no pay" cannot be accepted as a rule of thumb and the matter will have to be considered on a case to case basis and in Para(4), it was held as under:

"...We have considered the decisions cited on behalf of both the sides. So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages or 50 per cent of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before court or tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the court may grant sometimes full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard-and-fast rule. The principle "no work no pay" cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also".

13.We are conscious that even in the absence of statutory provision, normal rule is "no work no pay". In appropriate cases, a court of law may take into account all the facts in their entirety and pass an appropriate order in consonance with law. The principle of "no work no pay" would not be attracted where the respondents were in fault in not considering the case of the appellant for promotion and not allowing the appellant to work on a post of Naib Subedar carrying higher pay scale. In the facts of the present case when the appellant was granted promotion w.e.f. 01.01.2000 with the ante-dated seniority from 01.08.1997 and maintaining his seniority along with his batch mates, it would be

unjust to deny him higher pay and allowances in the promotional position of Naib Sudebar”.

12. From the above, it is quite clear that the facts of the present O.A. are not identical to the facts in Ramesh Kumar case. In Ramesh Kumar case, as would be evident, the appellant, Ramesh Kumar had not been given promotion due to a wrong action committed by the authorities which is not the case in hand. Therefore, the decision in Ramesh Kumar (supra) being distinct from the facts and circumstances of the instant O.A. is of no help to the applicant.

13. Similarly, the decision of CAT, Principal Bench in O.A. No.2344/2008 is not applicable to the facts of the present case. In that case the applicant Chhedi Lal had been denied promotion because of the fault on the part of the respondent-department. Therefore, the decision rendered therein being in a different context is not at all applicable to this case.

14. We would like to note that the respondents had already disposed of representation dated 15.03.2010 preferred by the applicant by communicating their decision on 03.03.2011. It is not a case where the applicant has been superseded by his junior which having been challenged, he has been promoted retrospectively from the date his junior was so promoted. It is also not a case where the administration has wrongly denied him promotion. Although the applicant has not mentioned regarding the exact nature of allegations made against him in the criminal case, in Paragraph-6 of the counter have made the following averments:

“...it is respectfully submitted that time and again the applicant had suffered several punishment, i.e., in 1988 minor penalty of stoppage of privilege pass, in the year 1992 suffered major penalty of removal which was reduced to reversion by the Appellate Authority and finally in the year 1993 had suffered penalty of dismissal. It may kindly be taken note of that the applicant was placed under suspension vide office order dated 16.08.1993 as he was arrested by RPF/Eastern Railway/Hoarash-2 on 10.08.1993

at Rishra Railway Station and found in possession of a brief case containing Railway Blank paper Ticiket Book, used Railway Tickets etc. and arrested committing crime punishable under the Railway Proper (Un-authorized Possession) Act. Finally, the misconduct of the applicant was proved during inquiry and punishment of dismissal from service passed terminating the service of the applicant w.e.f. 01.09.1993. It is needless to indicate here that the order of dismissal was upheld by this Hon'ble Tribunal dismissing the OA filed by the applicant. However, on remand of matter by the Hon'ble High Court, the Hon'ble Tribunal re-considered the matter and allowed the OA on technical grounds. While directing the Authority to reinstate the applicant, this Hon'ble Tribunal also passed orders how the entire period of applicant from the date of suspension till his reinstatement will be treated. Accordingly, steps were taken by the Railway Administration and the benefits as due and admissible extended to the applicant without any further delay".

15. As the misconduct of the applicant was proved during inquiry, punishment of dismissal from service was imposed. Subsequently, after the matter was remitted back to this Tribunal by the Hon'ble High Court and as already mentioned earlier, this Tribunal reconsidered the matter and allowed the OA directing reinstatement of the applicant. The applicant has not made out a case that he was not gainfully employed during the period he was out of service due to dismissal. In the peculiar facts and circumstances of the case, this Tribunal is not satisfied that any illegality has been committed by the respondents in not allowing back wages in favour of the applicant for the period in question.

16. For the reasons discussed above, the O.A. is held to be without any merit and the same is dismissed with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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