

CASE NO.:
Appeal (civil) 4222 of 2006

PETITIONER:
Union of India & Anr.

RESPONDENT:
Tarsen Lal & Ors.

DATE OF JUDGMENT: 21/09/2006

BENCH:
ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T
(Arising out of SLP (C) No. 23021 of 2005)

ARIJIT PASAYAT, J.

Leave granted.

Union of India and its functionaries call in question correctness of the judgment rendered by a Division Bench of the Punjab and Haryana High Court dismissing the writ petition filed by the present appellants and affirming the order of the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (in short the 'CAT').

Background facts in a nutshell are as follows :

Respondent filed the Original Application claiming that he was entitled to pay and allowance from the date on which proforma promotion was given and not from the date of actual promotion. Appellants relied on circular dated 15/17 September, 1964 to contend that the claim was untenable.

According to CAT the only question which was to be decided was whether the respondent was entitled for his pay and allowance from August, 2001 on which date he was actually promoted as M.C.M. or with effect from 9.9.1997 from which date he has been given promotion on proforma basis. Appellants denied him the arrears with effect from 9.9.1997 on the ground that he has not worked on the promotional post during the said period and as such he was not entitled for the revised pay from that date. Reliance was placed on paragraph 228 of Indian Railway Establishment Manual (in short 'IREM') Volume I dealing with employees who have lost promotion on account of administrative error. It inter alia provides that in such cases the pay should be fixed on proforma basis and the enhanced pay was to be allowed from the date of actual promotion and no arrears on this account was to be paid for the past period as he did not actually perform duties and responsibilities of the higher post. The Tribunal relying on a decision of this Court in Harbans Singh v. State of Punjab and Others (1995 Supp. (3) SCC 471) held that the stand was unsustainable. Tribunal's order was assailed before the High Court.

The High Court as noted above dismissed the writ petition relying on the judgment in Harbans Singh's case

(supra).

Learned counsel for the appellant submitted that the view of the Tribunal as affirmed by the High Court does not reflect the correct position in law. Para 228 of IREM was pressed into service to contend that the Tribunal or the High Court in the instant case did not express any view on the legality of the provision. The CAT and the High Court merely relied on Harbans Singh's case (supra) without indicating as to how the factual scenario of that case has any application to the facts of the present case.

There is no appearance on behalf of the respondent in spite of notice.

Para 228 of IREM reads as follows:

"228. Erroneous Promotions \026 (I). Sometimes due to administrative errors, staff are over looked for promotion to higher grades could either be on account of wrong assignment of relative seniority of the eligible at the time of ordering promotion or some other reasons. Broadly, loss of seniority due to the administrative errors can be of two types:-

- i. Where a person has not been promoted at all because of administrative error, and
- ii. Where a person has been promoted but not on the date from which he would have been promoted but for the administrative error.

Each such case should be dealt with on its merits. The staff who have lost promotion on account of administrative error should on promotion be assigned correct seniority vis-à-vis their juniors already promoted, irrespective of the date of promotion. Pay in the higher grade on promotion may be fixed proforma at the proper time. The enhanced pay may be allowed from the date of actual promotion. No arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher posts."

This court has occasion to deal with the same issue in Union of India and Ors. v. P.O. Abraham and Ors. in C.A. 8904 of 1994 decided on 13.8.1997. In that case the appeal was filed against the order of the Ernakulam Bench of CAT. Reliance was placed by the Union of India and its Functionaries in that case on Railway Board's Circular dated 15/17 September, 1964 which inter alia provided as follows:

"No arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher post. "

One Bench of CAT held that clause to be invalid. But in Virender Kumar, General Manager, Northern Railways, New Delhi v. Avinash Chandra Chadha and Others (1990(3) SCC

472) the view was held to be not correct. The order in Abraham's case (supra) reads as follows:

"This appeal is directed against the order of the Central Administrative Tribunal, Ernakulam Bench, in O.A.No. 649/90 dated 30th September, 1991. Though the appeal challenges the order in its entirety. Mr. Goswami, learned senior counsel for the appellants, fairly stated that the appeal is now confined only to the payment of back-wages ordered to be given by the Tribunal.

By the order under appeal, the Tribunal has allowed the application which challenged the Railway Board Circular dated 15/17 September, 1964. The said Circular inter alia, contains the following clause:

"No arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher posts."

Consequent to the deletion of the above clause, further directions were given. Learned counsel submits that the clause, which has been directed to be removed, is in accordance with the judgment of this Court in Virender Kumar, General Manager, Northern Railways, New Delhi V. Avinash Chandra Chadha & Ors. (1990 (2) SCR 769). This Court, in that case, held on principle of 'no work no pay' that the respondents will not be entitled to the higher salary as they have not actually worked in that post. The clause, which has been directed to be deleted by the Tribunal, being in consonance with the ruling of this Court, we are of the opinion that the Tribunal was not right in directing the deletion of that clause. Accordingly, to that extent this appeal is allowed. The result is that the respondents will be given deemed promotion, if any, before retirement and also the benefit in the matter of fixing pension. No costs."

In view of what has been stated in Virendra's case (supra) and P.O. Abraham's case (supra), Tribunal and the High Court were not justified in granting relief to the respondent. Reliance on Harbans Singh's case (supra) was uncalled for.

The orders are set aside. The appeal is allowed but in the circumstances without any orders as to costs.