

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR, NAGPUR.

...

WRIT PETITION NO. 3051/2008

1) Union of India
Through the General Manager
Central Railway
Mumbai-CST.

2) Divisional Railway Manager
Central Railway, Nagpur.

.. **PETITIONERS**

v e r s u s

* D.E. Godghate
Aged 59 years, occu: Diesel Electrician Gr.I
Working under Sr.Section Engineer
(Diesel Loco), Central Railway Ajni, Nagpur
R/o Kashibai Temple
New Shukhrawari
Near Akre Decoration
Nagpur-440 002.

.. **RESPONDENT**

.....
Mr. P. H. Khobragade, Adv.h/for Mr. R.G.Agrawal, Advocate for the
petitioners
Mr. Anil B.Bambal, Advocate for respondent-sole
.....

**CORAM: DIPANKAR DATTA, CJ &
PUSHPA V. GANEDIWALA, J.
DATED: 2nd February, 2021**

ORAL JUDGMENT : (PER DIPANKAR DATTA, CJ.):

1. The challenge in this writ petition is to a judgment and order dated 28th March 2008 passed by the Central Administrative Tribunal, Bombay Bench (Camp at Nagpur). The Tribunal by the said judgment and order allowed Original Application No.2065/2007 on its

file, by directing the respondents in such application to pay to the original applicant the difference of pay with effect from 15th May 1997, i.e., the date on which the original applicant was granted notional promotion by the order dated 18th October, 2006. Such direction was directed to be complied with, within a period of 3 (three) months.

2. The respondents in the original application, who are the petitioners before us, had contended that in view of Rule 228 of the Indian Railways Establishment Manual (Volume I), a staff who is belatedly promoted due to any administrative error would be entitled to enhanced pay from the date of actual promotion and that no arrears on this count shall be payable as he did not actually shoulder the duties and responsibilities of the higher post. To resist the claim in the original application, reliance was placed by them on the decision of the Supreme Court reported in *(2006) 10 SCC 145 : Union of India and another vs. Tarsem Lal and others*, where, upon consideration of Rule 228 *supra*, it was held on the principle of 'no work no pay' that the Tribunal as well as the High Court was wrong in granting relief to the original applicants, and that reliance placed on the decision of the Supreme Court in the case reported in *1995 Supp (3) SCC 471 : Harbans Singh vs. State of Punjab and others*, by the Tribunal as well as the High Court was misplaced.

3. On behalf of the original applicant, who is the sole respondent before us, reliance had been placed on the decision of the Supreme Court reported in *(1998) 8 SCC 388: Paramjeet Singh vs. State of U.P and others*, where the employee having been found to be deprived of his pay qua posting on promotion, the Court allowed his prayer for back-wages.

4. The Tribunal preferred the decision in *Paramjeet Singh* (supra) to the decision in *Tarsem Lal* (supra), although the latter had the occasion to deal with Rule 228 and was a decision directly on the point. Admittedly, the vires of Rule 228 had not been challenged before the Tribunal by the original applicant. In the absence of such challenge, Rule 228 was the provision which held the field and governed the terms and conditions of promotees like the original applicant. Once Rule 228 made it clear that denial of promotion due to administrative error would not clothe the promotee to claim back-wages/arrears of salary which he would have been otherwise entitled to but for the delayed promotion, there was absolutely no ground for the Tribunal not to be guided by the decision in *Tarsem Lal* (supra).

5. We are of the considered opinion that the Tribunal exercised its jurisdiction illegally and, therefore, the order under challenge is

indefensible. Consequently, we have no other option but to allow this writ petition and set aside the impugned order of the Tribunal with the result that the original application filed before the Tribunal shall stand dismissed. There shall be no order as to costs.

JUDGE

CHIEF JUSTICE

sahare