

(4)

No
Promotion

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. /318/89

T.A. No.

DATE OF DECISION 15-1-1993

Shri Chhotubhai Mistry Petitioner

Shri P.K.Handa Advocate for the Petitioner(s)

Versus

Union of India & others Respondent

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

CORAM :

The Hon'ble Mr. N.V.Krishnan : 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 ?

Shri Chhotubhai Mistry
Block No: 487, Room No. 336
Railway Colony,
Opp. Vohra Ki Chawl,
Maninagar, Ahmedabad 8

Applicant.

Advocate Shri P. K. Handa

Versus

1. Union of India
Secretary, Ministry of Railways
Rail Bhavan,
New Delhi.
2. General Mnager
Western Railway
Chruchgate Bombay
3. Divisional Railway Manager
Western Railway,
Pratapnagar, Vadodara-390 004
4. Sr. Divisional Personnel Officer
Western Railway
Pratapnagar Vadodara
5. Sr. Divisional Accounts Officer
Western Railway
Pratapnagar Vadodara
6. Divisional Mechanical Engineer (LOCO)
Western Railway
Pratapnagar Vadodara.

Advocate Shri N.S. Shevde.

ORAL JUDGEMENT

In

O.A. 318 of 1989

Date: 15-1-1993

Per Hon'ble Shri N.V.Krishnan Vice Chairman.

Shri Handa for the applicant.
Shri Shevde for the respondents.

The applicant who was an engine driver has prayed for the following reliefs in this application.

((

- (1) The applicant prays for the Hon'ble Tribunal to direct the respondent to grant the arrears of Proforma fixation given while promoting from Dr. C to Dr. B and also to rectify the anomaly in pay fixation equivalent to the junior of the applicant.
- (ii) The respondents may also be directed to calculate the average by ~~xxx~~ emoluments for Pensionary benefits by merging 55% of basic pay instead of 30% as the applicant has retired as Driver B (DSL).

At the time of final hearing we noticed that these two reliefs are disconnected. In ~~the~~ these circumstance, the learned counsel for the applicant submitted that the application may be considered in respect of relief no. (i), leaving aside the relief sought in item no. 2. (ii) ¹

3. Accordingly, we consider this application in respect of first relief sought by him.

4. The grievance of the applicant is that ~~the~~ while working as driver C, the applicant was suspended on 27-2-1983 but it was revoked on 21-4-1983. Subsequently, this period has been ordered to be treated as duty under the Annexure A-2 letter dated 24-4-1987. It is stated that subsequently, a charge sheet was issued, apparently on 5-5-1983. However, the Department did not proceed with the charges and ultimately the charges were dropped. The applicant was promoted from 5-1-1984 taking into consideration the date on which his juniors M.Z. Mir was promoted during the pendency of the

(7)

charge sheet. Accordingly, he was given promotion to the post of Driver (B) Diesel notionally with effect from 5-1-1984. Subsequently, the memo dated 3-12-1987 (Annexure A) was issued by the sixth respondent, Divisional Mechanical Engineer, which indicated how his pay has been ~~ix~~ fixed on such promotion. It is stated that he was been given proforma promotion ~~xxxx~~ and pay fixation as Driver B Diesel, 5-1-1984 ^{made} and the actual payment has been ^{from} from 21-7-1986. The grievance of the applicant is that, for no fault of his, he has been kept out of promotion during the above period and denied financial benefits. He contends he is, therefore, entitled to full back wages for the above period.

4. It is in these circumstances and background that relief (1) extracted above has been prayed for. The learned counsel has also stated that in para 3 of the application, the exhibit A memo is ^{not} impugned. *impugned*

5. The respondents have filed ^a reply in which it is admitted that proceedings were initiated on 5-5-1983 and that during the pendency thereof, the applicant was not considered for promotion and was not promoted as Driver B for this reasons. It is also admitted on page 2 of the reply that the disciplinary proceedings^s was subsequently dropped by the competent authority. It is further submitted that the fact finding inquiry ~~x~~ was conducted by the Asst. Mechanical Engineer (BG) Ahmedabad but could not be finalised due to administrative account for one or the other reasons. The appellate authority, in ~~xxxxxxx~~ the meanwhile, ordered that the period of suspension should be treated as a period spent on duty. Subsequently, the ^e date of promotion of his juniors

applicant was promoted from 5-1-1984 notionally from the date of promotion of his juniors but he actually started working as Driver Grade (B) Diesel only from 21-7-1986.

5. In regard to non-payment of salary till ^{21-7.} ~~27-1~~-1986 the only reason given by the respondent is that the applicant had not shouldered, the responsibility of the higher post (Driver Grade B) and hence he has no right to claim arrears from 5-1-1984.

6. We have perused the record and have heard the learned Counsel for the parties.

7. Though the respondents have not raised the issue of limitation in the reply, Shri N.S. Shevde, learned Counsel for the respondent pointed out that impugned order was issued on 3-12-1987 and this application has been filed on 1-8-1989 and is, therefore, barred by limitation.

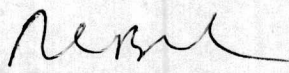
8. We have ~~not~~ considered this matter. The applicant has sought voluntary retirement from 9-2-1988. The prayer made by him will not adversely affect any other party. Besides, the claim is for a period of four years which is not an insignificant period. Therefore, we are satisfied that the delay should be condoned and we do so.

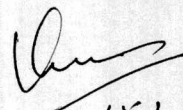
9. The learned Counsel for the applicant submitted that there are decisions of the Supreme Court on which the applicant relies for back wages.

10. We are of the view that the applicant should have made a proper representation against the exhibit A order which has not been done by him so far. It is only fair ^{to give} ^{an} to ~~direct~~ him/opportunity to make such a detailed

representation in which he can take all grounds available to him and submit it to respondent no.3 within three weeks from the date of receipt of this order, We do so. If such representation is received, the third respondent shall dispose it of in accordance with law within a period of one month thereafter.

11. We dispose of this application with the aforesaid directions making it clear that we have not considered the relief at Sr. No. 2 and leave that issue open.


(R.C. Bhatt)
Member (J)


15.1.83
(N.V. Krishnan)
Vice Chairman.

*AS.