**BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL**

BOMBAY BENCH : BOMBAY

C.P. No. 5/91 IN

ORIGINAL APPLICATION No. 177/86

Shri Raj Kumar Gupta

Senior Engineer

In the Office of the Chief

Engineer (Construction)

Central Railway, New Administrative Bldg.,

Bombay-400 001 ....... Applicant

V/s.

Ministry of Transport

Through Secretary (Establishment)

Ministry of Transport Deptt.,

Of Railways (Railway Board), Govt. of

India, Rail Bhavan

New Delhi, PIN -110 001 .... Respondent

CORAM: HON”BLE SHRI M.Y. PRIOLKAR, MEMBER (A)

HON’BLE SHRI T.C. REDDY, MEMBER (J)

Appearance

Mr. G.K. Masand, Adv.,

for the applicant

Mr. M.I. Sethna, Adv.,

for the respondents. Dated: 20.9.1991

ORAL JUDGMENT

(Per: M.Y. PRIOLKAR, N/A)

This C.P. has been filed by the applicant in O.A. No. 177/86 for non-compliance of our judgment dated 7.2.1990. In that judgment we had given direction to the respondents to dispose of the representation submitted by the applicant for ante dating his promotion from 14.10.1985 to 1.1.1984 and assign him proper consequential seniority. The learned counsel for the applicant stated that inspite of seeking time earlier on number of occasions the respondents have not yet complied with the directions given in our judgment for promoting the applicant from 1.1.1984. According to the respondents, there were no specific directions given in our judgment dated 7.2.1990 for promoting the applicant with effect from 1.1.1984.

The direction was only to consider the claim of the applicant for such retrospective promotion and to dispose of the matter by a speaking order within a specified time limit. According to the respondents, they have supplied with the direction contained in the judgment by considering the representations within the prescribed time, although, keeping in view the instructions on the subject and also, the law laid down by the Supreme Court, they had come to the conclusion that ante dating of promotion was not permissible in this case.

2. It must be admitted that in our judgment dated 7.2.1990 we had made our intention clear that this was a deserving case, even after taking note of the existing practice stated to be prevailing in Government under which ante dating of promotion claimed by the applicant could not be allowed. We had observed in our judgment that mercy because the respondents thought it convenient to hold the DPC only in the year 1985 and the approval of the UPSC to the recommendation of the DPC was given only on 14.10.1985, it will be unfair to give effect to the promotion only from that date”. We had mentioned in the judgment that since there was a vacancy, wherein the applicant could have been accommodated, we were not in a position, to grant the relief which was claimed in the application. Subsequently, in our interim order dated 9.8.1998 on this C.P., we have explicitly mentioned that the correct date of seniority would be taking him as if he was promoted in the year 1984 in which year the vacancies were available but because the DPC did not assemble, he could not be promoted. It is clear that our recommendation all along was that the applicant has been penalised for the delay was not on account of the Railway Administration, and it was necessary to grant him some relief by promotion during the year in which the vacancies were available or atleast within a reasonable time of the occurrence of the vacancies.

3. The learned counsel for the respondents has brought to our notice the specific instructions of the Govt. of India, Department of Personnel and Administrative Reforms dated 30th December, 1976 and 24th December, 198, to the effect that the date iof regular promotion of candidates included in a panel should be the date of actual promotion or the date of UPSC’s letter communicating their approval,\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and were apparently brought, to the notice of the Bench before the judgment dated 7.2.1990 had been delivered. The circular dated 24.12.1980 which was not brought to our notice when the above judgment was delivered, also lays down the procedure where for reasons beyond control, DPC could not be held nin any yar even though vacancies arose during these years. This circular stipulates that while promotions will be made in the order of consolidated select list, such promotions will have only prospective effect, even in cases where the vacancy relates to an earlier year. The learned counsel has also brought to our notice the judgment dated 26.10.1989 of the Supreme Court in the case of Union of India and others Vs. V K K Vadera and Ors. (C.A. No. 44940 of 1989) in which it had been held that promotion to the post of scientific officer in the Defence Research and Development Services will be effected from the date the promotion is granted and not from the date on which such post full vacant. We do not think that this judgment of the Supreme Court is relevant to the present case, since the question there was only of ante dating promotions vis-a-vis promotions was not involved therein as in present case.

4. Taking into account the observations made in our judgment dated 7.2.1990, and the /fact that there was an abnormal delay of one year and 10 months in this case in holding the DPC meeting by which time appointments had been made in the direct recruitment quota and these appointees had thus became senior to the applicant, we are of the view that relief should be given to the applicant as intended in our judgment dated 7.2.1990 on the lines of the Supreme Court judgment in the case of Paluru Ramakrishnan V Union of India, SC 1 AIR 1990/166 in which the Supreme court has quoted with approval the observations of Madhya Pradesh High Court in its judgment dated 18.4.1983.

“ It is the settled service rule that there has to be no pay for no work i.e. a person will not be entitled to any pay and allowance during the period for which he did not perform the duties of a higher post although after due consideration he was given a proper place in the gradation list having deemed to be promoted to the higher post with effect from the date his junior was promoted. So the petitioners are not entitled to claim any financial ................................................At the most they would be entitled to refixation of their present salary on the basis of the notional seniority granted to them in different grades so that their present salary is not less than those who are immediately below them.”

Accordingly, we direct the respondents to give notional promotion to the applicant in this post from 1.1.84. The applicant will not, however, be entitled to claim any financial benefits retrospectively. He will be only entitled to refixation of the present salary on the basis of this notional promotion and also consideration for further promotions on the basis of this seniority. He will be paid arrears of salary on the basis of the refixed pay from the date of his actual promotion.

4. We accept the respondents’ contention that there was no deliberate or wilful disobedience on their part in not implementing our judgment dated 7.8.1990, as that judgment did not certain a specific direction for ante dated promotion of the applicant. Accordingly to discharge the CP with the order as to costs.

**IN THE SUPREME COURT OF INDIA**

\*\*\*\*\*\*\*\*APPELLATE JURISDICTION

SUMMONS FOR NON-PROSECUTION

(Under Order XV, Rule 30, CR 1966)

IN

CIVIL APPEAL NO. 4804 OF 1992

( Appeal by special leave from the judgment and Order dated the 20th September, 1991 of the Central Administrative Tribunal, Bombay Bench at Bombay in C.P. No. 5 of 1991 in Original Application No.177 of 1986).

Ministry of Transport through the

Secretary (Establishment), Ministry

of Transport, Department of

Railways (Railway Board), Government

of India, Rail Bhavan, New Delhi ........ Applicant

Versus

Shri Raj Kumar Gupta, Senior Engineer

(Now Dy.CE/Cons, Central Railway),

Central Railway Officer’s Quarter No.3.

Kori Colony, Thane (East), Maharashtra,

Pin – 400 601.

.......... Respondent

27th September, 1993.

12th October, 1993.

CORAM:

HON’BLE MR.JUSTICE P.B. SAYANI

HON’BLE MR. JUSTICE S. MOHAN

For the Applicants : Ch. Badri Nath Sabu and B.K. Prasad

Advocates.

For the sole Respondents : Mr. M. Mudgal, Advocate.

Summons for Non-Prosecution reporting the default of the appeal at for not filling one copy of the special leave petition for record of the High court as required by rule 10 of Order XV SCR 1966 in the Appeal above mentioned being called on for Orders before this court on the 27th day of September, 1993 UPON hearing counsel for the parties herein, THIS COURT BOTH MAKE THE FOLLOWING ORDER :

“ Summons discharged.

Two weeks’s time is granted for filing a copy of the Special Leave Petition failing which the appeal will dismissed automatically without further reference to the court

AND the needful as per the order above quoted not having been done by the applicants herein, THIS COURT DOTH ORDER:

1. THAT the appeal above mentioned be and is hereby dismissed ;

2. THAT the Order of this Court dated 11th November, 1992 passed in interlocutory application No.1 in this appeal confirming stay be and is hereby vacated.

AND THIS COURT DOTH FURTHER ORDER that this ORDER be punctually observed and carried into execution by all concerned;

WITNESS the Hon’ble Shri Manapalli Narayanarao Venkatachaliah, Chief Justice of India, at the Supreme Court, New Delhi, dated this the 27th day of September, 1993/12th day of October, 1993.

Sd/-

( G.K. BATRA )

ADDITIONAL REGISTER

GOVERNMENT OF INDIA

MINISTRY OF RAILWAYS

(RAILWAY BOARD)

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No: E(GP)86/1/76 New Delhi, dt. 17.5.95

NOTIFICATION

In compliance with the directions given in the judgment delivered on 20.9.91 by the CAT/ New Bombay in the case of Shri R.K. Gupta, the President is pleased to decide that the substantive appointment of Shri R.K.Gupta, a Group ‘B’ officer of Civil Engineering Department of Central Railway in Junior Scale of Indian Railway Service of Engineers w.e.f. 14.10.85 notified under this Ministry’s notification No. E(GP)83/1/49 dated 13.11.85 and published in Part-I, Section II at page 1510 (English) in the Gazette of India dated 7.12.85 be cancelled and/be appointed substantively to the Junior Scale of Indian Railway Service of Engineers w.e.f. 1.1.84 on that Railway.

Sd/-

S.A.A. ZAIDI

SECRETARY/RAIWLAY BOARD

(For insertion in Part-I, Section 2 of the Gazette of India ).

Sd/-

(Balbir Singh)

Jt. Director, Establishment (Gaz.P)

Railway Board.

The Manager

Government of India Press

Faridabad.

: 2 :

No: E(GP)86/1/76 New Delhi, dt. 17.5.95

Copy forwarded for information to :

........................................

The General Manager, Central Railway, Bombay

Sd/-

(Balbir Singh)

Jt. Director, Establishment (Gaz.P)

Railway Board.

No: E(GP)86/1/76 New Delhi, dt. 17.5.95

Copy forwarded for information to :

1. The Director of Audit, All Indian Railways.

2. The Director of audit, Production Units, 14- Strand Road, Calcutta.

3. The Addl. (Railways), Mathura Road, New Delhi.

4. E(O)I, E(O)III (with five spares), E(CR)I, E(GC),

JS(E) & JS (Confdl) Branches, Railway Board’s office.

Sd/-

(Balbir Singh)

Jt. Director, Establishment (Gaz.P)

Railway Board.

No: E(GP)86/1/76 New Delhi, dt. 17.5.95

Copy forwarded for information to the Secretary, UPSC, Dholpur House, New Delhi – 110 011 with reference to the Commission’s letter No: 1/2 (9)**.....................** dt. 14.10.85.

Sd/-

(Balbir Singh)

Jt. Director, Establishment (Gaz.P)

Railway Board.

Copy to the Secretary General, Indian Railways Promotee Officers’ Federation (Sh. K. Hasan), Room No.301, Baroda House, New Delhi.

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