

**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 84 of 2021
Kamala Kanta Pandey & 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. Faced with the denial of promotional and monetary benefits in terms of the order dated 08.10.2013 issued by the Railway Board, Ministry of Railways, Government of India, petitioner no. 1 Kamala Kanta Pandey and Sadhan Chandra Das, since deceased, the husband of the petitioner no. 2 Dipali Das, after their retirement from railway services on superannuation on 31.12.2013 approached the railway authorities, the respondents herein, with representations seeking relief. During the pendency of the representations made by them, Sadhan

Chandra Das died on 25.03.2018. Being unsuccessful in their endeavour to get relief from the railway authorities, Kamala Kanta Pandey and Dipali Das, the widow of Sadhan Chandra Das as a first round of litigation filed application being No. O.A. 950 of 2018 in the Central Administrative Tribunal, Calcutta Bench (hereinafter be referred to as the Tribunal) praying for promotional and monetary benefits in terms of the Railway Board's order dated 08.10.2013. By order dated 28.09.2018 the Learned Tribunal disposed of the application by allowing the petitioners to make a comprehensive representation to the respondent no. 2 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 with such direction the petitioners made a comprehensive representation on 24.10.2018.

2. 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. 350/950/2018 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, vis-à-vis railway records & relevant rules and regulations and pass the following reasoned order:-

You have superannuated w.e.f 31.12.2013 while working as Technician Grade-I under SSE(C&W)/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 under 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 05.12.2013. The trade test was conducted in between 05.01.14 and 17.01.14 and result published on 21.01.2014 for the successful candidates.

You had retired from service on superannuation w.e.f 31.12.2013 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 facts 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 24.10.2018.”

3. Being aggrieved by and dissatisfied with the order dated 03.12.2018 the petitioners filed the tribunal application

being No. O.A 350 /250/2019 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 no.1 and late husband of applicant no. 2'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 Railway Board's order with effect from 01.11.2013 and releasing all pensionary benefit with arrear from the date of retirement of the applicant no. 1 and the late husband of the applicant no.2.

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.”

4. By the impugned order dated 20.01.2021 the Learned Tribunal dismissed the tribunal application preferred by the petitioners. Aggrieved by and dissatisfied with the

order passed by the Tribunal the petitioners have approached this Court with the present writ petition.

5. Now, the only point which falls for determination is whether the petitioner no. 1 Kamala Kanta Pandey and petitioner no. 2 Dipali Das as the widow of Sadhan Chandra Das are entitled to get promotional and monetary benefits in terms of the Railway Board's order dated 08.10.2013.
6. To adjudicate upon the plea of the petitioners the facts which are necessary may be summarised as under:

The petitioner no.1 Kamala Kanta Pandey and Sadhan Chandra Das, since deceased, the husband of the petitioner no.2 Dipali Das, were in the post of Fitter (Mech) under SSE(C & W)/ Santragachi of Kharagpur Division, South Eastern Railway and both of them retired from the services on 31.12.2013 on superannuation. 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 CPO/ Garden Reach issued a circular being No. Estt Sl No. 108/2013 and lastly D.R.M(P) Kharagpur vide its office no. E / mach(NR) Admn/restructuring/seniortech(F)/CNW/2013 dated 05.12.2013 issued a list for conducting trade test of the eligible candidates on assured vacancies and in that list the name of petitioner no. 1 Kamala Kanta Pandey and

the name of Sadhan Chandra Das, since deceased, figured at Serial Nos. 12 and 95 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 31.12.2013.

7. 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. During the pendency of the representations, the husband of the petitioner no. 2 Sadhan Chandra Das died on 25.03.2018. Not getting their grievances redressed from the railway authorities, the petitioners filed the aforesaid tribunal applications.
8. Admittedly, petitioner no. 1 Kamala Kanta Pandey and Sadhan Chandra Das, since deceased, the husband of the petitioner no. 2 Dipali Das before their retirement were posted as fitter (Mech) under SSE (TL), Santragachi and both of them retired from services on superannuation on 31.12.2013. Undisputedly and as it appears from a death certificate Sadhan Chandra Das died on 25.03.2018.
9. 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.”

10. It is all along the stand of the railway authorities that as the aforesaid two employees retired from services and 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.

11. Learned Counsel appearing for the petitioners has submitted that clause 4.7 of the order conferred indefeasible rights upon the petitioner no.1 and the husband of the petitioner no. 2 to fructify the benefits as available under the aforesaid order of the Railway Board.

12. 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 above said benefits to the said two employees who retired on 31.12.2013 is vitiated with severe arbitrariness.

13. We may advert to another aspect of the matter by referring to a letter dated 05.12.2013 issued by the Assistant Personnel Officer- I on behalf of Sr. Divisional Personnel Officer, South Eastern Railway/ Kharagpur by which a panel of 132 employees belonging to the cadre of the petitioner no. 1 Kamala Kanta Pandey and Sadhan Chandra Das, since deceased, was prepared for

conducting of requisite trade test for promotion to the post of Sr. Tech(Fitter) in pay band of Rs. 9300-34800 with G.P Rs. 4,200/-in Mech.(C&W) wing of KGP Division under restructuring scheme vide Estt. Serial No.108 of 2013. As it appears, the names of Kamala Kanta Pandey and Sadhan Chandra Das appeared at Serial No. 12 and 95 of the list. It is interesting to note that the aforesaid 132 employees were included in the list to fill up 132 vacancies (UR - 103, SC- 19, ST- 10) for the posts of Senior Tech(Fitter) in the aforesaid pay band. On scrutinising the list it is evident that 103 employees of Un-reserved category, 19 employees belonging to Scheduled Caste and 10 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 132 posts to select candidates for the promotion. The list demonstrates the latent intent of the railway authorities to promote all the 132 employees included in the list to the post of Senior Tech(Fitter).

14. If the railway authorities seriously desired to conduct the trade test of the said two employees they ought to have undertaken such exercise prior to their retirement. While a valuable right of the aforesaid two employees was at peril on their retirement on 31.12.2013, 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 and

obviously before 31.12.2013 while the concerned employees retired from services. Instead, they protracted the exercise of conducting the test and such procrastination continued after the said two employees retired from the services. 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 petitioner no.1 and the husband of the petitioner no. 2 as they did not undergo the trade test.

15.Now, the question crops up how the laches and errors crept in the process of selecting the said two employees 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.

16.As observed above and in exercise of the extraordinary power of judicial review we feel that the rights accrued to the aforesaid two employees 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.

17. It is not in dispute that after the retirement of Sadhan Chandra Das his widow Dipali Das, the petitioner no. 2, has been drawing family pension. That being so, the rights as accrued to Sadhan Chandra Das will devolve

upon his widow in accordance with the existing relevant rules.

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

19. In the result, the impugned order dated 20.01.2021 passed by the Learned Tribunal in O.A. No. 350/250/2019 is hereby set aside. Consequently, the tribunal application is allowed.

20. 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 petitioner no.1 Kamala Kanta Pandey and Sadhan Chandra Das, since deceased, the husband of the petitioner no. 2 Dipali Das with effect from 01.11.2013. They are also directed to release all pensionary benefits with fixation of the basic pay of the petitioner no. 1 Kamala Kanta Pandey and Sadhan Chandra Das, since deceased on regularization of their promotion to the post of Sr. Tech with effect from 01.11.2013. The respondent railway authorities are also directed to release all the promotional benefits and revised family pension to the petitioner no. 2, the widow of Sadhan Chandra Das.

21. Thus the writ petition is disposed of.

22. No order as to costs.

23.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.)