

CASE NO.:
Appeal (civil) 4862 of 2007

PETITIONER:
Purnendu Mukhopadhyay and others

RESPONDENT:
V.K. Kapoor and another

DATE OF JUDGMENT: 12/10/2007

BENCH:
S.B. SINHA & HARJIT SINGH BEDI

JUDGMENT:
J U D G M E N T
[Arising out of SLP (Civil) No. 145 of 2003]

S.B. SINHA, J :

1. Leave granted.

2. This case has a chequered history. Appellants herein were appointed as Chargeman Grade-II. They were, in terms of the Scheme dated 23rd April, 1965, required to appear in an examination for appointment to the post of Chargeman Grade-II or Supervisor Grade-A initially. They appeared in the said examination. They were, however, appointed as Supervisor Grade-A on account of the marginal difference in the marks obtained by them from the others who were appointed as Chargeman Grade-II. The Director General on or about 4th May, 1967 taking into consideration the marginal difference in the marks obtained by the appellants decided to give another chance to the appellants to appear within six months in the next examination so as to enable them to be graded as Chargeman Grade-II, in the event, if they qualify therein. It resulted in issuance of Government order dated 4th May, 1967 in terms of which the 1965 Scheme was amended as under :-

\023The Supervisory Apprentices who secure 5% marks less in the aggregate than prescribed by the Central Selection Board for gradation as Chargeman Grade II in a particular gradation examination will be graded as Supervisor Grade A/or equivalent but will be allowed to take another chance at the next gradation examination and on the basis of their performance may be graded by the D.G.O.F. as fit for appointment as Chargeman Grade II and appointed as such with effect from a date after they are so graded in the subsequent gradation examination.

This will have retrospective effect to cover the past cases in which the DGOF has already allowed the Supervisory Apprentices another chance to appear in the gradation examination.\024

Allegedly, however, the Government of India adopted a policy of pick and choose and did not grant the benefit of the said Scheme to which they were otherwise entitled thereto. A.K. Saxena and others filed writ petition before the Delhi High Court. Appellant herein filed a similar writ petition before the Calcutta High Court which was marked as CR1671-W/83. On establishment of the Central Administrative Tribunal under the provisions of the Administrative Tribunal Act, 1985 those petitions were transferred to the Central Administrative Tribunal and were marked as TA-1069/86. However, with effect from 1st January, 1980 the post of Supervisor Grade-A and the Chargeman

Grade-II were directed to merge. The Central Administrative Tribunal allowed the said Transferred Application of the appellants by an order dated 9th July, 1990 directing :-

\023On the facts and circumstances of this case, we with respect, agree with the observations of the Supreme Court set out above. We are also of the view that the respondent authorities, in not calling the applicants to sit in the examinations held earlier had acted discriminately. As the course for the official respondents has admitted that holding of intended examination is not necessary. We direct the respondent authorities not to hold the examination. We also direct the respondent authorities to refix the respective notional seniority of the applicants and fix their pay scale and all benefits attached thereto as per rule on the basis that all the applicants came out successful in the selection test for promotion to the post of Chageman Grade II from their respective dates of examination. But they will not be entitled to any back wages or any other financial benefit save and except the notional seniority. The applicants will be entitled to be paid in accordance with the fixed pay scale and all these directions must be completed within 90 days from date. As the present application was filed in the representative capacity by obtaining leave under Rule 11 of CPC from the Hon\022ble High Court on 18-3-83, this decision will be binding on all other persons similarly situated and similarly affected. The respondents are directive to give the same benefits to them to avoid future litigation on the same issue.\024

However, the said direction was partially modified by this Court to which we would advert to a little later.

The said order was challenged before this Court. No stay, however, was granted therein. As the Central Government was not implementing the said order the present contempt petition was filed. Appellants herein also filed an interlocutory application which was marked as IA 3 of 1992 for a direction upon the Central Government not to make any promotion ignoring the order of the Tribunal dated 9th July, 1990. This Court by its orders dated 21st September, 1992 directed :-

\023Heard learned counsel for both the parties on IA 3. Taking in view, the entire facts and circumstances of this case, we direct Union of India not to make promotions on the posts of Foreman, Assistant Works Manager and further higher posts ignoring the judgment of the Central Administrative Tribunal, Calcutta dated 9th July, 1990 till the final disposal of the present appeal. The appeal may be listed for disposal in the month of January, 1993.\024.

The said order passed in IA No.3 of 1992, however, was modified on an application filed in that behalf by the Union of India. We may place on record that another application was also filed on behalf of All India Association of Non-Gazetted Officers for intervention and direction, whereupon by an order dated 13th May, 1993 this Court directed :-

\023Union of India has filed an application for modifying the order dated 21.9.92 stating that this stay has been causing bottlenecks in the operational system due to the promotions having been stayed by this Court. Since the appeal has already been directed to be posted for final disposal, the stay creates difficulty for the administration

to function. We permit the Union of India to make promotions in respect of the posts above the post of Foreman on according to the rules but any promotion made will be further reviewed and be subject to the result of the appeal. IA No. 5 is disposed of accordingly. The Registry is directed to post this appeal immediately after vacation subject to part-heard.\024

The appeal preferred by the Union of India was dismissed by this Court by an order dated 5th August, 1993, observing:

\023Having heard the learned counsel for the appellant we must confess our inability to appreciate the attitude of the Union of India for approaching this Court by way of Special Leave Petition and delay the matters by another three years.\024

Appellants contend that by the said order dismissing the appeal preferred by the Union of India, this Court was alive to the fact that the dispute between the parties not only related to original appellants/petitioners but also affected their seniority and promotion occurring during the pendency thereof. While considering the question of removal of discrimination allegedly meted out to the appellants and determination of their seniority which was material for their promotion to higher post, it was observed :-.

\023Needless to say that despite appointment of every supervisor Grade \023A\024 Chargeman Grade II the discrimination which occurred due to enforcement of the modified scheme since 1965 permitted only few supervisors Grade A to appear in the next examination persisted so far those Supervisor Grade \023A\024 were concerned who were appointed prior to coming into force of this scheme and were denied similar opportunity even though they came in field of eligibility. The injustice arose as, if the policy of permitted Supervisors Grade \023A\024 to improve their grade would not have been introduced then the seniority amongst the Supervisors would have remained the same and those appointed in one year would have remained senior to those appointed in latter year.\024

With regard to seniority and the effect on promotion to higher post, this Court observed :-

\023It is not the appointment of petitioners of Chargeman Grade II from 1980 but also the determination of their seniority which was material as it is admitted that the higher posts are available for promotion on the basis of seniority cum merit. The question of seniority therefore was of utmost importance and unless there was some such difficulty which could not be resolved the appellant should have taken care to see that the order of the High Court was complied.\024

The Hon\022ble Court further observed:-

\023In any case the Tribunal in directing the respondents to be granted notional appointment as Charegeman grade II from the date of their first examination. In the peculiar circumstances of the case, does not appear to have committed any error of law. In our opinion, this was the only possible manner in which the injustice could have

been remedied.\024

The Court, however, modified the said order to the following extent :-

\023In the result the appeal fails and is dismissed with costs. It is however, clarified that the placement of all those supervisor grade A who came in the field of eligibility namely of securing less than 5% marks in aggregate fixed for selection as Chargeman Grade II, should be fixed by directing that they were selected for that post six months from the date of their Gradation Examination.\024

We may also notice here that the appellants were not to be granted any back wages in terms of the order of the Tribunal dated 9th July, 1990. They, however, claimed to be entitled to all the benefits attached thereto including seniority and promotion to the higher posts. The said order, according to them, was partially implemented wherefor two letters one being dated 4th November, 1993 and another being dated 10th November, 1993 were issued stating :-

\023\005on the basis that all the applicants came out successful in the selection test for promotion to the post of Chargeman Gr. II from their respective dates of examination. But they will not be entitled to any back wages or any other financial benefits save and except the notional seniority.\024

\023It was necessary to firm up the seniority position of the individuals in the grades of Chargeman Gr. I Assistant Foreman and Foreman as required by holding review DPCs on the basis of the amended seniority list in the grade of Chargeman Gr.II as on 1.1.77\024

The said orders were, however, withdrawn purported to be on the basis of a Full Bench judgment of the Central Administrative Tribunal which was rendered in the meanwhile. It was stated :

\023In view of the above, the beneficiaries in the case of Purnendu Mukhopadhyay & Ors. can be allowed notional seniority in the grade of Chargeman Gr. II (Tech) only, for determining revised date from which presumptive pay should be fixed. The persons who are granted notional seniority can be superceded by persons regularly promoted.\024

Later on the said order dated 4th November, 1983 was also withdrawn directing :-

\02312. Thus the seniority of Purnendu Mukhopadhyay and ors. in the revised seniority list of Chargeman Gr. II (Tech) will count from the dates when they were regularly promoted or appointed as Chargeman Gr. II (Tech) according to recruitment rules.\024

It is not in dispute that one S.K. Ganguly and others relying on the judgment and order of the Central Administrative Tribunal filed an Original Application before it. The said O.A was allowed. The order of the Tribunal in the case of Ganguly was implemented. The Tribunal by reason of the impugned judgment, however, inter alia placing reliance upon a decision of this Court in J.S. Parihar v. Ganpat Duggar and others [(1996) 6 SCC 291] and Vijay Singh, Secretary Home and another v. Mittanlal Hindoliya [(1997) 1 SCC 258] accepted the said

plea of Union of India and inter alia directed :-

\023While finalizing such revised seniority, for deciding inter se seniority vis-a-viz the 26 petitioners of OA 789/96, who have been indentified by the official respondents as similarly circumstance with the successful applicants of TA. 1069 of 1986 (Purnendu Mukhopadhyay & Ors. Vs. Union of India and others) and have accordingly been notified as such by the official respondents through their notifications dated 14.8.85 and 14.11.95 vide Anexures E and F respectively to OA 789/96, read with D.G.O.F. Notification dated 23.2.,96, Annexure G in MA 222/1995 it will be necessary that they are treated as belonging to the group described at para 80(I) of the Full Bench (PB) judgment dated 22.12.1995, reproduced at para 51(1) above, in the instant judgment. In other words, they would be in the first category of employees who were appointed as Chargeman Gr.II prior to 1.1.73.\024

This Court by an order dated 1st March, 2007 with a view to ascertain the correct position in regard to the implementation of the earlier orders, directed the respondents to file a status report. Pursuant to the said direction a status report has been filed. In the said status report it has been accepted that the benefits given to S.K. Ganguly and others have not been given to the appellants inter alia in view of the pendency of the present special leave petition as also interpretation on the concept of notional seniority by the Full Bench of the Central Administrative Tribunal dated 22nd December, 1995.

The bone of contention of the respondents, therefore, is the judgment of the Full Bench of the Central Administrative Tribunal dated 22nd December, 1995 as appearing in their affidavit, which is as under:

\023(i) The judgment decided the principles of seniority of the various categories of Chargeman Grade II(T). All the candidates in the present SLP got their notional seniority prior to 01.01.73 in pursuance of the judgment of the Hon\022ble Supreme Court of India dt. 05.08.1993. Hence they are the first lot of persons for the purpose of seniority in the psot of Chargeman Grade II(T) as per the judgment of the Full Bench of the Hon\022ble Tribunal and have been given the seniority in the grade as per sub-para (i) and para 80 of the Full Bench judgment.

(ii) The judgment of Full Bench had also interpreted the concept of notional seniority and its consequential benefits in Para 76, 77 & 78 of the judgment of the Full Bench of the Hon\022ble Tribunal. As per the interpretation the notional seniority is used only for determining the date with effect from which the presumptive pay should be fixed. It does not give the benefit of seniority. Higher notional seniority cannot be given to the detriment of others who have been actually promoted earlier. It is not always necessary that retrospective promotion should also be accompanied by retrospective seniority.\024

Submissions of Mr. Sushil Kumar Jain, learned counsel appearing on behalf of the appellants, inter alia are -

(i) In view of the judgment of the Central Administrative Tribunal as confirmed by this Court with modification, the appellants were not only entitled to be appointed as

Chargeman Grade-II but also were entitled to promotion to higher grades and respective notional seniority at each level.

(ii) Determination of seniority at each grade therefore was material.

(iii) Although an order of stay was passed by the Central Administrative Tribunal in OA No. 521 of 1988 but the same related to only paragraph 13 of the judgment of the Tribunal and not paragraphs 11 and 12 thereof.

(iv) The appellants were entitled to promotion having regard to the facts that those who were juniors to them have been promoted in terms of Rule 18.4.3 which reads as under :-

18.4.3 If the officers placed junior to the officer concerned have been promoted, he should be promoted immediately and if there is no vacancy the junior most person officiating in the higher grade should be reverted to accommodate him. On promotion, his pay should be fixed under F.R. 27 as the stage it would have reached, had he been promoted from the date the officer immediately below him was promoted but no arrears would be admissible. The seniority of the officer would be determined in the order in which his name, on review, has been placed in the select list by D.P.C. If in any such case a minimum period of qualifying service is prescribed for promotion to higher grade, the period from which an officer placed below the officer concerned in the select list was promoted to the higher grade, should be reckoned towards the qualifying period of service for the purpose determining his eligibility for promotion to the next higher grade.

(v) The contention of the respondents that the employees who had been accorded notional seniority cannot be equated with those who had been regularly appointed is unsustainable as the object and purport of the order of the Tribunal as also of this Court were to remove discrimination meted out to the appellants by promoting their juniors.

(vi) The order of the Full Bench dated 22nd December, 1995 is not applicable

According to the appellants, their case falls under category I of the Full Bench judgment. This fact has also been accepted by the respondents in their status report. Thus if the appellants were to be appointed and or promoted as Chargeman Grade-II before 1st January, 1973 they became seniors to the other employees. As we have noticed hereinbefore that S.K. Ganguli and others had been given the benefit of the order passed by the Tribunal. We do not appreciate the stand of the respondents in this behalf inasmuch as whereas one set of order involving employees who were similarly situated to those of the appellants, benefits have been given but the same are being denied to them. Such an action on the part of the respondents in our opinion is wholly unjustifiable. The judgment of a court, as is well known, should not be read as a statute. It has to be read in its entirety. So read, the appellants had become entitled to the grant of benefits contemplated thereby. There is no reason why the same shall be denied to them. [See Ramesh Chand Daga v. Rameshwari Bai (2005) 4 SCC 772, Islamic Academy of Education v. State of Karnataka (2003) 6 SCC 697, Zee Telefilms Ltd. v. Union of India (2005) 4 SCC 649 and P.S. Sathappan v. Andhra Bank Ltd. (2004) 11 SCC 672] Our attention has also been drawn to the fact that apart from S.K. Ganguly and others some other persons who were similarly situated, namely - Prem Kumar Saha; S.K. Majumdar and Alopi Lal, have also been granted the same benefits.

In a case of this nature, in particular having regard to the fact that

the respondents have granted similar benefits to others, we fail to understand as to how the decision of this Court in J.S. Parihar (supra) and Mittanlal (supra) could be applicable. The State cannot treat employees similarly situated differently. It cannot implement the orders in relation to one and refuse to do so in relation to others. It is also not a case like J.S. Parihar (supra) where while implementing the orders, a particular stand has been taken by the employer giving rise to a subsequent cause of action. It is also not a case where the order of this Court is capable to two interpretations. [See State of Bihar v. Rani Sonabati Kumari AIR 1961 SC 221, State of Kerala v. Unni (2007) (2) SCC 365 and Sneh Enterprises v. Commissioner of Customs 2006 (7) SCC 714].

For the reasons aforementioned the impugned judgment cannot be sustained. The appeal is allowed. We, however, before taking any punitive action against the contemnors at this stage, would like to issue a direction upon them to fully implement the orders of this Court as modified by this Court on the same terms as was done in the case of employees similarly situated. In facts and circumstances of the case the appellants shall also be entitled to costs which we quantify at Rs.25,000/-.