

12.12.2023
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WPCT 178 of 2023
Nemai Charan Das
– *Versus* –
Union of India & Others

Mr. Sarajit Sen,
Mr. Tapas Singha Roy
... for the Petitioner.

Mr. D. N. Ray,
Mr. Rajesh Kumar Shah
... for the Respondents.

The present writ petition has been preferred challenging the order dated 29th May, 2023 passed by the learned Tribunal in the original application, being O.A. 350/00968/2016.

Shorn of unnecessary details, the facts are that seeking promotion to the post of Goods Driver (Diesel) and/or Loco Pilot (Goods/Diesel) Grade – II the petitioner participated in a selection process but he was not included in the panel. Challenging such act, the petitioner approached the learned Tribunal and by an order dated 20th July, 2009 the respondents were directed to communicate his ACRs below the benchmark and the petitioner was granted an opportunity to represent against the same. The competent authority was also directed to consider such representation and if subsequently his ACRs are upgraded then a review committee should be convened to consider his case for promotion. Pursuant to the said order the attested copies of ACRs were furnished and the petitioner's representation was considered and rejected by

an order on 15th March, 2010. Aggrieved thereby, the petitioner again filed an original application, being O.A. 2354 of 2010 which was disposed of by an order dated 26th June, 2012 quashing the impugned order dated 15th March, 2010 and directing the respondents to constitute the selection committee and consider the case of the petitioner for promotion to the next higher grade from the date his junior was given promotion with all consequential benefits. Pursuant to such direction, an order was passed by the competent authority granting promotion to the petitioner in the post of Loco Pilot (Goods/Diesel), Grade – II) on *proforma* basis from the date of promotion of his next junior Shri M. Papa Rao with effect from 28th July, 2004 to 8th September, 2010 and on actual basis from the date of shouldering higher responsibility to the concerned post from 9th September, 2010. Aggrieved by such decision the petitioner submitted several representations and as the same were not considered, the petitioner again preferred an original application, being O.A.350/00968/2016 claiming actual benefits pertaining to the said period from 28th July, 2004 to 8th September, 2010. The said original application was dismissed by the order impugned in the present writ petition.

Mr. Sen, learned advocate appearing for the petitioner argues that it is due to the fault on the part of the respondents the petitioner could not join in the promoted post on 28th July, 2004. As no laches were attributable to the petitioner, the respondents erred in law

in withholding the said consequential benefits. On the said issue, as urged, no finding was returned by the learned Tribunal and such infirmity warrants interference of this Court.

He argues that upon application of the principle '*no work no pay*', the respondents could not have denied the actual benefits of promotion to the concerned post with effect from 28th July, 2004. Similar issue came up for consideration in the case of *Commissioner, Karnataka Housing Board Vs. C. Muddaiah*, reported in AIR 2007 SC 3100 and the Court laid down the principle that the direction of the competent Court towards disbursement of consequential benefits cannot be curtailed by citing any circular/statutory provision and the employee, who was willing to work but was not allowed to do so, cannot be denied the actual benefits.

According to Mr. Sen, the judgment delivered in the case of *Union of India & Another Vs. Tarsem Lal & Others*, upon which reliance was placed by the learned Tribunal, is distinguishable on facts and even if there are contradictory judgments on similar issues, the later decision needs to be followed. In support of such argument reliance has been placed upon the judgment delivered in the case of *Bholanath Karmakar and Others Vs. Madanmohan Karmakar & Others*, reported in AIR 1988 (Cal)1.

Per contra, Mr. Ray, learned advocate appearing for the respondents submits that admittedly the petitioner did not work in the promotional post during the period from

28th July, 2004 till 8th September, 2010. Even if the delay occurred due to any administrative error, the petitioner cannot be granted the actual benefits applying the principle of '*no work no pay*'.

He argues that there was no deliberate intent on the part of the respondents to deny the petitioner's benefits and there was no *malafide* in such decision of the respondents. The petitioner was granted the benefits by the order dated 5th October, 2012 which he accepted without any objection and subsequently submitted representations re-agitating the issue that he had been denied the actual benefits of promotion from 28th July, 2004 till the date of promotion on actual basis. In the said conspectus, the petitioner is not entitled to the relief, as prayed for. In support of such argument reliance has been placed upon the judgments delivered in the cases of *State of Haryana and Others Vs. O. P. Gupta and Others*, reported in (1996) 7 SCC 533, *A. K. Soumini Vs. State Bank of Travancore and Another*, reported in (2003) 7 SCC 238 and *Union of India Vs. B. M. Jha*, reported in (2007) 11 SCC 632.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

Indisputably the petitioner was working in the Indian Railways and the provisions of the Indian Railway Establishment Manual (in short, IREM) are applicable to him. In the case of *Tarsem Lal (supra)* the issue which came up for consideration was as to whether in view of

para 228 of IREM the petitioner therein could have been given the arrears pertaining to the period he did not actually shoulder the duties and responsibilities to the higher post. In the said judgment it was decided that in view of the service conditions the petitioner cannot be granted the actual benefits pertaining to the period during which he did not render service in the concerned post.

It is well-settled that a decision is an authority for what it decides and not what can logically be deduced therefrom. A slight difference in fact or an additional fact may make a lot of difference in the decision making process. The judgment is a precedent for the issue of law that is raised and decided and not the observations made in the facts of any particular case.

In the present case the petitioner was guided by the provisions of the IREM which provided a clause to the effect that an employee cannot claim arrears pertaining to the post in which he had not actually shouldered the duties and responsibilities and in view thereof, the judgment delivered in the case of *C. Muddaiah (supra)* is distinguishable on facts.

The learned Tribunal, in our opinion, rightly observed that as per the Rules in vogue payment of arrears of pay for the period during which the employee has not held the promotional post is not treated as a consequential benefit of a promotion effected from a retrospective date.

The learned Tribunal upon dealing with the factual issues had arrived at specific findings and we do not find

any patent error of law in the same. The order also does not suffer from any jurisdictional error or any manifest injustice warranting interference of this Court.

For the reasons discussed above, the writ petition is dismissed.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Gaurang Kanth, J.)

(Tapabrata Chakraborty, J.)