
(2018) 11 CAT CK 0022

In the Central Administrative Tribunal

Case No : Original Application No. 060, 01273 Of 2017

Gurpiar Singh

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 26-11-2018

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2018) 11 CAT CK 0022

Hon'ble Judges : Sanjeev Kaushik, J;Ajanta Dayalan, J

Bench : Division Bench

Advocate : Jagdeep Jaswal, G.S. Sathi

Final Decision : Dismissed

Judgement

1. The applicant has filed this Original Application (O.A) under Section 19 of the Administrative Tribunals Act, 1985, inter-alia, for quashing the order dated 21.11.2016 (Annexure A-1) and 28.7.2015 (Annexure A-9) to the extent he has been denied pay and allowances for promotion on retrospective basis, and to direct the respondents to allow him financial benefits of promotion as Ticket Examiner (TE) w.e.f. 5.3.2007 and Sr. Ticket Examiner (STE), at par with his junior Arun Kumar w.e.f. 4.1.2010, with all the consequential benefit.

2. The facts leading to the filing of the instant OA, are that applicant, a sportsperson in Kabaddi, joined service as Group D employee (Luggage Porter) w.e.f. 24.6.2000. As per Railway Board letter dated 19.6.2000, sports persons are entitled for out of turn promotion on specific achievements. On denial of this benefit, applicant filed O.A. No.1286-PB-2011, seeking out of turn promotion as had been allowed to applicant in Mandeep Singh Vs. UOI etc., O.A. No.612-PB-2008 decided on 16.8.2010, as upheld by Hon'ble High Court on 16.3.2011. The O.A. was allowed in favour of applicant vide order dated 2.8.2012 on principle of parity. On filing of a Contempt Petition, the applicant was promoted as TE vide order dated 14.6.2013 w.e.f. 5.3.2007, subject to passing of C-I course which was done by him and he was promoted as such from indicated date

with seniority also in that cadre over one Arun Kumar. Arun Kumar was promoted as STE w.e.f. 4.1.2010. The applicant filed an O.A. No.060/00471/2015, claiming promotion as STE w.e.f. 4.1.2010, which was dismissed as withdrawn being premature. The applicant got issued a legal notice dated 22.7.2015 and he was given promotion as STE w.e.f. 4.1.2010. However, he was allowed only proforma promotion and actual benefits were granted from the date of assumption of charge of the post / shouldering higher responsibility, as per PS No.2709. He claimed pay and allowances for retrospective promotion by representation submitted on 11.11.2016, which has been rejected vide impugned order dated 21.11.2016 (Annexure A-1), hence the O.A.

3. The official respondents have filed a reply. They submit that applicant has rightly been denied benefit of pay and allowances as he did not perform duties of higher post for the relevant period in terms of P.S. No.2709. Thus, they have prayed for dismissal of the O.A. The applicant has filed a rejoinder.

4. We have heard the learned counsel for the parties at length and examined the material on file.

5. The learned counsel for the applicant vehemently argued that on parity with case of Mandeep Singh, who was allowed pay and allowances of promotional post, the applicant is also entitled to same benefit. On the other hand, learned counsel for the respondents vehemently argued that in view of provisions of P.S. No.2709, the applicant having not worked on higher post, is not entitled to any benefit.

6. We have considered the rival submissions made by the learned counsel for the parties.

7. A perusal of the pleadings and documents available on record would show that indeed the applicant was eligible for promotion from 2007 and 2010, at par with his juniors. However, he filed first O.A. in 2011 and was granted promotion as TE from 2007 and second O.A. was filed in 2015 which was withdrawn and then he got served a legal notice on 22.7.2015 and in response, he was granted promotion as STE from 2010. Now, he has filed O.A. claiming arrears of pay and allowances in 2017. It is not in dispute that as per PS No.2709, one can draw actual pay only from the date of shouldering higher responsibility and as such the respondents have declined the request of the applicant for grant of arrears of pay and allowances for retrospective promotion. The law on the issue is well settled. There is no hard and fast rules that one has to be allowed or denied benefit of pay and allowances on retrospective promotion, as a straight jacket formula, and each case is to be examined on its own merit.

8. In the first litigation, the applicant approached this Tribunal claiming parity with one Mandeep Singh, for promotion as TE. It was allowed and when he was placed in the cadre, he compare his case with another junior namely Arun Kumar, who was granted benefit as STE since 2010. So, the applicant claimed promotion from retrospective date i.e. 2010, at par with his junior in the cadre. The earlier

promotion denied to the applicant was on the basis of interpretation of the instructions. The respondents were under the impression that unless one applies for promotion, he or she cannot be promoted as this issue came to be settled by this Tribunal, as upheld by Hon'ble High Court, in the case of Mandeep Singh (supra), that it is duty of the respondents to promote the individuals without submission of any applications etc. In these circumstances, the applicant filed two O.As in this Tribunal, in pursuance whereof, he was promoted as TE and STE from 2007 and 2010 retrospectively, with denial of actual pay and allowances for the period the applicant did not perform duties of higher post, in terms of indicated circular. Thus, we do not find any infirmity in the impugned orders, in denial of pay and allowances for the retrospective promotion.

9. In the case of VIRENDER KUMAR, GENERAL MANAGER, NORTHERN RAILWAYS, NEW DELHI V. AVINASH CHANDRA CHADHA AND ORS. (1990) 2 SCR 769, it was held on principle of 'no work no pay' that the employees will not be entitled to the higher salary as they have not actually worked in that post. Further, in STATE OF HARYANA AND ORS. V. O.P. GUPTA AND ORS. 1996 (2) SCT 294, the Court observed as follows:-

"This Court in Paluru Ramkrishnaiah v. Union of India) considered the direction issued by the High Court and upheld 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 higher post, although after due consideration, he was given a proper place in the gradation list having been deemed to be promoted to the higher post with effect from the date his junior was promoted. He will be entitled only to step up the scale of pay retrospectively from the deemed date but is not entitled to the payment of arrears of the salary. The same ratio was reiterated in Virendra Kumar, G.M., N. Rlys. v. Avinash Chandra Chadha."

10. In the aforesaid decision, the Hon'ble Apex Dispensation has distinguished its earlier decision in UNION OF IONDIA ETC. V. K.V. JANKIRAMAN etc. (AIR 1991 SC 2010) as follows:-

"It is true, as pointed out by Shri Hooda, that in Union of India v. K.V. Jankiraman this Court had held that where the incumbent was willing to work but was denied the opportunity to work for no fault of his, he is entitled to the payment of arrears of salary. That is a case where the respondent was kept under suspension during departmental enquiry and sealed cover procedure was adopted because of the pendency of the criminal case. When the criminal case ended in his favour and departmental proceedings were held to be invalid, this Court held that he was entitled to the arrears of salary. That ratio has no application to the cases where the claims for promotion are to be considered in accordance with the rules and the promotions are to be made pursuant thereto."

11. Considering the rule position and judicial pronouncements, we are of the view that a person will not be entitled to any pay and allowances for the period

during which he did not perform the duties of higher post although. In this case, after due consideration, the applicant was given proper place in gradation list having been deemed to be promoted to the higher post w.e.f. the dates his juniors were so promoted. In these circumstances, no employee can be held to be entitled to claim any financial benefits retrospectively, in all circumstances. Present is a case, where we do not find any grounds made out to grant benefit of pay and allowances to the applicant. At the most one may be entitled to re-fixation of the salary on the basis of the notional promotion granted to him / her in different grades, which has been done. Even otherwise, the indicated PS No. relied upon by the respondents grants arrears from the date of actual promotion as such it cannot be said that such a principle is arbitrary or unreasonable. Not only that, the rule denying such benefit has not been challenged, which is the foundation for taking a decision to deny the relief to the applicant, and as such applicant cannot be granted any relief.

12. The decisions relied upon by the applicant of Jharkhand High Court in SWAPAN KUMAR CHATTERJEE VS. UOI ETC. 2017 (4) JLJR 671, VASANT RAO ROMAN VS. UNION OF INDIA, 1993 (3) RSJ, 87; C. BAKTHAVATCHALAM V. UNION OF INDIA, C.A. No.6926 of 2015, decided on 7.9.2015, of Hon'ble Apex Court, BHIM SINGH VS. STATE OF HARYANA, 1995 (4) SCT 45; INDRAJ SINGH VS. STATE OF HARYANA, 2001 (2) SCT 214 of Hon'ble Punjab & Haryana High Court and other decisions, are clearly distinguishable and do not help him at all, considering the peculiar and specific facts of this case and rule position involved in this case. Thus, we do not find any grounds made out to allow any relief of arrears of pay and allowances, for proforma promotion as claimed in this O.A.

13. In the wake of aforesaid discussion, this O.A turns out to be devoid of any merit and is dismissed accordingly, leaving the parties to bear their own costs.