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CAT/8/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~NEW DELHI~~

O.A. No. 579 OF 1987
~~XXXXXX~~

DATE OF DECISION 22.9.1989

Shri Kirtisinh D. Jadeja, Petitioner

Mr. V.S. Mehta, Advocate for the Petitioner(s)

Versus

The 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*

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Shri Kirtisinh D.Jadeja
Retired Transit Inspector,
Western Railway,
Satyarth,
12-Janta Janardan Society,
Race Course, Rajkot.
(Advocate: Mr.V.S.Mehta)

: Petitioner

Versus

1. Union of India,
Owning Western Railway,
Through: General Manager,
Western Railway.

2. Chief Commercial Superint-
endent, Western Railway.

: Respondents

(Advocate: Mr. N.S.Shevde)

Coram : Hon'ble Mr. P.M. Joshi

: Judicial Member

O R A L O R D E R

O.A./579/87

Dt: 22/9/1989

Per : Hon'ble Mr. P.M. Joshi

: Judicial Member

The petitioner Shri.Kirtisinh D.Jadeja (a retired "Transit Inspector", Western Railway) has filed this application on 18.11.87, under Section 19 of the Administrative Tribunals Act, 1985. According to the case set up by the petitioner, while he was holding the post of "Guidance Checking Clerk" in scale Rs.150-240(A) he was transferred, promoted and posted on the post of Head Transit Clerk (scale Rs.205-280) in the 'Transit Cell' (a new organisation established in the Western Railway), vide order dated 12.7.1971 and in pursuance thereof, he joined in the said organisation with effect from 3.8.1971. It is alleged that even though Mr.M.A.Trivedi was transferred and posted in the said Transit Cell as Senior Transit Clerk in the grade of Rs.205-280 (A) in the year 1974 (i.e. after the petitioner was inducted in the Transit Cell), he was drawing a salary at Rs.555 per month; whereas he (the petitioner) was allowed to draw monthly salary of Rs.500 in the year 1974, after the

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revised pay scale came into force with effect from 1.1.1973 as a result of recommendations of the Third Pay Commission. It is further alleged that even though Mr.M.A.Trivedi and other persons like Shri Chhagan Singh and others who were junior to him they were drawing higher pay than him for which he had made several representations to the General Manager but the benefits of removal of anomaly has not been granted to him and hence he has been constrained to file this application. The petitioner therefore prayed that the Respondents - Railway Administration be directed that the pay of the petitioner be stepped up ~~to~~ at par with Mr.M.A.Trivedi in the scale Rs.425-640 from the date of his promotion to the said scale with all consequential benefits including the amount of arrears of pay and other allowances ^{are} as/admissible under law.

2. The Respondent - Railway Administration contested the application filed by the petitioner and denied the assertions and allegations made against them. According to them, the petitioner was posted as Head Transit Clerk scale Rs.205-280/425-640 (R) from 3.8.1971, purely on adhoc basis and after the implementation of the recommendations of the Third Pay Commission, ^{his} ~~his~~ pay was fixed at Rs.420 per month and with the increment due from 3.8.1973 his pay was fixed at Rs.485. It was further submitted that Mr.M.A.Trivedi was holding the post of Assistant Commercial Inspector at Rajkot in the year 1974, he was transferred and promoted as Transit Inspector in scale Rs.250-380 (A)/455-700(R) on 17.1.74 and retired as Transit Inspector on 31.8.1984 (A.N.) The stand of the respondent is that Mr.Trivedi was not junior to the petitioner and right from the ~~induction~~ ^{inception} he was holding a higher scale even prior to his induction in the Transit Cell and even subsequent thereafter and hence, the petitioner is not entitled to the reliefs as prayed for.

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3. When the matter came up for hearing Mr. V.S.Mehta and Mr. N.S. Shevde, the learned counsel for the petitioner and the respondents respectively, are heard. The documents and the materials placed on record are also perused and considered alongwith the rejoinder filed by the petitioner.

4. During the course of his arguments Mr. Mehta, the learned counsel for the petitioner invited my attention to Note at Annexure 'M' dated 11.5.1985 and the seniority list enclosed herewith (Exh.3 filed alongwith the petitioner's rejoinder) and para-38 of the judgment dated 3.8.1988 rendered by New Bombay Bench, Bombay in T.A.Nos. 265 and 267 of 1986 and strenuously urged that the petitioner was senior to Mr. Trivedi. According to him, the petitioner was inducted in the unit or organisation known as "Transit Cell," much earlier i.e. in the year 1971, and Mr. Trivedi was inducted in the said organisation in the year 1974, and thus, by virtue of provisions contained under para 311 (Chapter III of the I.R.E.M., since the petitioner had entered in the grade much earlier he would be senior to him and entitled to the benefits as prayed for. Mr. Mehta in support of his submissions also pressed in service the instructions contained in the Railway Ministry's letter dated 5.10.76 (Annexure A-7) which reads as under :-

"Copy of Railway Ministry's letter No.PC/III/75/ROP/I/46 dated 5.10.1976 to the General Managers, All India Railways and others.

Sub :- Anomalies as a result of fixation of pay under Rule 1018 B (FR 22^(c)) R-II in the revised scales promulgated with effect from 1.1.1973 under the recommendations of the Third Pay Commission.

Attention is invited to Ministry of Railways letter No.PC III-74/ROP-1/32 dt.4.9.1974 providing for the stepping up of pay of Senior employees with reference to their juniors with a view to remove anomalies of junior persons drawing more pay than their seniors. This benefit of stepping up of pay is necessarily be allowed when promotion to the higher post of both the senior and junior persons is on regular basis. The

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Ministry of Railways have however, reconsidered the matter in consultation with the Ministry of Finance, and it has been decided that the benefit of stepping up of pay may also be given on ad hoc promotions provided that the adhoc promotions of senior and junior persons are followed by their regular promotion without break. The pay of senior person will, in such case, be stepped up from the date of promotion of the junior and not from the date of regularisation of his promotion. This has the sanction of the President.

This disposes of South Eastern Railway's D.O. letter No. P/3rd/PC/21(Pt.III) dated 5/7.6.1976.

5. Mr. N.S. Shevde, learned counsel for the respondents, however, vehemently contended that Mr. M.A. Trivedi was appointed in the year 1946; whereas the petitioner was appointed on 17.6.1947 and while referring to the comparative chart showing the relevant particulars regarding the date of promotion and pay of Mr. Trivedi and the petitioner, he submitted that since the year 1956 Mr. Trivedi was drawing a higher salary and he was holding higher post compared to the post held by the petitioner. In his submission, Mr. Trivedi, who was holding the post A.C.M.I. at Rajkot in the scale of Rs. 205-280 during the year 1973-74 he was inducted in the Transit Cell as "Transit Inspector" and he resumed his office as Transit Inspector in grade Rs. 250-380(A) on 18.1.1974. During the course of his arguments, he produced the Note dated 18.1.74 whereby Mr. Trivedi had resumed his post on 18.1.1974 which was taken on record with the consent of the parties which reads as under :-

"Shri M.A.Trivedi, ACMI(CP) has reported for duty as TRI in the grade of Rs.250/380(A) on 18.1.1974.

Please issue necessary 1st class duty card pass available on station to station on W. Railway and on MTJ-DLI and RB-DLI sections. Pass should also be endorsed duly available by Brakes Van of Passenger and goods trains as done in case of other TRIs.

His present pay is Rs. 305/-
(No.T.215/97/16)

ATO(T)
18/1/74. "

6. Before adverting to the rival contentions raised by the learned counsel for the parties, ^{it will be pertinent to note} that the "Transit Cell" came into being under headquarters of Western Railway

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vide Notification dated 12.7.1971. It is conceded that on the date of the entry of the staff in the said organisation, it resulted in severance of their connection with the original branch and also the chance in the avenue of promotion. It is also conceded that all appointments, promotions and postings in the said organisation since its inception i.e., 1971 were made on ad hoc basis and it is stated that ^{this position} continued till Memorandum dated 19.1.86 (Annexure VI) was issued, whereby the petitioner Mr. K.D. Jadeja and Mr. M.A. Trivedi were given promotions to the post of Senior Transit Inspector in scale Rs.550-750 on regular basis against ^{the} upgraded post and existing vacancies with effect from 1.1.84 till they retired. The fact that the petitioner retired on 31.8.1985; whereas Mr. Trivedi retired on 31.8.1984, is not in dispute.

7. Now, at the very outset it may be stated here that even though the petitioner was promoted and posted to the post of "Head Transit Clerk", carrying scale Rs.250-380, while he was holding the post of Guidance Checking Clerk in scale Rs. 150-240(A), he was not allowed the said grade. It was indicated in the memorandum dated 12.7.1971 that the post of ^{"Head Clerk"} Transit Inspector shall operate in the scale Rs. 205-280(A), which was the scale of pay for Senior Transit Clerk.

8. It is true that when the orders passed in the case of Mr. Trivedi vide memorandum dated 24.11.73, it was shown that he was posted as Senior Transit Clerk in the "Transit Cell" in the grade of Rs.205-280(A) against the existing vacancy. However, it is pertinent to note that initial orders which were issued vide Memorandum dated 25.9.1973 (incorrectly stated as 21.8.1973 in Memorandum dated 24.11.1973), Mr. Trivedi who was holding the post ACMI scale Rs. 210-320(A), was promoted to officiate as TRI (Transit Inspector) scale Rs. 250-380(A) on ad hoc basis and when he had joined the 'Transit Cell', he had

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taken over the charge as Transit Inspector. Even subsequent orders issued vide Memorandum dated 14.3.74 also confirms this position.

9. It is significant to note that the petitioner was merely officiating as Senior Assistant Clerk scale Rs. 425-640(R) till 11.12.75 and he was promoted to the post of Head Transit Clerk in the scale Rs. 455-700 vide order dated 11.12.1975; whereas Mr. Trivedi who was working as Transit Inspector right from the day when he assumed his office, was working as "Transit Inspector" scale Rs. 250-380 which was revised at Rs. 455-700 with effect from 1.1.73. It is thus obvious that Mr. Trivedi was holding higher grade of Rs. 455-700 as Transit Inspector since his induction in the "Transit Cell"; whereas the petitioner attained the said grade only after 15.12.75.

10. The petitioner in support of his claim has heavily banked upon the so called seniority list attached to the NOTE at Annexure A-4 (P.B. 18). Now, it should be borne in mind that the said note was prepared by Senior Personnel Officer (T) on 11.5.1981 and the so called "seniority list" seems to have been prepared by some nine employees who had made joint representation dated 1.5.1981. On perusal of the said Note it is quite evident that the so called seniority list was tentatively prepared for the guidance of such employees appearing at the written test which was likely to be held on 20.5.1981 to regularise their services. It is however conceded that after the preparation of the said note, no such test was ever held till the petitioner and Mr. Trivedi retired. It is also conceded that after the preparation of the aforesaid note, no final list has been notified thereafter and it is conceded that apart from this

note, no seniority list was prepared officially by the said organisation. Reference to para 38 of the judgment relied upon by Mr. Mehta do not support ~~of~~ the petitioners claim or in other words create any ^{seniority} ~~seniority~~ on the basis of the so called seniority list attached with the Note (Annexure A-5). The fact that the petitioner's name is shown at Sr.No. 3 and the name of Mr. Trivedi at Sr.No.5 in the Memorandum dated 19.11.1986 (Annexure-6) do not suggest that he was senior to Mr. Trivedi. The assertions of the petitioner is that he was senior to Mr. Trivedi does not seem to be well founded. As a matter of fact, there is no anomaly whatsoever as a result of fixation of pay under Rule 2018 B(F.R.22 C) in the revised pay scale promulgated with effect from 1.1.1973, under the recommendations of the Third Pay Commission, as contended by the petitioner.

11. In the light of the foregoing discussion, the petitioner has failed to establish his claim. The application, filed by the petitioner merits no consideration whatsoever and accordingly, the same is dismissed with no order as to costs.


(P.M. JOSHI)
JUDICIAL MEMBER.