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CAT/J/13

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
AHMEDABAD BENCH

**O.A. NO.** OA/274/90  
**TAX NO.**

DATE OF DECISION 2nd Sept r. 1997

S. Krishna biharilal Shrivastav Petitioner

Mr. J.D. Ajmera Advocate for the Petitioner (s)

Versus

Union of India & another 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 ? <sup>no</sup>
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 ?

S.Krishna Biharilal Shrivastav,  
K.K.House, Nilam Society,  
Dahod.

Applicant

Advocate Mr.J.D.Ajmera

versus

1. Union of India,  
Through : General Manager,  
Western Railway,  
Churchgate,  
Bombay.

2. Dy.Civil & Mechanical  
Engineer, Western Railway,  
Free Land Ganj,  
Dahod.

Respondents

Advocate Mr.N.S.Shevde

ORDER

O.A.No.274 of 1990

Date: 2-9-97

Per Hon'ble Mr.V.Ramakrishnan Vice Chairman

The applicant a railway employee who was earlier serving as Shop Superintendent in the Production Control Organisation (PCO) at Dahod in Western Railway and who was regularly appointed as Assistant Works Manager (AWM) which is Class II post w.e.f. 18.12.1987 has prayed for a direction that he should be given ad hoc ~~ex~~ promotion to the level of AWM from the date his juniors were given such promotion. He has also prayed for

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quashing the order dated 4.5.89 from Dy. CME Dahod at Annexure A-3 which rejects this request.

2. The applicant had filed a Civil Suit in 1977 before the court of Civil Judge, Godhra which was dismissed by order dated 24.11.81. He filed ~~thereafter~~, regular Civil Appeal No.13 of 1982 against this order. This appeal was transferred to this Tribunal and registered as TA/734 of 86. The grievance raised by the applicant in that case was that the Selection list prepared and published on 23.8.1977 of officials eligible for the test for promotion to the post of AWM did not include his name. The Railway Administration resisted this T.A. on the ground that the post in Production Control Organisation (PCO) where the applicant was working was declared as ex-cadre post and an option was given to such employees working in PCO either to be absorbed in the PCO or to get back to the Shop floor. However, it is admitted by the railways that such option was not given to the applicant. It was the Railway's contention that for promotion to the ~~post~~ of AWM the seniority of the applicant could ~~not~~ be reckoned with reference to the length of service put in by him as Shop Superintendent in ex-cadre post in PCO. The Tribunal did not accept this contention and held that the applicant's name should have appeared in the impugned seniority list taking into account his services as Shop Superintendent in PCO and directed the respondents to place his name in ~~that~~ list by taking into account his services as Shop

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Superintendent in the grade of Rs.840-1040 in PCO and bearing in mind his earlier gradation. The Tribunal however made it clear that this revision in the seniority will not automatically entitle him to promotion to the higher post for which he is required to pass a selection test or has to be found otherwise suitable. The Tribunal directed for redrawing seniority list and to extend to the applicant whatever consequential benefits that may be due and in accordance with the rules. Consequent to this direction, the Railway administration had revised the seniority of the applicant upwards giving him the benefit of service in the scale of Rs.700-900 from 27.9.67 instead of from 7.4.1976 and he was promoted to the post of AWM on ad hoc basis w.e.f. 22.7.87 pending finalisation of

selection. Subsequently on his qualifying the Class II Selection he was placed in the panel for A.W.M. vide order dated 22.12.87 effective from 18.12.87 and his ad hoc promotion as AWM was regularised from 18.12.87 by an order dated 13.1.88. In the meantime, the applicant represented to the authority by letter dated 18.9.87 that as per direction of the Tribunal his seniority has to be upgraded and he would rank senior to one Shri Chandrabali Singh and another Shri B.X. Pariera and as these persons were appointed to the higher grade earlier, the applicant's pay also needed to be ~~raised~~ refixed from November 1979 onwards. The Western Railway Employees Union had also

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recommended his case by their letter dated 22.10.87 Annexure A-2, where they brought out that the two juniors who were serving in the Railways were promoted, even though they were not eligible and as such, the applicant's pay should be refixed at a higher level. The Union also brought out that the official had only a short time before superannuation and this would help him for the purpose of retiral benefits. From the tenor of this representation it would seem that what was sought for was ad hoc promotion to Class II even though it was not spelt out as such. The request of the applicant was turned down by the Railways bringing out that he had failed in the selection test held in 1974 and did not appear in the selection test held later. They brought out that Tribunal had observed that he had no automatic right for promotion to the higher post for which he is required to pass selection test or is found to be otherwise suitable. This order dated 4.5.89 as at Annexure A-3 is impugned in the present O.A.

3. We have heard Mr. Ajmera for the applicant and Mr. Shevde learned Standing Counsel for the Railways.

4. Mr. Ajmera submits that the Tribunal had directed that the seniority of the applicant should be upgraded after taking into account the services rendered by him in PCO. Nodoubt, there is an observation that he is not entitled to automatic promotion to the higher post for which he is required to pass a selection test, Mr. Ajmera submits that passing the selection

test is obligatory for regular appointment to Class II post but not for ad hoc promotion. He also states that the two juniors referred to by the applicant had not passed the selection test when they were given ad hoc appointment to Class II posts. The counsel submits that seniority should be the criterion for giving ad hoc promotion subject to rejection of the unfit <sup>and</sup> as such, the observation of the Tribunal would not bar giving the benefit of ad hoc promotion to the applicant. The applicant is not asking for regular promotion from earlier date but wants the benefit of ad hoc promotion which will enhance his pay in the scale of Assistant Works Manager to which he had been regularly appointed in December 1987 and this would help him in getting higher retiral benefits. Mr. Ajmera also states that it is not open to the respondents to re-open the question whether services in PCO should ~~count~~ count for fixation of seniority or not as this is concluded with the Tribunal's final orders in TA 734 of 86 decided on 30.6.87.

5. Mr. Shevde resists the application. He highlights the fact that the applicant had failed in the written test held in 1974 and did not take subsequent test. After the Tribunal disposed of TA 734 of 86 on 30.6.87, the applicant was given ad hoc promotion from July 1987 and his qualifying in the selection test was regularised from December 1987 for appointment to Class II post. Passing the selection test is obligatory for appointment to Class II posts and when he had not passed the test earlier, the applicant cannot claim such

promotion. To a specific query, Mr. Shevde does not deny that for ad hoc promotion seniority is the criterion and passing the selection test is needed only for regularisation. He also argues that Shri Chandrabali singh and A Mr. B.X. Pariera are not juniors to the applicant. He refers to the contention in the reply statement in para 5 that for the purpose of selection to the Class II post of AME/AWM the position of the employee on scale of the post to which he belongs has to be taken into account and not that of ex-cadre post of PCO ~~of~~ and at the relevant time, the applicant's ~~ex-cadre post~~ <sup>position in the concerned stream</sup> ~~in PCO~~ was in the scale of Rs.700-900 (R) as Junior Shop Superintendent. He says that viewed from this angle the applicant is not senior to the two persons Shri Chandrabali Singh and Shri Pariera and they were correctly promoted on ad hoc basis as per rules.

6. We have given our careful thought to the submissions of both sides. The applicant has sought to argue that he is entitled to ad hoc promotion from the date his juniors were given such benefits as per Tribunal's directions. The Tribunal has directed to redraw the seniority list and to extend consequential benefits to the applicant. The Tribunal's direction was in the context of the omission of his name in the selection list of officials eligible for the test for promotion to the post of Assistant Works Manager. Obviously, this was for appointment on a regular basis. The Tribunal had not gone into the question of giving ad hoc promotion



from retrospective date to the applicant consequent to the upgradation of his seniority. As such, the reference to consequential benefits does not automatically mean that he should be given ad hoc promotion retrospectively from the date of his juniors even though he had not worked in the higher post. However, the Tribunal's observation that there is no automatic entitlement to promotion to the higher post for which a selection test is required to be passed has to be viewed in the context of regular promotion and not ad hoc promotion. The admitted position is that for ad hoc promotion even to Class II post there is no requirement to pass the selection test. The respondents have not been able to show any rule or instruction regarding the scrutiny to be carried out before such ad hoc promotion is given to Class II post. Mr. Shevde also has not denied that the seniority should be the criterion for ad hoc promotion. The two juniors referred to by the applicant had also admittedly not passed the selection test before they were given ad hoc appointment. It is true that the applicant had failed in the test held in 1974 but there is nothing to show that an ad hoc appointee has necessarily to be reverted to the lower post on his failure to clear the selection test. If sufficient posts are not available and if the regular selectees are awaiting their promotion then ad hoc promotees have to yield and had to be reverted but that is not the Railway's case. The



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The Railways cannot now raise the contention that service in the ex-cadre post of PCO does not count for seniority in the applicant's case. That issue stands concluded with the direction of the Tribunal in TA/734 of 86 decided on 30.6.87. We may extract below part of this judgement:-

" As we have said the/ire appears to have been an ambivalent attitude on the part of the Railways itself in sometimes treating PCO as ex-cadre and sometimes not. In fact the/ order appointing the applicant as Shop Superintendent in PCO in 1967 does not say that it is an ex-cadre posting; it merely says that he will officiate as production Foreman on regular basis. It appears therefore that the applicant himself was not made aware of the ex-cadre nature of his posting. In view of this we are of the opinion that the benefit of doubt should go to the applicant and that his name should have appeared in the impugned seniority list of 23.8.1977 (Exh.48 in the Civil suit) on the basis of his service as Shop Superintendent in PCO. We therefore, quash that list to the extent that his name does not figure in it. We direct the respondents to place his name in that list by taking into account his service as Shop Superintendent in the grade of Rs.840-1040/- in ~~the~~ PCO and bearing in mind his earlier gradation in the list brought out on 26.12.1974. We however, make it abundantly clear that this revision in the seniority will not automatically entitle him to promotion to the higher posts, for which he is required to pass a selection test or has to be found

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otherwise suitable. We may mention that in October '77, when the suit was pending the applicant was allowed to take the examination but he did not take it. The impugned seniority list will be redrawn by the ~~respondents~~ respondents as directed by us and whatever consequential benefits may be due to him strictly in accordance with the rules may be extended to him".

It is clear from the above that while the orders were in the context of the impugned selection list dated 23.8.77, the Tribunal's direction was for upgradation of applicant's seniority in the relevant cadre. The respondents admit that the selection list indicating the officials eligible for the test for promotion to the post of Assistant Works Manager was to be prepared keeping in view the seniority in the relevant cadre. It is also seen from the impugned order that 4.5.89 as at Annexure A-3 the Railway also knew that the intention was to upgrade the applicant's seniority. Part of para 3 of this letter reads as follows:-

"It is advised that in terms of the direction contained in the aforesaid judgement seniority of Shri Lal was revised upward giving him the benefit of service in scale Rs. 700-900 (R) from 27.9.1967, instead of 7.4.1976". (Emphasis supplied).

Mr. Shevde says that after the Tribunal's order, the Railways gave ad hoc promotion to the applicant from July 1987 and had not prepared the revised seniority list as such. If so, the reference in this letter to "the seniority of the applicant

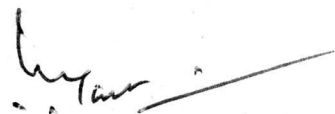
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being revised upward" is not quite clear. It is not known as to how the Railway upgraded the seniority of the applicant without incorporating his name at a higher position in the seniority list. We hold that the argument that Tribunal's direction is for revising the selection list and not the seniority list is hairsplitting as it is only a distinction without difference. If despite the averment that the applicant's seniority was revised upwards giving the benefit of service in scale of Rs. 700-900 from 27.9.67 instead of 7.4.76, his seniority position has not been incorporated in the appropriate slot in the relevant seniority list, we direct the respondents to fit in the rank of the applicant in such a slot for ascertaining whether Shri Chandrabali Singh and Shri B.X. Pariera referred to by the applicant would rank junior to him or not. If on such preparation, it is found that these two are in fact junior to the applicant then the department shall extend to the applicant the same treatment given to ~~two~~ these two for the purpose of giving ad hoc promotion after subjecting him to the same scrutiny which was applied to them. If on such scrutiny the applicant is found eligible, the department shall notionally promote him on ad hoc basis to the Class II post of AWM from the date on which such juniors are promoted. We note that the applicant had been given ad hoc promotion from July 87 whereas the present O.A. is filed only in 1990. In view of this and if on the basis of our direction the applicant

is promoted from a date earlier than July 1987 on ad hoc basis, no arrears shall be paid to him but higher pay fixation will be reckoned for the purpose of calculating retiral benefits including pension ~~of~~ to the applicant which should be released to him within three months from the date of receipt of a copy of this order. To facilitate this exercise, we quash the letter dated 4.5.1989, at Annexure A-3.

7. With the above directions, O.A. is finally disposed of. NO order as to costs.

  
( T.N.Bhat )  
Member (J)

  
(V.Ramakrishnan )  
Vice Chairman

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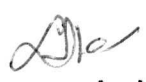
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O R D E R

22.6.98

Heard Mr. Shevde, who says that he has given a copy to Mr. Ajmera. We waive office objections. Registry to give regular number to M.A.St.387/98.

The prayer in the M.A. is to extend time upto 6.9.98. This is allowed. M.A. stands disposed of accordingly.

  
(Laxman Jha)  
Member(J)

  
(V.Ramakrishnan)  
Vice Chairman

vtc.