

# CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A. NO. 30 of 1989.

~~XXXXXXXXXX~~

DATE OF DECISION 18th August, 1994.

Shri Ranchhodbhai G.Patel Petitioner

Shri R.R.Tripathy Advocate for the Petitioner (s)

Versus

Union of India and ors. Respondent

Shri N.S.Shevde Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. K.Ramamoorthy : 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 ?

22

9

: 2 :

Shri Ranchhodbhai G.Patel,  
Vimalnath Co-operative Housing  
Society Ltd.,  
Opp.Amber Cinema,  
Bapunagar,  
Ahmedabad.

...Applicant.

(Advocate : Mr.R.R.Tripathy)

Versus

1. Union of India,  
(Notice to be served  
through the General Manager,  
Western Railway,  
Churchgate,  
Bombay).
2. Divisional Railway Manager,  
Western Railway,  
Bareilly.
3. Divisional Railway Manager,  
Western Railway,  
Ratlam.

...Respondents.

(Advocate : Mr.N.S.Shevde)

J U D G M E N T

O.A.NO. 30 OF 1989.

Date : 18.08.1994.

Per : Hon'ble Mr.K.Ramamoorthy : Member (A)

This application relates to grant of an earlier deemed date of promotion. The short facts of the case are as under : -

The applicant had joined the Respondent-Railways as "C" Grade Guard on 1.4.1958 and got promoted regularly upto Grade "A" (Special). When the time came for the applicant to be promoted to the post of Grade "A"(Special), options had been asked from the employees to choose the Division in which they would like to be promoted.

...3..

(10)

: 3 :

According to the applicant, at the time of promotion to Grade "A" (Special) one Shri J.G.Baria, who was junior to him, got promoted on 11.1.1979 as Grade "A"(Special) in the scale of Rs.425-600 (Revised); whereas he was given the Special Grade only from 1.7.1979. In view of this earlier joining in Special Grade "A" by Shri Baria, he has been given higher seniority from that grade onwards resulting in loss of emoluments to the applicant. It is the contention of the respondents that it was true that options had been sought for from the employees concerned and since no option had been received from the applicant, he was treated as non-optee officer and was posted on promotion as Guard "A" Grade (Special) in Bombay Central Division vide Memo No.E(T) 839/3/32 dated 23.5.1977. However, the applicant had joined only on 17.2.1979 vide joining report at "R-1". Since further seniority depended on the actual date of joining, Shri Baria, admittedly though junior to him in the earlier post, had joined as Guard (Special Grade) earlier and got seniority over him and there was no error in giving such a seniority.

It is the contention of the applicant that he had never received the order in question and this particular error on the part of the respondents had resulted in his not being able to join in 1977 itself. With the implementation of the Fourth Pay Commission, recommendations he found that on the date of retirement, the applicant retired at a pay of Rs.2300/- while his junior, Shri Baria, was drawing Rs.2420/-. It is the further contention of the applicant that for this error on the part of the respondents, he should not suffer financial losses. Since he had retired from the Railways

2

(11)

: 4 :

thereafter on 31.7.1988, there was no question of his affecting anybody's seniority even if he was given deemed date of promotion, as his interest was only in seeing that he should not suffer further pecuniary loss and he would not claim any back wages for the revision if he was given this deemed date. His only concern was that his pension was properly fixed.

We have gone through the averments made on behalf of the railways. Though in their statement they had categorically stated that a formal order was issued in 1977, in spite of many opportunities being given to the respondents, they have not been able to produce this order. In fact, the subsequent M.A.s filed by them only relate to actual orders of promotion and his joining report as Guard "A" (Special) in 1979. In view of the liability of the respondents to produce the order stated to have been issued in 1977, we cannot help drawing an adverse inference and have to accept the point made by the applicant that no such orders had actually reached him possibly due to the fact that Railways had not received the option form in time. The Railways themselves have agreed that because of the non-receipt of the option form they could not hold back promotion since such a promotion order had to be issued as non-optee officer in any division where the vacancy was. In view of the concession given by the applicant, the question of payment of any back-wages would not also arise.

...5..

(12)

: 5 :

We, therefore, direct the respondents to take action to give a notional date of promotion to the applicant as per his due seniority. His pay will be fixed on notional basis to arrive at the last pay that he would have drawn according to the Fourth Pay Commission recommendation. The grant of pension also to the applicant will start only from the date of his application to the Central Administrative Tribunal i.e. from the month of November, 1988 only. Actual payment of pension also on his revised pay would have to be given only from the date of application before the Central Administrative Tribunal i.e. from the month of November, 1988 Only.

With this direction, the application is disposed of. No order as to costs.



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



(K. Ramamoorthy)  
Member (A)

ait.