

Seniority not Lod

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH

O.A. No. 65 OF 1987.  
~~XXXXX~~

DATE OF DECISION 9-8-1991.

Umiyashankar Vashram Mehta, Petitioner

Mr. M.M. Xavier, Advocate for the Petitioner(s)

Versus

The Union of India & Ors. Respondents.

Mr. R.M. Vin, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.M. Singh, Administrative Member.

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?

Yes  
No  
No  
No

(10)

Umiyashankar Vashram Mehta  
Adult, Hindu, Occupation:  
since retired, Block No.D/146,  
New Rly. Colony, Bhavnagar Para.

... Applicant.

(Advocate: Mr.M.M. Xavier)

Versus.

1. The Union of India owning and representing Western Railway through its General Manager, Western Railway, Churchgate, Bombay - 400 021.
2. The Divisional Railway Manager, Western Railway, Bhavnagar Division, Bhavnagar para.

.... Respondents.

(Advocate: Mr. R.M. Vin)

J U D G M E N T

O.A.No. 65 OF 1987

Date: 9-8-1991.

Per: Hon'ble Mr.M.M. Singh, Administrative Member.

The applicant has, in this Original Application under section 19 of the Administrative Tribunals Act, 1985 (hereinafter the Act) disputed his supersession for promotion for the post of Deputy Train Controller (pay scale Rs. 700-900(R)). It is also alleged that he was denied the benefits of the raised pay scale Rs. 550-800(R) though similar benefits were granted to eligible Senior Assistant Trains Controllers(SATNCL for short) on the other divisions of the Western Railway but were not granted in Bhavnagar division. The applicant thus seems to have two grievances. However, the relief prayed in the application consists of the direction that the applicant is entitled for seniority position in the cadre of Deputy Train Controllers vis-a-vis his

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juniors already promoted and that he is eligible for pay fixation in the scale Rs. 700-900(R) with effect from 28.10.82 at the stage he would have reached if he was promoted at the proper time. Award of Consequential benefits to arise out of this direction are also prayed. The right to raised scale of Rs. 550-800(R) with effect from 19.11.1982 is sought only as an alternative relief.

2. As reliefs are sought from 28.10.82 in the main relief and from 19.11.82 in the alternative relief, the application filed on 9.2.1987 is evidently filed outside the period of limitation for filing applications laid down in Section 21 of the Act. Nevertheless, in the application an untenable declaration has been made that it has been filed in time.

3. It is the case of the applicant that he as SATNCL had become eligible for the raised scale Rs. 550-800(R) and also for promotion to the post of Deputy Train Controller(DTNCL for short) with pay scale Rs. 700-900(R) in preference to his juniors. By order dated 28.10.1982 four SATNCL including the applicant were promoted as DTNCL and posted to Baroda division. However, the applicant was not relieved due to administrative reasons on transfer to resume on the promotion post despite his request for relief several times. The applicant also avers that during this period some posts of SATNCL were put in raised scale Rs. 550-800(R) the benefit on which upgradation was to be made available with effect from 19.11.1982. The applicant though eligible for this scale, it was not given to him. Later the applicant was promoted as DTNCL Bhavnagar in a vacancy from 5.9.1983 on a temporary basis and was promoted on regular basis by

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order dated 27.6.84 with retrospective effect from 1.1.1984. It is alleged that the applicant suffered monetary loss from 19.11.1982 to 5.9.1983 for no fault of his which affected his pay fixation in the higher scale as also pensionary benefits. His representations and legal notice to respondents served no purpose. The applicant superannuated on 31.5.1984.

4. The respondents have resisted the application. Their stand is that the applicant was SATNCL in scale Rs.470-750 till 27.10.82. He was drawing Rs. 750/- as pay since 1.10.1976 and was thus at the top of the scale. The raised scale Rs. 550-800(R) was not operated on Bhavnagar Division and therefore there is no question of any junior of the applicant having been given this scale in Bhavnagar division. The applicant was promoted as per seniority as DTNCL scale Rs.700-900(R) by order dated 26.10.1982 and posted in Baroda division but he did not join in Baroda division. The order of promotion dated 26.10.82 was issued by the headquarter office as the applicant's cadre was then centralised. Subsequently, the cadre was decentralised by order dated 14.11.1982 with effect from 17.10.1982. As the applicant did not proceed on promotion to Baroda division, he was retained in Bhavnagar division in his original rank and when the cadre of DTNCL was decentralised, the question of his promotion in accordance with the order dated 26.10.1982 when the cadre was centralised could not arise. When the first vacancy of DTNCL in scale Rs. 700-900(R) arose in Bhavnagar division on 5.9.1983, the applicant being senior-most as per decentralised division seniority, he was promoted on ad hoc basis at the divisional level and was regularised in the post with effect from 1.1.1984. Thus the substance of the respondents' reply

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is that the applicant was himself responsible in not proceeding to Baroda division on transfer on promotion when the cadre was centralised and when it was decentralised the applicant was promoted as per seniority when a vacancy arose in the decentralised cadre and that Bhavnagar division had not operated pay scale Rs. 550-800(R) for anybody and therefore the applicant could not be given benefit of the same. According to respondents, the application is devoid of merit.

5. The applicant filed no rejoinder.

6. Mr.M.M.Xavier, learned counsel for the applicant filed written arguments and waived oral hearing. With regard to the respondents' contention that the applicant was himself responsible for not proceeding to Baroda division in response to the transfer on promotion order, the written argument submits that the respondents have not produced any documents to substantiate their averments and that the applicant was not relieved to proceed on transfer and that such contentions are unfounded. The written arguments also dispute the contention of decentralisation on the ground that by the order of promotion four people were transferred to Baroda division and therefore the contention of decentralisation is baseless. It is submitted that the applicant was eligible for raised scale Rs. 550-800(R) with effect from 19.11.82, the date of issue of the order of this raised payscale. In the written arguments, reliance is placed on the cases G.P.Doval V/s. Chief Secretary, Government of U.P.(AIR 1984 SC 1528) and Municipality Faridkot Vs. Chanderbhan & ors. (1982(1)SCC 479) on the subject of limitation. This argument evidences that the applicant has belatedly realised that the application was filed

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late. These cases of 1984 and 1982 respectively were prior to the Act of 1985 which contains Section 21 as provision on the subject of limitation. These judgments prior to 1985 could therefore not be on the subject of limitation provision under the Act.

Mr. Xavier forwarded by post under his letter dated 31st July, 1991 copy of judgment of this Tribunal in O.A. 359/87 dated 13.10.1989 without clarifying how the judgment is relevant to the case. We could therefore not take this judgment into consideration.

7. Mr. R.M.Vin, learned counsel for the respondents in his submissions stressed on the application being time-barred and that when the applicant did not proceed on transfer on promotion and in the mean time when the cadre was decentralised, the applicant could claim promotion only in the decentralised cadre in which he was promoted when a post became available.

8. The application thus gives rise to three issues for adjudication, the first being about limitation, the second being about the admissibility of raised grade of Rs. 500-800 and the third being the effect of applicant not joining on promotion-cum-transfer which according to the applicant, was because he was not relieved and was, according to the respondents, because the applicant himself did not proceed on transfer.

9. With regard to limitation for the reasons and facts discussed earlier, the application is grossly barred by time. With regard to the raised scale which is selection grade, the applicant has himself averred that he was entitled to the selection with effect from 19.11.82. As a promotion order dated 27.9.82 had already been issued in the pay scale 700-900(R), there

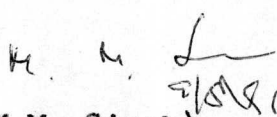
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remained no need to give the applicant benefit of the selection grade as the pay scale of the promoted post was higher than the selection grade. With regard to the applicant allegedly not having been relieved on promotion, we have not been shown any protest or representation by the applicant at the relevant time against his nonrelief on promotion. In the absence of such representation or protest timely made, there is ground to hold that the allegations made in this regard are unfounded. As when the cadre came to be decentralised and when a vacancy arose the respondents issued promotion order of the applicant in the decentralised cadre, there remains no substance in the application for any relief as his grievance has to be taken to have arisen because the applicant himself did not proceed on transfer on promotion.

10. With the above reasons taken together, the application is liable to be dismissed. We hereby do so but in the circumstances without any order as to costs.

  
(R.C. Bhatt)  
Judicial Member

  
(M.M. Singh)  
Admn. Member