

(3)

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH
XXX XXX XXX XXX

O.A. No./531
TAX No.

1987

DATE OF DECISION 5.3.1991

Mr. B. S. Dadwal,

Petitioner

Mr. Y. V. Shah

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Mr. R. M. Vin

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P. H. Trivedi

: Vice Chairman

The Hon'ble Mr. R. C. Bhatt

: Judicial Member

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?



Mr.B.S.Dadwal,
S.O.M.,
Chief Project Manager(Re)
Western Railway,
Baroda.

: Applicant

Versus

1. Union of India
Through: The General
Manager, Western Railway,
Churchgate, Bombay.

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

3. Chief Project Manager(Re)
Western Railway,
Baroda.

: Respondents

Coram : Hon'ble Mr. P.H.Trivedi

: Vice Chairman

Hon'ble Mr. R.C.Bhatt

: Judicial Member

O R D E R

Date: 5.3.1991

Per: Hon'ble Mr. P.H.Trivedi

: Vice Chairman

Learned advocates for the petitioner and the respondents Mr.Y.V.Shah and Mr.B.M.Vin respectively heard. The petitioner has been employed off and on as Sub-Overseer Mistry and after going to the Labour Tribunal has ~~replied~~ ^{Objcuted} relief in terms of wages which he has claimed. In the present case the petitioner seeks relief for determining his seniority ~~on~~ two grounds: (1) the Labour Tribunal having awarded to him the wages with the finding that the order of termination/retrenchment ⁱⁿ⁻ dated 16.9.1974 become valid and bad in law, the petitioner was entitled to reinstatement and backwages w.e.f. 16.9.1974 and as a result the backwages have been paid but according to the petitioner although reinstatement was allowed no order of seniority consequential to the order of the ^{Labour} Tribunal showing the place of the petitioner in it has still emerged.

(2) The petitioner alleged ~~by~~ hostile discrimination against him citing the case of 8 persons in para 6 (A) of his petition, In whose cases although similarly placed seniority has been given but the petitioner has not been given such a seniority.

2. As against this the respondents urge that the petitioner has been appointed intermittently and eventually on adhoc basis as Sub-Overseer Mistry only on 20.12.1980. As a result the question of determining his seniority otherwise or in terms of the directions given by the Labour Court does not arise. In fact admittedly the petitioner had accepted the position as Tally Clerk and Junior Clerk as has been found in the Labour Court Judgement dated 7th August, 1985 in para-5 and as a result the petitioner cannot claim seniority for the post of Sub-Overseer Mistry having himself voluntarily accepted junior positions.

3. The petitioner has filed a representation asking for the determination of seniority dated 24.11.86 which has been forwarded by Respondent No.3 to Respondent No.2 on 10.12.1986 at pages 10,11 and 12. No reply to the representation has been given according to the petitioner and the respondents could not say whether any reply has been given.

4. The learned advocate for the respondents stated that in questions of seniority, Tribunals are not in a position to determining them and an order has to be left to the respondents to be passed after due consideration. We find that from the reply except a bare denial there is no detailed narration of the position according to the respondents in reply to the averments in para 6 regarding hostile discrimination against the petitioner. The practice of bare denial being only averments in the reply adopted by the respondents, in this, as has been found in a number of similar cases has to be deplored because apart from the Tribunal not being seized with the full facts regarding the case on hand, a question regarding the onus shifting and resting could arise and such bare denial is likely to leave the respondents to be vulnerable to the onus having not shifted from them and, as a result, to an adverse inference being drawn against the respondents. In addition without

being fully seized with facts the Tribunal has a right to the respondents being Government or department institutions stating their case with reference to the details of the averments in the plaint. The respondents being the Government and having special duty to bring all the facts before the Tribunal in the interest of justice has to see that merits are fairly decided as a result of its decision.

5. The facts stand in the representation dated 24.11.1986 has not been replied to. The petitioner has been unable to establish the case that he has been in regular employment or that the respondents are obliged to maintain a seniority or that the respondents are obliged to maintain a seniority list for adhoc or for intermittent appointees. The plea of the hostile discrimination however has not been satisfactorily replied to by the respondents. In the circumstances, it is fair and adequate to direct as follows:-

6. The representation of the petitioner supplemented by the pleadings in this case be decided upon by the respondents i.e. General Manager (Establishment) within a period of four months and in doing so, a speaking order be passed dealing specifically with the allegations of hostile discrimination with reference to persons named in para 6 (A) of the petition.

7. With the above observation and direction, the case is disposed of. There shall be no order as to costs.


(R.C.Bhatt)

Judicial Member


(P.H.Trivedi)
Vice Chairman