

6-976

On 980/85.

Order pronounced in ^{court} open today.
Case disposed of by the General
of Haibee m/s 82a(11) & Haibee
Dr A-V-V. (J.M.)

Be

X
Cor III

71

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH.

O.A.No. 980/89

New Delhi: this the 6th day of Sept, 1996

HON'BLE MR.S.R.ADIGE MEMBER (A).

HON'BLE DR.A.VEDAVALLI MEMBER (J).

Shri Girdhari Lal,
S/o Shri Mulakh Raj,
Ex.Works Accountant in office of the
Divisional Railway Manager,
Northern Railway,
Ferozpur,

.....,Applicant.

By Advocate: Shri B.S.Mainee.

Versus

Union of India through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. The Divisional Railway Manager,
Northern Railway,
Ferozpur

.....Respondents.

By Advocate; Shri O.P.Khashtriya.

JUDGMENT

BY HON'BLE MR.S.R.ADIGE MEMBER (A).

In this application, filed on 5.5.89,
Shri Girdhari Lal, retired Works Accountant
DRM's office, Northern Railway, Ferozpur has
sought the following reliefs:

- i) grant of benefit of judgment dated
24.9.87 in TA No.319/85 Balwant Singh
Vs. UOI & others.;
- ii) interpolation of his name in the
earlier panels of Assistant Supdt.
(Works) and Supdt.(Works);
- iii) pay fixation as in Balwant Singh's
case (supra);

- iv) payment of arrears from the date
from which he ought to have ^{been} promoted
as Assistant Superintendent Works (ASW)
and Superintendent Works (SW);
- v) Refixation of pension and other retiral
benefits after pay fixation;
- vi) interest on arrears.

2. In T.A.No.319/85 Balwant Singh & 16 other Works Accountants in the Engineering Department, Northern Railways had prayed that the Railway Board's Circular dated 31.7.76 revising the pay scale of the Works Accountants from Rs.250-380 to Rs.455-700 for those who were promoted from the category of Head Clerk (Rs.250-350) and allowing a pay scale of Rs.425-640 to those promoted from the category of UDC (Rs.130-300) should be quashed and the petitioners should be declared to be entitled to the revised pay scale of Rs.500-900 allowed to Divisional Accountants, irrespective of the fact that they were promoted from the rank of UDC. They had also prayed that the revised pay scale of Rs.500-900 should be paid to them from the date of implementation of the Third Pay Commissioner's recommendations and that they should be given the benefit of seniority and status for being entitled to further promotion beyond the grade of Rs.500-900. On 1.9.80, they amended their O.A. praying also that the Circular dated 30.3.73 of the respondents should be quashed by which the interse seniority between Works Accountants (Rs.250-380) and Head Clerks

A

33

(Rs.210-380) was to be determined in a common seniority list and the Head Clerks would count their service from the stage of Rs.250 in the scale of Rs.210-380. They have also prayed that irrespective of the pay and length of service, all Work Accountants in the higher scale should be shown senior to the Head Clerks.

3. This TA which had initially been filed in the Delhi High Court on 14.12.76, was transferred to the Tribunal and was disposed of by judgment dated 24.9.87 by which the application was allowed only in part to the extent of directing the respondents that the Work Accountants[^]/who were promoted directly from the grade of UDCs, as also the Head Clerks promoted as Work Accountants, should be given a unified revised scale of Rs.455-700 with effect from the date the revised scales were made generally operative and the Work Accountants in the integrated seniority list with Head Clerks should be placed en bloc above the Head Clerks. The Circular dated 30.3.73 stood quashed to that extent..

4. Shri Balwant Singh & 8 others had filed OA No.833/89 alleging that the respondents had not given them the benefits of the judgment dated 24.9.87 in TA.319/85. When the case came up for hearing on 4.2.91, it was contended on behalf of Applicant No.1 Shri Balwant Singh that the benefits of the aforesaid judgment had

A

been given to 15 applicants, as well as one Shri S.C.Bhatnagar who had approached the Tribunal in OA No.980/89 which had been decided in their favour on 19.11.90 and the applicant was the solitary person to whom the benefits of judgment in T.A. No.319/85 had not been given. He stated that his case was exactly the same as that of Shri S.C. Bhatnagar (in OA No.980/89 decided on 19.11.90) and he was also entitled to the same relief as was granted to Shri Bhatnagar. On the date of hearing it was also noticed that although the OA had been filed by Shri Balwant Singh & others, it was not pressed by 8 others as they had all received the benefits of the judgment in T.A.No.319/85.

5. On the date of hearing, applicants' counsel was present but none appeared for the respondents. By judgment dated 4.2.91, the OA was allowed and the respondents were directed to implement the order dated 24.9.87 passed in T.A. 319/85 within one month, if they had not done so. The respondents were also directed to include the name of the applicant in the earlier panels of ASW w.e.f. 1.12.68 and SW w.e.f. 1.1.79 in which the name of his junior had already been included, and to fix the applicant's pay giving him the benefit of annual increments. The respondents were also directed to pay the arrears to the applicant from the date he ought to have been promoted as ASW/SW, and to refix his pension according to the pay refixed as per the above directions. Costs of Rs.1000/- were also

h

awarded since he had been forced to come to Tribunal because the earlier order dated 24.9.87 passed in TA No.319/85 had not been implemented.

6. The present OA^{filed by Shri Girdhari Lal} was disposed of by judgment dated 10.3.92 by which it was dismissed as being devoid of merits. It was noted inter alia that the applicant's claim was that he should be given the benefit of judgment dated 24.9.87 passed in TA No.319/85, but the applicant was not even in service — on the date of judgment i.e. 24.9.87, as he had already retired in 1982. Although the grievance of the applicant was that there was a wrong calculation of seniority in his case and the applicants of TA No.319/85 were junior to him and they had been given the benefits of interpolation in the earlier panels for the post of ASW/SW in terms of Northern Railway HQ's Memo dated 31.8.88, all those persons named therein i.e. Sl.Nos.1 to 15 were already in service. It was observed that many more, like the applicant, had retired before and after him, and if the applicant was interpolated, then all those persons who had retired since that date, if not on an earlier ^{date, would also have to be} ~~earlier~~ interpolated. It was observed that there was no law which allowed a subsequent declaration of law to be applied retrospectively, and for these reasons the OA was dismissed.

7. Against that judgment, the applicant filed RA No.164/92 which was dismissed on 22.5.92.

/h

8. Against that order dated 22.5.92 in R.A.No.164/92, the applicant filed SLP No.14005/92 in Hon'ble Supreme Court which was renumbered as Civil Appeal No.188/96 and was allowed by order dated 3.1.96, and the Tribunal's order dated 22.5.92 in RA No.164/92 arising out of OA No.980/89 was set aside. The matter was remitted to the Tribunal with the direction that the Tribunal restore to its file OA No.980 of 1989 and decide the case of the applicant Girdhari Lal afresh, and grant relief to the applicant herein the retiral benefits due to him in accordance with its earlier decision dated 24.9.87 in TA No.319/85 Balwant Singh & others Vs. UOI and decide the matter within 6 months from 3.1.96. In the reasons for their orders, their Lordships were pleased to observe that there was no dispute that Shri Girdhari Lal would be entitled to the benefit of judgment dated 24.9.87 in TA No.319/85 Balwant Singh & others Vs. UOI if he too had been a party therein, since his claim was identical to that of those applicants. Noting that the main challenge on behalf of the Union of India to Girdhari Lal's claim was that he did not join as a party in that matter and moved the application for grant of the same benefit after that decision in 1989, he having retired earlier, their Lordships observed that it was not disputed that the applicant's claim based on the decision in TA No.319/85 was material also for computation of the retiral benefits to which he was entitled even now. That being so,

A

it was difficult to appreciate the resistance on behalf of the Union of India to grant the same benefit to the applicant and the rejection of his claim. Their Lordships observed that in view of the Tribunal's decision in TA No.319 of 1985 it would be appropriate that the UOI treated all such persons alike and to grant them the same benefits instead of driving each one of them to litigation in the course of which the UOI itself would be required to spend considerable public money and this aspect appeared to have been overlooked also by the Tribunal. Their Lordships therefore held that it was appropriate that the Tribunal was required to grant relief to Shri Girdhari Lal computing the benefits due to him in accordance with the decision in TA No.319/85 for which purpose the matter was remitted to the Tribunal.

9. Upon receipt of Hon'ble Supreme Court's orders dated 3.1.96, the case came up on 29.1.96 on which date notice was ordered to be issued to respondents. On the next date i.e. 29.2.96 respondents' counsel sought time to study the Hon'ble Supreme Court's order. The case next came up on 8.4.96 on which date it was heard in part and was fixed for further hearing on 9.4.96 but on that date applicant's counsel sought time to bring certain further developments in the case to the Tribunal's notice. This was allowed, and on the next date i.e. 9.5.96 applicant's counsel sought an adjournment to bring certain addl. documents on

A

38

record. The case was finally heard on 6.6.96 and orders were reserved, but owing to the sudden and tragic demise of one of the Hon'ble Members of that Bench, judgment could not be delivered and the matter was therefore reheard by our Bench on 26.8.96.

10. We note that pursuant to the Tribunal's judgment dated 29.4.87 in TA No.319/85, respondents issued letter dated 23.8.88, (Annexure A-1) allowing Balwant Singh and 15 others improved seniority position over the Head Clerks as Works Accountants and refixing the dates from which they would be eligible for proforma promotion as ASW/SW on the basis of revised seniority, with reference to their juniors with payment of arrears only from the dates they had actually shouldered the higher responsibilities.

11. It is manifest that as per Hon'ble Supreme Court's decree dated 3.1.96 the respondents are now required to allow applicant Girdhari Lal's improved seniority position over the Head Clerks, and thereafter refix the date from which he would be eligible for proforma promotion as ASW/SW on the basis of that revised seniority, with reference to his junior, with payment of arrears only from the date(s) he actually shouldered the higher responsibilities, and thereafter refix and pay him his retiral benefits on that basis.

A

12, In this connection applicant's counsel Shri Mainee has emphasised that as per Tribunal's judgment dated 4.2.91 in OA-833/89 Balwant Singh & 8 Ors. Vs. UOI & Ors., not only was the date of eligibility of Balwant Singh's proforma promotion as ASW fixed by respondents letter dated 23.8.88 revised from 21.11.69 to 1.12.68, but the respondents were also directed to give him the benefit of annual increments, as well as the arrears from the date he ought to have been promoted as ASW/SW, besides refixing his pension according to the pay so refixed. Shri Mainee has emphasised that applicant Girdhari Lal is not only entitled to pay fixation on promotion as ASW/SW as per his revised seniority, and annual increments thereon, but arrears as well, from the date he ought to have been promoted as ASW/SW, besides refixation of pension and arrears thereon on the basis of pay so fixed. He has contended that a number of rulings are available in support of his claims for arrears on account of pay fixation. On the other hand respondents counsel Shri Kshatriya has argued that the extension of the Tribunal's judgment dated 29.4.87 in TA No.319/85 to applicant Girdhari Lal itself, would open the flood-gates for similar claims by persons who had retired well before 29.4.87, in future.

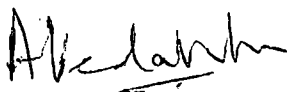
A

13. The question whether applicant Girdhari Lal would be entitled to arrears of pay from the date(s) of his eligibility for proforma promotion, even if he did not actually shoulder the additional responsibilities has been carefully considered by us. We note that the Hon'ble Supreme Court's Decree dated 3.1.96 explicitly directs the Tribunal to "decide the case of appellant Girdhari Lal afresh and grant relief to the appellant herein the retiral benefits (emphasis supplied) due to him in accordance with its earlier decision dated 24.9.87 in TA No.319/85". We are bound absolutely by the wordings in the Hon'ble Supreme Court's decretal order dated 3.1.96, which [^]speaks only of the grant of retiral benefits to the applicant Girdhari Lal in accordance with the Tribunal's judgment dated 24.9.87, which the respondents implemented vide their letter dated 23.8.88. There is no direction in the said decretal order for payment of arrears in respect of periods for which higher responsibilities were not shouldered, and in fact there is no mention therein of the Tribunal's judgment dated 4.2.91 in OA No.833/89 although the same was delivered nearly 5 years before the decretal order dated 3.1.96.

A

14. Under the circumstance, as we are to go strictly in accordance with the Hon'ble Supreme Court's decretal order dated 3.1.96, what the applicant Girdhari Lal will be entitled to is improved seniority position over the Heard Clerks as Works Accountant and refixation of the date(s) from which he would be eligible for proforma promotion as ASW/SW on the basis of revised seniority with reference to his junior, and with grant of annual increments notionally thereon, but with payment of arrears only from the date he actually shouldered higher responsibilities. The applicant's pay should be refixed on that basis. Thereafter the applicant's retiral benefits should also be refixed on the basis of the above pay refixation, and payment of such retiral benefits so refixed, less what has already been paid, together with arrears of such retiral benefits (but without any payment of interest thereon), should be released to the applicant within 3 months from the date of receipt of a copy of this judgment.

15. This O.A. is disposed of in terms of the directions contained in para 14 above. No costs.



(Dr. A. Vedavalli)
Member (J)



(S.R. Adige)
Member (A)

/UG