

Retired Employee Not Entitled To Retrospective Promotion or Benefits of Promotional Post after Retirement

Supreme Court

Yash Mittal

28 Nov 2024 9:22 AM

The Supreme Court on Wednesday (Nov. 27) held that an employee whose promotion was not effectuated before his retirement would not be entitled to retrospective promotion and the notional benefits attached to the promotion.

The bench comprising **Justice PS Narasimha and Justice Sandeep Mehta** observed that *“promotion only becomes effective upon the assumption of duties on the promotional post and not on the date of occurrence of the vacancy or the date of recommendation.”*

The Bench heard the appeal filed by the State of West Bengal against the grant of notional benefits to respondent No. 1 employee, whose promotion to the post of Chief Scientific Officer (CSO) was approved post-superannuation.

The High Court approved the Administrative Tribunal decision which found that due to delay and laches on the appellant's part, respondent no.1 promotion was not effectuated before his superannuation though recommended before superannuation. Therefore, instead of directing retrospective promotion under Rule 54(1)(a) of the West Bengal Service Rules, 1971, the Tribunal directed the appellants to provide the benefits of the promotional posts.

The Supreme Court considered the question of *“whether respondent No.1, who was recommended for the promotion before his retirement but did not receive actual promotion to the higher post due to administrative delays, is entitled to notional financial benefits of the promotional post after his retirement?”*

Before the Supreme Court, the appellant-State Government contended that service jurisprudence does not recognize retrospective promotion without a specific enabling provision, therefore, notional promotion cannot be granted retrospectively unless there exists a specific rule or exceptional circumstances. It argued that in the present case, Rule 54(1)(a) of the West Bengal Service Rules, precludes retrospective promotion, therefore respondent no.1 would not be entitled to even notional benefits.

Finding force in the appellant's argument, the judgment authored by **Justice Mehta** answered the question negatively and observed that it would be unjustified to grant even a notional benefit to respondent no.1 because he had not assumed the office of the promoted position (CSO) and didn't serve in that capacity.

“promotion only becomes effective upon the assumption of duties on the promotional post and not on the date of occurrence of the vacancy or the date of recommendation. Considering that respondent No. 1 superannuated before his promotion was effectuated, he is not entitled to retrospective financial benefits associated to the promotional post of Chief Scientific Officer, as he did not serve in that capacity.”, the court said.

Reference was drawn to the case of [Bihar State Electricity Board and Others v. Dharamdeo Das \(2024\)](#), where the Court held that promotion is effectuated only when it is granted. The Court clarified that promotion would not be effectuated from the date when a vacancy occurs on the subject post or when the post itself is created.

The Court's reasoning was based on the fact that when the employee was not even borne in the cadre then how he can be promoted to the said cadre retrospectively.

The Court took into account Rule 54(1)(a) of the West Bengal Service Rules which prevent retrospective grant of promotion to an employee when his promotion was not even approved.

“In the instant case, it is evident that while respondent No. 1 was recommended for promotion before his retirement, he could not assume the duties of the Chief Scientific Officer. Rule 54(1)(a) of the West Bengal Service Rules, clearly stipulates that an employee must assume the responsibilities of a higher post to draw the corresponding pay, thus, preventing posthumous or retrospective promotions in the absence of an enabling provision.”, the Court said.

Accordingly, the appeal was allowed.