

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
Appellate side

PRESENT:

HON'BLE JUSTICE MADHURESH PRASAD
AND
HON'BLE JUSTICE SUPRATIM BHATTACHARYA

W.P.C.T. 216 OF 2012

Arijit Tagore
vs.
Union of India & Ors.

For the Petitioner	:	Mr. Chitta Ranjan Chakraborty, Adv. Mr. Dip Jyoti Chakraborty, Adv. Mr. Sumit Banerjee, Adv. Ms. Puspa Rani Jaiswara, Adv.
For the Respondents	:	Mr. Asok Bhaumik, Adv.
Heard on	:	04.11.2024 & 08.11.2024
Judgment on	:	11.11.2024.

MADHURESH PRASAD, J.:-

1. The petitioner before us is aggrieved by decision of the Central Administrative Tribunal dated 18.05.2012. The Tribunal has dismissed the petitioner's challenge to the order dated 29.02.2008 whereby and whereunder the grant of promotion to the petitioner from a Group-C post of

Fuel Checker to Clerk Grade-I has been given on proforma basis with effect from 26.10.2005, actual benefits having been granted from the date of issuance of the order. The petitioner has claimed that the benefits be granted to him from the date his junior was granted the same (29.04.2005).

2. The brief factual background of the matter is that the petitioner was functioning as a fuel checker, a Group-C post under the Section Engineer (LOCO) [SE (LOCO) for short] of the Eastern Railway at Malda. The petitioner was absent for a brief period from 11.10.1999 to 16.11.1999, and thereafter from 17.11.1999.
3. In respect of the period of absence between 11.10.1999 to 16.11.1999, the petitioner was awarded the punishment of withholding of one increment without cumulative effect. On account of the second unauthorised absence from 17.11.1999, the petitioner was proceeded against and awarded punishment of dismissal from service by an order dated 02.08.2004, issued by the Senior Divisional Mechanical Engineer, Eastern Railway, Malda (SDME).
4. The petitioner thereafter, on 16.08.2004 filed an appeal against the order of punishment. The petitioner reiterated his stand taken before the disciplinary authority that he had reported for duty on 26.04.2001. He was not allowed to join by the authorities on extraneous considerations; and for reasons not attributable to the petitioner. He claimed that he was deprived from his opportunity to join work and therefore claimed salary with effect from 26.04.2001. The appellate authority was of the view that petitioner be given

a chance to improve. The petitioner was thus directed to be reinstated to his original post in the Group-C. As per the appellate authority the period of absence was to be regularised with leave admissible and due to the petitioner.

5. The leave due to the credit of the petitioner was thereafter examined and it was decided that the period of absence will be treated as follows:-

a) For the period 11.10.1999 to 07.04.2000 he was found admissible to leave on average pay;

b) For the period 08.04.2000 to 25.12.2000, he was found entitled to leave on half average pay.

c) From 26.12.2000 to 19.10.2005, he was found to be having no leave due to his credit and therefore was granted leave without pay or extraordinary leave as it is commonly referred.

6. Order of the appellate authority, namely, the Additional Divisional Railway Manager (ADRM) was communicated to the petitioner by the SDME by communication dated 03.10.2005.

7. The petitioner thus came to be reinstated, and after reinstatement made his claim for promotion with reference to the date it was granted to one Mr. S.K. Sinha, whom he claimed to be his junior. The said Mr. Sinha was granted promotion in Clerk Grade-I with effect from 29.04.2005. The first application of the petitioner for grant of such benefit of promotion is dated 29.06.2006. The petitioner's claim was considered by the authority and vide an order dated 31.10.2006, he was communicated the result of such consideration. It

was stated that he would be considered for promotion to the post of Clerk Grade-I in the scale of Rs. 4,500/- to 7,000/- (RSRT) as and when the vacancy will be filled up.

8. Finally, on 29.02.2008, an office order was issued by the Senior Divisional Personnel Officer. From the same it is manifest that the claim of the petitioner that he was entitled to grant of promotion with effect from the date granted to Mr. Sinha, was acceded to by the authorities. The authorities however were of the view that when the said Mr. Sinha was granted the promotion i.e. on 29.04.2005, the petitioner was not in service, as he had been dismissed under order dated 02.08.2004 passed by the SDME. Thus, there was no occasion to consider the petitioner's claim for promotion on 09.04.2005. The petitioner had joined back in service much later by the order of reinstatement on 26.10.2005. It is with effect from this date (26.10.2005), the petitioner was given the promotion but on proforma basis. The actual benefit was given only from the date of issuance of the order dated 29.07.2008.
9. The issue therefore arising for consideration is whether the petitioner can claim to grant of said promotion with effect from the date his junior was granted the same, namely, 29.04.2004.
10. We have heard the learned counsel for the parties. While it is the petitioner's claim that he is entitled to the said benefit with effect from the date his junior was granted the same, the learned Counsel for the respondents on the other hand submits that the authority while considering

the petitioner's claim has referred to and relied upon a relevant consideration being the past punishment granted to the petitioner, as also the fact that the petitioner has not shouldered any responsibility of the promoted post prior to issuance of the impugned order dated 29.02.2008. It is submitted that for any period prior to the said order, when he has not discharged any function of the promoted post he cannot assert any claim for benefits in respect of, or attached to the promoted post in question. It is also submitted that the promotion could have been granted only when vacancy was to be filled up. Such submission has been made referring to the earlier rejection order dated 31.10.2006. On account of such submissions, the claim of the petitioner has been found inadmissible by the authorities. The reasons forming the basis of rejection of his claim for grant of benefit from an earlier date is therefore justified. In support of his submission, he has referred to a decision of the Hon'ble Apex Court in the Case of ***Union of India & Anr. Vs. R. Swaminathan etc. etc.*** Copy of the judgement dated 12.09.1997 has been handed over to us.

11. The learned Counsel for the petitioner however has submitted that there is no dispute that the said Mr. Sinha who has been granted the promotion with effect from 29.02.2005 was junior to the petitioner. Entitlement of the petitioner is not in dispute even in terms of the impugned order. The petitioner, in such circumstance cannot be deprived of the benefits of promotion due to him from the date his junior was granted the same. The learned Counsel for the petitioner has relied upon the decisions of

the Hon'ble Apex Court in the case of ***Gurcharan Singh Grewal & Anr. Vs. Punjab State Electricity Board & Ors.*** reported in ***(2009) 3 SCC 94***; ***Union of India & Ors. Vs. Anil Kumar Sarkar*** reported in ***AIR 2013 Supreme Court 1661***; ***Ramesh Kumar Vs. Union of India & Ors.*** reported in ***(2015) 14 SCC 335***; ***Union of India, etc. etc. Vs. K.V. Jankiraman etc. etc.*** reported in ***AIR 1991 Supreme Court 2010***; ***Sri Sukumar Mukherjee Vs. Union of India & Ors.*** reported in ***2013 SCC OnLine Cal 7330***.

12. We have examined the judgements relied upon by the learned Counsel for the petitioner and heard the submissions advanced on his behalf. The claim of the petitioner for grant of promotion with effect from the date of his junior being 29.04.2005 at the very outset appears to be untenable. On this date, when the said junior was considered for grant of promotion, the petitioner was already dismissed from since 02.08.2004. The petitioner has been reinstated by an order dated 03.10.2005 but from bare perusal of the order it is apparent that the authorities have not accepted his claim for being granted benefits with effect from 26.04.2001 i.e. the date, when he claims he had submitted his application for joining which was not acceded to by the respondents on extraneous considerations. On the contrary, the reinstatement order treats the entire period from 11.10.1999 uniformly as being a period when the petitioner was absent from duty for which he has been allowed leave as due and admissible to him. The leave has been regularised by the impugned order in the manner noted above. As a result,

the petitioner was made to suffer denial of salary for a substantial period. However, once he is reinstated, the said punishment or the terms and conditions of reinstatement had ceased to have any effect thereafter. After his rejoining, when the petitioner had made his claim for promotion on 29.06.2006, the same was required to be considered by the authorities, without, in any manner being influenced by the order dated 03.10.2005. As noted above, the order of reinstatement dated 03.10.2005 deprived the petitioner of his claim for salary for the entire period of absence and was thus penal in nature. The petitioner has accepted the same without any objection. In the order dated 29.02.2008, there is no reason assigned for denying the past benefits from the date he was reinstated. The reasons however have been assigned for the first time in the WS filed before the Tribunal as well as the affidavit-in-opposition filed in the present proceedings wherein the authorities have relied upon two reasons. The first being that the petitioner had not worked on the promoted post prior to issuance of the impugned order, and therefore could not claim any benefits in respect thereof and the second reason assigned is that the petitioner had been on continuous unauthorised leave for substantial period and therefore he could not claim parity in the matter of promotion with anyone else that also when the promotion granted to the person who he claims to be junior to him was considered at the time when the petitioner was a dismissed employee, not in service. Great emphasis laid on the fact that petitioner had

earlier also suffered a stoppage of one increment for the period of unauthorised absence between 11.10.1999 to 16.11.1999.

13. We are not in agreement with the submission advanced by the learned Counsel for the respondents to justify the denial of benefits to the petitioner from an earlier date. It is apparent from bare reading of the order passed by the appellate authority and the subsequent regularisation of his services with reference to the leave admissible to him that the entire period from 11.10.1999 till 19.10.2005 has been regularised by grant of some leave or the other whether on average pay, half average pay or without pay. Reference to the stoppage of increment therefore in our considered opinion is irrelevant for the consideration of grant of benefit of the promoted post from a date after he was reinstated when the respondents themselves are of the view that his junior had been granted promotion with a date much prior thereof.

14. We, however, find some force in the submission advanced by the learned Counsel for the respondents that the petitioner cannot claim benefit of the promoted post if he has not discharged duties attached therewith. Such submission in our opinion obviously finds basis in Rule 17 of CCS (CCA) Rules. The Hon'ble Apex Court in the decision cited by the learned Counsel for the respondents and various other decisions has taken a view that benefit of the promoted post is to be granted from the date the employee assumes the post and discharges the functions thereof prior thereto he would not be entitled to any benefit of the promoted post. While doing so

however the Apex Court has on various occasions laid down the law that denial of benefits of the promoted post from a date prior to the date on which the employee assumes the post is not a thumb rule and is subject to certain recognised exception, one of them being denial or delay by the authorities in granting the promotion to the employee concerned.

15. We are also of the same view. Having taken this view we must accord due consideration to a relevant fact, being the date on which the petitioner has claimed the benefit of the promoted post. The first claim of the petitioner in this regard on records is dated 29.06.2006. The authorities thereafter have issued the order on 29.02.2008. The delay in granting the benefit, we do not find to be justified by the reasons advanced in the pleadings filed before the Tribunal or before this Court. We are of the view that the petitioner be granted the benefits due and admissible to him in terms of the office order dated 29.02.2008 issued by the Senior Divisional Personnel Officer but with effect from the date on which he has claimed the benefit, being 29.06.2006.

16. We, therefore, are not in agreement with the conclusion of the learned Tribunal dismissing the petitioner's application. We are inclined to interfere with the decision of the Tribunal dated 18.05.2012. We accordingly set aside the order of the Tribunal and direct that the petitioner be granted the benefit in terms of the impugned order dated 29.02.2008, but with effect from 29.06.2006. Such benefits are required to be granted to the petitioner, and the consequences arising therefrom including financial benefits within eight weeks from the date of receipt/production of a copy of this order before the competent authority.

17. The writ petition stands allowed.
18. Pending applications or interim orders stands disposed of or vacated.
19. There shall be, however, no order as to costs.
20. Pronounced in open Court on this day i.e. 11th day of November, 2024.
21. Urgent Photostat certified copy of this Judgement, if applied for, be given to the parties on completion of usual formalities.

(Madhuresh Prasad, J.)

I agree.

(Supratim Bhattacharya, J.)