

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 3067/92

DECIDED ON : 24.4.93

Ishwar Dayal

... Applicant

Vs.

Union of India & Others

... Respondents

COURT :

THE HON'BLE MR. J. P. SHARMA, MEMBER (J)

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

Shri Sant Lal, Counsel for the Applicant
Shri M. L. Verma, Counsel for the Respondents

JUDGMENT

Hon'ble Shri J. P. Sharma, Member (J) :-

The applicant worked as Mailman on daily wages from November, 1979 to September, 1988 in the Record Office, RMS, 'D' Bn., New Delhi and was not allowed to appear in the literacy test and, therefore, filed O.A.1922/88 before the Principal Bench of the Tribunal which was decided with other similar O.A.s vide order dated 15.12.1989 and the said O.A. was disposed of by the following order :-

"(a) The respondents are directed to consider the applicants for regular absorption in Group 'D' cadre from the due date according to their seniority on the basis of the literacy test for recruitment of Group 'D' staff held in 1988. The results of the test should also be published forthwith. They must be considered to have put in service for a period of 240 days for this purpose. The respondents are further directed to treat them as within the age-limit prescribed for the purposes of regularisation as they were within the prescribed age-limit at the time of their initial appointment.

(b) xxxxxx xxxxxx"

2. In the aforesaid O.A. also an interim direction was issued to the respondents to allow the applicant to take the literacy test but the result would not be declared and after the decision of the aforesaid O.A. the result of the applicant was declared on 28.2.1990 and as the applicant came out successfully, he has also been regularised and absorbed on regular basis in Group 'D' post in the Postal Department.

3. The Superintendent, RMS, 'D' Division wrote a D.O. letter on 19.6.1990 to the Assistant Post Master General (Staff) submitting the seniority list of all daily wagers who appeared in the literacy test held on 9.10.1988 and observed for the applicant's seniority as follows :-

"(i) Shri Ishwar Dayal OA-1922/88 was the senior most according to his length of service and he is to be given seniority and back wages with effect from 13-10-88 which is earliest date on which one of his junior i.e Shri Jai Singh whose name appears at serial no. 5 of the list above was appointed."

The applicant also submitted a representation dated 16.12.1991 for fixation of seniority and pay etc. on the basis of the length of service to implement the judgment of the Tribunal in O.A.1922/88. Vide letter dated 9.12.1991, respondent No.3 directed the SRO, RMS, Hissar to give seniority to the applicant in Group 'D' cadre w.e.f. 13.10.1988 and in pursuance of this direction, the SRO, RMS, Hissar vide order dated 29.1.1992 fixed the seniority of the applicant w.e.f. 13.10.1988 instead of 6.3.1990. The applicant is aggrieved by the fact that no orders have been issued with regard to the consequential benefits of pay fixation and confirmation etc. The applicant, therefore, made another representation dated 18.5.1992 for pay fixation and payment of arrears etc. w.e.f. 13.10.1988. This representation of the applicant

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has been rejected by the Superintendent, RMS, D.Division vide impugned order dated 25.5.1992 informing the applicant that as per judgment of the Tribunal, the applicant is entitled to seniority from 1988 but to no other benefit.

4. The applicant has prayed for the grant of the following reliefs :-

- (i) To direct the respondents to make pay fixation in Group 'D' Cadre in the pay scale of Rs.750-940/- w.e.f. 13-10-88 i.e the date from which the applicant has been regularised and given seniority at par with his junior Shri Jai Singh;
- (ii) To grant consequential benefits of payment of arrears becoming due on account of pay fixation w.e.f. 13-10-88 and confirmation from due date;
- (iii) To award the costs of this application;
- (iv) To grant such other relief as this Hon'ble Tribunal deem fit in the circumstances of this case in the interest of justice."

5. The respondents contested the O.A. and took the preliminary objection that the application is barred under the provisions of sections 20 and 21 of the Administrative Tribunals Act, 1985. On merits, it is contended that the applicant is not entitled to any backwages and the seniority of the applicant has already been fixed w.e.f. 13.10.1988. It is further contended that the applicant did not assume the duty in Group 'D' cadre till 6.3.1990 and as such there is no question of giving the applicant any benefit of wages for the period when he did not do any work in Group 'D' cadre earlier to that date. The analogy drawn by the applicant with junior Shri Jai Singh cannot be the case of awarding backwages to the applicant because Jai Singh has earned annual increments while he was physically working and discharging the duties in Group 'D' cadre w.e.f. 13.10.1988

whereas the applicant performed the actual duties in Group 'D' cadre w.e.f. 6.3.1990, and so, the applicant cannot claim any benefit on that account.

6. The applicant has also filed a rejoinder reiterating the averments made in the C.A. and further stating that the applicant is entitled to regularisation from due date according to his seniority as a result of literacy test held in 1988 with the benefits of pay fixation and confirmation etc.

7. We have heard the learned counsel for the parties at length. The learned counsel for the applicant has referred to the case of Shri Paras who also filed O.A.2140/92 decided on 23-12-1992 and that has been disposed of by the following observation :-

.....According to the respondents that in view of the direction given by the tribunal that the seniority of the applicant has already been fixed on the basis of literacy test held on 9-10-1988 i.e. from 11-11-1988 instead of 6.3.1990 by the Record Office, RMS 'D' Division Hissar, but the orders for confirmation of the applicant were issued keeping in view the satisfactory probation period of work and conduct of two years as required under the department rules, hence the confirmation orders were issued correctly as required under the rules after watching the work and conduct of the official for two years and the applicant was not permanent or quasi permanent employee and on 11-8-91 he was not allowed to appear in the examination for the higher post. These facts make it clear that due seniority was given to the applicant w.e.f. 1-11-1988 and he was continuing in service the period of two years, the probationary period was deemed to have expired in 1990 and the year 1990 was not the starting point. The respondents have committed an error and rather tried to bypass the order, passed by the tribunal in such a sophisticated manner, which they could not have done. The applicant having completed a period of probation in the year 1990, he was entitled to all the benefits including appearance in the examination for the higher post. Accordingly, this application is allowed and the order by which the applicant was been confirmed w.e.f. 29-1-1991 is quashed. It is directed that the applicant will be entitled to all the consequential benefits...."

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8. In the case of Paras (supra) the issue involved was totally different. In that case the main issue was whether the said Paras fulfilled the eligibility conditions to take the departmental examination for promotion to the cadre of Time Scale Clerks and Sorting Assistants or not. The direction which was issued was that the applicant, Paras, will be entitled to all the consequential benefits and in case he had appeared in the examination in pursuance of the order passed by the Tribunal, the result of the same shall be declared and he shall be given the benefits of the same.

9. The learned counsel for the applicant has also referred to the decision in the case of Charan Singh vs. Union of India decided on 25.5.1990 (O.A. 1886/87) in which the Tribunal held as follows :-

"The applicant having been declared successful in the Literacy Test for regular appointment vide memo dated 5-2-80 would be entitled to be regularised w.e.f. the said date. He would also be entitled to other consequential benefits, including regular pay scale from 5-2-80 and not merely notional seniority. The regularisation envisaged by the Supreme Court's order relates back to 5-2-80, when he qualified in the Literacy Test, which is the pre-requisite for regularisation. We, therefore, direct the respondents to fix the pay of the applicant in Group 'D' Cadre w.e.f. 5-2-80 and to release the arrears of pay and allowances becoming due on account of such pay fixation within a period of two months from the date of communication of this order."

10. Learned counsel for the applicant also referred to another case of Ram Chandra vs. Union of India, O.A. 932/86 decided on 4.8.1987 where the similar benefits of arrears of pay has been allowed.

11. We have considered all these aspects in greater details. In fact, the applicant was allowed to take the literacy test under orders of the Tribunal passed in

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O.A.1922/88. The result of the said literacy test was also declared on the decision of the aforesaid O.A. by the judgment dated 15.12.1989. The first available opportunity available to regularise the applicant would have been from the date when the result was declared, i.e., 28.2.1990. There is no direction in O.A.1922/88 for payment of backwages and this was the specific observation made in the impugned order dated 25.5.1992. It was open to the applicant to come in review for that judgment at the relevant time or in any case, move for contempt if the same was the intention of the Bench in O.A.1922/88. The Hon'ble Supreme Court also considered a similar matter of grant of backwages when the incumbent on the post did not work and the backwages were not awarded when the seniority list was revised. In the present case, the applicant was earlier given seniority w.e.f. 6.3.1990 and subsequently he has been given seniority w.e.f. 13.10.1988. The judgment of the Supreme Court referred to above is reported in 1989 (1) SCALE 830 - Taluru Ramakrishnaiah & Ors. vs. Union of India & Anr.

12. Thus, the applicant has been rightly given the wages when he actually worked in Group 'D' cadre, but the respondents have revised the seniority list giving him the notional benefit w.e.f. 13.10.1988 on account of the fact that the applicant was the seniormost among those casual workers who took the literacy test and were regularised in Group 'D' cadre on the result of the said test. The maximum benefit which can be given to the applicant is notional fixation of pay and his pay will be stepped ^{up} to the level of his junior Shri Jai Singh, that is, to give him the same pay on his regularisation w.e.f. 6.3.1990 as has been drawn by Shri Jai Singh. To this extent, the application is liable to be allowed.

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13. Having given a careful consideration to the rival contentions of the parties, the application is partly allowed with the following directions :-

(a) The respondents are directed to fix the pay of the applicant on his regularisation in Group 'D' cadre w.e.f. 6.3.1990 to the level of Shri Jai Singh, the immediate junior to the applicant, and give him the notional benefit of fixation of pay w.e.f. 13.10.1988, a berth given to him in the seniority list with effect from that date.

(b) The prayer for the grant of backwages earlier to 6.3.1990 is disallowed.

In the circumstances, the parties are left to bear their own costs.

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(S. R. Adige)

Member (A)

Sharma
2.4.93
(J. P. Sharma)

Member (J)

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