

(10)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 467 OF 1987.
~~Ex-Ax No.~~

DATE OF DECISION 10.2.1989.

SHRI B.K. GANDHI Petitioner

MR. Y.V. SHAH Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS. Respondents

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*

Shri B.K. Gandhi,
Office Superintendent,
Chief Engineer (C),
2nd floor,
Station Building,
Ahmedabad - 380 002.

..... Petitioner.

(Advocate: Mr. Y.V. Shah)

Versus.

1. Union of India, through
the General Manager (E),
Western Railway,
Churchgate, Bombay-20.

2. Chief Engineer (S&C),
Western Railway,
Churchgate,
Bombay - 20.

3. Chief Engineer (C),
2nd floor,
Station Building,
Western Railway,
Ahmedabad - 2.

..... Respondents.

(Advocate: Mr. N.S. Shevde)

J U D G M E N T

O.A.NO. 467 OF 1987

Date: 10.2.1989.

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

The petitioner Shri B.K. Gandhi, working as "Office Superintendent", in the Western Railway at Ahmedabad, filed this application under section 19 of the Administrative Tribunals Act, 1985, on 25.9.87. The case set up by the petitioner is that after he was promoted and confirmed as "Senior Clerk" with effect from 1.3.1972, he was required to be given the benefit of upgradation on the basis of the combined seniority list of Construction and Open Line staff in ~~terms~~ of the judgment of the Bombay High Court delivered on 19.6.78. It was submitted by the petitioner that he was promoted

to officiate as Head Clerk, scale Rs. 425-700(R) on adhoc basis under the order dated 16.12.1983 passed by the Respondents No.3 and by virtue of the Headquarter Office order No.23 dated 20.1.87/ 3.2.87 he was confirmed as such against 40% construction reserved post, w.e.f. 19.6.78 (Annexure A-2). It is alleged that even though his promotion and confirmation is made with effect from 19.6.78 his pay has not been fixed accordingly from that date, with the result he has suffered monetary loss. He has therefore prayed that the respondents be directed to grant the benefit of proforma fixation of pay to the applicant in terms of the Railway Board's directions from the date of his confirmation as a "Head-clerk".

2. The Respondents-Railway Administration in their counter have resisted the petitioner's claim on the grounds inter-alia that the petitioner was promoted to officiate as Head Clerk purely on adhoc basis vide order dated 16.12.83 against the upgraded post sanctioned vide C.E.(C)ADI's letter No. E 261/1/C/ADI dated 12.12.83. According to them, the pay of the petitioner was fixed as per rules in view of the promotion given to him by administration and he is not entitled to grant of benefit of proforma fixation of pay from the date of his confirmation as Head Clerk as per Railway Board's directions.

3. When the matter came up for hearing M/s. Y.V.Shah and N.S. Shevde the learned counsel for the petitioner and the respondents respectively were heard. The documents and the materials placed on record are also perused and considered.

4. The main grievance of the petitioner is that he was entitled to promotion to the post of 'Head-Clerk' since the year 1978 but he was not given such promotion due to administrative error and delay. According to him, even though he was promoted as Head Clerk and confirmed with effect from 19.6.78 his fixation to pay has not been correctly made in the scale of Rs. 425-700(RS) with consequential benefits including increments etc. In this regard he has relied on the cases viz; (i) Vishnu Sambhaji Dange v/s. Union of India & Ors. (A.T.R. 1987(2) C.A.T. 245 and (ii) Shaikh Mehaboob v/s. Railway Board & Ors. (1982 S.L.R. (Vol.29) p.455). The petitioner has also pressed in service, the instructions contained in Railway Board's letter dated 17.9.64 (Annexure A-3) the material portion thereof reads as under :-

Sub:- Hardships to non-gazetted staff due to administrative errors - Loss of seniority and pay.

It has been reported to the Board that some times due to administrative errors staff are overlooked for promotion to higher grades. This could either be on account of wrong assignment or relative seniority of the eligible staff or full facts are 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 errors, and
- b) Where a person has been promoted but not on the date from which he should have been promoted but for the administrative error.

2. The matter has been considered and the Board desire that each such case should be dealt with on its merits. These staff who have lost promotion 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 at the stage which the employee would 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 he did not actually shouldered the duties and responsibilities of the higher grade posts.

5. The fact that the petitioner was shown at S.No.42 in the combined seniority list duly notified on 23.3.83, in pursuance of the directions issued by the Bombay High Court, on 19.6.78, is not in dispute. More over the fact that the petitioner has been confirmed as Head Clerk in the scale of Rs. 425-700(R) with effect from 19.6.78 against 40% construction reserved post vide Annexure A-2 is not controverted. The relevant extract of the order dated 20th January 1987/3.2.87 (Annexure A-2) reads as under :-

H.Q.S.O.O.No.23 Headquarter Office,
Churchgate, Bombay.
Dt.20th Jan. 1987
3-2-1987

The following employees of Works (Engg) Branch CCG and S&C Deptt. are confirmed in the permanent vacancies occurred against 40% construction Reserve Posts w.e.f. 19-6-1978 i.e. the date of judgment of Bombay High Court in connection with combined seniority list of staff of S&C deptt. with Works(Engg) Br. CCG and against the resultant vacancies occurred due to retirement/V.Retirement/Expired/Staff resigned/Staff transferred to other Railways and removed from Railway services, according to combined seniority list.

2. The following employees are confirmed as HC scale Rs. 425-700(R) w.e.f. 19-6-78 against the 49 posts of 40% Construction Reservation posts.

Sr. Name of the employee Desig- Scale Date R
No. nation. Rs. of

confirma-
tion
against
the 40%
construc-
tion
reserve
posts.

1 to 42 xxxxx xxx xxx xx
43. Shri B.K.Gandhi HC 425-700 19-6-78
(R)

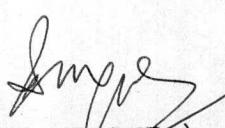
6. The stand of the respondents is that since the petitioner was promoted to officiate on adhoc basis vide order dated 16.12.83 (Annexure A-1),

he is not entitled to proforma fixation from 19.6.78 as contended by him. It is pertinent to note that after the issuance of the order Annexure A-1 no other order of regular promotion seems to have been issued by the respondents. However, the respondents authorities by virtue of order Annexure A-2, they have preferred to confirm him on the post of Head Clerk with effect from 19.6.78. Now, since the petitioner has been confirmed with effect from 19.6.78 and in absence of any regular order of promotion being issued in his case, he is presumed to have been promoted and confirmed with effect from 19.6.78. Obviously, he is therefore clearly entitled to proforma fixation from that date i.e., 19.6.78. The Railway Board, under their letter dated 17.9.64 (reproduced earlier) has clarified that whenever the staff members lost their promotion on account of some administrative error, they should be given promotion as per the proper turn and also be assigned proper seniority. The letter further states that pay and higher grade of promotion should be fixed at the stage as if he was promoted at the appropriate time. It is true, on the principle of "no work, no pay" salary can be given only from the date, the petitioner has worked actually on the post of Head Clerk i.e. 16.12.83. The Railway Board's circular of 17.9.64 is unexceptionable. In its application, however, the only point that remains to be considered is that the pay fixation of the petitioner should be done in such a manner that as on 19.6.78, the date on which he was promoted and confirmed as Head Clerk in the

scale Rs. 425-700 (RS) he should have the benefit of increments which he would have earned, had he actually assumed office of this post on 19.6.78, the date from which benefit of seniority and proforma promotion is deemed to have been given to him. (see Roshan Lal V/s. Union of India & Ors. A.T.R. 1987 (2) C.A.T. Jabalpur Bench, p.16). The plea in defence raised by the respondents that petitioner is not entitled to grant of benefit of proforma fixation of pay from the date of his confirmation as 'Head-Clerk', is devoid of merits.

7. In the result, the application succeeds. The petitioner is entitled to proforma fixation with effect from 19.6.78 in the post of Head Clerk. The respondents are directed to refix the pay of the petitioner in the post of Head Clerk with effect from 19.6.78 in such a manner that as on 16.12.83, the day on which he officiated the post of Head-Clerk, he should have the benefit of increments which he would have earned, had he actually assumed office of this post on 19.6.78. The respondents are directed to take action accordingly and work out the difference and pay the monetary benefits ^{from 16.12.83} admissible to him within a period of 4 months from the date of this judgment.

The application stands disposed of with the directions indicated above. There will be however no order as to costs.


(P.M. JOSHI)
JUDICIAL MEMBER