

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9450 of 2021

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Sadanand Yadav, Aged about 64 years, Male, son of Late Chandradeo Yadav,
resident of Mohalla Safiabab, P.S. Naya Ram Nagar, District Munger.

... .. Petitioner

Versus

1. The Union of India through the Ministry of Railway, Rail Bhawan, New Delhi.
2. The Divisional Railway Manager, Eastern Railway, Kolkata.
3. The Chief Personnel Officer, Eastern Railway, Jamalpur Workshop, Jamalpur.
4. The Deputy Chief Personnel Officer, Jamalpur Workshop, Jamalpur.
5. The Assistant Personnel Officer, Eastern Railways, Jamalpur Workshop, Jamalpur.
6. The Chief Workshop Manager, Eastern Railway, Jamalpur Workshop, Jamalpur.
7. The Workshop Personnel Officer, Eastern Railways, Jamalpur Workshop, Jamalpur.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Akshansh Ankit, Advocate
For the Respondents/R1-7	:	Mr. Anil Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
and
HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date : 27-09-2021

Heard Mr. Akshansh Ankit, learned counsel for the
petitioner and Mr. Anil Singh, learned counsel for the Railways
viz. Respondents No. 1-7.

2. The instant writ petition has been filed against
the order dated 16.04.2019, passed by the Central
Administrative Tribunal (hereinafter referred to as the



‘Tribunal’) in Original Application No.159 of 2014 (hereinafter referred to as the ‘OA’), by which the Railways have denied the benefit of arrears of pay after granting promotion with retrospective effect to the petitioner as the subsequent promotion to the post of Grade II at par with his juniors has been denied.

3. The petitioner, while in service, was accused in a criminal case and was incarcerated, leading to his suspension. Thereafter, upon being released from prison, his suspension was revoked. However, in the meantime, the petitioner along with others appeared at the suitability test on 18.05.1999 for being promoted to the post of Head Clerk. However, as the petitioner was facing trial in the criminal case, he was not given promotion and his result/case was kept under sealed cover. Later, the petitioner was acquitted in the criminal case giving him benefit of doubt. Upon the petitioner not being granted promotion at par with his juniors from 18.05.1999, he had moved before the Tribunal. The authorities had granted such promotion to him with effect from the date his juniors were given such promotion, i.e., from 18.05.1999, though the same was only notional till the date of passing of the order dated 27.03.2007. The petitioner moved the Tribunal in Original Application No.246 of 2008,



which was disposed of *vide* order dated 10.01.2013, remitting the matter to the authorities to take a decision with regard to promoting the petitioner to Office Superintendent Grade II with effect from the date his juniors were promoted. On such remission, the claim of the petitioner was again rejected, by way of order dated 10.01.2013. The petitioner thereafter represented for being promoted to the post of Office Superintendent Grade II, but the same was rejected on 06.06.2013. The petitioner then filed a protest petition on 17.06.2013, which came to be turned down through order dated 25.07.2013, on the ground that the petitioner had not cleared the test prescribed for the selection process as was required and applicable on 28.11.2003. Being aggrieved once more, the petitioner preferred OA No.159 of 2014 before the Tribunal. Upon rejection of the same on 16.04.2019, the present writ petition has been filed.

4. Learned counsel for the petitioner submitted that once the petitioner had been granted initial promotion to the post of Head Clerk with effect from 18.05.1999, the monetary and other benefits of the said post till the date of passing of the order granting such promotion cannot be denied to him as there was no departmental proceeding initiated against him, which could permit the authorities to do so. He placed reliance on the



judgement rendered by the Hon'ble Supreme Court in ***Ranchhodji Chaturji Thakore v. Supdt. Engineer, (1996) 11 SCC 603***, the relevant being at paragraph no.3.

5. Further, learned counsel submitted that once the petitioner had been granted the benefit of promotion to the post of Head Clerk from retrospective effect, he became eligible for consideration for promotion to the post of Office Superintendent Grade II with effect from 2007, and, in any case, with effect from 2008, when a person junior to him was extended the benefit of such promotion.

6. Learned counsel submitted that in OA No.246 of 2008, the Tribunal remanded the matter to the authorities for considering his claim to be promoted to the post of Office Superintendent Grade II with effect from the date his juniors were promoted. Thus, it was contended that the authorities could not have imposed any other condition on him, more so, to qualify in a test. Learned counsel urged that as the petitioner was also superannuating within one year, the condition of having to pass such suitability test ought to have been waived, if at all it was required, in this case. Learned counsel submitted that the Tribunal had not considered the facts and circumstances of this case in its proper perspective and had erred in dismissing



the OA.

7. *Per contra*, learned counsel for the Railways submitted that the writ petition is misconceived. It was submitted that the claim of the petitioner for back wages from 18.05.1999 is not applicable as he has himself accepted such position, which would become clear from the fact that in the OA, the relief sought was not with regard to granting him the monetary benefits for the back period upon promotion to the post of Head Clerk. Learned counsel drew the attention of the Court to the specific relief prayed for which does not state anything about seeking relief by claiming back wages for the period from 18.05.1999 to 26.03.2007. Coming to the issue of promotion to the post of Office Superintendent Grade II, learned counsel submitted that the stand of the petitioner cannot be said to be proper for the reasons that promotion can be granted only upon the person fulfilling the basic eligibility by which he comes under the zone of consideration and, consequently, by following the due procedure, as may be prescribed in law, including the relevant rules and regulations. It was submitted that as per the extant rule, there was a suitability test which had to be cleared by the petitioner before such promotion, which ultimately has not been done by the petitioner. Learned counsel



submitted that the person, who has been granted such promotion in the year 2008, also underwent the same procedure and had qualified in the suitability test and based on the same he was promoted to the post of Office Superintendent Grade II. Learned counsel submitted that such requirement was in place right from the year 2003. Thus, it was contended that the submission of the petitioner that there should have been a waiver in his case only because the Tribunal had remanded the matter for consideration with effect from the date the juniors to the petitioner were promoted to Office Superintendent Grade II cannot in any view of the matter mean that such promotion should be *de hors* the procedure prescribed and the rules and regulations, which in the present case would include passing the suitability test. Learned counsel submitted that the petitioner was given an opportunity to clear the suitability test but he refused to give the examination and thus, the authority could not have even considered such promotion in absence of the petitioner appearing in such suitability test. With regard to ***Ranchhodji Chaturji Thakore*** (*supra*), learned counsel submitted that besides the foundational facts being dissimilar, ultimately the Hon'ble Supreme Court refused to direct payment of back wages for the reason that the petitioner therein had '*involved*



himself in a crime, though he was later acquitted, he had disabled himself from rendering the service on account of conviction and incarceration in jail’.

8. We have examined the facts and circumstances of the case, considered the relevant precedents, and analysed the rival submissions at the Bar. In sum, the Court does not find any ground to interfere in the order impugned of the learned Tribunal. The contention of learned counsel for the Railways is correct that since no relief of payment of back wages for the period from 18.05.1999 to 26.03.2007 was claimed before the Tribunal, the same cannot be agitated now, as a fresh cause in the present writ application. We also note that upon the petitioner’s acquittal on 26.03.2007, he was granted notional promotion to the post of Head Clerk since 18.06.1999 (which happens to be the date of promotion of his juniors), and the monetary benefits were granted from 27.03.2007. We do not find any fault in this, especially given the *dictum* in ***Raj Narain*** (*supra*).

9. That apart, in ***Banshi Dhar v. State of Rajasthan***, (2007) 1 SCC 324, it was observed that ‘No hard-and-fast rule can be laid down in regard to grant of back wages. Each case has to be determined on its own facts...’.



10. In ***Union of India v. Jaipal Singh***, (2004) 1 SCC 121, it was held that ‘*The respondent will be entitled to back wages from the date of acquittal and except for the purpose of denying the respondent actual payment of back wages, that period also will be counted as period of service, without any break...*’.

11. The need to travel further, however, is not felt, in view of the pronouncement in ***Raj Narain v. Union of India***, (2019) 5 SCC 809, the relevant paragraphs being:

‘5. This Court in *Ranchhodji Chaturji Thakore [Ranchhodji Chaturji Thakore v. Gujarat Electricity Board, (1996) 11 SCC 603 : 1997 SCC (L&S) 491]* considered the case of an employee who sought back wages for the period he was kept out of duty during the pendency of a criminal case for his involvement in an offence under Section 302 IPC. The claim of the petitioner therein was that he was entitled to full wages on his acquittal by the criminal court. This Court rejected the said submission by holding that the question of payment of back wages would arise only in case of termination of service, pursuant to findings recorded in a departmental enquiry. In the event of the dismissal order being set aside by the Court, the delinquent employee would be entitled to claim back wages as he was unlawfully kept away from duty by the employer. This Court was of the opinion that an employee against whom criminal proceedings are initiated would stand on a different footing in comparison to an employee facing a departmental enquiry. The employee involved in a crime has disabled himself from rendering his services on account of his incarceration in jail. Subsequent acquittal by an appellate court would not entitle him to claim back wages.



6. The decision of Ranchhodji Chaturji Thakore [Ranchhodji Chaturji Thakore v. Gujarat Electricity Board, (1996) 11 SCC 603 : 1997 SCC (L&S) 491] was followed by this Court in Union of India v. Jaipal Singh [Union of India v. Jaipal Singh, (2004) 1 SCC 121 : 2004 SCC (L&S) 12] to refuse back wages to an employee who was initially convicted for an offence under Section 302 read with Section 34 IPC and later acquitted by the High Court in a criminal appeal. While refusing to grant relief to the petitioner therein, this Court held that subsequent acquittal would not entitle an employee to seek back wages. However, this Court was of the opinion that if the prosecution is launched at the behest of the department and the employee is acquitted, different considerations may arise. The learned counsel for the appellant endeavoured to distinguish the prosecution launched by the police for involvement of an employee in a criminal case and the criminal proceedings initiated at the behest of the employer. The observation made in the judgment in Union of India v. Jaipal Singh [Union of India v. Jaipal Singh, (2004) 1 SCC 121 : 2004 SCC (L&S) 12] has to be understood in a manner in which the department would become liable for back wages in the event of a finding that the initiation of the criminal proceedings was mala fide or with vexatious intent. In all other cases, we do not see any difference between initiation of the criminal proceedings by the department vis-à-vis a criminal case lodged by the police. For example, if an employee is involved in embezzlement of funds or is found indulging in demand and acceptance of illegal gratification, the employer cannot be mulcted with full back wages on the acquittal of the person by a criminal court, unless it is found that the prosecution is malicious.

7. The point that remains to be considered is whether the appellant is entitled to payment of full wages between 1979 and 1987. The appellant was placed under suspension on 23-10-1979 and his suspension was revoked on 21-10-1987. An inter-



esting development took place during the inter-regnum by which the disciplinary proceedings were dropped on 21-3-1983. It is clear from the record that the appellant was the one who was seeking postponement of the departmental enquiry in view of the pendency of criminal case. The order of suspension was in contemplation of disciplinary proceedings. By virtue of the disciplinary proceedings being dropped, the appellant becomes entitled to claim full salary for the period from the date of his suspension till the date of closure of the departmental enquiry. Thereafter, the respondents took four years to reinstate him by revoking his suspension. The order of suspension dated 23-10-1979 came to an end on 21-3-1983 which is the date on which disciplinary proceedings were dropped. The appellant ought to have been reinstated immediately thereafter unless a fresh order was passed, placing him under suspension during the pendency of the criminal trial which did not happen. Ultimately, the appellant was reinstated by an order dated 21-10-1987 by revocation of the order of suspension. Though, technically, the learned Additional Solicitor General is right in submitting that the impugned judgment does not even refer to the IA, we are not inclined to remit the matter to the High Court at this stage for fresh consideration of this point. We hold that the appellant is entitled for full wages from 23-10-1979 to 21-10-1987 after adjustment of the amounts already paid towards subsistence allowance.

8. For the reasons mentioned above, we approve the judgment of the High Court by holding that the appellant shall be entitled for back wages only from the date of acquittal on 31-8-2001, till the date of his reinstatement on 20-1-2003. Further, the appellant shall be entitled to full salary from 23-10-1979 to 21-10-1987.'

(emphasis supplied)

12. Apropos the issue of promotion of the petitioner to Office Superintendent Grade II, aided by the reasoning in



Ranchhodji Chaturji Thakore (*supra*), we find that at the relevant point of time, denial of promotion to the petitioner was because of his own conduct as there was already a criminal trial pending against him. Moreover, and more importantly, in matters of promotion, we are of the considered view that there must be strict observance of the procedure prescribed, except where the governing rules or regulations themselves contemplate a waiver or departure therefrom. In the present case, it is not in dispute that even at the relevant point of time in the year 2008, when a person junior to the petitioner was promoted to the post of Office Superintendent Grade II, one requirement was of clearing the suitability test. The petitioner had not taken such test hence the authorities, upon remand by the Tribunal had called upon him and given him an opportunity to take the test but he refused. Thus, he cannot claim, straightaway, promotion, *de hors* the prescribed procedure and the requirement of clearing the suitability test, merely on the simple ground that the person junior to him has been promoted. We note that it is not in dispute that the authorities offered the petitioner an opportunity to clear the suitability test but he refused. Hence, the authorities could not have even considered such claim promotion in the absence of the petitioner appearing



in the suitability test. The petitioner had not taken the suitability test, despite being asked to do so by the respondents. Thus, he cannot claim waiver of the suitability test.

13. For the reasons aforesaid, this writ petition stands dismissed.

(Ahsanuddin Amanullah, J)

(Anjani Kumar Sharan, J)

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