

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 16 OF 1987.
~~Ex-Acc-Not~~

DATE OF DECISION 17-3-1989.

SHRI UMEDBHAI BECHARBHAI PATEL, Petitioner

MR. K.K. SHAH Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS. Respondent(s).

MR. N.S. SHEVDE Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.M. JOSHI, JUDICIAL MEMBER.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal. *Yes*.

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Shri Umedbhai Becharbhai Patel,
Residing at 13-B, Saujanya Society,
Makarpura Road, Teen Rasta,
Baroda - 390 009.

.... Petitioner.

(Advocate: Mr. K.K. Shah)

Versus.

1. Union of India, notice to be served through the General Manager, Western Railway, Churchgate, Bombay.

2. Senior Divisional Accounts Officer, Western Railway, DRM Office, Pratapnagar, Vadodara.

3. The Financial Adviser & Chief Accounts Officer, Western Railway, New Building, Churchgate, Bombay.

.... Respondents.

(Advocate: Mr. N.S. Shevde)

J U D G M E N T

O.A. NO. 16 OF 1987

Date: 17-3-1989.

Per: Hon'ble Mr. P.M. Joshi, Judicial Member.

The petitioner Shri Umedbhai Becharbhai Patel, working as "Sub-Head," in the Office of the Senior Divisional Accounts Officer (Western Railway) Baroda filed this application on 15.1.1987, under section 19 of the Administrative Tribunals Act, 1985.

According to him, when he was promoted to the post of "Sub-Head," vide order dated 4.10.54 on the basis of his seniority position he ought **not** to have been reverted to the lower post by the respondents-railway administration with effect from 3.1.1959 till 2.4.1962 i.e., when he was repromoted on the same post. The petitioner claimed that he is

entitled to the benefit of proforma fixation of pay and seniority as if there was no reversion from 3.1.1959 to 3.4.1962. He therefore prayed that the respondents be directed to pay the applicant the arrears of increments due to him with 18% interest thereon from the date when it had actually fallen due till the date of payment.

2. The Respondents-Railway Administration in their counter contested the petitioner's application and denied the allegations made against them. They have contended inter-alia that the application filed by the petitioner is barred by law of limitation. According to them, the petitioner was promoted as "Sub-Head on 1.10.1954 purely on adhoc basis and much prior to the declaration of panel of "Sub-Head" dated 1st April, 1958. It was submitted that there was no question of revision of panel in the year 1959 when the petitioner was reverted on 3.1.59, as he was reverted as per his seniority position on that day, which he had never complained in the year 1959 and thereafter. The stand of the respondents is that the panel dated 1.4.58 was revised under office order dated 25.5.64 consequent upon major change in policy of assigning seniority from the date of passing the Departmental examination. Thus, the petitioner had no right to become senior to many others when the panel was declared in 1958 and thus the petitioner was not reverted on account of any administrative error as alleged.

3. When the matter came up for hearing Mr. K.K. Shah and Mr. N.S. Shevde, the learned counsel for the petitioner and the respondents,

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respectively were heard. The materials placed on record including the rejoinder of the petitioner are perused and considered. The petitioner has been permitted to place additional rejoinder on record whereby he has relied on the documents including the judgment rendered by the Munsif Magistrate, Ajmer District, in Civil Suit No. 303/68 , and also 125/70 by the High Court of Gujarat in S.C.A.No. 1158/68 (Bhagwatiprasad Ambalal Barot & Ors. V/s. Union of India & Ors.)

4. Relying on the case of Dr.G.D.Hoonka & Anrs. V/s. Union of India & Ors. (1987) 2 Administrative Tribunals Cases, 228, Mr. K.K. Shah, the learned counsel, for the petitioner, strenuously urged that the petitioner, after the decision in the case of P.B. Naik, had requested the authorities for extending similar benefit but as the same was denied, he has filed this application and sought similar reliefs and hence the petitioner's claim can not be considered as barred by limitation.

5. Bearing in mind the special facts and circumstances of the present case, at the outset, it may be made clear that no similar issues were raised in the Civil Suit filed by Mr. P.B. Naik. The plaintiff, in Civil Suit No. 303/68, alleged that B.K. Chitnis was confirmed as "sub-head" in the year 1960; whereas he (the plaintiff) was confirmed as "sub-head" in 1967 and hence he claimed that since he has been senior to B.K.Chitnis, he should be treated to have been confirmed from the date of B.K. Chitnis was confirmed. In the case of Bhagwatiprasad A. Barot (supra), the petitioner

was denied promotion on the basis of the seniority which was subsequently revised. But in the present case the petitioner was already promoted prior to the revised panel (25.5.64) and his case was finalised much earlier.

6. It is borne out that the petitioner for the first time made the grievance against his reversion to the lower post with effect from 3.1.59, under his letter dated June 6, 1974 and the same was examined and considered by the respondents-railway administration. The decision taken in this regard is found, in the copy of FA&CAO(ADM)CCGs letter No. ADM/REP/MISC. dated 26.9.79, Annexure 'G' which is reproduced in extenso as under :-

Sub : Petitions & Memorials NG Staff-Proforma Fixation of pay - Shri U.B.Patel, SH/BRG.

Ref : Your letter No.BRC/Adm/E804/2/Vol.III dated 3-5-79.

.....
Shri U.B.Patel, vide his representation dated 24-4-1979 has requested that he may be allowed proforma fixation from the date he was reverted as his junior Shri S.T. Patel was continuing to officiate as S.Hd. (on 3.1.59) so that he should not suffer loss for the period from 3.1.59 to 3.4.62 (the date of his promotion as S.Hd.) apart from drawing less pay even as S.Hd. after 3.4.62.

In this connection, it is stated that the Rly. Board vide their letter No.E(S)I.61 CPC/112 dated 17-2-64 have advised that in cases similar to that of Shri Patel, no proforma fixation of pay can be granted.

In Shri U.B.Patel's case, even if first panel is considered on administrative error, it was corrected by the revised panel which became effective on 29-4-64 i.e., prior to 17-9-64. As such the Board's orders contained in their letter No.E(NG) 63 PM1/92 dated 17-9-64 are not applicable in this case in view of the position clarified by the Board in their letter No.E(NG)63 PM1/92 dated 20-10-65 that their orders dated 17-9-64 are applicable to those cases in which the seniority lost due to an administrative error was detected and restored after 17-9-64 and not to those which are detected and finalised prior to 17-9-64.

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In view of the above, the request of Shri U.B. Patel cannot be considered. His representations may be treated as finalised and need not be shown as outstanding.

This issues with FA&CAO's approval.

7. In view of the aforesaid decision it is quite obvious that the grievance raised by the petitioner was concluded as back as in the year 1979. The petitioner has made an attempt to raise the same grievance in this application. A perusal of Section 21(2) of the Administrative Tribunals Act, 1985 clearly shows that if the grievance had arisen by reason of any order made beyond three years from the date, the Tribunal exercised its jurisdiction in respect of the matter to which such matter relates, then the application can not be admitted. In Shri A.C. Bose V/s. Union of India & Ors. (A.T.R. 1986 (2) C.A.T. 642), it has been held that if the grievance in respect of which an application is made had arisen before three years prior to 1.11.1985 this Tribunal has no jurisdiction to condone the delay (see also A.T.C. 1988, Bangalore C.A.T.p.24).

8. While relying on the revised panel Annexure 'B' dated 25th May, 1964, it was contended by Mr.K.K.Shah the learned counsel for the petitioner, that when the petitioner was placed at Sr.No.6 and that was his correct position, he ought not to have been reverted to the lower post with effect from 3.1.59. According to him, the petitioner was wrongly placed at Sr.No.26 in the panel dated 1st April, 1958 (Annexure 'A'). In his submission he was wrongly reverted and loss of promotion is on account of administrative error. In this regard, he has pressed in service. The instructions contained in

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the railway board's letter dated 15.9.64, which reads as under :-

Sub : Hardships to non-gazetted staff due to administrative errors - loss in seniority and pay.

It has been represented to the Board that sometimes due to administrative errors staff are over-looked for promotion to higher grades. This could either be on account of wrong assignments or relative seniority of the eligible staff or full facts not being placed before the competent authority at the time of ordering promotions or some other reasons. Broadly, loss of seniority due to administrative errors can be of two types.

- a) Where a person has not been promoted at all because of administrative error; and
- b) Where a person has been promoted but not on the date from which he should have been promoted but for administrative error.

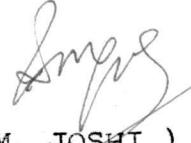
The matter has been considered and the Board desire that each such case should be dealt with on its merits. The staff who have lost promotion~~s~~ on account of administrative errors should on promotion be assigned correct seniority vis-a-vis their juniors already promoted, irrespective of the date of promotion. Pay in the higher grade on promotion may be fixed proforma at the stage which the employee should have reached if he was promoted at the proper time. The enhanced pay may be allowed from the date of actual promotion. No arrears on this account shall be payable, as he did not actually shoulder the duties and responsibilities of the higher grade posts.

9. It is pertinent to note that admittedly, the petitioner was promoted to the post of sub-head on 1.10.54 purely on adhoc basis i.e., even prior to the panel dated 1st April 1958 (Annexure 'A'). As per the said panel he was holding the position at Sr.No. 26 and while the said panel was operative he was reverted to the lower post with effect from 3.1.59. Moreover, the fact that the petitioner was repromoted, on the post of "sub-head with effect from 3.4.62, when the same panel was operative, is not in dispute. The seniority position was modified, as explained by the respondents due to the policy

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decision in the year 1964, vide Panel dated 25.5.64. Now in the context of the said panel, the petitioner can not be allowed to make any grievance against his earlier reversion. The seniority position in such panel like all administrative orders can not have any retro-active operation. In case of one Nursi Lallu V/s. Union of India (A.I.R. 1978 S.C. p.386) it was held that inculsion of name in panel does not confer any right to a railway employee. Thus even on merits the petitioner has no valid claim for any proforma fixation as prayed for.

10. In view of my findings made above, it is held that the petitioner's case must fail. As a result, the application stands dismissed with no order as to costs.


(P.M. JOSHI)
JUDICIAL MEMBER

M.A./223/89

in

O.A./16/87

(25)

CORAM : Hon'ble Mr. P.M. Joshi .. Judicial Member

23/06/1989

Mr. K.K. Shah, learned counsel for the petitioner states that the application has become infructuous. Mr. N.S. Shevde learned counsel for the respondents also does not press for this application at this stage as in the meantime, the judgment in O.A./16/87 has been rendered. Accordingly, the application stands disposed of with no order as to costs.

Joshi
(P M Joshi)
Judicial Member

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