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Union of India Vs. Sant Ram

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Court : Delhi

Decided On : Jul-22-2013

Judge : Pradeep Nandrajog

Appellant : Union of India

Respondent : Sant Ram

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment Reserved on: July 09, 2013 Judgment Pronounced on: July 22, 2013 + W.P.(C) 1955/2012 UNION OF INDIA Represented by: .....Petitioner Mr.R.V.Sinha, Advocate with Mr.Amit Dubey and Mr.A.S.Singh, Advocates versus SANT RAM .....Respondent Represented by: Ms.Meenu Mainee, Advocate CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MR.JUSTICE V.KAMESWAR RAO PRADEEP NANDRAJOG, J.

1. The respondent has litigated four times with the Indian Railways before the Central Administrative Tribunal. The litigation commenced for the first time when respondent filed OA No.1679/1994 challenging the order passed by the Disciplinary Authority removing him from service on account of gross negligence and not completing the assigned work to him. Finding a technical flaw, pertaining to the procedure, the penalty order was set aside. Respondent was reinstated in service as per order dated July 21, 1999 passed by the Tribunal allowing OA No.1679/1994; simultaneously granting liberty to the department to initiate fresh

disciplinary proceedings. The resumed disciplinary proceedings culminated in a penalty of withholding two increments being imposed upon the respondent and in appeal the Appellate Authority reduced the penalty to withholding the increments for only three months. The respondent challenged the penalty vide OA No.1917/2001 which was allowed by the Tribunal on February 01, 2002. The penalty was quashed and a direction was issued that the intervening period during which petitioner either remained under suspension or without job as a consequence of he being initially dismissed from service be treated as per Rule 1343 and 1344 of the Indian Railways Establishment Manual (Vol.II). Complying with the direction issued by the Tribunal the Railway Authorities passed an order treating the period from June 13, 1993 till December 19, 1999 i.e. the period interregnum respondent being dismissed from service and reinstated, as spent on duty but under suspension. The result was the respondent being entitled to only subsistence allowance for said period.

2. Still aggrieved, respondent filed OA No.26/2003 challenging the order passed by the department and succeeded in the challenge when OA No.26/2003 was allowed by the Tribunal on September 03, 2003. The direction issued was that the entire period would be treated as spent on duty with all consequential benefits. The result was that the department had to pay wages with increment to the respondent for the period in question.

3. As time was passing by life was going on progressing and rearranging for others in the department. Promotions were being effected. The person immediately junior to the respondent was granted promotion as a Technician Grade III with effect from January 01, 1999 and accordingly in view of the order dated September 03, 2003 passed by the Tribunal allowing OA No.26/2003 the department passed an order on November 20, 2003 granting promotion to the respondent to the post of Technician Grade III but on notional basis with effect from January 01, 1999 and actual basis from the date of the order; and the result was that the respondent did not receive actual wages for the post of Technician Grade III from January 01, 1999 till November 20, 2003.

4. The respondent went marching before the Tribunal and filed OA No.2145/2005 seeking salary and allowances payable to a Technician Grade III with effect from January 01, 1999 as also to be promoted to the grade of Technician Grade II. OA No.2145/2005 was disposed of by the Tribunal on August 14, 2006 directing that a fresh order be passed on the subject of respondents entitlement to receive wages as Technician Grade III with effect from January 01, 1999 and further promotion as a Technician Grade II.

5. At this stage we need to comment upon the decision taken by the Tribunal; and we find the reasoning quixotic. On the one hand the Tribunal has noted para 228 of the Indian Railway Establishment Manual which requires no back wages if promotion was not effected from the date due but was effected at a later date, to be reckoned from an anterior date, but simultaneously spoke about the effect of the order dated November 20, 2003 promoting respondent as Technician Grade III on notional basis with effect from January 01, 1999 ignoring that the order passed on November 20, 2003 clearly stated that the ante-dated promotion was on notional basis. The Tribunal also held that if respondent became entitled to be promoted further to the post of Technician Grade II which required a trade test to be cleared, he would be considered for promotion as per Rule.

6. The Competent Authority examined the matter keeping in view the observations made by the Tribunal as also para 228 of the Indian Railway Establishment Manual, as also the decision of the Supreme Court in C.A.No.8904/1994 dated August 13, 1997 UOI Vs. P.O.Abraham and rejected the claim for back wages to be paid. Entitlement to be promoted as Technician Grade II was found not maturing.

7. The respondent filed OA No.2754/2008 praying for back wages to the post of Technician Grade III with effect from January 01, 1999 till November 20, 2003. He also claimed entitlement to be promoted as Technician Grade II. By an unreasoned decision dated August 10, 2009 the Tribunal disposed of OA No.2754/2008 directing wages to be paid from January 01, 1999 till November 20, 2003 for the post of Technician Grade III, which decision was set aside by this Court on October 28, 2010 allowing W.P.(C) No.12970/2009 filed by the

petitioners against the decision taken by the Tribunal simultaneously remanding the matter to the Tribunal to consider para 228 of the Indian Railway Establishment Manual.

8. In the meanwhile a trade test had been conducted which was cleared by the respondent and he was promoted as Technician Grade II on May 22, 2006. He claimed a right to be promoted as a Technician Grade II with effect from October 15, 2004 (written as October 19, 2004 in some places) i.e. the date when person immediately junior to him was so promoted.

9. Thus, at the remanded stage, deciding OA No.2754/2008, two issues were required to be decided by the Tribunal. Firstly respondents entitlement to wages as Technician Grade III for the period January 01, 1999 to November 20, 2003 and secondly his entitlement to receive wages as Technician Grade II with effect from October 15, 2004; the issue of respondent to be promoted as Technician Grade II having resolved itself when promotion order dated May 22, 2006 was issued.

10. Deciding OA No.2754/2008 at the remanded stage vide order dated September 29, 2011 the view taken by the Tribunal is, and we quote: The Tribunal has already considered the issue earlier in order dated 14.08.2006 in OA No.2145/2005 and held that in the facts and circumstances of the case the applicant was entitled for the pay and allowances for the period of his suspension and the provisions of para 228 of the IREM would not apply for his promotion as Technician Grade II with effect from the date of promotion of his juniors. Holding so the direction issued by the Tribunal is to pay wages to the respondent in the grade of Technician Grade III with effect from January 09, 1999 till November 20, 2003 and in the scale of Technician Grade II with effect from October 19, 2004.

11. The department is up in arms against the aforesaid view taken by the Tribunal as per the impugned decision dated September 29, 2011.

12. At the outset it stares us in the face that the view taken by the Tribunal is contrary to the final direction which was issued by the Tribunal as per its decision dated August 14, 2006 disposing of OA No.2145/2005. In passing the order dated

September 29, 2011 the Tribunal overlooked the fact that order dated August 14, 2006 simply directed the department to pass a fresh order keeping in view para 228 of the Indian Railway Establishment Manual and the fact that the department itself had promoted respondent as a Technician Grade III from a retrospective date albeit notionally. It may be true that there are certain observations which at first blush tend to suggest that the Tribunal directed para 228 of the Indian Railway Establishment Manual to be overlooked, but said observation cannot be treated as a mandate, for if it was a mandate, the final direction could not have been for the department to reconsider the matter and take a fresh decision the mandate would have been positive: To pay the back wages.

13. Having found the reasoning of the Tribunal in the impugned decision to be based on a complete misreading of its earlier decision dated August 14, 2006, we proceed to consider para 228 of the Indian Railway Establishment Manual in light of the fact that due to an issue pertaining to a disciplinary proceedings and penalty levied, the respondent was not promoted as Technician Grade III and the person immediately junior to him was so promoted on January 01, 1999. The penalty being struck down, the respondent was ultimately promoted as a Technician Grade III on November 20, 2003 on notional basis with effect from January 01, 1999 i.e. the date on which the person immediately junior to the respondent was promoted. The respondent was further promoted as Technician Grade II on May 22, 2006 on notional basis with effect from October 15, 2004 i.e. the date when person junior to him was promoted. The benefit of promotion being notional, meant that respondent was placed in the applicable pay scale from the date he was to be promoted. Benefits of increments were granted, but notionally. He started receiving the wages which included the increments from the date of the two promotion orders i.e. November 20, 2003 and May 22, 2006. The reason for respondent not being promoted was, as noted above, the disciplinary proceedings which finally culminated in a penalty order withholding increments for a period of 3 months; but being ultimately quashed by the Tribunal.

14. Para 228 of the Indian Railway Establishment Manual reads as under:"228. Erroneous Promotions. (1) Sometimes due to administrative errors, staff are overlooked 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 types: (i) Where a person has not been promoted at all because of administrative error, and (ii) Where a 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 filed proforma a the paper 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."

15. Referring to para 228 of the Indian Railway Establishment Manual, in the decision reported as AIR 200.SC 25.Union of India & Anr. v Tarsem Lal, the Supreme Court held that in view of para 228 of the Indian Railway Establishment Manual even when it is an administrative error which results in a promotion being delayed the incumbent would not be entitled to salary and allowances for the previous period.

16. In the decision reported as ILR (2008) Supp. 1 Del. 44 UOI & Ors. Vs. G.D.Goel, noting the decision of the Supreme Court in Tarsem Lals case (supra) noting para 228 of the Indian Railway Establishment Manual, in paragraph 13, a Division Bench of this Court The principle which can be deduced is that if a promotion is denied to an employee because of the mistake of the administration and due to no fault of the said employee, then the authorities are bound to pay the arrears of salary etc. upon giving him the benefit of retrospective promotion after realizing that mistake. This principle would be extended even to those cases where due to sheer negligence, carelessness or on account of malafides an employer denies the benefit of promotion to the employee at a proper time when it becomes due and gives him afterwards though retrospectively. On the other hand, where there is genuine dispute and the promotion was delayed because of pendency of such a dispute and before the settlement of the dispute the promotion

could not have been granted, the salary for the past period can be denied even when promotion is given retrospectively after the resolution of the dispute. Further the benefit of arrears of salary for past period can also be denied if it is found that it was not fault or mistake of the administration because of which the promotion was delayed.

17. In the decision reported as 2005 (3) Bom CR 88.Union of India v K.M.Chaudhari & Ors. a Division Bench of the Bombay High Court observed that there was no clear and fast rule by which in every case of back dated promotion that the courts are bound to award back wages or the monetary benefits. It depends on the facts and circumstances of each case. It further observed as under: In the instant case, the issue squarely to be considered is para 228 of I.R.E.M. was it open to the Tribunal to grant arrears of back wags contrary to what is set out in I.R.E.M. In my opinion the answer must clearly to be in the negative. Even though the Industrial Tribunal in the course of adjudication can rewrite the contracts, none the less when there are valid rules made which have the force of law, unless that rule bye-law or notification is struck down, it will not be open to the Tribunal or the Court to bypass the rule or notification and grant relief contrary to it.

18. Accordingly, in view of the fact that a bona fide dispute with respect to the disciplinary proceedings initiated against the respondent was pending which got resolved only in the year 2001 impacting respondents right to be promoted on January 01, 1999, we hold that para 228 of the Indian Railway Establishment Manual would be applicable and thus we allow the writ petition and quash the impugned order dated September 29, 2011. The Original Application filed by the respondent is dismissed.

19. There shall be no orders as to costs. (PRADEEP NANDRAJOG) JUDGE (V.KAMESWAR RAO) JUDGE JULY 22 2013 mamta

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