

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

(11)

O.A.NO. 33/90
T.A.NO.DATE OF DECISION 30.8.96Shri H.S.Jagtap PetitionerMr.K.K.Shah Advocate for the Petitioner [s]
VersusUnion of India RespondentMr.N.S.Shevde Advocate for the Respondent [s]**CORAM**

The Hon'ble Mr. K.Ramamoorthy : 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 ?

/ NO

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Shri H.S.Jagtap
C/o.K.K.Shah,
Advocate,
3, Achalayatan Society
Div-II, B/H. Memnagar, Fire
Station, Navrangpura,
Ahmedabad - 380 009.

...Applicant.

(Advocate : Mr.K.K.Shah)

Versus

1. Union of India,
Notice to be served through
The General Manager,
Western Railway,
Churchgate,
Bombay - 400 020.

...Respondent.

(Advocate : Mr.N.S.Shevde)

J U D G E M E N T

O.A.NO. 33 OF 1996.

Date : 30.8.1996

Per : Hon'ble **MR.K.Ramamoorthy** : Member (A)

The application relates to the non-promotion of the applicant in view of the delayed finalisation of the seniority due to administrative reasons not attributable to the applicant. The applicant has therefore, sought relief by way of grant of deemed promotion as per his turn and refixation of his retirement dues such as pension on the basis of such deemed promotion and other consequential benefits.

The admitted facts of this case are as under :-

The question of fixing the seniority of the cases of the staff of Stores Department consequent to the scheme of bifurcation of the cadre as Ministerial and

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non-ministerial has been ~~the~~^a matter of litigation. Though, interim promotions were allowed on an adhoc basis, the formal seniority list of staff eligible for the post of ACOs was, on finalisation of the court cases, first time notified on 13.7.1984. It is an accepted fact that the applicant's name was not in that list and as a result of objections raised to the seniority list, it had been revised and in the revised list also, there were certain objections including objection of the applicant himself regarding his sl.No. Accordingly, it was revised on 12.9.1984, 1.10.1984, and 26.9.1984 and in ^{supersession} ~~suppression~~ of these seniority lists, a final integrated seniority list was notified, ~~on 23.12.1986~~², Selection for ACOs was processed on 23.10.1986 based on the correct seniority position. The applicant also was empanelled as ACO- Class II at Sl.No.6 (Annexure-A/5).

It is the contention of the applicant that the delay in correctly placing him as ACOs at Sl.No.6 above other colleagues, who had been promoted earlier on ad hoc basis should not come in the way of benefits that would, according to the applicant accrue, had the seniority been correctly fixed in time. In short, the case of the applicant is that his promotion to ACO even notionally, should be related to the time when the ACOs' post became available as per his seniority and the applicant should also be given notional promotion as DCOS, if it would have been available to him, since the post of DCOS is only a promotional post and not a selection post. In point of fact, for instance, the order of 24.4.1987 refers to a much junior person placed at Sl.No.23 (Mr.K.A.Karnik) already officiating as DCO.

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The respondents, on the other hand, have argued that the respondent-department have correctly placed him in ACOs panel, according to his current seniority as soon as the seniority position became clear. It is the contention of the respondents that after this date, nobody junior to the applicant has been promoted, and the order of 24.4.1987 correctly shows the position of the applicant according to the seniority. If the applicant's junior had become DCOS earlier, it was on the strength of the interim promotions which were granted as per the orders of the High Court of Gujarat at that time, to enable the administration to function without impediment. The respondent-department had not violated the principles of seniority after the order of 24.4.1987. It is also ^afact that the applicant had soon thereafter, i.e. on 31.12.1988, superannuated and therefore, was not in receipt of any further promotions thereafter.

The short question for consideration is whether, the respondent-department were right in empanelling the applicant only in 1987, ^{giving benefits thereafter only,} when the picture regarding the final seniority became clear and settled.

The respondent-department themselves are aware of the hardship which occur to the staff due to the administrative errors and as early on 15/17-9-1964, ^(CA/B) the Railways have laid down the principles in this behalf. This, being a short circular, is reproduced below :

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Sub : Hardships to Non-Gazetted staff due to administrative errors.

Loss in seniority and pay.

It has been represented to the board that sometimes due to administrative errors are overlooked for promotion to higher grades. This could either be on account of wrong assignments or relative seniority of the eligible staff or full facts not being placed before the competent authority at the time of ordering promotions or some other reasons. Broadly, loss of seniority due to administrative errors can be of two types : -

- (A) Where a person has not been promoted at all because of administrative errors and
- (B) Where a person has been promoted ~~but~~ not on the date from which he should have been promoted but for the administrative errors.

The matter has been considered and the Board desire that each such case should be dealt with on its merits. The staff who have lost promotion on account of administrative errors should be on promotion be assigned correct seniority viz-a-viz their junior already promoted, irrespective of the date of promotion. Pay in the higher grade on promotion may be fixed proforma at the stage which the employee should have reached if he was promoted at proper time. The enhance pay may be allowed from the date of actual promotion. No arrear on this account shall be payable, as he did not actually shoulder the duties and responsibilities of the higher grade posts."

The learned counsel for the applicant had cited a number of judgements which support the case for correction of administrative errors with consequent benefits regarding the seniority and also to the effect that the Railway employee should not be made to suffer any loss on account of such errors.

1. ATR 1987 (2) CAT 245
Vishnu Sambhaji Dange V/s. Union of India and Ors.
2. 1982 (1) SLR 455 - Shaikh Mehbood V/s.
Railway Board and ors.

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The learned counsel for the applicant had also cited the Judgement of this Tribunal in O.A./244/90 and # 351/89 decided by Central Admn.Tribunal, Ahmedabad, A.A.Dave and M.O.Pathak Versus Union of India, Central Administrative Tribunal, Ahmedabad, to the effect that promotion should relate to the year of vacancy of such promotional post. It is clear in this case that if the applicant's seniority had been fixed in time and not as late as on 24.4.1987, he would have become entitled to the post of ACOS earlier and he might also have become entitled for the post of DCOS at the time of his retirement.

While the principle is well established that the applicant cannot receive financial benefits against posts where he has not worked, this would not prevent proforma fixation being done against post such employees would have got, if he was promoted at the proper time as indicated in the circular of the Railways Board reproduced above.

Accordingly, the O.A. is disposed of with direction to the respondent department to give proforma promotion to the present applicant on the basis of the seniority already assigned to him in the seniority list finalised on 23.10.1987, and also assign the date of proforma promotion as ACOS in the order passed on 24.4.1987. Based on this proforma date of promotion as ACOS consequential benefits for fixing of pay on the date when he took over as ACOS and also the proforma promotion as DCOS may be granted. This exercise may be carried out within a period of 12 months. The final pay at the time of retirement should be on the pay that he would have drawn as DCOS as per the proforma promotion is given. His pension benefits may also be refixed as per the proforma


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promotion as above. This being proforma promotion,
the question of payment of back wages would not arise.

of the
In view/above order the application is allowed.

There will be however, no order as to costs.


(T.N. Bhat)
Member(J)

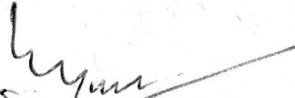
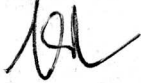
30.8.96


(K. Ramamoorthy)
Member(A)

ait.

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Date	Office Report	ORDER
15.1.97		<p data-bbox="586 339 782 380"><u>M.A./31/97</u></p> <p data-bbox="606 404 1372 587">M.A. for extention of time is allowed. Time is granted up to 8th February,1997. No further time will be given. MA/31/97 stands disposed of.</p> <div data-bbox="612 611 1325 797"><div> (T.N. Bhat) Member (J)</div><div> (V.Radhakrishnan) Member (A)</div></div> <p data-bbox="571 862 632 893">npm</p>