

HON' BLE SRI JUSTICE SURESH KUMAR KAIT  
&  
HON' BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P. No. 9512 of 2016

ORDER:- (ORAL)

(Per Hon' ble Sri Justice Suresh Kumar Kait)

This writ petition is filed challenging the order dated 09.03.2015 in O.A.No. 801 of 2011 passed by the Central Administrative Tribunal, Hyderabad Bench, Hyderabad, whereby the application filed by the respondent herein, has been allowed.

The brief facts of the case are that the respondent joined Railways as Chargeman. In 1965, he was placed in the scale of Rs.205-280/- and in 1974, he was promoted to the post of Assistant Electrical Foreman "A". In April, 1975, he was suspended from service and the same was revoked in November, 1975. In September, 1976, the post of Assistant Electrical Foreman, which was a selection post, was filled in. However, the proceedings as to whether the respondent was selected or not were kept in a sealed cover. On 08.03.1977, a minor penalty of censure was awarded. The selection for the post of Assistant Electrical Foreman took place on 28.05.1977 and 14.09.1977. As the respondent was shifted to Railway Electrification Project, his case was not considered in his parent department. As on 08.06.1979, he was found suitable, but his case was not considered due to the fault on the part of

the administration. On account of restructuring, which was given effect to from January, 1984, the posts of Foreman in the scale of Rs.700-900 were available on 08.02.1985. The proceedings were issued on 09.11.1998 considering the request of the respondent. His juniors were given benefit of pay scale of Rs.700-900 from 01.01.1984 itself. When the respondent filed O.A.No. 1499 of 2001, the Tribunal, vide its order dated 26.04.2005, directed the petitioners to fix the pay of the respondent in the grade of Rs.700-900/- with effect from 01.01.1984 on par with his juniors. As the same was not implemented, Contempt Petition was filed and appropriate payments were made treating the respondent on par with his junior, Mr.S.S.Sahu.

It is pertinent to mention here that on receiving his pension, the respondent came to know that the same has not been fixed on par with Mr.Sahu. Initially, the respondent's pension was fixed at Rs.5,525/- and subsequently revised to Rs.5,683/- and further revised to Rs.5,739/-, but the basic pension drawn by Mr.Sahu, was Rs.5,750/-. Being aggrieved by the same, the respondent filed O.A. No. 801 of 2011, and the Tribunal, by order dated 09.03.2015, while allowing the O.A. observed that the petitioners should suitably compensate the respondent in monetary terms.

The present writ petition is filed by the petitioners – Railways on the ground that pension has been calculated on the average employments of the respondent which is as follows:

|                                                                               |                          |                                    |               |
|-------------------------------------------------------------------------------|--------------------------|------------------------------------|---------------|
| December 1999<br>(1 month)                                                    | Basic Pay<br>Rs.11,275/- | $11,275 \times 1 =$<br>Rs.11,275/- | Rs.11,275/-   |
| Jan., 2000 to<br>Sep., 2000 (9<br>months)                                     | Basic pay<br>Rs.11,500/- | $11,500 \times 9$                  | Rs.1,03,500/- |
|                                                                               |                          | Total                              | Rs.1,14,775/- |
| Average emoluments Rs.1,14,775/ 10 = Rs.11,477.50                             |                          |                                    |               |
| Pension average emoluments Rs.11,477.50 x 50%= Rs.5,738.75<br>i.e. Rs.5,739/- |                          |                                    |               |

In the case of Mr.Sahu, the details of fixation of pension are as follows:

|                                                          |                          |                                       |               |
|----------------------------------------------------------|--------------------------|---------------------------------------|---------------|
| July, 2000 to<br>April, 2001<br>(10 months)              | Basic pay<br>Rs.11,500/- | $11,500 \times 10 =$<br>Rs.1,15,000/- | Rs.1,15,000/- |
|                                                          |                          | Total                                 | Rs.1,15,500/- |
| Average emoluments Rs.1,15,000/ 10 = Rs.11,500/-         |                          |                                       |               |
| Pension average emoluments Rs.11,500/- x 50%= Rs.5,750/- |                          |                                       |               |

The reason for this is that the date of annual increment of the respondent being 1<sup>st</sup> January before his VRS from Railway service on 30.09.2000, he has drawn pay of Rs.11,500/- on 01.01.2000, whereas, Mr.Sahu's last pay was Rs.11,500/- but he had retired from Railway service on 30.04.2001 on attaining the age of superannuation. The Tribunal failed to consider this aspect.

It is an admitted fact that the petitioners gave the respondent proforma promotion with effect from 30.09.1977 and this was acknowledged by the respondent stating that the

petitioners had committed an error by not permitting him to participate in the suitability proceedings in spite of his being eligible and accordingly depriving him of his right to be considered for promotion.

It is important to note that in the counter filed by the respondent it is *inter alia* stated that he along with Mr.Sahu was promoted as ELEC/ AEF in the grade of Rs.335-425 and the same was effected from 01.08.1972. As such, with a basic pay of Rs.335/- for both of them, their pay was fixed as on 01.01.1973 at Rs.550/- P.M., and subsequently, increments were given up to 1975 i.e. up to Rs.610/- p.m. After revocation of suspension of 7 months, the respondent was working as ELCA in the grade of Rs.550-750. After departmental enquiry in the major penalty case, the officer as well as disciplinary authority (DEE OSD) recommended acquittal of the respondent from charges in the year 1975 itself. In order to avoid payment of wages for the period of suspension, a minor penalty of censure was imposed on the respondent after almost two years i.e. on 10.03.1977. Meanwhile, selection was conducted in the year 1976 and a part panel was published in December, 1976. After six months, the respondent was supposed to be called for the selection on 14.09.1977 and 30.09.1977, however due to lapse

on the part of the administration, he was not called for selection and the same was not denied by the administration.

It is further important to note that on 25.04.1971, the respondent did not come on transfer to rolling stock maintenance group. The case of the petitioners is that the respondent was found not eligible for promotion as on 25.04.1971 and the same does not arise for the reason that he was promoted from 01.04.1992 to a grade of Rs.2,375-3,500/-, but in fact, this was not the promotion and relevant orders were given in 1974 and whoever was holding the post was given the benefits of pay. The retrospective effect of the orders issued in 1974, are wrongly interpreted. In fact, the claim is that Mr.Sahu and the respondent will get salary of Rs.795/- as on 01.01.1984. The stagnation increment and annual increments in 1982 and 1996 were missed. Notional increment at the time of higher grade is also missed out. In case of promotion, a notional increment at the rate of normal increment is added and pay is fixed at the next higher stage of promotional grade.

The issue is that the respondent was denied the correct fixation of salary and consequential pension benefits. Mr.Sahu, who is junior to him, is getting higher pension due to the fault in fixing the pay. In the letter dated 01.11.2010, the petitioners stated that the respondent was given pay scale on



par with Mr.Sahu, but the statement with wrong calculation of pay was given on 02.05.2008. In this pay, the name of Mr.Sahu is not mentioned. Thus, it is not clear about Mr.Sahu, who was paid Rs.650/- in 1977, vide letter dated 29.03.2012. Thus, the respondent is also entitled to the same scale.

The petitioners have completely obliterated the intervening period from the date of the respondent's reversion i.e. from 30.06.1976 to 1984, during which period, selection to the post of ELC 'A' took place in 1976, 1977 and 1979. The relief given by the Tribunal is that his pay is being fixed with effect from 13.09.1977 because he was eligible to participate in the selection proceedings, however, in May, 1976 and September, 1977, he was not permitted by the petitioners.

In the representation dated 25.02.2011 made by the respondent to the 2<sup>nd</sup> petitioner - Divisional Railway Manager, he has indicated the date of basic pay of Sri S.S.Sahu as 30.09.1977. Accordingly, the Tribunal came to the conclusion that the respondent is entitled to the relief with effect from 30.09.1977 and not 13.09.1977.

In view of the fact that the petitioners gave him proforma promotion with effect from 30.09.1977, the same was accepted by the respondent stating that the petitioners

had committed an error by not permitting him to participate in the suitability proceedings in spite of his eligibility.

In the light of the facts recorded above, we find no ground to interfere with the impugned order passed by the Tribunal.

Hence, the writ petition is devoid of merit and the same is accordingly dismissed. No order as to costs.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

17.07.2018

bcj

SURESH KUMAR KAIT, J

ABHINAND KUMAR SHAVILI, J

