

(2004) 08 RAJ CK 0024

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4760 of 2003

Union of India (UOI) and Others

APPELLANT

Vs

Central Administrative Tribunal and Another

RESPONDENT

Date of Decision : 27-08-2004

Acts Referred:

Citation : (2005) 104 FLR 404 : (2005) 1 RLW 283 : (2004) 4 WLC 445

Hon'ble Judges : Anil Dev Singh, C.J.; Krishan Kumar, J

Bench : Division Bench

Advocate : Manoj Bhandari, for the Appellant; S.K. Malik, for the Respondent

Final Decision : Dismissed

Judgement

Anil Dev Singh, C.J.—This writ petition is directed against the order of the Central Administrative Tribunal, Jodhpur dated 13th December, 2002 rendered in Original application No. 29/2002, whereby the petitioners (herein) were directed to consider the case of the second respondent for being promoted to the post of Office Superintendent Gr.-I in the pay-scale of Rs. 6500-10500 with effect from 19.09.1996 i.e., the date from which persons junior to him were promoted.

2. The second respondent was appointed as Clerk in the pay- scale of Rs. 260-400 in the Railways. It appears that the respondent was denied promotion as Sr. Clerk. Aggrieved by the action of the petitioners the respondent preferred a writ petition in the year 1981 seeking direction to the appellants to promote him as Sr. Clerk. Subsequently, the writ petition was transferred to the Central Administrative Tribunal, Jodhpur Bench. The Tribunal accepted the writ petition and the same was treated as Original Application and directed the petitioners to promote the second respondent as Sr. Clerk. Thereafter, the second respondent filed Original Application seeking promotion to the post of Head Clerk and Assistant Superintendent. The relief prayed for by the respondent was accorded by the Tribunal. It appears that for every promotion, the second respondent had to seek legal remedy and only then he was able to secure the promotions. Even

he was denied promotion to the post of Office Superintendent Gr.-I.

3. The second respondent, having been denied the promotion to the post of Office Superintendent Gr.-I, filed yet another Original Application before the Central Administrative Tribunal, Jodhpur Bench, The Central Administrative Tribunal, Jodhpur Bench by its order dated 13th December, 2002 allowed the application and directed the respondents to consider the case of the applicant for being promoted to the post of Office Superintendent Gr.-I in the pay-scale of Rs. 6500-10500 with effect from 19.09.1996 i.e., the date from which persons junior to him viz., Om Prakash Agarwal and Prahlad Kumar Meena were promoted. Aggrieved by the order passed by the Tribunal, the petitioners have filed the instant writ petition.

4. While admitting the writ petition it was directed by the Division Bench of this Court by an ad interim order dated 03.09.2003 that the appellants shall consider the case of the .respondent for notional promotion on the post of Office Superintendent Gr.-I in the pay-scale of Rs. 6500-10500 with effect from 19.09.1996 as directed by the Tribunal. However, the Division Bench while admitting the writ petition granted stay in so far as the consequential benefits including arrears of pay with effect from 19.09.1996 are concerned.

5. The learned counsel appearing for the petitioners pointed out that pursuant to the interim order dated 03.09.2003 passed by the Division Bench at the time of admission of the writ petition, notional promotion was granted to the second respondent on the post of Office Superintendent (Gr.-I) in the grade-of Rs. 6500-10500 with effect from 19.09.1996, the date from which his juniors were so promoted. Learned counsel for the petitioner submitted that since the petitioner did not work on the post of Superintendent Gr.-I he was not entitled to the benefits of arrears of pay in respect of the higher post with effect from 19.09.1996 on the basis of the principle of "No work, no pay". The learned counsel, however, conceded that the consequential benefits of the higher grade will be available to the second respondent for the purposes of pension etc. We have considered the submissions of the learned counsel for the petitioners. However, we regret our inability to accept the contention that the second respondent will not be entitled to the grant of consequential benefits of arrears of pay in respect of the higher post with effect from 19.09.1996. The second respondent was denied promotion for no fault of his, rather he was deprived of the promotion in the year 1996 on account of the mistake of the petitioners. It is well settled that no one can be allowed to suffer for the mistake of the other person. It is not in dispute that the second respondent was entitled to promotion with effect from 19.09.1996. The second respondent was willing to work against the higher post but was denied the opportunity to work by the petitioners. The petitioners themselves having denied the opportunity cannot be heard to say that the second respondent should not be paid salary for the higher post with effect from 19.09.1996 as he did not perform duties of the higher post. In *Union of India Vs. K.V. Jankiraman, etc. etc.*, the Supreme Court held that where a

person is willing to work but was not given the opportunity to work for no fault of his, he would be entitled to payment of arrears of salary.

6. Learned counsel for the petitioners, however, relied on the decision of the Supreme Court in 2003 (7) SCC 23 (2). In this case, the appellant was appointed as a Clerk under the respondent Bank. She appeared in the written test for promotion to the post of Officer, (Junior Management Grade). She was declared successful in the examination. Thereafter, she appeared in the interview but was not selected as she failed to obtain the minimum marks in the interview. Aggrieved by the decision, she filed a writ petition. The Single Judge of the Kerala High Court held the stipulation of obtaining the minimum marks in the interview to be bad in law. Accordingly, the learned Single Judge directed that the result of the appellant be determined de hors the stipulation. On appeal by the Bank, the Division Bench of the High Court affirmed the order of the learned Single Judge. In further appeal, the Supreme Court held the stipulation to be valid. Having held that, the Supreme Court took the view that the matter remained pending in appeal before it for more than a decade and, therefore, the respondent should not be allowed to suffer on account of the pendency of the appeal. The Supreme Court directed that the respondent should be given the benefit of the High Court's decision. The grant of relief to the respondent by the Supreme Court was in the nature of gesture of gratis and not by way of right. Consequently, the notional promotion given by the Bank to her with suitable modifications was held to be sufficient to meet the ends of law and equity. Further payment of arrears of pay was not granted. The facts of the aforesaid case are different from the facts of the instant case. As already pointed out the Supreme Court granted the relief as a matter of gesture of gratis and not by way of any entitlement of the respondent; but, in the instant case, the relief given to the second respondent by the Tribunal, was based on the light of the respondent and it was not a gesture of gratis. The second respondent (herein) was wrongly denied promotion, therefore, he cannot be allowed to suffer for the mistake of the petitioners in not granting promotion to him when the same was due to him on 19.09.1996. The principle of no work, no pay cannot be invoked by the petitioners as the second respondent was not unwilling to work but the opportunity to work was not given to him though he was eligible for being promoted.

7. In the circumstances, therefore, we do not find any merit in the writ petition. The writ petition is, therefore, dismissed.