

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Writ Petition No. : 25542 of 2019(O&M)
Date of decision : September 12, 2019

Union of India ...Petitioner
Versus
Rakesh Kumar and another ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Puneet Jindal, Senior Standing Counsel with
Mr. Amandeep Singh Meho, Advocate for
the petitioner – Union of India.

Harinder Singh Sidhu, J. :

1. This writ petition has been filed against the order dated 10.05.2019 (Annexure P-6) of the Central Administrative Tribunal, Chandigarh Bench in Contempt Petition No.060/0141/2018 in Original Application No.864/PB/2011, whereby the officers of the petitioner- Union of India were held guilty for not implementing the order dated 20.05.2015 passed in O.A.No.864/PB/2011 and granted two weeks time to implement the order failing which they were directed to remain present in court for framing of charges against them.

2. Respondent No.1 joined the service of the Railways in 1981 under the quota of sportsman. He filed OA No.864/PB/2011 seeking quashing of the orders dated 08.04.2014 and 21.06.2010 vide which his claim for promotion to the post of Goods Guard had been rejected. He prayed that he be promoted to the post of Goods Guard on the basis of selection held in the year 2005 with all consequential benefits of seniority and arrears of pay and allowances with interest from the date the amount

became due till actual payment.

3. The Tribunal concluded that the official communications placed on record proved that he had been duly selected for the post in 2005 exam. The officers of the petitioner herein were not able to controvert this allegation that he had been wrongly denied promotion. Thus, the OA was allowed vide order dated 20.05.2015. The petitioner herein was directed to give promotion to respondent No.1 to the post of Goods Guard w.e.f. the date of promotion of the last candidate selected through the 2005 exam. He was also held entitled to all consequential benefits.

4. Alleging non-compliance with the aforesaid order respondent No.1 filed CP No.060/0141/2018 which has been disposed of vide the impugned order.

5. The officers of the petitioner had stated that the order had been faithfully complied with. Respondent No.1 was promoted as Goods Guard vide letter dated 19.12.2016 after successfully completing the pre-requisite course w.e.f., 10.08.2016 to 06.10.2016. He was granted promotion as Goods Guard with effect from the date of promotion of the last candidate who qualified the 2005 exam. His pay had been fixed on proforma basis w.e.f. 12.07.2006 vide order dated 28.02.2017. Arrears had been granted to him w.e.f. 19.12.2016, the date he actually started working as Goods Guard. The denial of back-wages was justified by relying on paragraph 228 of IREM Volume I, as per which, where an employee is erroneously denied promotion on the account inter-alia of non-assignment of relative seniority or full facts not being placed before the competent authority or for some other reasons, the pay in the higher grade may be fixed pro-forma at the

proper time. However, enhanced pay may be allowed only from the date of actual promotion. No arrears on this account shall be payable as he did not actually shoulder duties and responsibilities of the higher post. The said para 228 is reproduced below:

“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 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.

(II) In pursuance of Rule 1326-R.II, 1987 Edition the following provisions shall govern the pay and increments of the Railway servant whose promotions or appointments in a substantive or officiating capacity to a post is later found to be erroneous on the basis of facts-

(a) The orders of notification of promotion or appointment of a railway servant should be

cancelled as soon as it is brought to the notice of the appointing authority that such a promotion or appointment has resulted from a factual error and the railway servant concerned, should, immediately on such cancellation, be brought to the position which he would have held but for the incorrect orders of promotion or appointment. In the case, however, of a railway servant, who has been erroneously promoted and appointed to a post in a substantive capacity, procedure prescribed in Board's letter No. E5O/RCI/16/3 dt. 23-7- 1954 for rescinding the irregular confirmation of a railway servant should be followed/and only thereafter the railway servant concerned should be brought down to the position which he would have held but for the erroneous promotion/ appointment by the issue of orders as mentioned above. Service rendered by the Railway servant concerned in the post to which he was wrongly promoted/appointed, as a result of the error should not be reckoned for the purpose of increments or for any other purpose in that grade/post to which he would not normally be entitled but for the erroneous promotion/appointment.

- (b) Any consequential promotion or appointments of other railway servants made on the basis of the incorrect promotion or appointment of a particular railway servant will also be regarded as erroneous and such cases also will be regulated on the lines indicated in the preceding paragraph.*
- (c) Except where the appointing authority is the Railway Board or the President, the question whether promotion/appointment of a particular*

railway servant to a post was erroneous or not should be decided by an authority next higher than the appointing authority in accordance with the established principles governing promotions / appointments. Where the appointing authority is the Railway Board or the President, the decision should rest with the President and shall be final.

(d) Cases of erroneous promotion/ appointment in a substantive or officiating capacity should be viewed with serious concern, and suitable disciplinary action should be taken against the officers and staff responsible for such erroneous promotion or appointment. The orders refixing the pay should be issued expressly under Rule 2927-R.II.”

6. The Ld. Tribunal rejected the contentions of the petitioner. The Ld. Tribunal noticed that the judgment in OA No.864/PB/2011 had been upheld by the High Court in CWP No.7373 of 2016. It had been concluded that respondent No.1 had been illegally and in an arbitrary manner deprived of his promotion as Goods Guard in the year 2005. The argument of 'no work no pay' could not be accepted in the present case as respondent No.1 was illegally not promoted to the post of Goods Guard. It was not that at the relevant time he was not ready to discharge the duties of the higher post. He had been illegally denied promotion by the Railway Authorities and they could not take benefit of their own wrong.

7. Regarding paragraph 228 of the IREM Volume I the Tribunal noticed that it was not a case of erroneous promotion where the claim of respondent No.1 had been over-looked while considering his case of promotion, rather it was a case of deliberate attempt to deny him his due promotion which was ultimately granted by the Tribunal.

8. Accordingly, it was concluded that the order of the Tribunal had not been implemented in toto by not granting him consequential benefits from the due date. The officials were held guilty of not implementing the orders and were granted two weeks time to implement the same.

9. On the next day i.e. 30.05.2019 a compliance affidavit was filed by the petitioners because of which the Contempt Petition was disposed of as infructuous.

10. The Order of the Tribunal was very clear. Respondent No.1 was directed to be accorded promotion to the post of Goods Guard with effect from the date of promotion of the last candidate promoted pursuant to the 2005 exam. He was also held entitled to all consequential benefits. In these circumstances the action of the petitioner in fixing his pay on pro-forma basis w.e.f. 12.07.2006 and denying him the arrears from that period till 19.02.2016 when he actually started working as Goods Guard was clearly a violation of the order of the Tribunal directing the grant of all consequential benefits.

11. There is no illegality or infirmity in the order of the Tribunal.

12. Consequently, this petition is dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

September 12, 2019

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No