

Chatter Singh Vs. Uoi and ors.

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Court : Delhi

Decided On : Aug-25-2014

Judge : S.Ravindra Bhat

Appellant : Chatter Singh

Respondent : Uoi and ors.

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + Date of Decision:

25. 08.2014 % W.P.(C) 1725/2012 CHATTER SINGH Through : Petitioner Mr. K.Venkatraman, Adv. versus UOI & ORS, Respondents Through : None
CORAM: HON'BLE MR. JUSTICE S. RAVINDRA BHAT HON'BLE MR. JUSTICE VIPIN SANGHI S. RAVINDRA BHAT, J.

(OPEN COURT) C.M. No.10708/2014 (for early hearing) This is an application for early hearing. For the reasons stated in the application, the petition is taken up today. The application is allowed and stands disposed of accordingly. W.P.(C) 1725/2012 1. The petitioner challenges an order of the Central Administrative Tribunal (CAT) dated 07.12.2011 in O.A. No.1043/2008, in which his complaint of not being given arrears for the period from 01.03.1993 to 08.08.1995, at par with the juniors in the Painter Grade-I, was rejected.

2. The petitioner, at the relevant time, was working in the Indian Railways as Painter and the next grade for promotion from Grade-II was that of Grade-I.

Sometime in 1993, cadre re-structuring took place in the Railways. Pursuant to this, the pay-scales and certain other terms and conditions of service were altered. However, the condition of Grade-II employees having to clear a trade test in order to secure the pay-scale attached to Grade-I survived. It is a matter of record that the petitioners juniors S/Shri Krishan Lal, Ram Swaroop, Hari Singh, Sri Niwas, Tejwant Singh, Subhash Chander and Surinder Kumar passed the trade test; their test result was declared on 08.08.1995. Consequently, an order fixing their pay-scale was issued on 19.10.1995. In this, those juniors were given the benefit of Grade-I along with arrears with effect from 01.03.1993. The petitioner felt aggrieved and approached the Tribunal on an earlier occasion by preferring OA No.1300/2006. He contended that though he was promoted in 1999 after a fresh trade test was held, he was denied the pay-scale and similar benefits which were extended to those juniors (in the higher pay-scale, i.e. Grade-I of Rs.4500-7000 with effect from 01.03.1993). By the time the order was made by the CAT, the petitioner had retired. The CAT, relying upon an earlier Full Bench order, directed the Indian Railways to process the petitioners claim as to his entitlement for arrears from 01.03.1993 to 16.09.1999. This order was challenged by the Railways in the Writ Petition W.P.(C) 11365/2009 (Union of India v. Chatter Singh) which was disposed of on 27.10.2010. This Court quashed the order of the CAT and directed it to decide the core issue as to whether the restructuring amounted to upgradation, the benefits of which were automatically available to all.

3. In the fresh round, the Tribunal called for pleadings; additional and supplementary affidavits were filed. These disclose that apart from the trade test held on 03.07.1995, in which the petitioners juniors were successful, other trade tests were held on 04.07.1995 and 18.07.1995 for the post of Painter, Grade-I in the pay-scale of Rs.1320-2040 (replaced by Rs.4400-7000). The pay fixation order made in the case of those successful in the said trade test clarified that they were entitled to the grade with effect from 01.03.1993. The CAT noticed, in the impugned order, that six out of the seven persons were given benefit of pay-scales with retrospective effect, i.e. 01.03.1993 whereas one Shri Surinder Singh who appeared in the trade test in 1995 was given the benefit with immediate effect. On this basis, the CAT held that the benefit of restructuring scheme had to be extended to the resulting vacancies by resorting to modified selection procedure,

based upon scrutiny of service record and confidential reports and not on the basis of the qualifying trade test alone. The CAT also relied upon guidelines on 27.01.1993 in this regard. The CAT therefore looked into the matter and was of the opinion that the petitioners juniors were promoted in October, 1995 after passing trade test, by resorting to the normal procedure against vacancies of the direct recruit quota and not by preparation of panel approved on or before 01.03.1993.

4. The following finding of the CAT is relevant in this regard:

Thus, we are of the view that the persons junior to applicant were granted promotion by resorting to normal procedure against direct recruits vacancies and qualifying trade test and it is not a case of upgradation where junior persons were granted benefit under the restructuring scheme on the basis of the panel prepared on or before 01.03.1993 as such cannot be said to be a case of upgradation. Thus, according to us, the ratio as laid down by the Full Bench in the case of B.S.Tyagi (supra) is not attracted in the instant case. Further, the decision rendered by the Full Bench in the case of B.S.Tyagi (supra) has been partly overruled and cannot be said to be a good law, in view of the decision rendered by the Rajasthan High Court in the case of Union of India & Others vs. CAT & Others, 2004(1) ATJ141 whereby the High Court in para-9 has specifically held that in their 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. It was further held that in terms of a provision contained in para 228 of IREM arrears of pay and allowances to an employee not promoted earlier on account of administrative lapse can be denied on the principle of no work no pay but such employee shall be entitled to only seniority and re-fixation of salary on the basis of the notional promotion with retrospective effect from the date when his juniors were so promoted. Since the applicant has not shouldered the duties of the higher post as such, according to us, we see no infirmity in the action of the respondents whereby the applicant has been extended the benefit of actual promotion w.e.f. 1.3.1993 and declined arrears of pay for the period w.e.f. 1.3.1993 to 16.09.1999. The view, which we have taken is in conformity with the decision of the Apex Court in the case of Virender Kumar, General Manager, Northern Railway, New Delhi vs. Avinash Chandra Chadha and Others, 1990 (3) SCC472 and Union of India & Ors.

Vs. Tarsen Lal & Others [2006 (6) SLR5 and more particularly in view of the specific provision made in para 228 of Indian Railway Establishment Manual, Volume-I, which stipulates that in the case of erroneous promotion on account of administrative error pay in the higher grade on promotion be fixed on proforma basis but the enhanced pay may be allowed from the date of actual promotion.

5. Learned counsel urges that the CATs finding, denying the pay-scales to the petitioner on the same basis on which juniors were given that benefit with effect from 01.03.1993, is arbitrary and erroneous. It was submitted that even though the petitioner himself qualified in the trade test in 1999, the respondents were alive to the fact that he was entitled to the notional benefits in the scale in 1993, but actually denied the benefits of arrears. As between his case and those of the juniors granted the benefit, counsel urged that there was no distinction, considering the fact that both qualified the trade test after 1993. It was submitted that having found that the trade test alone, could not be the criteria for filling up vacancies arising from restructuring, the CATs view that there is no illegality in denying the actual arrear for the period, i.e. from 01.03.1993 to 08.08.1995, in the case of the petitioner, was arbitrary.

6. This Court has carefully considered the submissions. The CATs findings especially in para 8 & 9- clarified that the entire material of the procedure to be followed while filling vacancies in the higher grade, had been scrutinized. The CAT found that not only qualification in the trade test but also the normal procedure, i.e. examination of the records for preparation of panel for promotion was to be followed. It is not in dispute that at the relevant time, when the petitioners juniors were indeed promoted in 1995, he was aware of those facts. He seems to never have challenged it, nor alleged that he was wrongly denied promotion either on the basis that qualifying in the trade test was irrelevant or that his case for promotion had not been considered at all. Having accepted and acquiesced those events that led to the promotion of his juniors, he could not have, in the opinion of this Court, articulated a grievance with respect to the grant of arrears in the higher pay-scales for only a limited duration of about two and a half years. The CATs findings after remand are clear in that the re-structuring did not result in a mere upgradation, but required compliance with the process for promotion as is evident from need to

prepare a panel for promotion, based on the records of individual employees. Apart from that, the concerned employees also had to qualify in the trade test.

7. In these given circumstances, this Court is of the opinion that the findings of the CAT cannot be found fault with.

8. The petition is accordingly dismissed as being without merit. S. RAVINDRA BHAT, J VIPIN SANGHI, J AUGUST 25 2014 sn

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