

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (S) No. 5892 of 2015
With
I.A. No. 130 of 2017

Swapan Kumar Chatterjee Petitioner

Versus

1. Union of India through the General Manager,
South Eastern Railway, Kolkata (W.B.).
2. Divisional Railway Manager,
S.E. Railway, Adra Division, Dist.-Purulia (W.B.).
3. Divisional Railway Manager,
S.E. Railway, Adra Division, Dist.-Purulia (W.B.).
4. Divisional Personnel Manager (1),
S.E. Railway, Adra Division, Dist.-Purulia (W.B.).
5. Divisional Administrative Officer,
S.E. Railway, Ranchi Division, Ranchi..... Respondents

CORAM : HON'BLE MR. JUSTICE H.C. MISHRA
HON'BLE MR. JUSTICE DR. S.N. PATHAK

For the Petitioner : Mrs. M.M. Pal, Advocate
Mrs. Ruby Pandey, Advocate
Mrs. Leena Mukherjee, Advocate
For the Respondent : Mr. Mahesh Tewari, Advocate
Mr. Abhishek Kumar Dubey, Advocate
Mr. Md. Shahabuddin, Advocate

12/11.05.2017 Heard learned counsel for the petitioner and learned counsel for the Union of India, represented through S.E. Railway.

2. The petitioner is aggrieved by the order dated 11.11.2013 passed by the Central Administrative Tribunal, Patna Bench, Circuit Bench, Ranchi, in O.A. No.325 of 2009(R), as contained in Annexure-7 to the writ application, whereby the application filed by the petitioner, claiming pecuniary benefits for the promotions given to him with retrospective effect, from which the juniors were promoted, has been dismissed, denying the claim of the petitioner.

3. The facts of this case lie in the short compass. The petitioner was initially appointed as casual labour under S.E. Railway on 08.11.1980 and subsequently he was posted as Shed Khalasi. Vide order dated 29.01.1983, his services along with 11 others were terminated, which was challenged by the petitioner and other similarly situated persons in C.W.J.C. No.599 of 1983(R) before the then Patna High Court, Ranchi Bench. Consequent upon setting up of the Central Administrative Tribunal, the case was transferred to Central Administrative Tribunal and was numbered as T.A. No.521 of 1986, which was allowed by the Central Administrative Tribunal, by order dated 06.05.1987, whereby the termination of services of all the employees were quashed with the direction to respondents to reinstate them in service, w.e.f. 28.01.1983. Pursuant to the order passed by the Central Administrative Tribunal, the petitioner was reinstated in service.

4. The present dispute arose when the petitioner was denied his due promotions by the respondent authorities and two persons junior to him, namely, Sri H.P. Singh and Sri Raj Kapil were given the promotion but the petitioner was denied the same. Aggrieved thereby, the petitioner moved the Central Administrative Tribunal in O.A. No.162 of 2008, which was disposed of by order dated 16.12.2008, as contained in Annexure-4 to the writ application, directing the respondent authorities to decide the pending representation of the petitioner by passing speaking and reasoned order, within a period of three months from the date of receipt of order. Subsequent thereto, by order dated 09.02.2009 issued under the signature of Divisional Personnel Officer, Ranchi, as contained in Annexure-5 to the writ application, the petitioner, who was then working as Technician Grade-II at Hatia, was given proforma promotions with retrospective effect, to the post of KH w.e.f. 28.08.1988, Fitter-III w.e.f. 06.11.1997, Fitter-II w.e.f. 10.11.2004 and Fitter-I w.e.f. 06.09.2007, and his seniority was fixed between Sri Krishna Gope, Tech I and Sri Raj Kapil, Tech Gr.1/Hatia. Since these were only proforma promotions given to the petitioner, the petitioner was denied all the consequential benefits of these promotions with retrospective effect. This compelled the petitioner to move the Central Administrative Tribunal again in O.A. No.325 of 2009(R), claiming all the consequential benefits of these promotions with retrospective effect, which was dismissed by the impugned order dated 11.11.2013, as contained in Annexure-7 to the writ application. Aggrieved thereby, the petitioner has moved this Court through this writ application.

5. Learned counsel for the petitioner has submitted that the impugned order passed by the Central Administrative Tribunal denying the consequential benefits of the promotions given to the petitioner with retrospective effect, as also the action of the respondent authorities in denying the same to the petitioner, are absolutely illegal, inasmuch as, the petitioner was denied the promotions for no fault of his, rather it was due to the administrative fault that the petitioner was denied due promotions and the persons junior to the petitioner were given the promotions with some benefits. Even the representation given by the petitioner against the same was not acceded to by the respondent authorities, which compelled the petitioner to move the Central Administrative Tribunal in O.A. No.162 of 2008, and only after the direction of Central Administrative Tribunal, the proforma promotions were given to the petitioner with effect from the aforesaid dates as indicated in the order dated 9.2.2009, as contained in Annexure-5 to the writ application. Learned counsel submitted that in view of the fact that the promotions were denied to the petitioner for no fault of his, the petitioner shall be entitled to all the consequential benefits w.e.f. from the dates of the respective promotions. In this connection learned counsel has placed reliance upon the decision of the Hon'ble Supreme Court in **Ramesh Kumar Vs. Union of India & Ors.**, reported in 2015 (3) *JLJR* 511 (SC), wherein the Supreme Court has taken note of its earlier decision in **State of Kerala & Ors. Vs. E.K. Bhaskaran Pillai**, reported

in (2007) 6 SCC 524, and has laid down the law as follows:-

“12. In normal circumstances when retrospective promotions are effected, all benefits flowing therefrom, including monetary benefits, must be extended to an employee who has been denied promotion earlier. So far as monetary benefits with regard to retrospective promotion is concerned that depends upon case to case. In **State of Kerala & Ors. Vs. E.K. Bhaskaran Pillai**, (2007) 6 SCC 524, this Court held that the principle of “no work no pay” cannot be accepted as a rule of thumb and the matter will have to be considered on a case to case basis and in para (4), it was held as under:-

“.... We have considered the decisions cited on behalf of both the sides. So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages or 50 per cent of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before court or tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the court may grant sometimes full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard-and-fast rule. The principle “no work no pay” cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also.”

13. We are conscious that even in the absence of statutory provision, normal rule is “no work no pay”. In appropriate cases, a court of law may take into account all the facts in their entirety and pass an appropriate order in consonance with law. The principle of “no work no pay” would not be attracted where the respondents were in fault in not considering the case of the appellant for promotion and not allowing the appellant to work on a post of Naib Subedar carrying higher pay scale. In the facts of the present case when the appellant was granted promotion w.e.f. 1.1.2000 with the anti-dated seniority from 1.8.1997 and maintaining his seniority along with his batchmates, it would be unjust to deny him higher pay and allowances in the promotional position of Naib Subedar.” (Emphasis supplied).

6. Placing reliance on this decision, learned counsel submitted that the petitioner shall be entitled to all the consequential benefits to the promotions given to him to the higher posts, with effect from the dates, the promotions were granted by the order dated 09.02.2009, as contained in Annexure-5 to the writ application.

7. Learned counsel for the Union of India, on the other hand, submitted that there is no illegality in the impugned order dated 11.11.2013, passed by the Central Administrative Tribunal in O.A. No.325 of 2009(R), as the earlier OA filed by the petitioner was not for the promotion with consequential effects, rather it was only for the fixation of the seniority which has been done in this case. Learned counsel admitted that the petitioner was not given the due promotions with effect from the due dates, and they were subsequently given to the petitioner on proforma basis w.e.f. the

dates the promotions were given to persons junior to him, due to the administrative latches on part of the Railways, but he submitted that the case of the Railways is fully protected by Paragraph 228 of Indian Railway Establishment Manual (for short IREM), Volume-1, brought on record as Annexure-A to the reply filed to the I.A. No.130 of 2017, which reads as follows:-

“228. Erroneous Promotions. -(I) Sometimes due to administrative errors, staff are over looked for promotion to higher grades 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 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.” (Emphasis supplied).

8. It is submitted by learned counsel that this Paragraph of IREM was considered by Hon'ble Supreme Court of India in **Union of India & Anr. Vs. Tarsem Lal and Ors.**, reported in (2006) 10 SCC 145, wherein it has been upheld by the Supreme Court. Learned counsel accordingly, submitted that in view of the fact that Paragraph 228 of the IREM clearly lays down that the staff who have lost promotion on account of administrative error, their pay in the higher grade on promotion may be fixed proforma and the enhanced pay may be allowed to them only from the date of actual promotion and no arrears on this account shall be payable, the petitioner is not entitled to any consequential benefits with effect from the retrospective dates of his promotions, in view of the law laid down by the Apex Court in **Tarsem Lal's** case (*supra*).

9. Having heard learned counsels for both the sides and upon going through the record, we find force in the submission of learned counsel for the respondents that Para 228 of IREM quoted above, has been upheld by the Supreme Court in **Tarsem Lal's** case (*supra*). However, it has been pointed out by learned counsel for the petitioner that **Tarsem Lal's** case (*supra*) was considered by the Supreme Court in **E.K. Bhaskaran Pillai's** case (*supra*), as relied upon by the Apex Court in **Ramesh Kumar's** case (*supra*).

10. In **E.K. Bhaskaran Pillai's** case (*supra*), the Supreme Court has considered its earlier decisions, including the one in **Tarsem Lal's** case (*supra*), and has laid down the law, so far it covers the case of the petitioner fully, as follows:-

“4. -----. Sometimes in the matter when the person is

superseded and he has challenged the same before Court or Tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the Court may grant sometime full benefits with retrospective effect and sometimes it may not. -----." (Emphasis supplied).

11. Thus we find that in **E.K. Bhaskaran Pillai's** case (*supra*), taking into consideration the decision of the Apex Court in **Tarsem Lal's** case (*supra*), in which Para 228 of the IREM was upheld, the discretion is left to the Courts, in the matters covering the situations as in the case of the petitioner, either to grant full benefits or to deny the same, depending upon the facts of the given case. However, in **Ramesh Kumar's** case (*supra*), Para 228 of the IREM was not under consideration by the Apex Court, while laying down the law that the principle of "no work no pay" would not be attracted where respondents were in fault in not considering the case of the employee for promotion. We are of the considered view, that since the case of the petitioner is covered by Para 228 of the IREM, upheld by the Supreme Court in **Tarsem Lal's** case (*supra*), which in turn was considered in **E.K. Bhaskaran Pillai's** case (*supra*), giving the discretion to the Courts, in the matters covering the situations as in the case of the petitioner, either to grant the consequential benefits with retrospective effect, or to deny the same, depending upon the facts of the given case, the question is open for us to decide whether in the facts of his case, the petitioner is entitled to be given the consequential benefits of his promotions with retrospective effect, or the petitioner is not entitled for the same.

12. From the record we find that the petitioner was denied successive promotions to the posts of KH, Fitter-III, Fitter-II and Fitter-I and he filed representation for those promotions, as two persons junior to him, namely, Sri H.P. Singh and Sri Raj Kapil, were given those promotions. The representation of the petitioner was not considered by the respondents, until the Central Administrative Tribunal in O.A. No.162 of 2008, vide order dated 16.12.2008, as contained in Annexure-4 to the writ application, directed the respondents to decide the representation of the petitioner and dispose it of, with a speaking order. Thereafter, by order dated 09.02.2009 as contained in Annexure-5 to the writ application, all those promotions were given to the petitioner with retrospective effect, but only on proforma basis, and the seniority of the petitioner was placed between one Sri Krishna Gope, Tech Gr. I and Sri Raj Kapil, Tech Gr.1.

13. We find from the record that even the said Sri Krishna Gope, was denied his due seniority and consequent promotion, for which he, along with other similarly situated employees had moved the Central Administrative Tribunal, Circuit Court, Ranchi, in O.A. No.34 of 2002, which was disposed of with the direction to rectify the seniority list with follow up action, within four months, by order dated 24.1.2005, as contained in Annexure-1 to the writ application. Those employees were also given the

retrospective promotions pursuant to the order passed as above. We are of the considered view, that if those employees, i.e., the said Sri Krishna Gope, and the persons immediately junior to the petitioner, i.e., Sri Raj Kapil and Sri H.P. Singh, have been given some consequential benefits with retrospective effect, the petitioner cannot be denied at least those benefits which were given to them, in the garb of Para 228 of IREM. Indeed by order dated 9.2.2009 as contained in Annexure-5 to the writ application, the position of the petitioner is fixed just below Sri Krishna Gope and just above Sri Raj Kapil, in the seniority list.

14. We accordingly, hereby, quash the impugned order dated 11.11.2013, passed by the Central Administrative Tribunal, Patna Bench, Circuit Bench, Ranchi, in O.A. No.325 of 2009(R), as contained in Annexure-7 to the writ application, and dispose of this writ application directing the respondent authorities that the petitioner shall also be given at least all those benefits which have been given to the said Sri Krishna Gope, just after whom the petitioner has been placed in the seniority list, and persons immediately junior to the petitioner, i.e., Sri Raj Kapil and Sri H.P. Singh, if any such benefits have been given to them with retrospective effect. We direct the respondent authorities to give all those benefits to the petitioner also, positively within the period of four months from the date of communication of this order.

15. This writ application is accordingly, allowed to the extent indicated above, with the directions as above. Consequently, I.A. No.130 of 2017 also stands disposed of.

(H.C. Mishra, J.)

(Dr. S.N. Pathak, J.)