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CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 227/89

DATE OF DECISION 19-4-95

Mr. K.C. Acharya Petitioner

Mr. M.S. Trivedi Advocate for the Petitioner (s)

Versus

The Chairman, Railway Board, Respondent
New Delhi and Others.

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

CORAM

The Hon'ble Mr. V. Radhakrishnan Member (A)

The Hon'ble Mr. Dr. R.K. Saxena Member (J)

JUDGMENT

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

No

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Mr. K.C. Acharya
Senior Commercial Inspector (Claims-Prevention)
Western Railway, Vadodara
Residing at 88/F Railway Colony
Pratapnagar Vadodara.

Applicant

Advocate Mr. M.S. Trivedi

Versus

1. The Chairman,
Railway Board,
And Principal Secretary
Ministry of Railways, Rail Bhavan,
New Delhi
2. The General Manager
Western Railway, Churchgate,
Bombay.
3. The Chief Commercial Supdt.
Western Railway, Churchgate,
Bombay.

Advocate Mr. R.M. Vin Respondents

JUDGMENT

In

Date: 19-4-1995

O.A. 227/1989

Per Hon'ble Dr. R.K. Saxena

Member (J)

Challenging the speaking order, Annexure A-11
passed in compliance with the directions given by the Tribunal
in T.A. 335/86, the application has been filed.

2. In order to appreciate the relief claimed, it
would be proper to go through the facts. The case of the applicant
is that initially he was appointed as Assistant Goods Clerk in the

Grade of Rs. 60-150 on 21-6-1955 and was confirmed on 11-2-1956. It appears that Railway Service Commission invited applications in 1961 for the posts of Commercial Apprentices in the pay scale of Rs. 250-380. The applicant submitted his application through department but the department withheld the application on the ground that the applicant was over-age. The application of Sarva Shri O.P. Mallick and N.K. Gehani who were older in age to the applicants, were, however, forwarded. The result was that Shri N.K. Gehani was selected and promoted as Assistant Commercial Superintendent whereas the applicant was denied the opportunity although both of them were similarly situated employees. Subsequently in the year 1968, the applicant was allowed to officiate as Senior Goods Clerk in the grade of Rs. 150-240. Thereafter he was posted as Claims Tracer on ad-hoc basis on 10-5-1971. The post of Claim Tracer was equivalent to the post of Senior Goods Clerk and carried the same grade.

3. The Railway Board issued a circular in the year 1972 that those employees who were working as ad hoc claim Tracers, should be regularised and confirmed. In the case of the applicant, there had been total defiance of the said circular. Since there were more avenues of promotion to the Claim Tracer in comparison to the Commercial Clerk, the applicant made an application to the General Manager in the year 1974, seeking change of category from Goods Clerk to that of Claim Tracer, but no heed was paid. The applicant, however, remained in search of an occasion to become regular Claims Tracer. That opportunity came in 1975 when the suitability test for the posts of Claim Tracers in the grade of Rs. 330-480 from amongst the Commercial Clerks, was going to take place. He, therefore, applied on 17-5-1975.

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He also moved another application on the same day, for his reversion from the post of officiating Senior Goods Clerk/Claims Tracer. The Senior Divisional Commercial Superintendent passed order on 29-8-1975 reverting the applicant to the post of Assistant Goods Clerk and ^{also} _{also} debarring him for promotion to the post of Senior Assistant Goods Clerk for one year.

4. The applicant qualified the suitability test for the post of Claims Tracer in the grade of Rs. 330-480 and was selected. In the meantime, the restructuring of several cadres including Claims Tracer and Assistant Commercial Inspector took place. As a result of it, the post of Claims Tracer was upgraded to the post of Assistant Commercial Inspector in the grade of Rs. 425-640. Accordingly, the applicant who was working as Claims Tracer was ordered to be promoted as Assistant Commercial Inspector on 9-8-1976. The Chief Commercial Superintendent, however, issued another order on 16-8-1976 holding the promotion of the applicant in abeyance till further orders. The applicant made representations to the authorities but the result was that the applicant was transferred/repatriated by order dated 4-4-1977 to the post of Senior Goods Clerk. The applicant was, therefore, constrained to move the High Court through S.C.A. 467/77 for quashment of the order of transfer with consequential benefits. The decision was rendered on 30-4-1980 declaring the applicant holder of the post of Assistant Commercial Inspector. Directions were also given to grant all benefits including increments and promotions to which the applicant would have been entitled.

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5. According to the applicant the respondents treated him as Assistant Commercial Inspector in the grade of Rs. 425-640 with effect from 11-4-1979 in pursuance of the judgment of the Hon'ble High Court. Besides, his further promotions as Commercial Inspector in the grade of Rs. 455-700 from 18-9-1984, Commercial Inspector in the grade of Rs. 550-750 from 11-3-1985 and as Senior Commercial Inspector in the grade of Rs. 700-900 (Revised Grade Rs. 2000-3200) from 11-7-1985 were given while they ought to have been given from earlier dates. It appears that no early steps were taken by the department in accordance with the directions as given by the High Court although several representations were made by the applicant.

6. Ultimately the applicant filed Miscellaneous Civil Application No. 99/82 for action of Contempt against the respondents. The said application was disposed of on 5-7-82 by the Division Bench holding that since there was no direction by the Single Judge (in the judgment of S.C.A. 467/77 delivered on 30-4-1980) to post the applicant as Claims Tracer no contempt was committed. The applicant was however, permitted to withdraw contempt petition with a view to file a fresh petition. Thereafter the applicant filed another SCA 2165/84 which was transferred to Tribunal where it was numbered as T.A. 335/86. It was disposed of on 30-6-1988 directing the respondents to pass speaking order after examining the claims of the applicant in relation to specific directions of the High Court. The speaking order was directed to contain whether the relief is granted or refused in toto or in part and if granted in part, the reasons be given. The applicant was given liberty to file fresh application for any cause which he needed to pursue as a result of the said

speaking order.

7. On the basis of these directions, Chief Commercial Superintendent passed impugned speaking order-Annexure -11 (without giving any date) holding that the applicant was given all the benefits to which he was eligible. It was further observed that he was not entitled to any further benefits. Feeling aggrieved by this order, he has filed the present O.A. No. 227/89 giving the entire history of the case in a ^hhapazard manner. His contention is that the respondents failed to treat him as Assistant Commercial Inspector and give further ^{interim} promotions, and thus he was deprived of the higher posts and higher grades. He also claims that he was eligible for the post of Commercial Apprentices/Traffic Apprentices but his application was not forwarded on the ground of his being overage whereas the applications of Sarva Shri O.P. Mallick and N.K. Gehani who were older in age to him, were forwarded and they got promoted. He therefore, claims relief of appointment on par with Shri N.K. Gehani for all the scales and posts including Class II posts and above. He further seeks relief of payment of difference in pay of all posts.

8. The respondents contested the case on the grounds that narration of very old facts starting from his initial appointment, is given to create confusion and thus the application is verbose and otiose. The application is time-barred

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because the relief sought is for very old grievances. The application suffers from multifareousness because several causes of action have been mingled up. It is also pleaded that the competent authority had passed a reasoned order as was directed. The applicant was granted all the benefits due to him and suffered no loss.

9. The respondents have come with averment that promotion^s to Class II posts of Class III staff of Commercial ^{authoritative} branch is not ~~authoritative~~ but is made according to the procedure of selection. The application is, therefore, contended to be dismissed.

10. The Tribunal directed the applicant wide order dated 8-1-1993 to produce brief statement listing out the reliefs sought in different ^{stages} ~~cases~~ filed by him. He submitted amendment application 227/89 in 45 pages virtually in the form of a fresh O.A. The amendment was allowed on 22-3-1993. The Bench on 16-9-1993 passed order to file rejoinder on the points namely;

1. That the speaking order is legal or not.
2. Annexure A-24 letter 11-4-1979 could be challenged or not at this stage.
3. Whether there is any non-joinder of parties in this O.A.
4. Whether there are multiple reliefs prayed

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in this O.A.

5. Whether there are causes of action which occurred one year prior to the filing of this O.A.

In response to these directions, the applicant submitted reply dated 18-7-1994 which was taken on record. According to this reply, it was contended that the speaking order was not legal, Annexure A-24 could be challenged because the matter is being agitated since 1974, there was no question of mis-joinder or non-joinder, there is no case of multiplicity of reliefs; and in case two independent reliefs are found, the Tribunal could appropriately mould them; and that the present O.A. is not time-barred because the impugned speaking order was received on 8-3-1989 (though typed as 8-3-1979) while this O.A. was filed on 27-4-1989.

11. The personal file of Shri N.K. Gehani which was ordered to be produced so as to conclude ^{the} ~~part~~ heard arguments of the parties, was produced on behalf of the respondents on 7-4-1995. We ourselves looked into the file. This is personal file of Shri N.K. Gehani and contains mostly the transfer orders, charge-certificates, leave applications, orders of pay-fixation etc. Shri M.S. Trivedi- the learned counsel for the applicant wanted to ascertain from this file the date of birth and the dates of promotions of Shri N.K. Gehani. At page 324 of the file, there is carbon-copy of service particulars signed by

F.A.&C.A.O. which speaks the date of birth as 8-2-1936, and date of appointment as 3-5-1956. It also speaks that the period of Gazetted service was from 1-2-1979 to 28-2-1984 and the date of superannuation was 28-2-1984.

12. At page 271 of the personal file of Shri Gehani is also the service statement giving date of birth, joining of several offices held by him during service period; and the date of service which shall be counted for pension. According to this statement, Shri Gehani joined service in Class III on 3-5-1956. He was promoted to Class II post as ACS-CCG grade 650-1200 on 1-2-1979. This statement contains details of postings upto 3-7-1989. These facts of service book of Shri Gehani shall be discussed as and when necessary.

13. We heard the learned counsel for the parties who laid emphasis on their respective replies brought on record. We have also perused the record.

14. Before dealing with the main issue we would like to discuss the technical objections such as of limitation non joinder of necessary party and multifareousness of causes of action. So far as the question of limitation is concerned we will have to see the impugned order and its date. The impugned order admittedly is the speaking order Annexure A-11, which was passed by the Chief Commercial Superintendent in compliance

with the directions given by the Tribunal in T.A. No.335/86. There is no mention of date in the speaking order. The reply filed on behalf of the respondents is also silent about the date of the order. It was expected of the respondents to have mentioned the date particularly when the plea of limitation was taken by them. The applicant averred specifically in the application that he received the copy of the impugned order on 8-3-1989. In rejoinder, the same fact was reiterated and it was also contended that the present O.A. was filed on 27-4-89.

15. The learned counsel for the respondents pointed out that several causes of action on different dates have been indicated in the application and thus looking from that angle and also from the angle of point no.5 of order dated 16-9-93 passed by the earlier Bench, the application is time-barred. We are unable to agree with this argument. The applicant mentioned different stages of non-promotion because those stages ~~as~~ were considered by the Chief Commercial Superintendent in his order, Annexure A-11. Thus the O.A. is filed within the period of limitation. The point No.5 of order dated 16-9-1993 is answered accordingly.

16. The next objection raised on behalf of the respondents is that Union of India has not been made party. The applicant has made Chairman Railway Board, Principal Secretary, Ministry of Railways, General Manager of Western Railway and Chief Commercial Superintendent, Western Railway,

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as respondents. A party will be a necessary respondent only if there is a right to relief against him in respect of the matter and his presence is necessary for the effectual and complete adjudication of all the questions involved in the matter. Looking from this angle and finding that the relevant and necessary authority ^{lay} in the respondents no.1 to 3, non-making Union of India as respondents, will not make the O.A. bad and non-adjudicable. It would have been proper had the Union of India been made party. The distinction between necessary and proper party is clear and understandable. We, however, do not find Union of India as necessary party. The objection raised by the learned counsel for the respondents is, therefore, rejected.

17. The third objection is of multiplicity of causes of action. The genesis of it lies in the impugned order. The Chief Commissioner Superintendent while passing order, considered different phases of promotion or non-promotion, confirmation, determination of seniority and fixation of pay about the applicant and that appears the reason that the applicant dwelt upon those facts in the O.A. It further appears that the applicant understood the task of drafting the O.A. himself because in the beginning of the case, he had been appearing in person. Thus this multiplicity is reflected because of careless and improper drafting.

18. On the direction of the Tribunal on 8-1-1993 to submit briefly the reliefs sought by him, the applicant had submitted reply in 45 pages by seeking the amendment of O.A. Thus the confusion was worst confounded. However, it was also

indicated that speaking order was under challenge and this order deals with promotion and determination of pay. In the rejoinder dated 18-7-1994, it was clarified by the applicant in para 4 that if there are two reliefs (more than one) the Tribunal may deal with appropriate relief. Looking to the facts of the case, we presume that the applicant wants to attack the impugned order for being in violation of the direction given by the High Court in SCA 467/77 decided on 30-4-1980 and by the Tribunal in T.A. 335/86. Thus this objection is partly over-ruled.

19. Now we come to consider the main point whether impugned order is bad or not. While disposing of SCA 467/77, the High Court concluded that the applicant was entitled to a declaration that he continued on the post of Assistant Commercial Inspector and a writ of mandamus was issued to the Western Railway enjoining to grant him (applicant) all the benefits including increments, promotions, etc to which he (applicant's) would have been entitled. The Tribunal also gave directions in the decision of T.A. 335/86 to pass speaking order in relation to the decision of the High Court. It is in this prospective that we have to see whether speaking order suffers from any infirmity.

20. A detailed order running into six pages and supported ~~key~~ by three annexures, was passed by the Chief Commercial Superintendent. He clearly mentioned that



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Shri Acharya was allowed to continue as Assistant Commercial Inspector in view of the judgment of High Court of Gujarat in SCA 467/77. As regards seniority and regularisation, it is pointed out that it is done according to the policy laid down in the letter dated 11-4-1979 of the Railway Board. Even when attempt was made to regularise the employees and determine the seniority of Assistant Commercial Inspector, case was started in which Shri K.C. Acharya was one of the respondents. He gave the O.A. No. 764/89 in the impugned order.

21. As regards the selection for the post of Commercial Inspector Grade Rs. 455-700, panel was drawn and the applicant was shown at Serial No. 39. He was promoted on 18-9-1984 and no junior to Shri Acharya was promoted before him. It was also pointed out that in the year 1976, the promotion to this post (Commercial Inspector) in the grade Rs. 250-380 (A)/ Rs. 455-700 (R) being a selection grade post, was based on seniority-cum-suitability and since Shri Acharya was not selected, he was not given ^{promotion} in 1976 but on selection in 1984 he was promoted on 18-9-1984. The regularisation and confirmation is done accordingly to the seniority.

22. Further promotion of Shri Acharya in the grade of Rs. 550-750 (R) was given to him on 30-1-1985 although this date was shown as 11-3-1985 in the amendment application of T.A. 335/86. Anyway, the promotion date 30-1-1985 has

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not been disputed. Similarly the promotion in the grade of Rs. 700-900 (R) is given to the applicant with effect from 31-7-1985.

23. These facts go to show that the respondents had complied with the judgment of High Court in SCA 467/77 and directions given by the Tribunal in T.A. 335/86 in letter and spirit. Now by filing this O.A. the applicant wants to be equated for all promotions with Shri N.K. Gehani whose personal file was ordered to be produced on the request of the applicant. The plea of the applicant was that Shri Gehani was born in 1933 whereas he himself was born in 1934 and in such a situation his application for the post of Claims Tracer could not be withheld by the department on his (applicant) having become overage. The personal file of Shri Gehani shows his date of birth as 8-2-1936 and thus the information of the applicant that Shri Gehani was born in 1933 was without any foundation.

24. Another important aspect which arises is that this ground was not taken or raised before High Court when the applicant sought continuance on the post of Assistant Commercial Inspector in SCA 467/77. Hence the applicant is estopped from raising this question by application of the principle of constructive res-judicata. Moreover, the plea of

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promotions along with Shri Gehani who was promoted in the year 1979, cannot be allowed to be raised after ~~more~~ ten years. Accordingly the case of the applicant fails.

25. On the consideration of the facts of the case and the discussion made above, we come to the conclusion that the impugned order, Annexure A-11, does not suffer from any infirmity or illegality. Thus the case of the applicant does not merit and accordingly the O.A. is rejected. No order as to costs.



(Dr. R.K. Saxena) _____
Member (J)



(V. Radhakrishnan)
Member (A)

*AS.