
(2002) 09 AHC CK 0036
In the Allahabad High Court
Case No : C.M.W.P. No. 27523 of 2002

Charan Singh and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 02-09-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 4 AWC 3175

Hon'ble Judges : N.K. Mehrotra, J;G.P. Mathur, J

Bench : Division Bench

Advocate : Sudhir Agarwal, for the Appellant; Tarun Verma, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Mehrotra, J.—This writ petition has been filed under Article 226 of the Constitution for quashing the order dated 5.3.2002 (Annexure-19 to the writ petition) passed by the Central Administrative Tribunal, Allahabad, in Original Application No. 1174 of 1995, Charan Singh and Ors. v. Union of India and Ors., for quashing the order dated 4.10.1993 (Annexure-11 to the writ petition) and for a writ of mandamus directing the respondent Nos. 1 to 4 to pay the arrears of salary to the petitioners on account of their promotion to the post of Senior Wagon Repairers--Grade II with effect from the date mentioned in the promotion order dated 30.11.1992 and to give all consequential benefits and arrears of salary along with interest payable to the petitioners.

2. We have heard learned counsel for the petitioners at length.

3. The applicant Nos. 1 to 67 and husband of applicant No. 68 in Original Application before the Central Administrative Tribunal were selected as Trade Apprentices in Mechanical Workshop, Central Railway, Jhansi and after completing their training, they were appointed as Skilled Men in the trade of Wagon Repairers in the pay scale of Rs. 950-1,500. There was one another source of appointment as skilled workmen by way of khalasi helpers after

passing the trade test. A decision for restructuring class IV staff including khalasi helper was taken on 13.11.1982. It was decided to enforce the restructuring with effect from 1.8.1978. As a result of this restructuring, khalasi helpers working in the pay scale of Rs. 825-1,150 were upgraded in the pay scale of Rs. 950-1,500. There was confusion about the date from which the khalasi helpers may be given seniority in the upgraded scale of Rs. 950-1,500. A decision was taken that upgraded khalasi helpers should be assigned seniority from 1.8.1978. The applicants before the Central Administrative Tribunal were aggrieved by this decision and they filed Original Application Nos. 684 of 1986 and 773 of 1986 before the Central Administrative Tribunal. These two original applications were dismissed. This matter went up to the Supreme Court in Civil Appeal Nos. 642 and 642A of 1986. During the pendency of the appeal before the Supreme Court, it was decided by the Railway Board that even the seniority of khalasi helpers shall be reckoned from the date they passed trade test in skilled category. This decision was taken on 26.3.1990, Thereafter, the Supreme Court disposed of all the appeals and petitions on 12.2.1992 in terms of the Railway Board's letter dated 26.3.1990.

4. In pursuance of the judgment of the Hon''ble Supreme Court and the Railway Board Circular dated 26.5.1990, the seniority of the petitioners (applicants before the Tribunal) qua upgraded khalasi helpers was revised. Consequently, the petitioner-applicants were given promotion as Skilled Wagon Repairers Grade-II in the pay scale of Rs. 1,200-1,800 vide order dated 30.11.1992. The petitioner-applicants were however, given proforma promotion and seniority and they were not given the arrears of pay, etc. They made representation but to no effect and, therefore, they filed Original Application before the Tribunal.

5. The Tribunal dismissed the application firstly on the point of limitation and secondly, on merit. The Tribunal took the view that in the order dated 26.3.1990, there was clear contemplation for fixing the pay on proforma basis and the Supreme Court disposed of the appeals of petitioners in terms of the circular letter dated 26.3.1990 and the order dated 26.3.1990 became part of the order passed by the Supreme Court. The Tribunal also relied on the order dated 4.10.1993, by which the representations of the petitioners were disposed of by saying that in terms of the Supreme Court judgment, the seniors have been given proforma promotions and juniors have been reverted. The Tribunal also took the view that the applicants (petitioners) could not be paid arrears of salary as the salaries were actually paid to those who had worked on the post, though subsequently, they had been reverted. According to the Tribunal, the salary could not be paid twice for the same post and there was no direction by the Supreme Court to realise the salary paid to the petitioners while they worked on the higher post and since the order dated 26.3.1990, has merged in the order of the Supreme Court, the petitioners cannot be granted any relief and, consequently, the original application was dismissed by the Tribunal. It is against the order of the Tribunal that this writ petition has been filed for the aforesaid reliefs on the ground that the order dated 4.10.1993 was never addressed to the petitioners

nor even copy of the same was endorsed and, therefore, the original application was well within time from the date of the order of dismissal of the representation and the finding of the Tribunal is perverse and contrary to the material on record. It is also contended by the petitioners that they are not those persons who got benefit under the Railway Board order dated 13.11.1982, regarding restructuring and they were not claiming actual arrears of pay under the orders dated 13.11.1982 and 26.3.1990. It is also contended that they were those persons who suffered on account of the orders dated 13.11.1982 and 26.11.1983, which was subsequently modified by the Railway Board by order dated 26.3.1990 removing the grievance of the petitioners. These three orders did not confer any benefit upon the petitioners but were in respect of those workmen who were in the pay scale of Rs. 825-1,150 and got upgraded scale of Rs. 950-1,500 with effect from 1.8.1978. According to the petitioners, granting promotion with retrospective effect without arrear of salary is illegal and violative of Articles 14 and 16 of the Constitution and the Tribunal has not considered a number of decisions cited by the petitioners in support of their contention. The respondents have taken advantage of their own wrong by not granting arrears of salary.

6. The main question to be decided in the writ petition is whether the petitioners have any legal right for arrears of salary on their retrospective promotion for the period during which they have not worked on those posts and on which post, the juniors had worked and after getting the salary on those posts, they were reverted back for giving way to their seniors, the petitioners. Learned counsel for the petitioners in support of his legal right has referred to number of decisions of various Courts. Learned counsel for the petitioners has referred to R.M. Ramaul Vs. State of Himachal Pradesh and Others, It was a contempt petition in which the interpretation of the order of Court was involved. It is on the basis of interpretation of the order that the Supreme Court allowed the monetary benefit on the strength of the earlier order for the violation of which contempt petition was moved. Learned counsel for the petitioners has further referred to Nand Kishore Nayak Vs. State of Orissa and another, The facts of this case also are not of any help to the petitioners for deciding the issue involved in the instant case. In this case, the Supreme Court did not permit the salary for idle period of 2 years to the employees accepting retirement at lower age fixed. No ratio of this case is found of any help to the petitioners. Learned counsel for the petitioners has further referred State of Andhra Pradesh Vs. K.V.L. Narasimha Rao and Others, In this case, although Supreme Court referred that in normal course when retrospective promotions are effected, all benefits flowing therefrom including monetary benefits must be extended to an officer who has been denied promotion earlier but in that particular case, in the circumstances, the Supreme Court held that arrears shall not be payable for the notional duty periods assigned as a result of revision of seniority position and clearly held that such officers are not entitled to monetary benefits flowing from their respective dates of notional promotion to higher post. This decision is squarely against the claim of the petitioners in the instant writ petition. Further learned counsel for the

petitioners has referred Shaikh Mehaboob v. Railway Board and Ors. 1982 (1) SLR 455 in which a circular stating "that if a civil servant was denied promotion at proper time, he was not entitled to arrears of salary on the ground that he did not shoulder the duties and responsibilities of the higher post" was challenged and the High Court was of the view that denial of arrears of salary to such petitioners cannot be supported.

7. Another case referred by learned counsel for the petitioner is Dipti Prakash Banerjee v. Satvendra Nath Bose National Centre for Basic Sciences, Calcutta and Ors. 1999 (2) AWC 1184 : 1999 (2) ATJ 208 It was a case of termination of an employee and the termination was set aside on the ground that no regular enquiry was conducted before terminating the services and in that circumstance, the reinstatement of the employee with back wages was permitted, so this decision of the Supreme Court is also of no help to the petitioners.

8. Further learned counsel for the petitioners has referred S. P. Singh and Ors. v. State of Bihar and Ors. 1997 (2) ESC 1270 (Pat) which is a decision of Patna High Court. This judgment is against the petitioners in which it was held that a notional seniority and consequential benefits thereof should not be granted if they affect the rights of unrepresented third parties. The Patna High Court held that it is in appropriate cases of notional seniority only that the consequential benefits is permissible. So this judgment of the Patna High Court is also of no help to the petitioners. Further the decision in Maimoona Khatun and Another Vs. State of Uttar Pradesh and Another, referred by the petitioners is again a case where dismissal order was declared to be void and the starting point for claim of the arrears of salary was determined in this case.

9. Lastly, learned counsel for the petitioners has referred to Vasant Rao Roman Vs. Union of India (UOI) through the Central Railway, Bombay and Others, in which the Tribunal at the time of granting seniority in higher grade retrospectively, did not allow payment of arrears of emoluments following the Memo of G.O.I. dated 22.12.1964 but the Supreme Court held that memorandum was not applicable in the case of the appellant and allowed the appeal by permitting payment of arrears. This is a judgment delivered by two Hon'ble Judge of Supreme Court. In one another case of Paluru Ramkrishnaiah and Others Vs. Union of India (UOI) and Another, a Bench of Hon'ble 3 Judges of Supreme Court has accepted the following principle with regard to the payment of arrears of salary by upholding the judgment of Madhya Pradesh High Court in the following words :

"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."

10. Learned counsel for the petitioners has referred one judgment of the Karnataka High Court and another judgment of two Hon''ble Judges of Supreme Court in support of his contentions ; while the judgment of a Bench of 3 Hon''ble Judges of Supreme Court cited above is against the petitioners. In Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., a five-Judge Bench of Supreme Court held that pronouncement of a law by a Division Bench of this Court is binding on another Division Bench of the same or smaller number of Judges Where the view expressed by two different Division Benches of this Court could not be reconciled, the pronouncement of a Division Bench of a larger number of Judges had to be preferred over the decision of a Division Bench of a smaller number of Judges. Therefore, in view of the above settled position, the judgment of a Bench of 3 Hon''ble Judges of Supreme Court in Paluru Ramkrishnaiah (supra), in which the aforesaid principle has been laid down with regard to the non-payment of arrears at the time of retrospective promotion, is to be followed.

11. Moreover, we agree with the reasoning given by the Tribunal that two persons cannot be paid salary for the same post in a particular period and since in the instant case, the juniors have already been paid the salary on the higher post in a particular period and no recovery can be made from them in view of the judgment of the Supreme Court being final, the petitioners-applicant cannot be granted arrears of back wages on the higher post during the said period when their juniors had worked and got the salary.

12. In view of the reasons given above in the circumstances of the case, the petitioners are not entitled to the arrears of salary from the retrospective date from which they were given proforma promotions and consequential seniority. In the result, the writ petition is liable to be dismissed.

13. The writ petition is dismissed at the admission stage.