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CAT/J/13

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. /351/89
T.A. NO.

DATE OF DECISION 5 -9 -95

Shri M.O.Pathak

Petitioner

Mr.K.K.Shah

Advocate for the Petitioner (s)

Versus

Union of India & ors.

Respondent

Mr.N.S.Shevde

Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. N.B.Patel

Vice Chairman

The Hon'ble Mr. K.Ramamoorthy

Member (A)

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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Shri Mahendra Omkarnath Pathak

Office Supdt.,
Khedkar Falia,
Wadi, Vadodara.

APPLICANT

Advocate Mr. K. K. Shah

versus

1. Union of India, Through :
General Manager,
W.Rly., Churchgate,
Bombay.2. Chief Engineer,
Survey & Constructions's Office,
New Churchgate Station Building,
1st floor, W.Rly., Churchgate,
Bombay.3. Chief Project Manager,
Railway Electrification,
Pratapnagar, Baroda.

RESPONDENTS

Advocate Mr. N. S. Shevde

JUDGMENT

O.A. No. 351 of 1989

Date: 5-9-95

Per Hon'ble Mr. K. Ramamoorthy

Member (A)

The present application has been filed seeking proforma promotion from an earlier date i.e. the date when a junior person to the applicant had been promoted and also seeking payment of difference of wages.

2. The short facts of the case which are not in dispute are as under :

The applicant had been appointed as Clerk on 26.2.1952 in the Railway Service Commission. He was thereafter promoted on 8.5.1958 and in 1961 he was transferred to the Survey and Construction Department. As per the then existing policy of districtwise seniority, he was promoted as Head Clerk in 1971. The applicant was transferred to the Railway Electrification Organisation in 1981 as Head Clerk and was promoted as Chief Clerk in 1982. Meanwhile with the decision of the Bombay High Court that seniority was to be fixed according to a joint norm, the applicant got the benefit of a revision in the seniority list and his serial number in the seniority list was refixed at Sr.No.34 A. Since the applicant has retired as Office Supdt., a post to which alone he could have aspired even if his claim of seniority is accepted, his present application is only with regard to refixation of his proforma promotion as Chief Clerk and Head Clerk according to this revised seniority and also for payment of arrears because of such proforma promotions.

3. As already stated, the fact of the entitlement of the present applicant to assignment of serial No.34 A in the actual seniority list is not a matter in dispute. It is also not in dispute that in view of the non-availability of the correct serial number in the seniority order, Mr.Panirwala who is admittedly junior to the

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present applicant had been promoted earlier.

4. The first question that would remain for our decision then would be to decide as to whether the applicant had a right to be promoted at the time when Mr. Panirwala had been promoted. On this point, the reply of the respondents is as under :

" It is submitted that the promotions in Railway Electrification Organisation are valid only in the said Organisation and are not taken into consideration for promotions in the present Department, i.e. Open Line. The applicant cannot compare his case with that of Shri Panirwala as they are not similarly situated and there is no violation of Article 16 of the Constitution of India. The applicant was given promotion to the higher post as per rules and seniority of Railway Electrification Organisation."

The short point in question obviously centres on the question of the implication that followed from the policy decision of 1972 that " there should be a combined cadre ". The implications that flew ^{ed} from this ' Combination ' was a matter of dispute in the Bombay High Court and the Bombay High Court had ruled that combined seniority should be drawn up on the basis that " the persons who are appointed to the Survey and Construction Department by transfer or ~~being~~ selected from the Open Line department

shall be deemed to have been appointed to that particular post and so on that particular date and scale of pay in the Civil Engineering department" and this combined seniority list should govern further promotion. Accordingly the present applicant was given a combined seniority list at Sl. No. 34 A. Fortunately in this case, the further implications of this seniority on his transfer to Rural Electrification Division has also been settled by Central Admn. Tribunal. In a specific order in T.A. No. 534/86 dated 15-12-1987, it has been clearly decided as under:

" We therefore direct that the petition has merit and direct that the impugned order at Annexure B is quashed and set aside and the respondents should decide the question of inter se seniority in REO by giving credit for the period of service in S & C department to the petitioners. The respondents should also review the question regarding requirement of severance for S & C department being fair or equitable or purposeful and in the light of the above observation and directions dispose of the representation of the petitioners within a period of four months of the date of this order".

It is quite clear that the said representation has since been disposed of by the respondents vide their letter dated 21-4-1988. The applicant has been given the credit of his working as Head Clerk in S & C department for assigning

him seniority in REO and his name has been interpolated at Sl.No. 34 A vide Annexure A/6. Because of this revised seniority, he has been also shown senior to Mr.Panirwala. In view of this decision, the question of the earlier higher seniority of Mr.Panirwala in the divisional cadre of Baroda as stated in the written reply of the respondents has no validity.

5. The respondents themselves have in their order dated 21-4-1988 specifically stated that " the present applicant, may, however, be adjusted as O.S. against the existing vacancy in your organisation." In view of the clear decision of the CAT in this regard and acceptance of the position and revision of the seniority by the respondents themselves, the question of the right of the applicant to get promoted earlier on the date of his junior was promoted cannot now be in dispute. The plea of the applicant for proforma promotion also has, therefore, to be upheld.

6. As regards payment of arrears, the right of the Govt. servant to get arrears of pay also in cases where the claim has not been recognized in time on account of the mistakes of the respondents is now a settled position. The Karnataka High Court had upheld the case for grant of arrears of salary in case of promotion given with retrospective effect in the case of Shaikh Mehaboob Vs. Railway Board and Others decided on 1-9-1981 in A.P. No.3014/1976 reported in SLR 1982(1) 455.

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This Tribunal has also upheld the similar claim in the case decided in T.A. No.298/86 decided on 3-4-1987 by CAT New Bombay reported in ATR 1987 (2) CAT 245.

7. The applicant had originally sought for stepping up of pay only and that too with regard to the case of Shri Shanbag. However, the applicant had since given an amendment for getting proforma promotions also in view of the fact of promotion of juniors. Though the case of stepping up of pay only on the ground of higher emoluments actually drawn by Shri Shanbag cannot be upheld, the fact however, remains that the present seniority having been upheld and right of the applicant to count his earlier service also to be counted being REO having been upheld, the question of proforma promotion has to be upheld in his favour and for the reasoning stated above, the following order is passed.

8. The respondents are directed to give proforma promotion to the applicant as Chief Clerk and O.S. on the date his junior, Shri Panirwala was promoted as Chief Clerk and O.S. respectively. The applicant will also be entitled for grant of arrears of pay in view of this proforma promotion. The retiral benefit may also be refixed in view of this revised

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proforma promotion if it becomes necessary.

The respondents may complete this above process within a period of 10 weeks from the date of the receipt of this judgment.



(K.Ramamoorthy)
Member (A)



(N.B. Patel)
Vice Chairman

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Date	Office Report	ORDER
2.5.96		<p>We see no ground to grant any extension of time to comply with the judgment, especially when we have already granted time in contempt proceedings upto 10th July, 1996 for compliance of the judgment. Hence, M.A. is rejected.</p> <p><i>VR</i> (V.Radhakrishnan) Member (A)</p> <p><i>NP</i> (N.B. Patel) Vice Chairman</p> <p>vtc.</p>