

6

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. /81/89
T.A. No.

DATE OF DECISION 6-10-1993.

Shankarlal varubhai Makwana Petitioner

Mr.P.R.Agrawal Advocate for the Petitioner(s)

Versus

Union of India & others Respondent

Mr.B.R.Kyada Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C.Bhatt : Member (J)

The Hon'ble Mr. M.R.Kolhatkar : Member (A)

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 ? ✗

Shankarlal Varubhai Makavana
Clerk, Loco Shed,
Sabarmati,
52, Sutaria Society,
Out side Shahpur,
Ahmedabad

: APPLICANT

Advocate

: Mr.P.R.Agrawal

VERSUS

1. Divisional Railway Manager,
Western Railway,
Rajkot Division,
Rajkot.

2. Union of India through :
The General Manager,
Western Railway,
Churchgate,
Bombay.

: RESPONDENTS

Advocate

: Mr.B.R.Kyada

J U D G E M E N T

O.A.81/89

Date: 6-10-1993.

Per : ^HHon'ble Shri R.C.Bhatt,
Judicial Member.

Mr.P.R.Agrawal, learned advocate
for the applicant. Mr.B.R.Kyada, learned advocate for
the respondents.

2. This application under section 19
of the Administrative Tribunals Act, is filed by the
retired Railway servant against the Railways seeking
the reliefs as under :-

(a) The Hon'ble Tribunal be pleased to
direct the respondents to give

the benefits of upgradation and of Reservation and Roster System meant ~~for~~ for SC/ST employees w.e.f.01/10/1972 and w.e.f.earlier dates respectively.

- (b) The Hon'ble Tribunal be pleased to direct the respondents to pay the arrears of difference of pay, allowances and all other benefits available to him as per prayer above (a) at the earliest within a time limit prescribed by the Hon'ble Tribunal.
- (c) The Hon'ble Tribunal be pleased to direct the respondents to remove the error of calculation or clerical error in computing the last pay for pension and accordingly to correct and revise the pension order and the pension and to direct them to pay the difference of pension etc. to the applicant accordingly at the earliest."

3. The case of the applicant is that he has retired on 26th October, 1983, and that at that time he was serving as clerk, Loco Shed at Sabarmati. According to him, as per the Railway Board letters of upgradation, Annexure A-3 and A-4, he should have been given the higher grade of Rs.110-180 (A) & 260-400 (R) w.e.f. from 05/07/1971 or at least from 01/10/1972, as he performed more than two duties out of 7 prescribed by the Railway Board in their letters, Annexure A-3, and A-4. It is also the case of the applicant that he should have been given benefit of the Roster System for SC/ST candidates, as he is a SC candidate vide. Annexure A-5, A-6, A-7. According to him, his last pay fixed as Rs.329.85/-p.m. is not proper. According to him, even

ms

without benefit of the Railway Boards' letters of upgradation and Roster System, his last pay was 344.00/-pm..

According to him, the co-employees promoted or up graded upto 1972 are junior to him and co-employees of SC and ST categories to whom benefits of Reservation and Roster System ^{are} ~~are~~ given also juniors to him.

4. The learned advocate for the applicant, submitted that the applicant was getting Rs.344/-p.m. as salary at the time of retirement and not ^{Rs.} Rs.334/-p.m. as mentioned in Annexure A and he relied on Annexure A/16 dated 05/9/1979, Annexure A is the PPO of the applicant which shows that his last pay for pension was Rs.329.85/- which according to him is incorrect.

5. Learned advocate for the applicant submitted on other points that the applicant was not heard by C.P.O. who has passed order on 25/9/1982 in pursuance of directions given by the High Court of Gujarat at Ahmedabad. He further submitted that the applicant ~~was~~ was not a party in the T?A./239/87 decided by this Tribunal. Learned advocate for the applicant submitted that the applicant wants benefits of Roster and Reservation System and reliance is placed by him on the documents Annexure A-5 to A-7, on the subject of the Reservation of SC and ST, Annexure A-6, is a copy of the letter dated 31/8/1971, and Annexure A-7, is ~~is~~ a copy of Railway Boards' letter dated 11/1/1973. We have also perused other documents filed by the applicant. Learned advocate for the applicant

submitted that the respondents in their reply have not met with the allegations made in the application. He submitted that Annexure A-17, Western Railways' letter dated 20/07/1981, would show that juniors were promoted while applicant was not given benefits of Roster System.

5. The respondents have filed detailed reply.

It is contended by the respondents that the applicant was one of the parties in SCA 1466/82, which was filed in the High Court of Gujarat for the same cause of action, which ~~has~~ now been sought by this application. The High Court of Gujarat, ~~had~~ passed an order in SCA 1466 of 1982, directing the CPO of the Western Railway to decide as to whether the petitioners of that SCA were rendering the duties of Material Clerk and if they were so performing the duties, whether the petitioners were entitled to the benefits of the Higher Time Scale of Rs.110-180/- or the revised scale as the case may be for the post of Material Clerk, in terms of two letters of the Railway Board of September 27, 1963, and November 3, 1972 and if so from which date. The respondents have produced at Annexure R-1, the decision given by the CPO-CCG on 25th September, 1982, which is ^a speaking order in which the directions given by the High Court of Gujarat are incorporated in details and findings are given after giving opportunity of hearing to the parties. The petition was withdrawn ultimately by the petitioners in view of the directions given by the High Court of Gujarat.

Reading ,R-1, it is clear that the CPO has after considering the oral and documentary evidence on record held as under :-

Keeping in view the above facts, I decide that -

- i) One post of Junior Clerk in the Stores Section of the Sabarmati Shed be upgraded from scale Rs.105-135(A)/225-308(R) to scale Rs.110-180(A)/260-400(R) in terms of instructions contained in Railway Boards' letter of 26.10.1072.
- ii) The single post of Junior Clerk at Himmatnagar shed which has been in existence prior to 1963, be upgraded to scale Rs.110- 180(A)/ 260-400(R) with effect from 01/01/1964 in accordance with instructions contained in Railway Boards' letter of 27/9/1963.
- iii) Whosoever among the petitioners has worked against the above mentioned two posts will be entitled, only to the benefit of higher time scale of Rs.110-180(A)/260-400(R) for the periods they have worked in the above said posts, as per directions of the Railway Board in this regard."

6. The respondents have contended that according to that decision of the CPO, the applicant was not eligible for the reliefs which he had along with others claimed in the said SCA. Learned advocate for the respondents submitted that not only the present application is barred by limitation because the applicant who was a party in SCA 1466/82, and ~~that~~ after the decision by CPO, dated 21/09/1982, neither the applicant nor other persons who were petitioners in that SCA moved ~~the~~ High Court about their grievances ~~if~~ any left thereafter challenging the order of CPO- The High Court, while allowing the

the petitioners in that case to withdraw the petition, had given liberty to those petitioners to move the High Court a fresh, if they were prejudicially affected by the decision of the CPO. Learned advocate for the respondents further submitted that the applicant in this application is seeking the relief from 01/10/1972, and this Tribunal has ~~not~~ jurisdiction even to entertain this O.A. because the cause of action had arisen 3 years prior to the date of coming into force of this Administrative Tribunals Act. He submitted that after the order of CPO, dated 25/9/1982, this application cannot be filed by applicant as being barred by principle of res-judicata.

7. The respondents have further contended in their reply that the T.A.239/86 was decided by this Tribunal which was originally filed as SCA 5259/82 in which the applicant was a party, while learned advocate for the applicant has stated before us that the applicant was not a party in that SCA 5259/82 which was subsequently transferred to this Tribunal as TA239/86. The order passed by this Tribunal on 26/08/1987 in T.A.239 of 1986 shows that the learned advocate for the applicants had stated that the applicants would file a representation before CPO and, if any cause survived after the decision was given by him, they would approach the Tribunal and the applicants learned advocate withdrew the T.A. in which the directions were given that the CPO should hear the

ms

the applicants before any order on the representation was passed. The respondents have produced at Annexure R.2, the decision given by the CPO on 18/03/1988 on representations filed before him as under:-

* Keeping the above facts in view, I decide that-

- i) the 3 posts of clerks in the Fuel section of the Sabarmati Loco Shed be upgraded from Rs.105-135(A)/225-308 to Rs.110-130(A)/260-400 in terms of the instructions contained in Board's letter No.PC-69-FE/3/1 dated 26.10.1972.
- ii) Since the employees in the Fuel section had also been rotated as per evidence adduced before me, it will not be feasible to give the benefits of upgradation to the actual incumbents of these posts for short periods as the factual position of incumbents of these posts is not available. Therefore, the benefit of upgradation should be given to the 3 senior most employees of Sabarmati shed from grade Rs.225-308/- to grade Rs.260-400/-. These employees should be fitted against the 3 posts in Fuel Section and should not be further rotated.¶

8. Thus, according to this decision, the benefits of the up gradation was granted to three posts senior of junior clerks in Fuel Section of S.B.I. Shed. in terms of Railway Boards' instructions in letter dated 26.10.1972. The respondents in the reply they have contended that the applicant was one of the parties, in T.A.239/86 which was originally a SCA 5259/82 and it is contended that the CPO had considered all the points. The respondents contended in the reply that in view of the CPO's decision, Annexure R-2, three

senior most employees were given the benefits of up graded post to Rs.110-180/- with proforma fixation from 01.10.1972 on local ad hoc basis without any prescribed right or claimed for regular promotion and seniority vide OM. dated 21.10.1 88. The applicant in this case, before us does not make any reference to the previous 'Special Civil Applications' and Transfer Applications in his application and the decisions given by the CPO .

9. We have considered all documents on record. The applicant is not entitled to file this O.A. because he did not take any legal proceedings after the decision given by CPO on 25.09.1982 and hence, the application is barred by limitation and by principle of Res Judicata also. The applicant has not made in this application any grievance against any order of CPO and therefore, he is not entitled to file this application.

10. The respondents have also contended in the reply, that the applicant was promoted as clerk scale Rs.105-135/- and 110-180 (A)/260-400(R) as per the Reservation/Roster System and therefore, for upgradation post, he would not be entitled for the said benefit, which point is ~~is~~ covered and concluded by the decisions of CPO.

11. We have considered all the grounds. The applicant has already retired on 26.10.1983. He having not challenged the CPO's order, Annexure R-1, his grievances

cannot now be considered at all even on merits because that was covered by the decision earlier. Therefore, if according to the earlier order of CPO's benefits, are given to others, now he cannot file this application as barred by limitation and Res-Judicata and ~~especially~~ when he has not challenged the same. We, therefore, see no ground to give any relief to the applicant. However, so far as the amount of salary in PPO is concerned, if there is any error regarding the last pay of the applicant at the date of retirement, the respondents to correct the same. With above observations, the application is dismissed. No order as to costs.

M.R. Kolhatkar

(M.R.KOLHATKAR)
Administrative Member

Date:

R.C. Bhatt

(R.C.BHATT)
Judicial Member

Date: 6/10/93

SSH