

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO/ 265/91
T.A.NO.

DATE OF DECISION

12-2-1998

Mr. N.K. Chauhan Petitioner

Mr. M.A. Kadri 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. P.C. Kannan : 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 ?

ND

Dh

Natwarlal Keshavlal Chauhan

residing at Uttar Gujarat,
Patel's society Vibhag No.3,
Block No.76, 3rd floor Babapura,
Asarva, Ahmedabad.

.... Applicant

Advocate Mr. M.A. Kadri

versus

1. Union of India, Through :
The General Manager,
W.Rly., HQ Office,
Churchgate,
Bombay.

2. The Divisional Rail Manager,
Baroda Divisional Office,
at Pratapnagar,
Baroda.

.... Respondents

Advocate Mr. N.S. Shevde

JUDGMENT

O.A. 265/91

Date: 17-7-1998

Per Hon'ble Mr. P.C. Kannan

: Member (J)

The applicant has filed the above O.A.
under section 19 of the A.T. Act and claimed the following
reliefs:-

AM

"

- (a) The respondents may please be directed that the applicant may be promoted as T.I. in higher grade 1600-2660(RP) from 25-4-90 and alternatively the applicant may be promoted as T.I. in higher grade 1600-2660 (RP) 2000-3200(RP) and 2375-3500 from the date of the promotion of his juniors who are promoted in these grades, in the interest of justice equity good conscience and as per principles of natural justice, if Hon'ble Tribunal think proper just proper and deem fit in this matter.
- (b) The respondents may be directed to arrange the arrears of wages and other amount which dues which are entitled by the applicant from the date on which the Hon'ble Tribunal deemd just fit and proper may be granted in favour of the applicant.
- (c) The respondent may be directed to pay the costs of the application and also arrange for the interest as deem fit.
- (d) Be please pass any other order deem fit and just proper in this matter."

2. The applicant who belongs to S.T. community was promoted as Transportation Inspector in the grade of

PN

455-700 under the respondents from 30-11-1977. In terms of the instructions of the respondents, the applicant was entitled to the promotion in the non-selection grade of Rs.550-750 and also in the selection grade of Rs-700-900 and 840-1040 as on 1-1-84. The main grievance of the applicant is that while his juniors were promoted on ad ^{provisional} ~~hoc~~ basis to the higher grades, he was not promoted to the higher grades. It was stated that he was considered not suitable for promotion only for the grade 700-900. He was, however, found suitable for promotion in Rs.550-900.

(H.Q. office letter dated 11-6-85 (Annexure A). The applicant submitted representations to the Divisional Authorities regarding fixation of wrong seniority and also against his non-promotion vide his letters dated 31-8-84 (Ann-A 14), 27-4-85 (Ann.A-15), 13-8-87 (Ann.A 16) X 5-4-88 (Ann.A 17) , 14-4-88 (Ann.A 18), 22-6-88 (Ann. A 19 & A 20) 22-9-88 (Ann. A 21) ^{and} 1-2-89 (Ann.A 22)

3. The applicant also represented against his non-promotion to the General Manager/Railway Board vide letter dated 17-8-89. The respondents after the receipt of the above representation, issued an interim reply on 25-4-90 (Annexure A I). The applicant has filed the present O.A. challenging the action of the respondents.

4. The respondents in thier reply stated that

Dr

as per the Railway Board's letter dated 21-2-83, the cadre of T.I. was reconstructed. In terms of the said circular, the employees were considered for promotion in accordance with the procedure laid down. The applicant was not considered suitable for promotion to the scales of Rs.550-750/- as well as Rs.700-900/- on the basis of his service records. The respondents denied that the applicant was considered suitable for promotion in the grade of Rs.550-900-. The respondents also stated that the applicant was promoted to the scale of Rs.1600-2660 (Rs.550-750/-) with effect from 1-3-1993 vide order dated 17-8-1993.

5. We have heard Mr.Kadri, counsel for the applicant and Mr.N.S.Shevde, counsel for the respondents.

6. Mr.Kadri, submitted that in terms of order dated 11-6-85 (Annexure 'A'), the applicant was not found suitable only for the post carrying the scale Rs-700-900/- and not for the scale of Rs.550-750/- In this connection, he referred to the ~~xxx~~ paragraph 3 of the said letter which reads as follows:-

"3. 8 The following TIs have been considered (un)suitable for promotion for the scale mentioned against each they may be informed accordingly. Before notifying their unsuitability, care should be taken that adverse remarks recorded in the CRs have been advised to them.

DR

Sr. No.	Name S/Shri	Div.	Considered unsuitable for promotion to scale Rs.
1.	K.R.Nagar	RTM	700-900
2.	B.B.Lol (SC)	AII	-do-
3.	N.K.Chauhan (ST)	BRC	-do-
4.	Jagmohan Swamy		550-750

He submitted that while Shri Jagmohan Swamy at Sr.No.4, was found not suitable for the scale of Rs.550-750/-, the applicant (Sl.No.3) was found suitable for Rs.550-750/-. He also submitted that promotion to the scale of Rs.550-750 was non-selection and the respondents made all promotions to the said scale only on ad-hoc basis. In the circumstances, he submitted that the respondents ought to have promoted the applicant to the scale of Rs.550-750/- in 1985. He also referred to a number of juniors to the applicant who were promoted on ad-hoc basis in the scale of Rs.550-750. He, therefore, pleaded that the applicant is entitled to be considered for promotion to the higher grade in the scale of Rs.550-750 (1600-2660 RP)-2000-3200 (RP) and 2375-3500 from the date of the promotion of his juniors or in the alternative, be promoted as T.I. in the grade of Rs.1600-2660 with effect from 25-4-1990

DDW

and given all arrears and consequential pension benefits as the applicant superannuated with effect from 31-5-93.

7. Shri Shevde, counsel for the respondents produced the relevant file at our directions. It was taken on record.

8. Shri Shevde, submitted that as the applicant was not found suitable for the scale of Rs.700-900- he was not considered for the scale of Rs.550-750 also. He also referred to the notings in the relevant file of the department which indicated that in the year 1986, the applicant was declared not suitable for the scale of Rs.550-750 as he was not found suitable for the scale of Rs.700-900. The relevant notes read as follows:-

"..... the unsuitability notified for Rs.700-900(R) vide page 35/c will equally be applicable to Rs.550-750 (R) as his CRs upto 1984 were not good".

9. Shri Shevde also submitted that the application is liable to be dismissed on the ground of limitation as the relief claimed is for promotion with effect from 1-1-84 or so.

10. The applicant also filed M.A.655/93 for condoning the delay in filing the O.A. on 8-2-1994. This Tribunal admitted the O.A. subject to contentions regarding limitation, delay and latches. In support

DR

of the application, the applicant inter alia stated that he submitted several representations (Annexure A-14 to 29) to the respondents for the redressal of his grievances. The respondents furnished ^{interim} ~~in terms~~ reply to the applicant only on 25-4-90 and after the reply, the applicant filed the present O.A. in May 1991. For the reasons stated in the M.A. and the O.A., we allow the M.A. ^{and O.A.} ~~condone~~ the delay.

11. We have carefully considered the submissions made by the counsel and also examined the records of the case. The main grievance of the applicant is that vide the order of H.Q. dated 11-6-85 (Annexure 'A'), the competency authority assessed the suitability of the applicant for both the scale of Rs.700-900 and 550-750- The applicant on assessment was found unsuitable only for the scale of Rs.700-900. The records produced by the respondents also borne out this fact. It is also found that the respondents issued promotion orders only on ad-hoc basis and promoted certain juniors to the applicant in the scale of Rs.550-750. In the circumstances, the contentions of the respondents that the applicant was not found suitable for the scale of Rs.550-750 in 1985 is not borne out by the records. In October 1986, a decision was taken not to promote the applicant in the scale of Rs.550-750- on the ground that he was not found suitable by the selection Board for promotion to the selection post carrying the scale of Rs.700-900- No instructions or ^{or brought to our notice} ~~in~~ rules were relied upon in this regard to support the above contention. We, therefore, reject this contention.

PN

we are of the view that the respondents ought to have ~~not~~ considered and promoted the applicant in the scale of Rs.550-750- when his juniors were promoted on provisional basis.

12. The applicant has already retired from service on 31-5-93. Keeping in view the overall facts and circumstances, ends of justice would be served if the applicant is granted the scale of Rs.550-750/- in terms of Annexure 'A' dated 11-6-85. As the posts in the scale of Rs.700-900- and above are selection posts and the applicant was considered but not found suitable by the Competent Authority, we hold that the applicant is not entitled to claim promotion in the scale of Rs.700-900 and above.

13. In the result, the O.A. succeeds and is allowed to the extent that the respondents are directed to consider the grant of scale of Rs.550-750/- to the applicant in terms of the order of the respondents dated 11-6-85 from the date of his immediate juniors were granted this scale. The applicant would be entitled to the arrears of pay and consequential benefits including the revision of his pensionary benefits. Respondents are directed to comply with the above directions within three months from the date of rec eipt of a copy of this judgment. No order as to costs.

P.C.Kannan
(P.C.Kannan)

*SSN...

V.Radakrishnan
(V.Radakrishnan)

Member (A)
Member (A)

DATE	OFFICE REPORT	ORDER
22-1-99		<p>Heard Mr. Shevde and Mr. Kadri. Mr. Shevde gives a copy of MA to Mr. Kadri.</p> <p><u>MAST/906/98 :-</u></p> <p>Objection waived. Registry may be give regular number to MAST/906/98. Extension of time, as prayed for, is granted upto 29-1-99. No further time will be given. M.A. disposed of accordingly.</p> <p><i>BR</i> (V. Radhakrishnan) Member (A)</p> <p>Pt</p>