

CENTRAL ADMINISTRATIVE TRIBUNAL, ALIAHABAD BENCH,  
ALIAHABAD.

O.A.No.1058 of 1988.

Mohd. Yusuf Khan ..... Applicant.

Versus

Union of India & others ..... Respondents.

Hon'ble Mr. Justice U.C. Srivastava, V.C.

Hon'ble Mr. K. Ghayya, A.M.

(By Hon'ble Mr. Justice U.C. Srivastava, V.C.)

The applicant, who was selected for the post of Assistant Station Master by the Railway Service Commission, was offered the post of Asstt. Station Master in South Eastern Railway but he being an outstanding Hockey player, could not be spared by the department. Prior to which he was working as Clerk at Gorakhpur in the year 1954. Similar post was also offered to him by the N.E. Railway but the applicant did not accept the said post and requested for his group transfer as Ticket Collector which was accepted by the department and he was posted as Ticket Collector with full benefit of seniority. The applicant gave option for promotion to the post of Travelling Ticket Examiner vide his application dated 10.10.71 which was accepted and the benefit of seniority was also given. But it appears that the seniority to the applicant on the post of Ticket Collector from his original post of appointment i.e. 20.11.54 and subsequent promotion as Travelling Ticket Examiner w.e.f. 10.11.71 and the order dated 10.5.76 allowed proforma fixation of the pay w.e.f. 31.12.66 but the same was recalled on 19.2.83 against which the applicant has approached this tribunal.

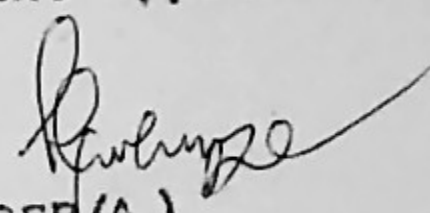
2. The respondents have opposed the application and have pointed out that the applicant's group transfer was approved by the authority vide order

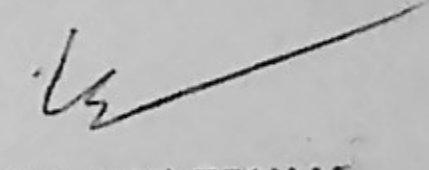
dated 29.4.61 and due to proficiency in the field of sports, the applicant was granted six advance increments raising his pay to Rs.167/ in the pay scale of 110-180. He was not promptly relieved to join the post of Ticket Collector but was relieved at later stage and on his joining as Ticket Collector, he was given full benefits of seniority and pay in Ticket Collector category treating his group transfer from Clerk to Ticket Collector on administrative ground. He was assigned seniority in Ticket Collector's group w.e.f. 20.11.54 when he was initially appointed as Clerk and was also treated to have opted for Travelling Ticket Examiner Group w.e.f. 10.10.71 in terms of Railway Board's letter dated 8.4.74. The applicant was to be given proforma fixation with reference to the position of next man in the seniority list and the office order was issued. According to the applicant, he was rightly given seniority w.e.f. 1966 and his seniority could not have been disturbed and taken at a stage in the year 1983 and no order for recovery of the amount reduced could have been passed. According to the respondents, the applicant was not getting the said pay scale in 1966 while he exercised his option in 1971 and when years after it was detected then the mistake was rectified and for rectification of mistake, it was not necessary for giving any opportunity to the applicant and it is this that the benefit of proforma fixation, which was given to the applicant on 31.12.66, was later on modified. The Railway Board vide its letter dated 8.4.74 had decided that the applicant should be treated as having opted for the Travelling Ticket Examiner group w.e.f. 10.10.71 and was given proforma promotion to the position of next man in the seniority list. It was only after a Ticket Collector had opted for cadre of Travelling Ticket Examiner. The

The applicant represented that he should be given seniority w.e.f. 20.10.54 and the Divisional Superintendent issued order in this behalf. The matter was taken up by the Vigilance Branch and the Financial Advisor and Chief Accounts Officer and they pointed out the irregularity that had occurred in the implementation of the Board's order and that is why the applicant, who was treated to have opted w.e.f. 10.10.71, had become entitled for promotion much earlier to this date i.e. 31.12.66. According to the applicant, an ex parte order could have been passed at the behest of vigilance department and atleast he should have been given an opportunity of explaining as to why the seniority has been given and notional promotion was given to him in the year 1966 and it was not a case in which actual promotion, as a matter of fact, was given to him in 1966. Earlier a policy decision was taken and this policy decision was recalled after several years behind the back of the applicant which could not have been permitted.

3. From the facts it is evident that the applicant was benefited at the initial stage as he was a sportsman and that is why six advance increments were given. It is possible that of course he was allowed to take T.C. Cadre because of proficiency in sports and it appears that in view of this decision a proforma seniority was given to him in 1966 and the applicant continued to work on the said post for years together without raising his voice. It may be a case of mistake or it may be a case of giving extra benefit because he was an outstanding sportsman. The position has not been made clear either by the applicant or by the respondents because there is

nothing on reco-rd to indicate one way or the other. But this much is clear that the applicant was under impression that he was given seniority w.e.f. 1966. In 1966, he was given a particular pay scale and he continued to work in the said grade. If it was a case of mistake on the part of the Railway Administration which was detected at a later stage, there was no question for recovering the amount from the applicant as it was not the applicant who himself jumped into a particular scale. No recovery could have been made. It is true that the seniority may have been wrongly given to the applicant but the applicant could have been apprised earlier which was not done. The seniority affects the interest of various other persons who were also to be heard but that stage never arose. Accordingly, so far as seniority is concerned, the applicant cannot raise his voice against the same though the mistake was detected. So far as the pay scale is concerned, after due deliberation and consideration and after taking into consideration the background of the applicant and as ~~xxxx~~ he was an outstanding sportman, a particular pay scale was given which could not have been reduced when the applicant was near retirement and has now retired. Accordingly, this application is partly allowed and the respondents are directed to treat the applicant having retired in the pay scale which was given to him when he opted ticket-collector grade and when he has retired, no recovery shall be made from him. So far as seniority is concerned, the claim of the applicant is rejected. No order as to costs.

  
MEMBER (A)

  
VICE CHAIRMAN.

DATED: FEBRUARY 8, 1993.

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