

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

PRESENT:

**THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE RABINDRANATH SAMANTA**

**WP.CT 83 of 2021
Ram Ratan Mukherjee & Anr.
Vs
Union Of India & Ors.**

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Mr. Shibendra Narayan Sukul,
Mr. Sagnik Chatterjee.

..... for the Petitioners.

Mr. Saptarshi Bhattacharjee
Mr. Subhankar Chakraborty

..... for the Respondents.

Heard On : 13.01.2022

Judgment on : 07.02.2022

Rabindranath Samanta, J:-

1. This writ petition depicts the struggle of the petitioners Ram Ratan Mukherjee and Radhaballav Jana since their retirement from railway services on superannuation on 30.11.2013 to establish their rights to promotion and monetary benefits in terms of the order dated 08.10.2013 issued by the Railway Board, Ministry of Railways, Government of India on restructuring of certain 'Group – C' Cadres. Failing in their appeals to the respondent authorities to get relief, they as a first round of litigation filed application being O.A No. 350/949/2018 in the

Central Administrative Tribunal, Calcutta Bench, (hereinafter be referred to as the Tribunal) seeking promotional and monetary benefits in terms of the aforesaid order of the Railway Board. By order dated 28.09.2018 the Learned Tribunal disposed of the application permitting the petitioners to make a comprehensive representation to the respondent no. 2, the Divisional Personnel Officer, South Eastern Railway, Kolkata within two weeks from the date of receipt of the order and if any such representation was preferred before the respondent no. 2, then the respondent no. 2 was directed to consider the same as per extant rules and regulations in force and pass a reasoned and speaking order communicating the same to the petitioners within a period of six weeks from the date of receipt of the representation. In compliance thereof the petitioners made the representation on 24.10.2018. By order dated 03.12.2018 the respondent no. 2 disposed of the representation with the following observations :

“ Hon’ble CAT/Calcutta Bench, Calcutta while disposing of the aforesaid O.A No. 350/949/2018 on 28.09.2018 issued the direction upon the applicants as well as to the railway respondents, the operative portion of which is, interalia, reproduced hereunder:

.....Applicants are allowed to make a comprehensive representation to Respondent no. 2 within two weeks from the date of receipt of this order and, if any such representation is preferred before Respondent No.2 then

the said Respondent no. 2 is directed to consider the same as per extant rules and regulations in force and pass a reasoned and speaking order communicating the same to the applicants within a period of six weeks from the date of receipt of the representation.

In compliance of the said order dated 28.09.2018 of Hon'ble CAT/Cal, I, the undersigned, being Respondent no. 2 and Principal Chief Personnel Officer of South Eastern Railway, Garden Reach has considered your representation dated 26.10.2018 keeping in view the railway records & relevant rules and regulations and pass the following reasoned order:-

You have superannuated w.e.f 30.11.2013 while working as Technician Grade-I(TL) under SSEE/SRC. Railway Board vide RBE No. 102/2013 circulated the guidelines for restructuring of certain Group 'C' cadre w.e.f 01.11.2013. It has been clearly stipulated in Para 4 of the said circular that in the case of Artisan staff, the benefit of restructuring under these orders will be extended only on passing the requisite Trade Test.

In order to implement the order, percentage wise revised cadre strength was certified by Accounts and necessary list of candidates who were to be trade tested for extending such benefits was circulated on 06.12.2013. The trade test was conducted on 25.12.2013 & 26.12.2013 and result published on 06.01.2014 for the successful candidates.

You had retired from service on superannuation w.e.f 30.11.2013 without passing the requisite Trade Test which is mandatory for getting the benefit of restructuring as per Railway Board's order. As such, you are not entitled to get any benefit of restructuring, as claimed.

Further, a letter was sent to Railway Board seeking clarification whether restructuring benefit can be extended to such staff who had retired from railway service in between 01.11.2013 and actual implementation of the order. In reply Railway Board vide their letter dated 13.08.2018 has clarified that the benefit of restructuring will be extended to artisan staff only on passing the requisite Trade Test and staff who demitted service without passing the requisite Trade Test may not be allowed the benefit of restructuring.

Thus, keeping in view the fact vis-à-vis railway rules explained above, your prayer for granting restructuring w.e.f 01.11.13 benefit of fixation and pensionary benefits thereof cannot be entertained and hereby rejected.

This disposes of your representation dated 26.10.2018."

2. Being aggrieved by and dissatisfied with the aforesaid order dated 03.12.2018, the petitioners filed the Tribunal application being No. O.A 350/242/2019 for the second time seeking the following reliefs:

“ i) to quash and set aside the speaking order dated 03.12.2018 and to grant promotion and fixation benefits restructuring of the cadre with effect from 01.11.2013 and releasing all pensionary benefits with fixation of the applicant's basic pay on regularisation of their promotion to the post of Sr. Tech. (Fitter). w.e.f. 01.11.2013.

ii) to direct the respondents to quash and set aside the impugned speaking order and give the effect of promotion and fixation benefits on due restructuring of the cadre in terms of Rly. Boards order with effect from 01.11.2013 and releasing all pensionary benefit with arrear from the date of retirement of the applicants.

iii) to direct the respondents authorities to produce the entire records of the case before this Hon'ble Tribunal for proper adjudication on the point of issue.

iv) And to pass such further order/orders, direction or directions as this Hon'ble Tribunal may deem fit and proper.”

3. By the impugned order dated 20.01.2021 the Learned Tribunal dismissed the tribunal application preferred by the petitioners. Challenging this order the petitioners have preferred the instant writ petition.
4. Now, the only point which falls for determination is whether the petitioners are entitled to get promotional and monetary benefits in terms of the Railway Board's order dated 08.10.2013.

5. To adjudicate upon the plea of the petitioners the facts which are necessary may be summarized as under:

The petitioners were in the post of the Fitter (Electrical) under SSE(TL)/ Santragachi of Kharagpur Division, South Eastern Railway and both of them retired from their services on 30.11.2013. Before their retirement the Railway Board vide its aforesaid order dated 08.10.2013 made a provision for promotion and monetary benefits to the concerned employees on restructuring of certain Group-C cadres with effect from 01.11.2013. Based on the Railway Board's order, the C.P.O/Gardern Reach issued a circular bearing Estt Sl No. 108/2013 and lastly D.R.M(P) Kharagpur vide its office no. EEANR/TL/SrTech/ Restructuring/13 dated 06.12.2013 issued a list for conducting trade test of the eligible candidates on assured vacancies and in that list the names of the petitioners Ram Ratan Mukherjee and Radhaballav Jana figured at Serial Nos. 13 and 17 respectively for promotion to the post of Senior Tech in the pay band of Rs. 9300-34800 with Grade Pay of Rs. 4,200/-. But, they were denied the promotion and fixation benefits on the ground that they already retired from services on 30.11.2013.

6. Aggrieved by the decision of the railway authorities they made repeated representations to the concerned railway authorities for getting promotion and fixation benefits, but to no effect. Under such circumstances, they preferred the aforesaid tribunal applications.

7. Admittedly, the petitioners before their retirement were posted as fitter (Electrical) under SSE (TL), Santragachi and both of them retired from services on superannuation on 30.11.2013. In this context, it will be apposite to refer to the relevant provisions viz Clause 4 and Clause 4.7 of the order dated 08.10.2013 of the Railway Board which read as under:

“ 4 The existing classifications of the posts covered by these orders as ‘selection’ and ‘non selection’, as the case may be remains unchanged. However, for the purpose of implementation of these orders. If any individual Railway servant becomes due for promotion to a post classified as a ‘selection’ post, the existing selection procedures will stand modified in such a case to the extent that the selection will be based only on scrutiny of service record and confidential reports without holding any written and /or viva-voice test. This modified selection procedure has been decided upon by the Ministry of Railways as a onetime exception by special dispensation, in view of the numbers involved, with the objective of expediting the implementation of these orders. Similarly for the posts classified as ‘non selection’ at the time of this restructuring the promotion will be based only on scrutiny of service records and confidential reports. In the case of Artisans staff, the benefits of

restructuring under these order orders will be extended only on passing the requisite Trade Test.

4.7 Employees who retire/resign or expire in between the period from the date of effect of these orders to the date of actual implementation of these orders, will be eligible for the fixation benefits and arrears under these orders w.e.f 01.11.2013, if they are otherwise eligible for the said benefits.”

8. It is all along the stand of the railway authorities that as the petitioners retired from services and as they could not participate in the trade test, the promotional and monetary benefits under the order dated 08.10.2013 could not be extended to them.

9. Learned Counsel appearing for the petitioners has submitted that clause 4.7 of the order confers indefeasible rights upon the petitioners to fructify the benefits as available under the aforesaid order of the Railway Board.

10. As clause 4.7 enjoins, an employee who expired was also entitled to get the benefits of the aforesaid order. Similarly, the employee who resigned from service after enforcement of the order was also entitled to get the benefits. In such conspectus of situations, insisting for trade test by those employees who either died or resigned from service sounds illogical. That being so, the stand taken by the railway authorities not to extend the

aforesaid benefits to the petitioners who retired on 30.11.2013 is vitiated with severe arbitrariness.

11. We may advert to another aspect of the matter by referring to a letter dated 06.12.2013 issued by the Assistant Personnel Officer- I on behalf of Sr. Divisional Personnel Officer, South Eastern Railway/ Kharagpur by which a panel of 26 employees belonging to the cadre of the petitioners was prepared for conducting of requisite trade test for promotion to the post of Sr. Tech in pay band Rs. 9300-34800 with G.P Rs. 4,200/- in TL wing of Electric. (G) Deptt. under restructuring scheme vide Estt. Serial No. 108 of 2013. As it appears, the names of the petitioners appear at Serial No. 15 and 17 of the list. It is interesting to note that the aforesaid 26 employees including the petitioners were included in the list to fill up 26 vacancies (UR - 20, SC- 04, ST- 02) for the posts of Senior Tech in the aforesaid pay band. On scrutinising the list it is evident that 20 employees of Unreserved category, 4 employees belonging to Scheduled Caste and 2 employees belonging to Scheduled Tribe figured in the list to fill up the aforesaid promotional posts. This shows that the concerned railway authority did not undertake any competitive test among more employees beyond 26 posts to select candidates for the promotion. The list demonstrates the latent intent of the railway authorities to promote all the 26 employees included in the list to the post of Senior Tech.

12.If the railway authorities seriously desired to conduct the trade test of the petitioners they ought to have undertaken such exercise prior to their retirement. While a valuable right of the petitioners was at peril on their retirement on 30.11.2013, the railway authorities should have taken all endeavour with seriousness to conduct the test immediately after the Railway Board's order dated 08.10.2013 was issued. Instead, they protracted the exercise of conducting the test and such procrastination continued after the petitioners retired from the service. Such gross laches on the part of the railway authorities do not countenance their stand that no promotional or monetary benefits could be extended in favour of the petitioners as they did not undergo the trade test.

13.Now, the question crops up how the laches and errors crept in the process of selecting the petitioners for promotional posts could be dealt with. It goes without any say that this writ court by invoking its extraordinary power of judicial review can set right the laches or errors on the part of the state authority to prevent gross injustice to the concerned party.

14.As observed above and in exercise of the extraordinary power of judicial review we feel that the rights accrued to the petitioners to get the benefits of promotion and fixation of pay on restructuring of cadre vide the Railway Board's Order dated 08.10.2013 should be protected.

15. In view of the above, the point as raised is answered in the affirmative.

16. In the result, the impugned order dated 20.01.2021 passed by the Learned Tribunal in O.A. No. 350/242/2019 is hereby set aside. Consequently, the tribunal application is allowed.

17. The order dated 03.12.2018 passed by the Respondent No. 2 is hereby quashed. The respondents railway authorities are directed to grant promotion and fixation benefits on restructuring of the cadre in terms of the Railway Board's order dated 08.10.2013 in favour of the petitioners with effect from 01.11.2013. They are also directed to release all pensionary benefits with fixation of the basic pay of the petitioners on regularization of their promotion to the post of Sr. Tech (Fitter) with effect from 01.11.2013.

18. Thus the writ petition is disposed of.

19. No order as to costs.

20. Urgent certified website copy of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

(Rabindranath Samanta, J.)

I agree,

(Harish Tandon, J.)