

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 448 of 1987.
~~T.A. No.~~

DATE OF DECISION 29-9-1993.

Shri Laxmi Kant Meena Petitioner

Shri K.K.Shah Advocate for the Petitioner(s)

Versus

Union of India and ors. Respondent

Shri B.R.Kyada Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C.Bhatt : Member (J)

The Hon'ble Mr. M.R.Kolhatkar : Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✗
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✗
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✗

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Shri Laxmi Kant Meena,
C/o.K.K.Shah, Advocate,
3, Achalayatan Society, Div.II,
Navrangpura,
Ahmedabad - 380 009.

...Applicant.

(Advocate : Mr.K.K.Shah)

Versus

1. Union of India,
notice to be served through
the General Manager,
Western Railway,
Churchgate,
Bombay - 400 020.
2. Chief Commercial Superintendent (E),
Western Railway,
Churchgate,
Bombay - 400 020.
3. Divisional Railway Manager (E),
Kothi Compound,
Western Railway,
Rajkot.
4. The Secretary (E/R),
Railway Board,
Rail Bhavan,
New Delhi.
5. Shri K.C.Kapadia
6. Shri R.M.Vonodia
7. Shri M.K.Jasawat
8. Shri S.V.Tahiliani
9. Shri V.G.Bhagehandani
10. Shri S.N.Chaubey
11. Shri S.B.Johari
12. Shri B.D.Pande
13. Shri Noor Mohd.
14. Shri Rameshchandra Verma,
15. Shri Kanhaiyalal
16. Shri Poonam Singh,
17. Shri H.M.Saxena
18. Shri K.L.Manglani,
19. Shri B.B.Sinha
20. Shri Ramesh T.Balwani
21. Shri Kazi Mohd. Shafi,
22. Shri Irshad Ahmed,
23. Shri Hemant Kumar Shah
24. Shri Sureshchandra Pathak
25. Shri V.P.Tiwari
26. Shri A.J. Joshi
27. Shri P.R.Shah
28. Shri G.M.Prajapathi
29. Shri Mathurbhai S.
30. Shri Arvind Singh
31. Shri R.G.Pathak,
32. Shri Hans Rajk Gupta,
33. Shri I.B.Wadhwani
34. Shri Prakash Ram Radkhiani

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- 35. Shri M.Y.Qureshi
- 36. Shri Mahmood Alam
- 37. Shri H.M.Rawal,
- 38. Shri H.K.Yadav
- 39. Shri Hohansingh Saldana
- 40. Shri Chandrasekhar Kuril (SC)
- 41. Shri Ramoolal Goyal (SC)
- 42. Shri Gurubachan Singh

Respondent Nos. 5 to 42,
Notice to be served through
Divisional Railway Manager (E)
Western Railway,
Kothi Compound,
Rajkot.

Respondents.

.....

(Advocate : Shri B.R.Kyada)

J U D G M E N T

O.A. NO. 448 OF 1987.

Dated : 29-9-1993.

Per : Hon'ble Mr.M.R.Kolhatkar : Member (A)

1. This is an application under Section 19 of the Administrative Tribunals Act, 1985. The facts of the case are as below :

2. The applicant belongs to ST Community. He was appointed in 1978 as Commercial Clerk in the scale Rs.260-430 and in 1982 promoted as Senior Goods Clerk in the grade Rs.330-560. It appears from record that the incumbents of cadre of commercial clerks viz. Goods/Booking/Luggage, etc., clerks, can seek promotion in their own cadre as Head Clerk in the scale Rs.425-640/- or they can seek promotion in the separate and distinct cadre of ACMI/CMI also in the scale Rs.425-640/- which cadre is controlled by the Head Quarters Office

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(vide Annexure-A-3). Moreover, post of ACMI is classified as a sensitive post and incumbent is liable for periodical transfer (vide Annexure-A-3).

3. Applicant states that Western Railway's Rajkot Divisional Office on 29.10.1984, issued a circular on the subject "Selection Board for promotion to the post of Assistant Commercial Inspector scale Rs.425-640". (Annexure-A). This circular invites applications for holding written suitability test for drawing up a select list for filling up 38 posts of ACMI's of which 6 posts are reserved for ST. (The respondent Railway Administration both in written statement as well as in arguments insisted that posts reserved for S.T. were 5 only but this is clearly wrong in the face of Annexure-A). According to para-3, Commercial clerks who are either substantively in the grade of Rs.330-560 or continuously officiating in that grade against non-fortuitous vacancies on regular basis i.e. on the basis of panel/select list or seniority as the case may be as on 1.10.1984, are eligible to apply. The applicant applied on 23.11.1984, i.e. prior to the last date which was 5.11.1984. (The respondent Railway Administration states that the last date was 27.10.1993, which again goes against Annexure-A. If a separate last date was prescribed by Head Office, Respondent Railway Administration has not produced any evidence in that regard.).

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4. Applicant states that Head Quarter Office, Western Railway, Bombay by their circular dated 26.12.1985, (vide Annexure-A-1) published a list of employees eligible to be called for a written suitability test on 02.02.1986, for promotion to the post of ACI. The applicant submits that he appeared for the test on 02.02.1986. Thereafter, he also exercised option to work as ACMI on 05.07.1986, in response to circular dated 27.6.1986, (Annexure-A-3). It appears that select list of ACMI'd was published by Western Railway, Head Quarters on 08.09.1986, but the same is not on record. But the order of promotion and transfer in terms of the above list were issued on 17.09.1986, by Head Office, Western Railway, Bombay, vide Annexure-A-4, containing 38 names ~~xxxx~~ including 3 SC's at Sr.No.36, 37, and 38, and none from S.T. Community. In respect of five of these employees in Rajkot Division (Sr.No.21 to 25), the Rajkot Division, ~~xxxx~~ of Western Railway issued orders of promotion dated 08.10.1988, which have also been enclosed at Annexure-A-4.

5. As applicant's ~~xname~~ did not figure in the above list, the applicant had sent representation dated 21.2.1987, and 13.6.1987, at Annexure-A-5 and A-6. His representation was rejected by DRM, Rajkot, by his letter dated 21.5.1987, Annexure A-7. The applicant sent counter-representation on 21.6.1987 and 21.7.1987, at Annexure-A-8 and A-9, which did not bear any fruit. Hence this application.

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6. There is one aspect of the case of the applicant which may be referred to at this stage. Consequent, on review of the Goods Staff Cadre, Sr. Goods Clerks in scale Rs. 330-560 were provisionally promoted in Head Goods Clerks in the Scale Rs. 425-640 and by its order dated 29.11.1984, Divisional Office, Rajkot, promoted applicant to the higher scale (vide Annexure-A/2). It will be noticed that the scale is identical with the scale of ACMI. The new scale was to be effective from the date of joining but by subsequent order dated 14.7.1986, (Annexure-A-2), the promotion of several of them including the applicant was, by operation of rules given retrospective effect viz. 1.1.1984. This means that the applicant was eligible to draw the higher scale of HBC viz. Rs. 425-640 from 01.01.1984. According to the applicant, all this was subsequent to his applying for the post of ACMI and was due to re-structuring of cadre and has no connection with the present challenge.

7. The applicant has claimed following reliefs :

"A. That Hon'ble Tribunal may be pleased to allow this application and direct the respondents to include the name of the applicant in the panel dated 17.9.1986 and assign him the correct seniority and issue the posting order accordingly and give all the consequential benefits arise out of it. or, On not including the name of the applicant in the panel, the Hon'ble Tribunal may kindly quash and set aside the panel dated 17.9.1986, and order dated 8.10.1986 and direct the respondents to review the panel and issue

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a fresh panel accordingly, after including the name of the applicant.

B. This Hon'ble Tribunal may allow this application with costs and pass ~~may~~ any other order or directions which may deem fit in the interest of justice.

Interim Reliefs :

A. This Hon'ble Tribunal may direct the respondents not to fill up the reserved posts notified by their letter dated 29.10.1984 and the reserved vacancies should be kept vacant till the final disposal of this application, and revert the persons who have been appointed and posted as per the panel dated 17.9.1986."

8. While admitting the applica^{tion} on 6.10.1987, this Tribunal directed the applicant to join the persons affected by the relief asked for as parties. Interim relief was declined except to the extent of the respondent Railway Administration notifying persons affected that the impugned order would be subject to the result of the case. Accordingly, 38 affected employees have been impleaded as Respondent no. 5 to 42. The Railway Administration (Respondent No.1 to 4) have a Written filed ~~Statement~~ Statement. Respondents 25, 27, 28, and 29, i.e., the employees except Shri Joshi (Respondent no.26) figuring ~~with~~ in the order dated 08.10.1986 issued by DCS, Rajkot have also filed /written statements. The applicant has filed a rejoinder with which he has annexed (Annexure-A-11) order dated Nov.1990, indicating that subsequently, on the basis of a test held on

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31.8.1989, applicant was taken up as CMI in the scale of Rs.1400-2300 with effect from 29.1.1990, (Note - the revised scale Rs.1400-2300 corresponds to the pre-revised scale of Rs.425-640).

9. The contention of the applicant is that six vacancies were reserved for ST and he belonged to ST Community and was on the panel. Yet, he was not included in the select list. Secondly, Railway Board's instructions re : de-reservation of vacancies have not been complied with. Thirdly, the applicant has been victimised by empanelling persons who are not on the eligibility list. Fourthly, he was asked to exercise option and he had exercised the same and hence the Railway Administration is estopped from denying the benefit of selection as CMI to him.

10. The Railway Administration has replied that no staff including applicant working in the scale of Rs.425-640 prior to 1.10.1984, was eligible to apply for the post of CMI notified in October, 1984. The applicant was among the 11 employees who got the scale Rs.425-640 with effect from 1.1.1984, and hence his option exercised on 05.7.1986 for CMI's post was of no avail, he was ab initio ineligible, and hence he was not included in the panel. As for no ST candidate being there, respondent states that the Department

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did not find qualified and eligible candidates and so far as in S.T.quota deficiency/is concerned, it will be carried over to the next year and therefore, there was no violation of any constitutional rule re : reservation.

11. The replies filed by respondents 25, 27, 28 and 29 are identical. Their basic contention is that applicant was not eligible to apply in terms of circular dated 29.10.1984, because he was promoted as Sr.Goods Clerk on a purely adhoc basis and not by passing requisite written suitability test for the same. They also say that their inclusion in the select list dated 17.9.1986 is perfectly legal, being based on seniority and eligibility and therefore, the same cannot be quashed and set aside.

12. The reply of Railway Administration really reiterates the stand in the letter of DRM rejecting the representation. We, therefore, extract below the relevant para of DRM, Rajkot's letter dated 21.5.1987.

"According to extant instructions of Head Quarter's Office, these employees who are in grade Rs.425-640/- on 1.1.1984 are not eligible for the post of CM I. On the basis of this direction, your name was not considered for promotion as ACMI as you are working in scale Rs.425-640 from 1.1.1984".

13. The Head Office instructions are not quoted, but they are relatable to para-no.3 of the Rajkot Dn Notification dated 29.10.1984 which appears to rely on Head Office letter dated 03.10.1984. (not on record)

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"Commercial Clerks viz. Sr.BC's/Sr LC's/ Sr PC's/ Sr.GL's and CI's including SC/ST who are either substantively in the grade of Rs.330-560 (R) or continuously officiating in that grade (i.e. Rs.330-560 (R) against non-fortutious vacancies on regular basis i.e. on the basis of panel/select list or seniority as the case may be, as on 1.10.1984 are eligible to apply."

14. This para specifies cut-off date in clear-cut terms. The applicant, no doubt at the time of application was in the scale of Rs.330 - 560. Notwithstanding the contention of respondents 25, 27, 28 and 29, there is nothing on record to show that his appointment was ad hoc. What the respondent Railway Administration did was to apply the cut-off date to the situation as obtained in 1986, Orders were issued on 14.7.1986 (Annexure-A-2) giving the benefit of higher pay scale of Rs.425-640 to applicant and 17 others, including A.J.Joshi, who is respondent no.26, with effect from 1.1.1984. On the relevant date, therefore, viz. 1-10-1984, pay scale of the applicant was no Rs.330-560 as required but it was higher ~~in~~ and hence the applicant was held to be ~~eligible~~ⁱⁿ.

15. This action of the applicant, however, clearly suffers from following weaknesses:-

(1) Applica^{tions} were called as far back ~~on~~ Oct.1984, The test was held in Feb-March, 1986. The pay fixation of applicant was made in July, 1986. The select panel was notified in Sept.1986. It appears to be a mere coincidence

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that select list was issued subsequent to retrorspective pay fixation of the applicant.

(2) The option of the applicant was called in June, 1986 and the same was furnished in July, 1986.

No objection was raised at the time of the option.

(3) Applicant was not ^{informed} / in advance that he is not eligible by ^{dint of} operation of the cut-off date viz. 1.10.1984.

(4) The applicant has averred in the application that there has been discrimination in as much as his name has been deleted to accommodate certain employees. Although he did not name the employee, at the stage of the arguments, reference was made to the name of Shri A.J.Joshi, ^{respondent no.26} regarding pay fixation who, in Annexure-A/2/ is shown at sr.no.2, as against sr.no.17 of the applicant. Shri A.J.Joshi, is sr.no.22 in the select list. He also began to draw the salary in the scale of Rs.425-640 from the same date as applicant viz.1.1.1984, But the rule of exclusion did not appear to stand ⁱⁿ /the way of his inclusion. Incidentally, no counter has been filed by Shri A.J.Joshi.

(5) If an exception was to be made to the rule of cut-off date of 1.10.1984, it would have been in order for respondents no.1 to 4, to make the exception in the case of the applicant ^{as} / admittedly there was reservation for ST

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of not less than 5 vacancies, the applicant belonged to ST community and the applicant was otherwise eligible having been in the list of successful candidates in the written suitability test.

16. Our conclusion, therefore, is that ^{the} exclusion of the applicant from select list dated 08.9.1986, reproduced in Departmental Memo dated 17.9.1986, Annexure-A/4, is clearly discriminatory, illegal, arbitrary, and against ^{the} principles of natural justice. In view of this finding of ours, we do not feel it necessary to go into the question of violation of reservation guidelines and applicability of the doctrine of promissory estoppel to the facts of the case. We, would, however, like to observe that the reply of the Railway Administration on the point of reservation does not meet specific allegations of the applicant and is hence quite unsatisfactory.

17. In the circumstances of the case, we ~~find~~ feel that the ends of justice would be met by directing the respondents to include the name of the applicant in the panel dated 17.9.1986. The department should decide the proper place where the applicant should be fitted keeping in view all ~~xx~~ relevant considerations including seniority of the applicant vis-a-vis General candidates and SC candidates,

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roster point and so on. Since we are directing inclusion of the applicant in the panel of September, 1986, and since the applicant was actually appointed as CMI on 29.1.1990, vide Annexure-A-11, the Department should adopt a date in October, 1986, for determination of the date of appointment of applicant as CMI for purposes of seniority and also consequential benefits should be given to the applicant.

18. The advocate for the applicant has argued that consequential benefits should include not only notional fixation of pay and seniority but also arrears of salary. For this purpose, he relied on the following authorities : -

(a) 1990 (12) A.T.C. 192. (Jaya Krishna Behara Versus Union of India) decided by Cuttack Bench of Central Admn. Tribunal, on 19.6.1989. The case related to an Accounts Officer of Telecommunications Department. The of Cuttack Bench after a review/judgments of Karnataka, Kerala and Punjab and Haryana, High Courts (the latter of which relied as judgment of SC in State of Mysore V.C.R. Sheshadri -AIR- 1974 SC 460) and also interpretation of FR 17 (1), directed payment of arrears of salary but not interest as there were no laches or mala fide intentions of Departmental Authority.

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(b) 1991 (17)ATC.259 H.M.Ramaul Vs. State ofH.P. This was a / ^{Supreme Court} case decided on 29.10.1990 which

arose; by way of contempt petition. While holding that there was no contempt, SC directed providing monetary benefits, salary with promotion as well as consideration of the complainant's case for further promotion.

(c) 1992 (1) SLJ 484 Ramesh Chander Versus

R.C.Gahlewat : This was a case decided by Jodhpur Bench of Central Admn.Tribunal, on 17.1.1992, relying on the general principle of law laid down in K.V.Janakiraman's case that the normal rule of "no work no pay" is not applicable in cases where the employee / ^{although} he is willing to work is kept away from work by the authorities for no fault of his, the Tribunal directed that the respondents shall make payment of the arrears of salary to the applicant from the date of retrospective notional promotion till the date when they were actually promoted.

19. We are inclined towards the reason^{ing} given by especially the Jodhpur Bench and / the general principle of law in K.V.Janakiraman's case relied on by them. In our view, Sheshadri's case decided by S.C. and referred to us Cuttack Bench, judgment has no applicability as it was ~~for~~ a case where the applicant was in the verge of retirement and had actually retired when / ^{the} Supreme Court gave its decision. We therefore, consider that the applicant is

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entitled to arrears of pay if any (because the scale of CMI and the scale of HBC is identical) ^{from the date of appointment as CM} / is also entitled to be considered for further promotion as laid down by Supreme Court in Ramoul's case and payment of arrears ~~xxx~~ if he is actually held eligible for promotion to higher scale beyond the earlier scale viz., Rs.1400-2300. We do not consider, however, that applicant is entitled to any interest arrears on for the reasons indicated in Behara's case.

20. We, therefore, dispose of this application by passing the following order :

ORDER


1. The application is allowed. The ~~applicant~~ applicant's name is deemed to be included in the select list of September, 1986, and the Railway Administration is directed to fix a deemed date of seniority of the applicant as CMI which should not be later than the date ~~on~~ which his immediate senior in the select list assumed charge as CMI.
2. The applicant should be given all consequential benefits which would include :


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- (a) Arrears of pay if any to which the applicant is entitled consequent on his appointment as CMI in terms of September, 1986, panel.
- (b) Consideration of his name for further promotion in terms of revised date of seniority.
- (c) Arrears of pay if any, if ^{he} is held eligible for promotion to the higher scale in terms of (b) above.

Consequential benefits would not, however, include interest on any arrears.

No order as to costs.


(R.C.Bhatt)
Member (J)
29-09-1993.


(M.R.Kolhatkar)
Member (A)
29-09-1993.

AIT

Date	Office Report	ORDER
25.7.1994.		<p data-bbox="737 296 1549 341">M.A./393/94, allowed. Time extended up to</p> <p data-bbox="649 361 1484 406">29.9.1994. M.A./393/94, stands disposed of.</p> <div data-bbox="649 406 1526 562"><div> (Dr. R.K. Saxena) Member (J)</div><div> (K. Ramamoorthy) Member (A)</div></div> <p data-bbox="646 653 721 687">ait.</p>