

Uoi & Anr vs Subhash Chander & Anr on 17 January, 2023

Author: V. Kameswar Rao

Bench: V. Kameswar Rao, Anoop Kumar Mendiratta

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IN THE HIGH COURT OF DELHI AT NEW DELHI
W.P.(C) 16890-91/2006
UOI & ANR

Through: Ms. Nidhi Banga, Sr. Pane
with Mr. Nishant Kumar, A
UOI

versus

SUBHASH CHANDER & ANR

Through: Mr. B.C. Nagar and
Ms. Leelawati Suma

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

% 17.01.2023

1. The challenge in this writ petition is to an order dated February 10, 2006, passed by the Central Administrative Tribunal Principal Bench, New Delhi („Tribunal , for short) in Original Application being O.A. No.2402/2004 filed by the respondents herein challenging the order dated October 29, 2003, vide which the respondents though promoted as Senior Clerk w.e.f. May 1, 2001 and August 1, 2001 respectively on „proforma basis , but were denied the arrears of pay and allowances from the aforesaid date till issuance of the said order.

2. The facts as noted from the writ petition are that the respondents were initially appointed as Khalasi in the year 1973 and 1974 respectively. On being screened, they were regularized and later promoted as Material Checking Clerk (MMC) / Store Issuer / Clerk in the year 1985 on ad-hoc basis. Their grievance was that their seniority in the cadre of Material Checking Clerk had not been correctly fixed and consequently their junior were selected for the post of Senior Clerk. Therefore, they initially filed O.A. No.932/1989 seeking regularization. During the pendency, of the said OA, their services were regularized on August 20, 1993. The said OA was disposed of vide order dated March 8, 1994 with a direction to the petitioners herein to consider their cases for regularization from the date of their juniors were regularized in the said grade with the „benefit of seniority . As their seniority was not correctly determined despite repeated representations made in the years 1995 and 1997 etc., they preferred another O.A. No.2206/2001. In reply filed to the said OA, the petitioners herein, inter alia, stated that their request was under active consideration and, therefore,

the said OA was disposed of vide order dated September 23, 2002 with a direction to the petitioners herein to take a final decision within the time limit prescribed therein and intimate the same to the respondents. As the required action had not been taken by the petitioners, the respondents had filed the Contempt Petition No.189/2003, which was disposed of vide order dated July 24, 2003, holding that though the respondents had issued revised seniority list on January 14, 2003, but the consequential benefits, available in accordance with law, ought to have been given by the petitioners to the respondents herein.

3. The plea of the respondents was also that in terms of the revised seniority list dated January 14, 2003, they were subjected to suitability test and on being declared qualified were promoted as Senior Clerk in the pay scale of 4500-7000, w.e.f. May 1, 2001 and August 1, 2001 respectively, but only on „proforma basis , which is illegal and arbitrary. It is their case once they have been promoted with retrospective effect, in compliance of the direction issued by the Tribunal, they should have been made entitled to all the benefits flowing therefrom including the monetary benefits as well.

4. The petitioners herein contested the aforesaid OA by stating that in terms of the directions of the Tribunal vide order dated September 23, 2002 in O.A. No.2296/2001, the respondents were assigned revised seniority in accordance with the rules vide seniority list dated January 14, 2003, and thereafter, they were subjected to suitability test for Senior Clerk. On being declared successful, they were promoted as Senior Clerk on „proforma basis strictly in accordance with the provisions of paragraph 228 of the IREM Volume-I. The respondents herein were paid pay and allowances of the higher post from the day they assumed duty and responsibility of the higher post and as such they were never made entitled to pay and allowances of the higher post from the dates of their proforma promotion in accordance with the provisions of the IREM. The reliance was placed on the judgment of the Supreme Court in the case of Union of India & Ors. v. P.O. Abraham & Ors., Civil Appeal No.8904/1994, decided on August 13, 1997 to contend that the Supreme Court has upheld the vires of the paragraph 228 of the IREM Volume-I, the fact of which was not taken into consideration by the Tribunal. It is the case of the petitioners that the Tribunal, on its finding emphasised on the title of the paragraph 228 of the IREM Volume-I, by observing that the heading of the para 28 is "erroneous promotions due to administrative error and not otherwise". The Tribunal also observed that the said paragraph contemplated that "each case has to be dealt with on its own merits". Thus the Tribunal finally allowed the OA on a finding in paragraphs 11 and 12 in the following manner:

"11. On bestowing our careful consideration to the entire matter, pleadings, rivals contentions raised as well as the Judgments relied upon, we are of the view that it is, no doubt, true that the Full Bench Judgment of the Tribunal in Devi Lal (supra) was not approved by the Hon'ble High Court of Rajasthan at Jodhpur. Similarly, it remains an undisputable fact that Para 228 of IREM Vo.-I, a portion of which has been quashed and set aside by the Emakulam Bench of this Tribunal, has been restored by the Hon'ble Supreme Court, but as noticed hereinabove, the said para in itself lays emphasis that "each case should be dealt with on its merits".

We find force and justification in the contention raised by the applicants that as held by the Hon'ble Supreme Court in the Judgment noticed hereinabove, in normal circumstances when retrospective promotions are ordered/made, all benefits flowing therefrom including monetary benefits must be extended to an employee, who has been denied such promotion on an earlier occasion. However, while considering the question of arrears etc., each case has to be dealt on its merits. The only reason and justification offered by the Respondents for denial of the said benefit of arrears to the applicants had been invocation of the aforesaid Para 228. On examining the case minutely in the light of the facts and law noticed hereinabove, we are of the considered view that a co-ordinate Bench of this Tribunal in D. Thomas (supra), almost on similar facts, had taken a view that Respondents should accord financial benefits of pay and allowances from the date of retrospective promotion. In the said Judgment, the Bench had noticed all aspects, including the Judgment of Hon'ble Delhi High Court in Civil Writ Petition No.5952 of 2002 Union of India & Anr Vs. C.N. Shahi & Others decided on 20th September, 2002. The applicants' seniority had not been fixed despite directions issued by this Tribunal vide order dated 8th March, 1994 and they were forced to institute OA No.2206 of 2001. Even directions issued thereunder were not followed in letter and spirit and despite revised seniority list dated 14th January, 2003, the consequential benefits flowing therefrom had not been extended to them without any justification. The Applicants were willing not only to appear in the test, but were ready to discharge functions of the higher post. They were prevented from appearing in the test along with juniors in the year 2001 because of non-fixation of their appropriate seniority. As such, the Respondents were not justified in restricting retrospective promotion on "proforma basis" only. Despite repeated direction issued by this Tribunal, it appears that the Respondents were adamant in denying them the benefit of promotion etc.

12. In the facts and circumstance of the present case, we do not find justification in Respondents' action. Accordingly, the impugned order dated 29.10.2003 vide which the Applicants were promoted on "proforma basis" and accordingly denied the pay and allowances is quashed and set aside to that extent. The OA is thus allowed. The respondents are directed to grant them the difference of pay and allowances during the period from 01.03.2001/01.08.2001 to 29.10.2003. This exercise shall be completed within a period of three months from the date of receipt of a copy of this order."

5. Ms. Nidhi Banga, learned Senior Panel Counsel appearing on behalf of the petitioners has reiterated the submissions as advanced on behalf of the Railways before the Tribunal in the OA No.2402/2004. Her contention is, mere fact that the promotions having been given in the year 2003 though from a back date, would not entitle the respondents to the benefit of arrears of pay and allowances between the period 2001-03 as admittedly they have not worked on the higher post.

6. On the other hand, learned counsels for the respondents would justify the order of the Tribunal stating that the promotion was wrongly denied to the respondents when a similarly situated junior to the respondents viz. Avinashi Lal was granted promotion w.e.f. August 1, 2001. In fact, it is a case of hostile discrimination which has been set right by the Tribunal by referring to various judgments of the Supreme Court. It is their submission that the impugned order should be upheld and not to be interfered with.

7. Having heard the learned counsel for the parties, the only issue which arises for consideration is whether the respondents are entitled to the pay and allowances for the period between March 1, 2001 / August 1, 2001 to October 29, 2003. There is no dispute that in terms of the order dated October 29, 2003, the respondents were promoted as Senior Clerk w.e.f. March 1, 2001 / August 1, 2001 but on a „proforma basis . The effect thereof was that the respondents were not granted the benefit of pay and allowances during that period.

8. The original application which was decided by the Tribunal was not the first OA, rather, it was the third OA which was filed by the respondents herein. The first O.A. No.932/1989 was for regularisation, the second O.A. No.2206/2001 was filed seeking benefit of the seniority. The third being O.A. No.2402/2004, wherein the impugned order has been passed. While deciding the O.A. No.932/1989 on March 8, 1994, the Tribunal directed the petitioners to consider the cases of the respondents for regularisation from the date when their juniors were regularised with benefit of seniority. Unfortunately, for the reasons best known to the petitioners, the respondents were not given the due benefit of seniority.

9. In this regard, we may state that there is a finding of the Tribunal that the respondents were assigned revised position in the seniority vide notice dated January 14, 2003. In other words, the seniority list determined by the petitioners on April 27, 1995 had not been drawn in terms of the directions issued by the Tribunal vide order dated March 8, 1994.

10. Insofar as paragraph 228 of the IREM Volume-I is concerned, the Tribunal was of the view that in order to determine if any benefits have to ensue from the promotion, each case should be dealt with on its own merits. The only reason and justification offered by the petitioners for denial of the benefits of the arrears to the respondents has been the invocation of the paragraph 228 of the IREM Volume-I.

11. Suffice to state, the reliance placed by the petitioners on paragraph 228 of IREM has not been accepted by the Tribunal by holding that the promotion to the respondents was delayed because of the wrong placement of their names in the seniority list by the petitioners despite a direction to such an effect had been passed by the Tribunal and which resulted in they being denied the rightful promotion and the same is not a minor error.

12. We agree with the said conclusion of the Tribunal, more so, a clear direction had been given by the Tribunal in O.A. No.932/1989 wherein the Tribunal had observed that the applicants / petitioners herein "shall also be given the benefit of seniority" and this direction being given in March 8, 1994 and coupled with the fact that a person junior to the respondents viz. Avinashi Lal was promoted as Senior Clerk in the year 2001 itself, the respondents could not have been discriminated.

13. It is for this reason, the Tribunal has granted the benefit of pay and allowances between 2001-03. Such a decision cannot be faulted, when no fault lies with the employees. The Tribunal has relied upon the judgment in the case of D. Thomas v. Union of India & Ors., 2004 (3) ATJ 36, wherein it is held the denial of pay and allowances to an official promoted retrospectively is not justified.

14. Similarly, it had also relied upon the judgment in the case of J.P.S. Bhandari v. B.B. Mishra, Director General, CISF, 2004 (3) SLJ 323, wherein this Court had taken a view that once the Court had directed a person to accord seniority with consequential benefits, that person cannot be later on denied back-wages on the premise that a similarly placed person was not allowed with such a benefit.

15. In view of the facts of this case, we are of the considered view that the Tribunal was justified in giving the directions to the petitioners to pay the respondents pay and allowances w.e.f. March 1, 2001 / August 1, 2001 to October 29, 2003.

16. That apart, we are of the view that the respondents have retired and the period with which we are concerned is primarily a brief / short period. Also since then, 16 years have been elapsed. Therefore, the present petition has no merit and the same is dismissed.

V. KAMESWAR RAO, J ANOOP KUMAR MENDIRATTA, J JANUARY 17, 2023/aky