

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

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O.A. NO. 244/90
T.A. NO.

DATE OF DECISION 5-9-1995.

Mr. Anantrai M. Dave Petitioner

Mr. K.K. Shah Advocate for the Petitioner (s)

Versus

Union of India and Others 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

Anantrai Mohanlal Dave,
 25/A, Varsha Society,
 Ajwa Road,
 Vadodara-390 019.
 (Advocate: Mr.K.K.Shah)

Applicant

Versus

1. Union of India,
 Chief Project Manager,
 Railway Electrification,
 Pratapnagar,
 Vadodara-390 004

2. General Manager,
 Railway Electrification,
 Allahabad-211 001.
 (Advocate: Mr.N.S.Shevde)

Respondents

JUDGMENTO.A.NO.244 OF 1990Date:05-9-95

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 district wise 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

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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.35 A. Since the applicant had 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 O.S.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.35A 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 present applicant had been promoted earlier.

4. The first question that would arise 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 parent 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 flow 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 on being selected from the Open Line Departmentshall 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.35A. Fortunately in this case, the further implications of this seniority on his transfer to Rural Electrification Division has also been settled by C.A.T. In a specific order in T.A. No.534/86 dated 15.12.87, 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 is set aside and the respondents should decide the question of interse 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~~ xx

seniority in REO and his name has been interpolated at Sl.No.35A 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 his junior was promoted cannot now be in dispute. The plea of the applicant for proforma promotion also has, therefore, to be upheld.

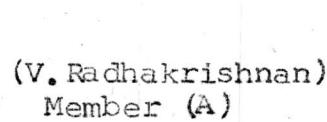
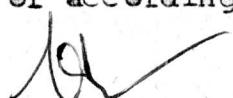
6. As regards payment of arrears, the right of the Govt. servant to get arrears of pay also in cases where the claim has not been recognised in time on account of the mistakes of the respondents is now a settled position. The Karnataka High Court had upheld the case for grant of arrears of salary in 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.3104/1976 reported in SLR 1982 (1) 455. This Tribunal has also upheld the similar claim in the case decided in T.A. No.298/86 decided on 3.4.1987 by C.A.T.New Bombay reported in ATR 1987(2) ~~CAT~~

CAT 245. In the light of the above, the petition succeeds. The respondents are directed to give proforma promotion to the applicant as Chief Clerk and O.S. on the date of 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 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
		<u>M.A. 36/95 in O.A. 244/90</u>
		M.A. allowed. In the circumstances stated in the M.A. time is extended till 29-2-1995, as a special case. No further time will be given. M.A. stands disposed of accordingly.
		
		(V. Radhakrishnan) Member (A)
		*AS.
10.3.96		<u>M.A. 199/96 in O.A. 244/90</u>
		At the request of Mr.K.K.Shah adjourned to 26th March 1996 xxxxxx for filing a reply to M.A.
		
		(V. Radhakrishnan) Member (A)
	PMR	
26.3.96		Mr. Shah is not present. Adjourned to 4th April 1996.
		
		(V. Radhakrishnan) Member (A)
		
		(N.B. Patel) Vice Chairman
	pmr	
4.4.96		So far as M.A. 199/96 is concerned, last time it was made it clear that no further extension of time will be given for implementation of judgment. No further extension of time granted. M.A. stands disposed of accordingly.
		
		(V. Radhakrishnan) Member (A)
	vtc.	