

(2024) 11 CAT CK 0006

In the Central Administrative Tribunal

Case No : Original Application No. 1372 Of 2018

Uma Shankar

APPELLANT

Vs

Union Of India Through Its General Manager, North Central
Railway, Subedarganj, Prayagraj & Ors

RESPONDENT

Date of Decision : 21-11-2024

Acts Referred:

Citation : (2024) 11 CAT CK 0006

Hon'ble Judges : Om Prakash VII, Member (J); Mohan Pyare, Member (A)

Bench : Division Bench

Advocate : A.D. Singh, Krishna Kumar Ojha

Final Decision : Dismissed

Judgement

Om Prakash VII, Member (J)

1. Shri A D Singh, learned counsel for the applicant and Shri K K Ojha, learned counsel for the respondents, were present at the time of hearing.

2. The instant original application has been filed seeking following relief:

"i. Direct the respondents to promote the applicant on the post of Mason in the pay band of Rs. 9300-34800 + Grade Pay of Rs. 4200/-

ii. Direct the respondents to issue a fresh amendment PPO in the pay band of Rs. 9300-34800 + Grade Pay of Rs. 4200/- instead of Rs. 5200-20200 + Grade Pay of Rs. 2800/- and accordingly make the fixation of pension and to pay the differences of arrear of pension and payment of arrear of superannuation settlement from the date of entitlement to the date of actual payment is being made with 18% interest per annum.

iii. To grant any other relief which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

iv. Award the cost of the application in favour of the applicant."

3. A compendium of the facts as have been narrated in the present original application has been filed by the applicant seeking relief to direct the respondents to promote him on the post of Mason (MCM) in the pay band of Rs. 9300-34800 + Grade Pay of Rs. 4200/- and to issue a fresh amended PPO in the pay band of Rs. 9300-34800 + Grade Pay of Rs. 4200/- instead of pay band Rs. 5200-20200 + Grade Pay of Rs. 2800/- and accordingly make the fixation of pension and payment of arrears of superannuation with 18% interest per annum from the date of entitlement to the date of actual payment is being made to the applicant for which the applicant is legally entitled as has been claimed by him. Applicant has contended that due to inaction and administrative delay on the part of the respondents, the applicant was not promoted and as such he is accruing loss of pension each and every month and therefore has claimed for aforesaid relief.

4. We have heard learned counsels for the parties and perused the documents on record.

5. Disclosing a brief history of the case, learned counsel for the applicant argued that the applicant was initially appointed on 31.10.1984. While in service, he was promoted as Mason – I on 03.12.2015 in the pay band of Rs. 5200-20200 + Grade Pay of Rs. 2800/-. Total 8 posts of Mason (MCM) were vacant for promotion under departmental quota in which 6 posts were reserved for general category, 1 for SC and ST each. The applicant was considered for promotion on the post of Mason (MCM) in the pay band of Rs. 9300-34800/- + Grade Pay 4200/- by the competent authority of the respondents vide letter dated 25.01.2018 while in service but could not be promoted due to administrative delay and non-providing of the service record of the applicant by the authority concerned and as such he is entitled for promotion. Learned counsel further argued that the said promotion of the applicant was only based upon the scrutiny of the service record and ACR of the employee and not upon any test. In other cadre there is a requirement of suitability test in the Mason – I. The applicant retired from service on 31.01.2018 from the post of Mason – I in the pay band of Rs. 5200-20200 + Grade Pay of Rs. 2800/- instead of Rs. 9300-34800 + Grade Pay of Rs. 4200/- in which he should have been placed during the course of his service itself. Due to the said inaction on the part of the respondents, learned counsel for the applicant argued that the applicant is suffering heavily because of the loss of pension and other consequential benefits. Learned counsel further argued that seeking redressal of his grievance, the applicant also submitted a representation dated 26.04.2018 before the respondent no. 2 but for no avail as no action was taken upon it.

6. Learned counsel for the applicant further argued that the respondent no. 2, after retirement of the applicant, had sent a letter dated 09.07.2018 to the respondent no. 3 in which only the applicant was an employee placed at serial no. 1 in first column for promotion on the post of Mason (MCM) in the pay scale of Rs. 9300-34800 + Grade Pay of Rs. 4200/- and directed the authority to

provide the service record for promoting the applicant on the said post even though the applicant was not promoted. Further, the respondent no. 4 issued a letter dated 23.07.2018 to respondent no. 5 directing to provide the service book of the applicant who was placed at sl no. 1 in the list of vigilance clearance clearly for the purpose of consideration of promotion of the applicant but the requisites were not provided. Thus, learned counsel argued that it is clearly evident that due to inaction and administrative delay on the part of the respondents, the applicant could not get promoted and therefore he is legally entitled for promotion. Thus, referring to entire facts and circumstances of the case, prayer was made to allow the original application thereby granting the relief sought.

7. Learned counsel for the respondents vehemently opposed the submissions of the applicant's counsel and by way of counter affidavit, he argued that the Grade Pay of Rs. 4200/- was not considered for promotion. Learned counsel argued that although it is true that the details of clearance and grading of APAR were sought from the officer concerned by letters dated 25.01.2018 and 09.07.2018, but since the applicant retired under his age limit on 31.01.2018 and he was not in service when the promotion could have been conferred upon him, thus there is no justification for giving benefits of promotion to him at a belated stage as that would be both illegal and uncalled for. The applicant has retired from service at the time when promotion could be granted to him and whatever post-retirement benefits accrued, have already been conferred upon him as per the PPO. Further, no representation as claimed by the applicant, has been received in the office of the respondents. Thus, referring to the entire facts and circumstances of the counter affidavit, prayer was made to dismiss the OA as being devoid of merits.

8. Rejoinder has been filed by the applicant citing the same averments as have been given in the OA.

9. We have considered the rival contentions and gone through the documents on record.

10. As the facts of the case have been recorded above in detail they are not reiterated. Admittedly, during the tenure of his service, the applicant was granted promotion to the post of Mason I vide letter dated 03.12.2015 in the pay band of Rs. 5200-20200 + Grade Pay of Rs. 2800/- and carrying the same post, he got retired upon attaining the age of superannuation. Contention of the applicant is that before attaining the age of superannuation, the applicant had completed requisite prescribed service to be considered for promotion to the post of Mason (MCM) which carries the pay band of Rs. 9300-34800/- + Grade Pay of Rs. 4200/-, however, the said promotion was not conferred upon him. Learned counsel for the applicant has also contended that even the respondents were ready to grant promotion to the applicant and that is why, the vide letter dated 25.01.2018, the competent authority has considered the promotion of the applicant to the post of Mason (MCM) in the aforesaid pay scale. But the same was not granted to the applicant due to administrative inaction and lapses and in

the meantime, the applicant got retired on 31.01.2018.

On the other hand, respondents have contended that although it is true that the promotion of the applicant to the post of Mason (MCM) was considered vide letter dated 25.01.2018, but the same was subject to fulfilling other conditions such as vigilance clearance, non-pendency of court cases, satisfactory service, forwarding of service records etc for which it is needless to say that some time is required. In the case of the applicant, he was not granted promotion because of the fact that just few days after issuance of the letter dated 25.01.2018, the applicant got retired on 31.01.2018 upon reaching the age of superannuation and the process of granting promotion was not completed by that date.

11. It is needless to reiterate that mere mentioning of the name of any employee in the provisional select list / promotion list does not confer any right of promotion of the said employee. Promotion is always subject to several other factors including satisfactory working, vigilance clearance, pendency or non-pendency of legal cases, completion of requisite residency period, passing of requisite promotional courses, etc. In the instant case of the applicant, although it is true that the process of consideration of promotion was started just a few days after the applicant had attained the age of superannuation and provisional list dated 25.01.2018 was issued in this regard, but the said process was never finalized in the tenure of the applicant as the promotion was always subject to fulfillment of several other factors as have been stated above. Just 6 days after the issuance of the provisional list, the applicant got retired upon attaining the age of superannuation. Thus, the Tribunal finds no cogent or reasonable grounds as to why the applicant be awarded antedated promotion when he was not in service when the process of promotion was finalized. Furthermore, no reasonable explanation or case law has been advanced on the part of the applicant's counsel which may establish as to why the applicant be given promotion from a back date and his post retiral pay be adjusted accordingly. Also, allowing the plea of the applicant would simply mean granting him seniority / promotion from the back date i.e., from the period when he was not on the said post he is seeking promotion on, which would be both illegal and against the prescribed service rules. A person cannot be assigned seniority with effect from the date when he was not in service or he was not borne in the cadre.

12. Thus, in view of the aforesaid deliberations and analysis, the Tribunal is of the considered opinion that the plea of the applicant is not liable to be entertained. Accordingly, the instant original application is dismissed as being devoid of merits.

13. All associated MAs stand disposed of. No costs.