
(1981) 09 KAR CK 0016
In the Karnataka High Court
Case No : WP 3014/76

Shaikh Mehaboob

APPELLANT

Vs

Railway Board and Others

RESPONDENT

Date of Decision : 01-09-1981

Acts Referred:

Constitution of India, 1950 — Article 16(1)

Citation : (1982) 1 KarLJ 131

Hon'ble Judges : M. Rama Jois, J

Judgement

1. The petitioner, who is a railway servant, is aggrieved by the refusal on the part of the respondents to pay arrears of salary consequent on his retrospective promotion to the higher grades.

2. The facts of the case are as follows:

The petitioner was originally working as a Basic Watch Repairer in the service of the railways. According to the petitioner, he was eligible for being promoted to the post of Skilled Grade II in the year 1903, but his junior was promoted to the said post in preference to the petitioner. He was also claiming promotion to the cadre of Skilled Grade I. As the same was denied, the petitioner filed W.P. No. 2579 of 1973. During the pendency of the writ petition, the petitioner was promoted. Accordingly, a memo was filed stating that the grievance of the petitioner did not survive. The writ petition was therefore dismissed as having become unnecessary, by an order dated 18.2.75 (Ex.B). He was given promotion as H.S.K. II from 17.7.71 and H.S.K.I. from 1-8-72. The petitioner claimed that because for no fault of his, the promotion was denied to him till 10.3.75, he was entitled to the difference of salary from 17-7-71 as H.S.K. II and from 1.8.72 as H.S.K.I. This claim of the petitioner was rejected as per the endorsement, a copy of which is produced and marked as Exhibit-D, which reads:

"Reference your application dated 23.5.75 for arrears of pay and allowances, CPO/SC who was referred to in the matter has advised as under:

Please advise the above named employee that in terms of board's letter No. E(NG) 63 PM1/32 of 15/17-7-9-64 he is not eligible for arrears on account, of refixation of pay as HSK II and HSK I w.e.f. 17-7-71 and 1.8.72 respectively since he did not actually shoulder the duties and responsibilities of the post of HSK II and HSK I till 10.3.75, when he joined Hubli workshops as HSK I."

3. From the above endorsement, it is clear that the pay of the petitioner had been revised with effect from 17-7-71 in HSK II and from 1.8.72 in HSK I, but the difference of salary was denied. This was done on the basis of the circular of the railway board, a copy of which is produced and marked as Exhibit-E, which reads:

"Copy of Boards" letter No. E(NG) 63: PMI/82 dated 15/17-9-64 addressed to the GMS/All Indian Railways and others is published for information, guidance and necessary action.

Sub: Hardships to non-gazetted staff due to administrative errors-Loss in seniority and pay.

It has been represented to the board that sometime due to administrative errors staff are overlooked for promotion to higher grades. This could either be on account of wrong assignment of relative seniority of the eligible staff or full facts not being placed before the competent authority at the time of ordering promotions of some other persons. Broadly, loss of seniority due to administrative errors can be of two types:

a) Whereas a person has not been promoted at all because of administrative error; and b) where a person has been promoted but not on the date from which he should have been promoted but for the administrative error.

2. The matter has been considered and the Board desire that each such case should be dealt with on its merits. The staff who have lost promotion on account of administrative errors should on promotion be assigned correct seniority vis-a-vis their juniors already promoted, irrespective of the date of promotion. Pay in the higher grade on promotion may be fixed proforma at the stage which the employee would have reached if he was promoted at the proper time. The enhanced pay may be allowed from the date of actual promotion. No arrears on this account shall be payable, as he did not actually shoulder the duties and responsibilities of the higher grade Posts."

4. The last portion of the above circular states that even 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. In my view, the denial of arrears of salary to the petitioner cannot be supported. The petitioner had a right to be considered for promotion on the dates when it was due in view of the right to equality guaranteed under Art. 14 of the Constitution and right to equal opportunity in matters relating to employment guaranteed under Clause (1) of Article 16 of the Constitution. The said valuable

rights guaranteed by the Constitution cannot be denied in the first instance and thereby deny the civil servant the opportunity to render service in the higher post and subsequently make it a ground for justifying the arrears of salary even after according retrospective promotion, at some point of time later. The giving effect to the circular as against the petitioner having regard to the facts and circumstances of the case, would amount to the violation of the fundamental rights guaranteed to the petitioner under Art. 14 read with Clause (1) of Art. 16 of the Constitution.

5. In the circumstances, I make the following order:

(1) Rule is made absolute;

(2) A writ in the nature of Mandamus shall issue to the respondents to pay the difference of salary to the petitioner in the post of HSK II with effect from 17-7-1971 and in the post of HSK. I with effect from 1-8-1972; and (3) No costs.