
(2012) 06 CAL CK 0026
In the Calcutta High Court
Case No : W.P.C.T. No. 579 of 2005

Union of India

APPELLANT

Vs

Tara Lal Das

RESPONDENT

Date of Decision : 29-06-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 1 CALLT 325 : (2012) 4 CHN 641

Hon'ble Judges : Nishita Mhatre, J; Anindita Roy Saraswati, J

Bench : Division Bench

Advocate : Swapan Banerjee and Saptarshi Roy, for the Appellant; Surajit Samanta and B.C. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Nishita Mhatre, J.—Being aggrieved by the decision of the Central Administrative Tribunal, Calcutta Bench in O.A. No. 540 of 2003. The petitioners have approached this Court under Article 226 of the Constitution of India. The Tribunal has allowed the original application filed by the respondent and directed the petitioners to fix his pay on promotion to the post of Head Typist with effect from 14th March 2003 at Rs. 6050/-. All consequential benefits were directed to be paid to the respondent. The brief facts giving rise to the present petition are as follows :-

The respondent was appointed as a Junior Typist with the petitioners from 18.03.1978. He was promoted to the post of Senior Typist on 27.09.1979. A further promotion was extended to him as Head Typist in the scale of Rs. 1400-3200/- with effect from 01.10.1994 and his substantive pay was fixed at Rs. 1680/- Indisputably, the promotion of the respondent to the post of Head Typist was on an officiating basis whereas his service as a Senior Typist was regularised on 20.07.1994. When the respondent was directed to work as a Head Typist on an officiating basis he held lien on the post of Senior Typist. Later the respondent was declared surplus as Head Typist and, therefore, was reverted to the post of

Senior Typist. While working as a Head Typist on officiating basis, the petitioner was paid an amount of Rs. 6050/- in the revised scale of Rs. 5000-8000/-. When the petitioner was reverted to the post of Senior Typist he was drawing pay in the scale of Rs. 4000-6000/-. The respondent was then promoted on a regular basis as Head Typist with effect from 14.01.2003 and was paid salary in the scale of Rs. 5000-8000/-. However, when he was promoted on a regular basis the respondent was not paid salary of Rs. 6050/- which he was drawing while officiating as a Head Typist instead he was paid Rs. 5300/-. A recovery notice was issued on 06.05.2003 to the respondent for recovery of the excess payment made to him. The respondent, therefore, approached the Administrative Tribunal for quashing the recovery notice and for re-fixation of his pay as Head Typist.

2. The petitioners in their reply before the Tribunal contended that the respondent had accepted his promotion as Senior Typist in the year 1994 without any grievance and had filed the original application only in the year 2003. It was, therefore, pleaded that the application was barred by limitation. The petitioners contended in their reply that the respondent's promotion to the post of Head Typist was not a regular promotion but a conditional one, conferring no title and seniority over his seniors in the parent department. His salary was paid in accordance with the others in his parent department and, therefore, it was pleaded that the respondent was not entitled to any relief. The Tribunal, after considering the pleadings and the submissions of the parties before it, held that the respondent was entitled to the relief claimed by him. The Tribunal relied on the judgment of the Supreme Court in the case of Union of India and another Vs. R. Swaminathan, The Tribunal calculated that the respondent could not be paid salary of the post of Head Typist at rate which was lower than that which was paid to him when he was officiating in the same post. Accordingly, the Tribunal granted the respondent the salary of Rs. 6050 in the pay-scale of Rs. 5000-8000/-

3. Mr. Banerjee, learned counsel appearing for the petitioners has submitted that the Tribunal has misdirected itself inasmuch as it has relied on the judgment which has no application to the facts involved in the present case. He submitted that the respondent had been working as a Junior Typist and was promoted as Senior Typist on a regular basis in the open line department. However, he was promoted to an ex-cadre post on an ad hoc basis as Head Typist and was paid an amount of Rs. 6050/- as salary. According to the learned counsel since his ad hoc promotion was in an ex cadre post in the construction line department the respondent was not entitled to the same salary when he was appointed as Head Typist in the open line department on a regular basis. He submitted further that when the respondent was promoted to an ex-cadre post he was aware that his promotion was conditional and that he was not entitled to seniority or any benefits attached to the post. The learned counsel then pointed out that the respondent had raised no objection when he was reverted to the post of Senior Typist from the post of Head Typist and was paid a lower salary than that he was drawing as Head Typist. He was, therefore, estopped from seeking the salary,

which he was paid while officiating in an ex-cadre post, urged the learned counsel.

4. Mr. Banerjee has also brought to our notice that Rule 1313 and Railway Board's Orders. According to him, when a railway servant holding an ex-cadre post is promoted or appointed regularly to his cadre post, his pay must be fixed on the basis of that payable to that cadre post.

5. Learned counsel appearing for the respondent has submitted before us that there no distinction can be made between the two eventualities, that is, when a person officiates in a post in the same cadre as he is working or he officiates in an ex cadre post. According to him the norms of fixation on the salary are laid down in the rules governing the pay fixation as applicable to the railway employees. These rules have been clarified and more specifically explained by the issuance of the Advance Correction Slip No. 37 by the Railway Board being No. [F (E) II 2001/FOP/1, dated 05.10.2001]. The manner in which the broken periods of officiating service in a higher grade are to be reckoned for the purposes of payment of increment has been clarified. The learned counsel pointed out that Rule 1313 has been explained in this correction slip by an illustration in which no distinction has been drawn between cadre post and ex cadre post. The learned counsel laid great emphasise on the judgment of the Supreme Court in the case of Union of India and Anr. vs. R. Swaminathan (supra). The learned counsel submitted that the Tribunal has not committed any error by granting relief to the petitioner and, therefore, this Court ought not to interfere with the impugned order by exercising its writ jurisdiction under Article 226 of the Constitution of India.

6. The indisputable facts in the present case are that the respondent was regularised in service as a Senior Typist on 20.07.1994 in the open line. He was promoted to an ex-cadre post, that is, in the construction line department as Head Typist on an ad hoc basis with effect from 01.10.1994. On being declared surplus as a Head Typist the respondent was reverted and joined duty as a Senior Typist in the open line on 17.04.2002. While promoting the respondent to the post of Head Typist on ad hoc basis he was allowed to retain his lien on the post of Senior Typist in the open line cadre. He was issued a letter by the department indicating that the promotion was purely by way of an ad hoc arrangement and would not confer upon him any title or seniority over his seniors in his parent department. The submission of Mr. Banerjee that this note contend in his promotion order issued on 29.09.1994 is sufficient to indicate that the respondent was not entitled to seniority and other benefits over his seniors in the parent department. According to him, the judgment of the Tribunal grants the respondent seniority over persons who are senior to him in his parent department, in as much as he would be drawing a salary which was higher than their salary. This submission is unacceptable. Merely because a person is drawing a particular salary it would not necessarily mean that he is senior to others in his department. The seniority of an employee is normally determined by the number

of years of service.

7. The rules applicable for payment of salary to the employees of the Railways are prescribed under the Indian Railway Establishment Manual which adopts the Fundamental Rules. Rule 1313 which is the same as Fundamental Rule 22(1) has been relied on by the petitioners to submit that this rule has been amended by the Railway Board's Orders with effect from 02.07.1959. Clause (3) (iv) provides as follows:-

Notwithstanding anything contained in this rule, where a railway servant holding an ex cadre post is promoted or appointed regularly to a post in his cadre, his pay in the cadre post will be fixed only with reference to his presumptive pay in the cadre post which he would have held but for his holding any ex cadre post outside the ordinary line of service by virtue of which he becomes eligible for such promotion or appointment.

8. Great emphasis has been laid on this clause by Mr. Banerjee in support of his submission that the respondent is not entitled to the salary he was drawing when he was officiating in an ex cadre post. It must be noted here that Rule 1313 has been explained by the railway authorities by issuing Advanced Correction Slip No. 37. This slip refers to Advance Correction Slip Nos. 14 & 15 which was issued consequent to the amendment of the fundamental rules. On a clear reading of Rule 1313 which is sought to be explained in Correction Slip No. 37 it is obvious that it does not draw any distinction between a cadre post and an ex cadre post.

9. A bare perusal of this Correction Slip indicates that the petitioners' case is untenable. While issuing the Advance Correction Slip No. 37 the railways obviously considered their earlier orders, including the one issued on 02.07.1959 wherein a distinction is sought to be made as regards cadre posts and ex cadre posts. However, the latest Correction Slip of 2001 deals with payments to be made to an employee on an ad hoc promotion.

10. In the case of Union of India and Another vs. R. Swaminathan and Ors. (supra) the Supreme Court has interpreted Fundamental Rule 22(I)(a)(I) which is in effect is Rule 1313 of the railways. The Court has held that if the person so promoted to a post in which he has officiated earlier or has held that higher post for short or long duration, then his initial pay fixed should not be less than the last paid drawn by him when he last hold the higher post in whichever his capacity.

11. We are not impressed by the argument by Mr. Banerjee, that if the Tribunal's order is upheld it would lead to heartburn amongst the senior employee in the department. Such a situation was considered by the Supreme Court in the aforesaid judgment and it has held that the senior employees are not entitled to have their pay stepped up because of the difference in paid drawn by them and the higher paid drawn by their juniors because they officiated in a post earlier. Such a difference in pay does not result in an anomaly.

12. In our opinion, therefore, the decision of the Tribunal is correct and must be upheld. Accordingly the Writ Petition is dismissed without any order as to costs.

Urgent certified copy of this order, if applied for, be given to the learned Advocates for the parties upon compliance of all necessary formalities.

Anindita Roy Saraswati, J.

I agree.