

(2003) 09 RAJ CK 0015

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4227 of 2002

Union of India (UOI) and Others

APPELLANT

Vs

C.A.T. and Others

RESPONDENT

Date of Decision : 10-09-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2004) 3 RLW 1414 : (2003) 1 WLC 310

Hon'ble Judges : O.P. Bishnoi, J;N.N. Mathur, J

Bench : Division Bench

Advocate : J.P. Joshi, Manoj Bhandari and Kamal Dave, for the Appellant; S.K. Malik, S.L. Jain and Daya Ram, for the Respondent

Final Decision : Allowed

Judgement

N.N. Mathur, J.—In this group of writ petitions filed by the Railway Administration the question of wide ramification arises for consideration is as to whether an employee who was not promoted earlier due to administrative lapse, on his retrospective notional promotion to higher post subsequently w.e.f. the date of his juniors have been promoted would be entitled to the arrears of pay and allowances with retrospective date.

2. Para 228 of the Indian Railway Establishment Manual provides that when a particular person does not work on a particular post, he cannot be granted the actual arrears of pay on the particular post as he has not discharged the duties on that post. The said Para is held to be invalid and violative of Article 14 & 16 of the Constitution of India by a Full Bench decision of the Central Administrative Tribunal dated 11.2.2002. It is held therein that an employee who was not promoted earlier due to administrative lapse, on his retrospective notional promotion to higher post subsequently w.e.f. the date his juniors have been promoted would be entitled to the arrears of pay and allowances with retrospective date. The reasoning given by the Full Bench of the Tribunal find place in Para 6 of the judgment, which is extracted as follows:-

"Aforesaid decision of the Karnataka High Court is binding upon us. Besides it, the provisions of para-228 of IREM (Vol. I) have also been declared invalid by the Full Bench (supra). Moreover, even on first principle, we find no justification in denying the employees pay and allowances for the period when they had been prevented from working not on account of any fault of theirs but on account of the fault of the management. Had they not been prevented from working by the management, they would have definitely worked, in which case they would have been entitled to pay and allowances. If they have prevented on account of the fault of the management, we find no justification in denying them the pay and allowances."

The decision of the Karnataka High Court on which the Tribunal has placed reliance has been referred in Para 3 of the judgment, which is extracted as follows:-

"The Karnataka High Court in the case of Saikh Mehboob v. Railway Board and Ors., 1982(1) SLR 455 has observed, thus:

"3.....

2.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 equal opportunity in matters relating to employment guaranteed under Cause (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 violation of the fundamental rights guaranteed to the petitioner under Article 14 read with Clause (1) of Article 16 of the Constitution."

3. We have heard Mr. J.P. Joshi, Mr. Kamal Dave and Mr. Manoj Bhandari learned counsel for the petitioners in support of the contention to the effect that a person who does not discharge duties of the higher post is not entitled for any arrears of

salary as he did not discharge the duties and worked on that particular post, in other words the application on the principle of "no work no pay". On the other hand Mr. S.K. Malik, Mr. S.L. Jain and Mr. Daya Ram learned counsel for the respondents have supported the view of the Tribunal. Before proceeding to deal with the rival contentions, it would be convenient to read Para 228 IREM as follows:-

"228. Erroneous Promotions.-(I) Sometimes due to administrative errors, staff are over-looked for promotion to higher grade 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 promotion or some other reasons. Broadly, loss of seniority due to the administrative errors can be of two typed:-

(i) Where a person has not been promoted at all because of administrative error, and

(ii) Where as person has been promoted but not on the date from which he would not have been promoted but for the administrative error.

Each such case should be dealt with on its merits. The staff who have lost promotion on account of administrative error 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 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 posts."

4. It has brought to our notice that the Ernakulum Bench of the Tribunal in the case of M. Balakrishna Nair v. Divisional Personnel Officer took the view that the employee will be entitled to the benefit of the salary from the date he was granted proforma promotion and not from the actual date from which the promotion was given. The said judgment is said to be a leading case which has been followed at the various Bench of the Central Administrative Tribunal. The learned counsel for the petitioners have placed before us a copy of the order of the Apex Court, wherein the Court has clearly ruled that the Tribunal was not right in directing the deletion of the clause prohibiting the payment of arrears for the work actually not done by the employee. The brief order of the Apex Court is extracted as follows:-

ORDER

"This appeal is directed against the order of the Central Administrative Tribunal, Ernakulum Bench, in O.A. No. 649/90 dated 30th September, 1991. Though the appeal challenges the order in its entirety, Mr. Goswami learned counsel for the appellants fairly stated that the appeal is now confined only to the payment of back-wages ordered to be given by the Tribunal.

By the order under appeal, the Tribunal has allowed the application which

challenged the Railway Board Circular dated 15/17 September, 1964. The said Circular stated:

"No arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher posts."

Consequent to the deletion of the above clause further directions were given. Learned counsel submits that the clause, which has been directed to be removed, is in accordance with the judgment of this Court in *Virender Kumar, General Manager, Northern Railways, New Delhi Vs. Avinash Chandra Chadha and others*, This Court, in that case held on principle of "no work no pay" that the respondents will not be entitled to the higher salary as they have not actually worked in that post. The clause, which has been directed to be deleted by the Tribunal being in consonance with the ruling of this Court, we are of the opinion that the Tribunal was not right in directing the deletion of that clause. Accordingly, to that extent this appeal is allowed. The result is that the respondents will be given deemed promotion, if any, before retirement and also the benefit in the matter of fixing pensions. No costs."

5. The Apex Court in *Virendra Kumar, General Manager, Northern Railways, New Delhi v. Avinash Chandra Chadha and Ors.* (1), dealing with the principle of "no work no pay" has observed in Para 16 as follows:-

"The respondents have not actually worked in the said posts and, therefore, on the principle of "no work no pay" they will not be entitled to the higher salary. Hence, we give no directions in this behalf and leave it to the appellant to give such relief as they may deem fit."

6. In *State of Haryana and Ors. v. O.P. Gupta and Ors.* (2), the Court observed as follows:-

"This Court in *Paluru Ramkrishnaiah v. Union of India* (SCR at p. 109; SCC p.556, para 19) 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* (SCC p.482, para 16)."

7. In the case of *State of Haryana v. O.P. Gupta* (supra), the Apex Court has distinguished its earlier decision in *Union of India etc. v. K.V. Jankiraman*, etc. (3), 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."

8. As far as Karnataka High Court is concerned, a photo stat copy of order of the Division Bench in Divisional Railway Manager and Anr. v. D.L. Deshpande and Anr. dated 18th June, 2000 (4), has been placed before us. In the said case a decision of the Tribunal relying on the decision of the Ernakulum Bench has been set aside and the validity of Para 228 has been upheld.

9. Thus, in our view a person will not be entitled to any pay or allowances during the period for which he did not perform the duties on higher post although after due consideration, he was given proper place in gradation list having been deemed to be promoted to the higher post w.e.f. the date his junior was promoted. No employee can be held to be entitled to claim any financial benefits retrospectively. At the most he may be entitled to re-fixation of the salary on the basis of the notional seniority granted to him in different grades and he may also be entitled the pensionary benefits. The provisions contained in Para 228 deny the arrears from the date of notional promotion in case where the promotion is with-held or not granted due to administrative lapse. It is based on principle of "no work no pay". The rule allows arrears from the date of actual promotion as such it cannot be said that such a principle is arbitrary or unreasonable. In our opinion, the view of the Full Bench of the Tribunal holding Para 228 of IREM as invalid and violative of Articles 14 & 16 of the Constitution of India is not correct. We hold Para 228 of IREM intra vires of the Constitution. Each case will have to be decided on its own merit.

10. In view of the aforesaid, all the writ petitions filed by the Union of India are allowed and the impugned order of the Central Administrative Tribunal in each writ petition is quashed and set aside to the extent of directing petitioners to pay the salary from the back date. The each Original Application shall be restored to its original number. The Tribunal is directed to give fresh decision keeping in view that Para 228 of the IREM is intra vires of the Constitution. Cost easy.