

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH, KOLKATA

C. A. No. 350/2049/2015

PARTICULARS OF THE APPLICANT:

1. Shri Alak Pal, son of Late Birendra Chandra Pal, aged about 55 years, working as Assistant Engineer under Executive Engineer/TM, S.E. Rly, Kharagpur, residing at Prafulla Abasan, Block - A, 2<sup>nd</sup> Floor, Flat No 4, KAMRANGU BISHALAKSMITALA, PO-JHOREHAT, DT- HOWRAH, Pin - 711302.
2. Sumanta Kumar Kirtania, son of Late Matilal Kirtania, aged about 56 years, working as Assistant Divl. Engineer/Bhojudih, under Sr. DEN (Co.) S.E. Rly, Adra, residing at Kharagpur, Flat No- 2A, Bhoomi-2 Appartment Saratpally, Jafala Road, PO- Inda, Dt- Paschim Medinipur. Pin-721305.

.....APPLICANTS -

-VERSUS-

- i) The Union of India, through General Manager, South Eastern Railway, Garden Reach, Kolkata 700043
- ii) Chief Personnel Officer, South Eastern Railway, Garden Reach, Kolkata 700043
- iii) Dy. Chief Personnel Officer (GAZ), South Eastern Railway, Garden Reach, Kolkata 70043

.....RESPONDENTS

all

CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH

Date of Order: 20.2.2019

Coram: Hon'ble Mr. A.K Patnaik, Judicial Member  
Hon'ble Dr. N.Chatterjee, Administrative Member

O.A./350/2049/2015

*Alak Pal & Another -vs- UOI & Ors.*

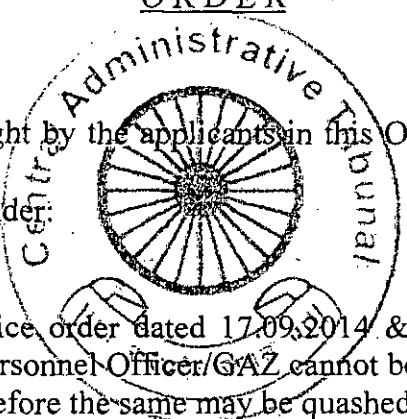
For the Applicant(s): Mr. A.Chakraborty, Counsel  
Ms. P.Mondal, Counsel

For the Respondent(s): Mr. B.L.Gangopadhyay, Counsel

ORDER

A.K Patnaik, Member (J):

The relief sought by the applicants in this OA filed under section 19 of the A.T. Act, 1985 are as under:

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- “(a) Office order dated 17.09.2014 & 24.12.2014 issued by Dy. Chief Personnel Officer/GAZ cannot be sustained in the eye of law and therefore the same may be quashed.  
(b) An order do issue directing the respondents to fix the seniority of the applicants with effect from 12.08.1996 in the Post of AEN and to grant consequential benefits.  
(c) Leave may be granted to file this Original Application jointly under Rule 4(5)(a) of the CAT Procedure Rules, 1987.”

2. The contention of the Applicants, in support of the relief, are that in pursuance of the order of the Hon'ble High Court dated 8.11.2011 in WPCT No. 845 of 2005 the Respondents included their names in Group 'B' panel for the post of AEN, with effect from 11.6.1998 with reference to their junior Shri Satish Kumar empanelled under 70% panel of AEN dated 27.04.1998 and, therefore, they should have been given the financial benefits notionally from the date Shri A.R.Jana, the last empanelled candidate in the first panel published by the Respondents.

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3. The contention of the Respondents are that mere featuring in the provisional panel does not make one necessarily senior counting the date of publication of panel for his seniority for further promotion in the cadre until he takes over the working post. On being empanelled for promotion, the candidates assume the posts. The date of such taking over the charge is reckoned for the purpose of their non fortuitous service for further consideration for promotion in future. In other words, the names originally in a panel only indicate the relative position of candidates in order of which they need to be promoted. If a candidate is not in a position to assume the promotional post due to his own personal reasons, unwillingness, disciplinary proceedings etc his seniority does not necessarily correspond to his relative position in the panel. Therefore, the candidates empanelled for promotion may be appointed in the promotional posts on different dates depending on vacancies in the cadre and in order of their relative position in the panel, the senior being promoted first followed by the next junior and so on. Further contention of the respondents is that the applicants were empanelled with Board's approval. They are the last lot of such modification as was made several times to the original panel published on 12.8.1996. By the time their names were decided to be included in the panel vide Board's letter dated 16.12.2013 most of their seniors in the panel would have assumed the promotion posts. Besides any notional benefit for a lateral entrant can only be given on par with immediate junior and not his senior. Since the senior candidate takes over earlier than the junior candidate for his higher position in the panel, the junior candidate should never claim parity with the senior in normal course or otherwise. Accordingly, the Respondents have prayed for dismissal of this OA.

4. According to the learned counsel for the applicants the Respondents have misinterpreted the order of the Hon'ble High Court, Kolkata inasmuch they have included the names of the applicants in the panel prepared for promotion but did not

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grant them the benefits with effect from the date last candidate in the first panel was given the promotion. Thus, in pursuance of the order of the Hon'ble High Court, Kolkata the applicants are entitled the benefits notionally with effect from the date Shri A.R.Jana was given promotion and not from the date when they were granted. Therefore, the applicants are entitled to the said benefits with effect from 12.8.1996 i.e. the date Shri Jana was given the promotion.

5. As we understood, the main thrust of the applicants is the order of the Hon'ble High Court and, therefore, for better appreciation, relevant portion of the order is quoted herein below:

"The authority would accommodate the petitioners by giving suitable opportunity to be considered in such limited quota and if they succeed in such process, they should be given notional benefit from the date when the first lot was given appointment. In case the authority is not in a position to accommodate the petitioners, the authority must call back the entire lot and conduct a fresh selection process. The present incumbents working in the promotional post should not be disturbed for the time being and after the selection process is over, the successful candidates would get back their seniority as on the date of the initial appointment. The petitioners would also get such benefit, although notionally."

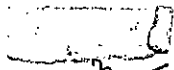
From the order, quoted above, it is clear that the Hon'ble High Court, Kolkata was pleased to direct the Respondents that if the applicants come out successful in the process they should be given notional benefit from the date when first lot was given appointment and the order of the Hon'ble High Court does not say that the applicants shall be given the benefit notionally with effect from the last candidate under 70% quota was appointed. It is needless to state that the Hon'ble Apex Court and various Hon'ble High Courts in very many occasions have held that passing order contrary to the order/direction of the competent court having jurisdiction to decide the matter is a travesty of the rule of law which is one of the basic structures of the Constitution and held that the executive cannot set at naught a

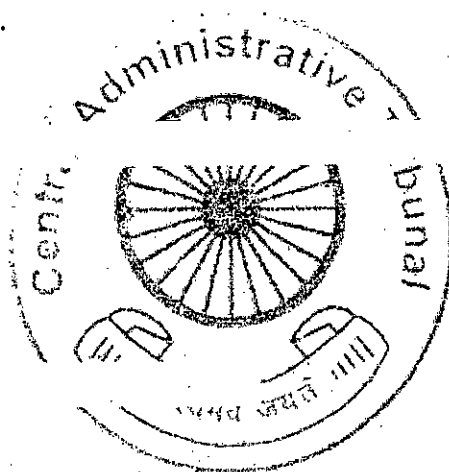
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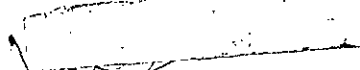
judicial order. The executive cannot sit in an appeal or review or revise a judicial order by giving their own interpretation. It is trite law that which is not possible to do directly cannot be done in an indirect manner and if it is so then the same is bad in law.

6. In view of the above, the order dated 24.12.2014 is hereby quashed being contrary to the order of the Hon'ble High Court, Kolkata and the matter is remitted back to the Respondents to grant the benefits to the applicants strictly in accordance with the order of the Hon'ble High Court of Kolkata, referred to above, within a period of 60 (sixty) days from the date of receipt of a copy of this order.

In the result, this OA stands allowed to the extent stated above. There shall be no order as to costs.

  
(Dr. N. Chatterjee)  
Member (Administrative)



  
(A.K. Patnaik)  
Member (Judicial)

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