

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
ADDITIONAL BENCH AT ALLAHABAD

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Allahabad : Dated this 15th day of March, 1996

Original Application No.577 of 1988

District : Shahjahanpur

CORAM :-

Hon'ble Mr. S. Das Gupta, A.M.

Hon'ble Mr. T.L. Verma, J.M.

Abhibaran Lal S/o Sri Bharat

R/o Q.No. E-137-A, Rosa Jn.

Station Colony, Rosa,

District-Shahjahanpur.

(Sri Anand Kumar & Sri AK Dixit, Advocates)

. Applicant

Versus

1. General Manager,
Northern Railway, Baroda House,
New Delhi.
2. Divisional Rail Manager,
Northern Railway,
Moradabad.
3. Permanent Way Inspector,
Rosa Jn,
Northern Railway
District-Shahjahanpur.
4. Union of India through Secretary to
Department of Railways, Ministry of
Railway, New Delhi.

(By Sri A.K. Gaur, Advocate)

. Respondents

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O R D E R

By Hon'ble Mr. S. Das Gupta, A.M.

In this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant seeks a direction to the respondents to grant him a sum of Rs.20,065.90 together with the interest @ 12% per annum on account of arrears of salary paid less to him on 22-5-1987. It has also been prayed that the applicant be promoted w.e.f. 20-5-1965 to the higher post of APWI /~~APWI-III~~ with all consequential benefits.

2. The facts stated in the application are that the applicant joined the railway on 20-5-1957 and being a Matriculate, he became eligible for selection to the post of APWI w.e.f. 20-5-1970. However, when inspite of various representations, the applicant's claim for promotion was not considered, he filed a civil suit no.250 of 1971 in the Court of Addl. Munsif Shahjahanpur seeking the relief of declaration to the effect that he ^{was eligible to be} promoted to the post of Mate w.e.f. 20-5-1960 and 20-5-1965 together with the arrears of salary from such dates. The said suit was decreed on 24-5-1973 with the declaration that the applicant had been illegally superseded and that he was eligible for selection as Mate from 20-5-1960 and later on ^{as} APWI. The respondents had filed an appeal before the District Judge, who had ^{affirmed} ~~allowed~~ the decree of the Lower Court with the modification that the date 20-5-1960 shall be read as 20-5-1961. The respondents filed a Second Appeal before the Hon'ble Supreme Court. This appeal was decided on 31-10-1975 by modifying the trial court's decree to the extent that the Plaintiff's suit for declaration that

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he was eligible for being considered for selection as Mate from 10-5-1961 and later on as APWI, will stand decreed.

Thereafter, the applicant continued to make representations for consideration of his case for promotion to the post of APWI (subsequently designated as PWI-III). The applicant was subsequently promoted on the post of Mate w.e.f. 25-1-1977 but an entry was made in the service record to the effect that he would be deemed as Mate w.e.f. 10-5-1961. He was also promoted as Permanent Way Mistry on 10-1-1990. This post is stated to be lower in rank than APWI/III. to which the applicant was legitimately entitled to be considered.

It is the further case of the applicant that on his promotion to the post of Mate w.e.f. 10-5-1961 a bill for arrears of salary amounting to Rs.24421.65 was prepared and submitted to the Divisional Accounts Officer, but this bill was returned on the ground that the applicant was entitled to the benefits of pay and allowances only from 25-1-1977 i.e. the date of his actual promotion. The applicant had moved an application before the Court of Munsif, Shahjahanpur for execution of the Hon'ble High Court orders. The Learned Munsif, however, passed an order to the effect that the decree being declaratory in nature, it could not be executed. Finally the applicant was paid a sum of Rs.4364.75 only as arrears of salary. In these circumstances, this application has been filed seeking the aforementioned reliefs.

3. The respondents have filed a counter reply in which an objection has been taken to the maintainability of the application on the ground of limitation. It has been stated that the final order disposing of the claim of the applicant

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in regard to the entitlement of salary etc. had been passed on 16-1985, a copy of which has been placed at Annexure-R-1. As regards his promotion to the post of APWI, it has been stated that the applicant does not satisfy the minimum requisite conditions of eligibility for being considered for the said post. It has been stated that the applicant is quite junior in the cadre of PW Mistry and, therefore, the question of his being considered for promotion to the post of APWI does not arise. The respondents have asserted that the civil court granted reliefs prayed for by the applicant by declaring that he was eligible for being considered to the post of Mate w.e.f. 20-5-1961 and the decision in this regard was to rest with the railway authorities. Promotion to the post of Mate from the post of Gangman was to be made on the basis of seniority-cum-suitability. The applicant, in his civil suit, did not claim any consequential reliefs and had confined his claim only to the ^{question} ~~extent~~ of ^{eligibility} ~~amount~~. Having failed to claim any other consequential reliefs in that suit, he is now debarred from doing so in the present application, his claim being barred by the principles of constructive Res Judicata. The order of the Hon'ble High Court did not envisage that the applicant shall be deemed as Mate w.e.f. 10-5-1961. Despite this, the applicant has been allowed proforma fixation of pay as Mate w.e.f. 20-5-1961 subject to the conditions that he would be entitled to difference in salary only w.e.f. 20-5-1961 and not giving him promotion as APWI is not in contravention of the decision of the civil courts.

4. We heard the learned counsel for the applicant. None was present for the respondents. We have also perused the record carefully.

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5. The applicant's claim for arrears of salary as Mate w.e.f. 20-5-1961 is clearly barred by limitation as contended by the respondents. The respondents have passed an order in this regard on 12-9-1985 in which it was stated that he would be entitled to arrears of salary only w.e.f. 25-1-1977. This application was, however, filed on 6-5-1988 i.e. much beyond the period of limitation. However, reckoned from the date 22-5-1987, on which the arrears were stated to have been paid to the applicant, the application will be within the period of limitation. ^{But, then} ~~Then~~ on merit, we do not find any ground ~~for~~ grant of reliefs prayed by the applicant. His retrospective promotion w.e.f. 20-5-1961 as Mate does not flow from the orders of the civil court. The civil courts did not order that the applicant must be promoted w.e.f. from that date but only declared that he was eligible for consideration for promotion on that date. If, therefore, the applicant was promoted actually from the subsequent date, on the basis of his seniority-cum-suitability, we see no contravention of the court's orders.

6. Similarly on the question of his promotion to the post of APWI, we have noticed that the civil courts ~~and~~ the High Court did not pass any order that the applicant must be promoted on that post w.e.f. ~~w.e.f.~~ any other particular date. There is only a declaration regarding his eligibility for consideration. The respondents have specifically stated that on the date mentioned in the civil court order, the applicant was not eligible to be considered for promotion to the post of APWI. The decree of the civil court did not enjoin upon the respondents to promote the

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applicant to the post of APWI irrespective of his seniority. In any case, if there was any violation of the court's decree, which forms the foundation of the applicant's claim, the applicant could have filed an application for contempt. The applicant, however, filed a petition for execution of the decree which was rejected by the civil court.

7. In view of the foregoing, we find no merit in this application and the same is dismissed accordingly. There shall, however, be no order as to costs.

J. Sharma
Member (J)

W. R.
Member (A)

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