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IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2230 OF 2011  
(Arising out of S.L.P. (Civil) No.11293 of 2010)

Union of India & Ors.

...Appellants

Versus

Sri Ashimendra Narayan Chakraborty

...Respondent

ORDER

1. Delay condoned.

2. Leave granted.

3. Heard counsel for the parties.

4. The respondent was an employee in the South Eastern Railway. He was granted ad hoc promotion on the post of Junior Maintenance Foreman on December 28, 1978. He worked in that capacity for about nine months before being reverted to his substantive post. On May 12, 1982, he was given regular promotion on the post of Junior Maintenance Foreman. On January 1, 1984, he was further promoted as Senior Maintenance Foreman and held that post till he retired from service on December 31, 1996.

5. Before the departmental authorities he made a claim that for calculating his retiral benefits, the period of his ad hoc posting as Junior Maintenance Foreman for the period from 1978 to 1979 should also be taken into account. The departmental authorities did not accede to his claim. He then moved the Central Administrative Tribunal in O.A. No.346 of 2000. The Tribunal dismissed the application and rejected his claim holding that his posting as Junior Maintenance Foreman during 1978-1979 was a working arrangement and it was not an ad hoc promotion following the provisions of the Rules.

6. Aggrieved by the order dated May 3, 2006, passed by the

Tribunal, the respondent came to Calcutta High Court in

WPCT

No.394(W) of 2006.

The High Court agreed with the view taken by the Tribunal and held that the claim raised by the respondent had

no merit. Strangely, however, the High Court felt that there was

an injustice caused to the appellant to which it could not shut

its eyes. The High Court said that it was a court of equity and

it was duty bound to mould the relief in order to redress the

injustice caused to the appellant.

It pointed out that before

superannuation the respondent had stagnated on the post of Senior

Maintenance Foreman without any further promotion and hence, he

was entitled to a further promotion on completion of 12 years on

that post. The High Court said:

"We would, however, be failing in our duty if we shut our eyes to injustice caused to the petitioner as apparent on the face of the record although not highlighted by the petitioner. The petitioner got promotion in the post of Senior Maintenance of Foreman with effect from January 1, 1984. He retired from the said post upon completion to thirteen years in the said post on December 31, 1996. The Apex Court time and again deprecated the practice of stagnation of an employee in one post for more than a decade. The Apex Court observed that in twelve years interval one should get at least one uplift irrespective of the result of the regular promotional avenue. We are of the view that the petitioner should have been given such benefit with effect from January 1, 1996 when he completed twelve years in the post of Senior Maintenance Foreman.

We direct the Railways to give him such benefit and recalculate his retrial benefit accordingly."

7. The High Court has based its directions on some purported decisions of this Court but, unfortunately, no reference is given of any such decision. We are unaware of any decision of

this Court saying that a person holding the same post for a

period of 12 years would be entitled to promotion without

anything else. This Court had indeed deprecated a situation

where an employee would not get a single promotion during his

entire service tenure and in light of the observations made by

this Court, the Central Government and the State Governments

framed the schemes of Assured Career Progression/ Time-bound

Promotion etc. under which, subject to the conditions prescribed

under the scheme, an employee gets a promotion after a fixed

period of service (usually 10-12 years) and another promotion after an additional fixed period of completed service (usually 24-25 years), provided he gets no promotions in the regular course of employment.

8. In the case in hand, the respondent was promoted as Junior Maintenance Foreman on May 12, 1982, and on January 1, 1984, he was promoted as Senior Maintenance Foreman. He was, thus, given two regular promotions in the course of his employment and his case clearly does not come under any scheme of time bound promotions.

9. The order passed by the High Court is, thus, clearly ill-conceived and it is a case of fortuitous grant of largesse by the court. The order of the High Court is untenable by any reckoning. We are, accordingly, constrained to set aside the order of the High Court and to dismiss the writ petition filed by the respondent. We order accordingly.

10. In the result, the appeal is allowed but with no order as to costs.

....J. ....  
(Aftab Alam)

.....J. ....  
(R.M. Lodha)

New Delhi,  
February 28, 2011.  
ITEM NO.45

COURT NO.12 SECTION XVI

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).11293/2010

(From the judgement and order dated 21/04/2009 in WPCT No. 394/2006 of the HIGH COURT OF CALCUTTA)

UNION OF INDIA & ORS.

Petitioner(s)

VERSUS

SRI ASHIMENDRA NARAYAN CHAKRABORTY

Respondent(s)

(With appln(s) for c/delay in filing SLP)

Date: 28/02/2011 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE AFTAB ALAM  
HON'BLE MR. JUSTICE R.M. LODHA

For Petitioner(s)

Mr. Mohan Jain, ASG  
Mr. D.K. Thakur, Adv.  
Mr. Deepak Jain, Adv.  
Mr. J.K. Misra, Adv.  
Ms. Yogita Yadav, Adv.  
Mr. Arvind Kumar Sharma, Adv.

For Respondent(s)

Mr. Anurag Pandey, Adv.  
Mr. Gautam Das, Adv.  
Ms. C.H. Milanta, Adv.

UPON hearing counsel the Court made the following  
O R D E R

Delay condoned.

Leave granted.

The Civil Appeal is allowed, but with no order as to  
costs.

(N.S.K. Kamesh)  
Court Master

(S.S.R. Krishna)  
Court Master

(signed order is placed on the file)