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CAT/J/13

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 141/90

T.A.NO.

DATE OF DECISION 25.11.1997

Shri Kanaiyalal Hiralal Pandya Petitioner

Mr. P. H. Pathak 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. V. Radhakrishnan : Member (A)

The Hon'ble Mr. T. N. Bhat : 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 ?

Shri Kanaiyalal Hiralal Pandya,
 Senior Inspector,
 Divisional Office,
 Western Railway,
 Pratapnagar,
 Baroda- 390 004. : Applicant
 (Advocate: Mr.P.H.Pathak)

Versus

1. The Union of India
 Notice to be served through
 the General Manager (WR)
 Churchgate, Bombay.
2. The Chief Personnel Officer,
 Western Railway, HC Office,
 Churchgate, Bombay.
3. The Sr.Divisional Personnel
 Office, Western Railway,
 Pratapnagar, Baroda. : Respondents

(Advocate: Mr.N.S.Shevde)

J U D G M E N T

O.A. 141/90

Date: 25.11.1997

Per: Hon'ble Mr.V.Radhakrishnan : Member (A)

Heard Mr.P.H.Pathak and Mr.N.S.Shevde,
 the learned counsels for the applicant and the
 respondents respectively.

The applicant was working as Junior Inspector
 with the respondents on 2.3.1973. The respondents
 notified the panel for Senior Inspector (HER)
 in the scale of Rs.335-425 (A). The applicant
 was at Serial No.10 on the panel. The applicant was

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promoted as Senior Inspector in the scale of Rs.335-425 (A) on 9.5.1973. However, the applicant vide his letter dated 18.6.1973 refused to accept the promotion. Accordingly, as per extant rules (Circular No.EP 839 Vol.II dt.10.8.72 he was debarred for promotion for a period of one year from 18.6.73 to 17.6.74. During this period the persons junior to the applicant who were placed on panel were promoted as and when vacancy arose. Incidentally, one Mr.Williamson who also appeared for selection to the post of Senior Inspector (HER) was not placed on the panel due to contention that he was not senior in the grade of 250-380(A). He made representation for giving him proper seniority and the representation of Williamson was considered by the CPO who found that he was not relieved on his promotion in the scale of Rs.250-380 due to administrative reasons. Accordingly, he should be given his original seniority in the said scale and because he had passed the selection to the post of Senior Inspector (HER) he should be placed on the panel which was prepared on 2.3.73. Accordingly, the name of Mr.Williamson was interpolated between Mr.H.C.Agarwal and Mr. N.P.Sonavaria. The applicant who was in Serial No.10

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~~Mr. P. C.~~ on the panel went to bottom on the panel of seniority on account of his refusal to accept the promotion vide Memorandum dated 28.2.75 to the post of Senior IHER. In the meantime the applicant had been promoted to the post of Senior IHER on 4.7.1874. However, as Mr. Williamson had been given seniority on the panel as stated above he was promoted and the applicant was reverted to the post of Junior Inspector HER as he had become juniormost. The applicant then approached the Court of Civil Judge (SD), Baroda challenging the order of reversion. The same was transferred to this Tribunal and numbered as .T.A.978/86 which was decided on 31.7.87 and the applicant's reversion was quashed on the ground that the applicant was not given opportunity of hearing before his reversion. The respondents were also given opportunity to decide the seniority of the petitioner and others after affording them opportunity of being heard in accordance with the relevant rules and orders. Accordingly, the applicant continued to work in the scale of Rs.335-425 (A)/550-750 (R). The applicant made a representation on 3.8.87 to the Divisional Railway Manager for refixing his seniority and consequential benefits of further promotion. After considering the representation the CPO, Western Railway rejected the same on the ground that because of the refusal he had become juniormost in the scale of Rs.335-425 (A)/Rs.550-750 (R)

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after promotion of persons senior to him during the debarring period who had become senior to him and as such he could be promoted only in his turn and his claim for deemed date of promotion on 20.9.76 the date on which Mr.H.C.Agarwal has promoted cannot be accepted. The applicant has challenged the order of CPO and prays for the following reliefs:-

- " (A) The Hon'ble Tribunal be pleased to declare the impugned decision of the respondent dated 16.5.89 and 3.3.89 as arbitrary, illegal, violative and inoperative in law and being non-application of mind violative of article 14 and 16 of the Constitution of India and be pleased to quash and set aside the same and direct the respondents to grant the benefits of higher cadre in the scale of Rs.700-900 to the applicant with effect from 16.7.76.
- (B) Be pleased to direct the respondent to consider the applicant in the scale of Rs.700-900 with effect from 16.7.76 and grant consequential benefits upto date and its reimbursement with 12% interest and further direct to give all the benefits accordingly including the pension and gratuity.
- (C) Any other relief to which the Hon'ble Tribunal deems fit and proper in the interest of justice".

We have heard both the learned counsels and gone through the documents. It is no doubt true that the applicant was placed at Sr.No.10 on the panel for the promotion to the post of Senior Inspector HER prepared on 2.7.73 and he was actually promoted on 9.5.73. However, the applicant refused to carry out the promotion order. As per the rules,

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he will be debarred for one year and also will lose seniority. The relevant rules No.EP839/0 Vol.II dated 10.8.72 reads as under:-

- " a) An ~~emp~~ employee refusing promotion becomes ineligible for promotion to that post for a period of one year. This is known as the debarring period. During this period he should not be considered even for any adhoc promotion to a similar post during the period of his debarring. (Circular No.EP/839/4 dated 23.11.1971).
- b) An ~~emp~~ employee refusing his promotion will take his seniority from the date of his repromotion. All those promoted earlier will rank senior to him irrespective of his position on the panel provided, the subsequent promotion orders are issued against a vacancy occurring from a date before the date of expiry of the currency of the panel (Reference circular letter dated 17.2.1965).
- c) An employee refusing promotion will not, however, lose his seniority to another employee promoted (ie.promoted, from the fresh subsequent panel) to the same promotion category during the one year debarring period as a result of a fresh selection subsequently held (Reference the circular of 5.12.1966)."

There is no dispute about the fact that S/Shri N.P.Sonavaria, H.C.Agarwal, K.D.Yagnik and G.M.Tahiliani were promoted during the debarment period. Mr. Williamson was also given deemed date position on the panel above Mr.Sonavaria as per the decision of the CPO. This resulted the applicant becoming juniormost in the seniority list. in the scale of Rs.335-425. In this view of the matter, the question of promotion of the applicant to giving him deemed date of position

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above Mr. Agarwal and any of his erstwhile juniors who were promoted during the debarment period did not arise. There is also no substance in the applicant's contention that the tribunal has by restraining the respondents from reverting the applicant and restored his original seniority. In this connection the relevant extract from the judgment which reads as follows:-

"The respondents are hereby restrained from reverting the petitioner only the ground that the decision has been taken to assign Williamson his original seniority and the name should be interpolated in the panel and the petitioner has been placed below Mr. Williamson, Sonavaria, Yagnik and Tahiliani in seniority as contained in letter No. E.839/40 dated 16.6.75 (marked 78/1) which is held as legally untenable. The Respondents however will be liberty to decide the seniority of the petitioner and others after affording them an opportunity of being heard in accordance with the relevant rules and orders."

It is seen from the records that the applicant made representation dated 3.8.87 and it was decided by the CPO after taking into account the relevant facts on 3.3.89 (Annexure A-4). The applicant is now challenging this speaking order but we find that there is no basis in the argument of the applicant that the speaking order is illegal and arbitrary. We find that it is based on the rules concerning refusal to accept promotions. The applicant by his own choice of

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refusing to accept the promotion offered to him by order dated 9.5.73 invited the further consequences of loss in seniority to his erstwhile juniors who had been promoted during the debarment period. As a natural corollary these persons were promoted to the next higher scale Rs.700-900 (R) earlier. Consequently, we come to the conclusion that there is no merit in the O.A. Accordingly, the same is dismissed. No costs.

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[Signature]
25.11.97
(T.N.Bhat)
Member (J)

[Signature]
(V.Radhakrishnan)
Member (A)