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CAT/J/13

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 175/90
T.A.NO.

DATE OF DECISION 19.12.1997.

Shri Ramlal Kaloo & Ors. **Petitioner**

Mr. P.J. Bhatt

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. Ramakrishnan : Vice Chairman

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 Lerdships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

NO

: 2 :

1. Ramlal Kaloo
- 1.1. Rashuraji w/o
Ramlal Kaloo
- 1.2. Jagnarayan
S/o Ramlal Kaloo.
2. Kam Singh (Karan Singh) D.
3. Chinappayan P.
4. Palakhndhari R.
5. Markendey Singh
6. Kantilal Nanubhai
7. Rambahalsingh
8. Thangraj G.
9. Bhimrao H.

All working at Engineering
Workshop, Sabarmati, Ahmedabad.

: Applicants

(Advocate: Mr. P. J. Bhatt)

Versus

1. The General Manager,
Western Railway,
Churchgate, Bombay
2. Dy. Chief Engineer,
Engineering Workshop,
Sabarmati, Ahmedabad.
3. The Union of India
to be served through
Respondent No. 1.

: Respondents

(Advocate: Mr. N. S. Shevde)

: J U D G M E N T :

O.A. 175/90

Date: 19-12-97

Per: Hon'ble Mr. T. N. Bhat

: Member (J)

1. We have heard the learned counsel for the parties at some length and have perused the material on record.

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2. The question that falls for determination in this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985 by some persons who were at the relevant time working as Mates at the Engineering Workshop, Sabarmati Ahmedabad is really a short one, as follows:-

Whether for the purpose of determining the combined seniority of employees belonging to different cadres, who are eligible for promotion to a higher grade, should be based upon the initial date of entry and the period of continuous officiation in the lower grades irrespective of the fact that the said grades are different.

In the instant case, both Mates as well as Slingers were made eligible for being considered for promotion to the post of Crane Driver in pursuance of the instructions issued by the Headquarter office of Western Railway, Churchgate, Bombay by the letter dated 7.8.1976, which reads as follows:-

"ACE (B) has approved of the proposed revised channel of promotion for the Artisan staff in the Engineering Workshop/ SSI indicated in your letter mentioned above".

Subj: / Earlier, Mates were not eligible, while Slingers were. This letter was addressed to the Deputy Chief Engineer (Engineering workshop), Sabarmati, by the Chief Engineer (E), C.C.G. The accompanying document, namely, the proposed revised channel

(6)

of promotion has not been produced by the applicants. However, the respondents have annexed copy of the same as Annexure-R/1 to the reply statement. A perusal of the said document clearly reveals that at the relevant time Slingers were working in the grade of Rs.210-290 while Mates were in the pay scale of Rs.210-270 only. The dispute between the persons belonging to the two categories initially arose were one Mr. Bhalubhai, who was a Slinger, was promoted to the grade of Crane Driver in October, 1979. On a representation being made by the deceased applicant No.1, the Deputy chief Engineer passed an order reverting the said Bhalubhai to the post of Slinger, though in the meantime he had secured as many as three promotions and was working as Crane Supervisor when the order reverting him was issued. The order of reversion was challenged by Bhalubhai by way of S.C.A./197/81 in the High Court of Gujarat which came to be disposed of by Hon'ble Mr. Justice R.K.Mehta by the judgment/order dated 21.12.1982. The S.C.A. was allowed, the common seniority list as on 1.10.1980 prepared by the Deputy chief ~~General~~ Engineer was held to be of no consequence and the said respondent was directed to prepare a fresh common seniority list as on 7.1.1976 i.e. the date when the proposed channel of promotion was approved by the Chief Engineer.

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3. In pursuance of the directions of the High Court of Gujarat the General Manager by his order dated 12.8.1983 (Annexure A/2) directed that since the Mates were in a lower grade than Slingers it has been decided that the names of Slingers would be placed above the names of the Mates in the combined seniority list. Annexure A/2 was in reply to a letter sent to the General Manager by the Western Railway Employees Union.

4. The applicants have alleged that they sent their representation to the General Manager, and a copy of the representation has been enclosed to the O.A. as Annexure A/3.

5. Another document which has been annexed to the O.A. is the copy of a letter dated 28.2.1984 issued by the office of Deputy General Manager, Sabarmati, to all subordinates by which a seniority list of staff eligible for trade test for the post of Khalasi-cum-Helper in the scale of Rs.210-290/- was issued.

6. Finally, the matter was set at rest by the letter dated 20th December, 1989, as at Annexure-A/5, issued by the General Works Manager, Engineering Workshop, Sabarmati. This letter was addressed to the applicants and purported to have been issued in pursuance of some judgment/order dated 9.8.1989 passed by this Tribunal in T.A.No.330/86 (S.C.A./1673/84). In this letter the General Works

W.M.W.

Manager has justified the action by which Slingers have been shown enblock Senior to Mates in the combined seniority list as on 7.8.1976 and 3.10.1979. This letter, inter alia, contains a mention of the fact that the Mates had approached the High Court of Gujarat by filing SC/1673/84 which came to be transferred to this Tribunal and the Tribunal by an order dated 9.8.1989, directed preparation of seniority lists either combined or separate on the basis of length of service. It is the aforesaid letter/order dated 20.12.89 which has been assailed in this O.A.

7. During the course of his arguments the learned counsel for the applicant sought to extensively quote from the Judgment of Mr.B.K.Mehta J. in S.C.A./197/81; and to support his contentions he referred to the following observations made in the judgment:

".....It is no doubt true, as urged on behalf of the Railway Administration and the contesting respondent employee that the promotional avenue was changed in August, 1976 so as to enlarge the semi-skilled grade by comprising two additional categories of semi-skilled Khalasi and Mates besides the original two categories of Slinger and Bridge Khalasi. The contention urged on behalf of the Railway Administration is also correct that with effect from the date of the change in the promotional avenue,

i.e. 7th August 1976 the Railway administration was required to promote the employees in any of these categories, namely, Bridge Khalasi, Slinger, Semi-skilled Khalasi and Mate, to skilled grade. The Railway administration is also justified in urging as it did before me that for the purpose of giving promotion from semi-skilled grade comprising of the aforesaid four categories to skilled grade inter categories seniority is to be drawn on the basis of principles of continuous officiation. In other words, the inter-category seniority to be fixed according to the date of entry of each of employee in the grade or category concerned. It is also an admitted position that the Railway administration has not drawn any seniority list as on 7th August 1976 or immediately thereafter as it should before granting any promotions of the employees from semi-skilled grade to skilled grade. The first time such a seniority list was attempted to be drawn was in October, 1980

8. The learned counsel, however, conveniently omitted to quote those observations contained in the judgment which go against the applicants. The same may be reproduced hereinbelow, as contained in page 16 of the judgment (page 46 of the Paper Book)

W.M.W.
"Admittedly the grade of Slingers and Mates was not equal even till today. In other words, this would be one of the important questions which the Railway Administration shall have to determine in fixing the inter category seniority

which could not have been determined without giving the petitioner an opportunity at the time of finalising the provisional seniority list ..."

9. We further notice that the impugned order reverting Bhalubhai to the post of Slingers was set aside on the ground that the Chief Engineer had no material before him to hold that promotion to him had been granted erroneously. Another ground was that the question of relative seniority had not been decided according to correct legal principles. Thus, there is no merit in the contention of the learned counsel for the applicants that the High Court had issued any directions to the respondents to prepare the seniority list on the basis of the period of continuous officiation or the date of entry into the respective grades by the Mates and the Slingers. The question was left to be decided by the Chief Engineer on the basis of the relevant Rules and instruction on the subject.

10. The question that arises is as to what are the rules or instructions on this subject? Both the parties rely on the provision contained in para 320 of the Indian Railway Establishment Manual. The said para may be reproduced as under:-

"When a post (selection as well as non-selection) is filled by considering

staff of different seniority units, the total length of continuous service in the same or equivalent grade held by the employees shall be the determining factor for assigning inter-seniority irrespective of the date of confirmation of an employee with lesser length of continuous service as compared to another unconfirmed employee with longer length of continuous service. This is subject to the proviso that only non-fortuitous service should be taken into account for this purpose."

11. A bare reading of this provision in the Indian Railway Establishment Manual would clearly reveal that in the case of different seniority units from which selection is to be made to fill up a higher post, the determining factor for assigning inter se seniority would be the total length of continuous service, provided the persons considered for promotion were in "same or equivalent grade". In the instant case, as already observed, Mates and Slingers not only belong to different seniority units but also were working in different scales of pay. Thus, this was not a case of service in the same or equivalent grade. That being so, the respondents were well within their rights to reject the prayer of Mates for being assigned seniority on the basis of total length of continuous service.

12. The learned counsel for the applicant has cited a few judgments in his bid to derive support for his contentions made before us. However, on going through those judgments, we find that the judgments do not support the

principle sought to be evolved by the learned counsel. In the judgment reported as 1992 (1) Gujarat Law Reporter, 704 it is held that seniority of temporary clerks recruited in the Gujarat State under the Rules applicable to the State Government should be fixed with reference to the date of their continuous service. The instant case does not pertain to a State Government employee of Gujarat nor are the rules of recruitment in this case in pari materia with the Gujarat Rules. Furthermore, there is nothing to indicate that the question before the High Court in that case pertained to fixation of seniority of persons belonging to different seniority units who were also working in different grades of pay.

13. Similarly, the judgment of the Apex Court in Ashok Gulati and Ors. vs. B.S.Jain and Ors. reported in AIR 1987 SC 424 also has no application, as the question at issue in that case was the inter se seniority between the direct recruits and the promotees. Furthermore, it was held, in reference to the question of seniority of Assistant Engineers in the State of Haryana that the length of continuous officiation cannot be the basis for reckoning the seniority when they had never become members of class II service prior to their absorption in the service. Relying upon an earlier

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judgment (AIR 1985 SC 1605), it was observed that the inter se seniority between direct recruits and promotees should as far as possible be determined by the length of continuous service in a particular Grade or post. Thus, it is the contention raised by the respondents in the instant O.A. which finds support from the aforesaid judgment of the Apex Court. In H.C. Sharma vs. Municipal Corporation of Delhi and Ors. (AIR 1983 SC 881), the question that arose was whether in matters relating to promotion to the post of Assistant Engineers, for which both Diploma holders and Graduate Engineers who were working as Junior Engineers were eligible, there should be a separate quota for graduate engineers for promotion. It was held that such a separate quota on the basis of qualification is not permissible. The question of inter se seniority did not at all arise in that case.

14. The judgment of the Apex Court in G.P. Doval and Ors. vs. Chief Secretary, Govt. of U.P. & Ors. reported in AIR 1984 SC 1527 also has no application to the instant case, unless the applicant relies upon it for the purpose of condonation of delay. There is no serious contention by the respondents that this O.A. is barred by limitation.

15. An attempt has been made by the Applicants to claim pay scales equal to that of Slingers and

have sought to equate the duties, functions and responsibilities of the two categories. This matter could more appropriately have been agitated before the various pay commissions which consisted of experts in the field. It is too late in the day to seek re-opening of this matter. The respective pay scales were granted to the contesting parties in pursuance to the recommendation of the Third Pay Commission. The Fourth Pay Commission does not appear to have been persuaded or even approached in the matter. Now the recommendations of the Fifth Commission have also come and are being implemented. It is not open to this Tribunal to go into the question whether there should have been parity in the pay scales of Mates and Slingers. This contention of the applicants is, accordingly, rejected.

W.M.

16. In view of the facts and circumstances discussed above, we are convinced that the decision taken by the respondents on the question of inter se seniority of Mates and Slingers for the purpose of considering their names for promotion to the post of Crane Driver, and conveyed to the applicants by the impugned letter dated 20th December, 1989, as at Annexure-A/5, has correctly been taken. In the result,

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this O.A., being devoid of merit, is hereby dismissed.

17. The parties are left to bear their own costs.

T.N.Bhat
(T.N.Bhat)
Member (J)

V.Ramakrishnan
(V.Ramakrishnan)
Vice Chairman