

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 289 OF 1991

~~**T.A.NO.**~~

DATE OF DECISION 29.6.1998

Shri V.D. Chauhan, Petitioner

Mr. K.K. Shah, Advocate for the Petitioner [s]
Versus

Union of India & Ors. Respondents

Mr. N.S. Shevde, Advocate for the Respondent [s]

CORAM

The Hon'ble Mr. V. Ramakrishnan, Vice Chairman.

The Hon'ble Mr. P.C. Kannan, Judicial Member.

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 ? ~

Shri V.D. Chauhan,
Head T.T.E.,
Western Railway,
Ahmedabad.

..... Applicant.

(Advocate: Mr. K.K.Shah)

Versus

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

2. Sr.D.C.S.(E) BRC
Division Office,
Pratapnagar, Baroda.

3. Divisional Commercial Supdt.(E) BRC
Divisional Office,
Pratapnagar,
Baroda.

.... Respondents.

(Advocate: Mr. N.S. Shevde)

ORAL ORDER

O.A.No. 289/91

Date: 29.6.1998

Per: Hon'ble Mr. V. Ramakrishnan, Vice Chairman.

We have heard Mr. K.K. Shah for the applicant
and Mr. Shevde for the respondents.

2. The applicant has prayed for a direction to the
Railway Administration to give the benefit of fixation
of pay in the revised scale of 1600-2660 on completion
of the penalty period with all consequential benefits.
As the applicant has since superannuated from service
with effect from 31.5.91, he is anxious that his
retiral benefit should be enhanced on that basis.

3. The applicant had got into difficulties and a series of orders were issued imposing the penalty of withholding of increment. The last such order of withholding of increment was over on 30.6.89. This is admitted by the respondents in page 4 of the reply statement where they have stated that the completion of penalty period was 30.6.1989 on which date he was drawn ^{my} pay in the scale of 1400-2300. The applicant's grievance is that on completion of the penalty period, he should have been considered for adhoc promotion to the next higher scale of 1600-2660, particularly as a number of his juniors had been given this scale. The applicant being a member of Scheduled Caste could have been considered against the reserved vacancies for adhoc promotion. The respondents have taken the plea that during the pendency of the penalty period, a number of reserved candidates belonging to Scheduled Caste were given such adhoc promotion and it so happened that there is an excess quota of SC & ST employees in the category of TTI/TNCR in the scale of 1600-2660 and as such the applicant could not be given that higher grade on completion of the penalty period. They also bring out that while some of the juniors were given such adhoc promotion in accordance with the general direction and policy followed, the Headquarter office issued on 15.5.90 instructions to the effect that the excess promotion of SC/ST made if any, between 28.4.89 and 26.9.89 may be adjusted against the future vacancies and need not be reverted and that the ^{may} ~~first~~ ^{best} cases already decided between 28.4.89 and 26.9.89

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should not be reopened. As such, even though the applicant was senior, he could not be given such adhoc promotion as there was an excess in the quota for reserved vacancies when he could have been considered after the penalty period was over.

4. Mr. K.K. Shah contends that this position is not really borne out by the orders issued by the Railway Administration dated 18.7.89, Annexure A-6. He submits that S/Shri Rathod, Vankar and Parmar also belonging to SC category who are his juniors have been given promotion and given the higher scale whereas the applicant has been denied the same. He says that the Railways can not deny promotion to the senior on the ground that such promotion would result in excess ^{when} ~~that~~ the juniors have been given promotion.

5. We have carefully considered the rival contentions. As has been brought out above, the penalty period was over on 30.6.89. Adhoc promotions are given not on the basis of regular selection as per the relevant instructions but on the basis of seniority cum-fitness and there is no need for a regular selection as in the case of a regular appointment. We find force in the submission of Mr.K.K.Shah that when the Department had issued an order on 18.7.89 the applicant was no longer undergoing the penalty which had expired on 30.6.89 and he could not be ignored for adhoc promotion. Infact, we find from the same order that the names of a number of employees had been enumerated who could not be given adhoc

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promotion as they were undergoing penalty of withholding of increment and in that order the applicant's name does not figure in such list. It is also not the contention of the Railways that the applicant was found unfit for adhoc promotion.

The only ground urged by the Railways for denial of adhoc promotion is that in the cadre of TTA/TNCR in the scale of 1600-2660, there is already an excess representation of SCs over the percentage of 15 and the applicant could not get adhoc promotion against the reservation quota. This is stated in the written statement and also this is the reason given to the applicant while rejecting his claim by letter dated 16.11.90 (Annexure A-7). The penalty period in respect of the applicant was over on 30.6.89 and on 18.7.89 S/Shri Rathod, Vankar & Parmar belonging to SC and who are juniors to the applicant as admitted by the Railways in para-5 of the written statement, had been promoted to the scale of 1600-2660 on adhoc basis. It is not the stand of the Railways that the applicant was assessed but declared unfit for adhoc promotion. The omission to promote the applicant by order dated 18.7.89 which was having immediate effect has not been satisfactorily explained. It is not the position as if the juniors were promoted when the applicant was still undergoing the penalty period, as these orders have been issued after 30.6.89. It is also significant that this order does not include the name of the applicant in the category of persons

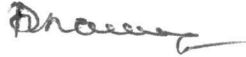
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who are not promoted as they were undergoing penalty of withholding of increment. The Railways ~~are~~ ^{were} obviously aware that the penalty period of the applicant was over on that date.

6. We therefore hold that the defence of the Railway Administration that the applicant could not be given adhoc promotion only because of excess representation of Scheduled Caste in the higher scale 1600-2660 is not substantiated by the materials on record particularly Annexure A-6. In the circumstances we direct the Railway Administration to consider the case of the applicant for adhoc promotion as on 1.7.1989 ~~for~~ immediately thereafter in respect of any vacancy or post in the scale of 1600-2660 in accordance with the relevant rules and instructions. The present O.A. has been filed in June 1991 and as such upto 1.6.90, which is one year prior to the filing of the O.A. such promotion will be notional but the applicant shall be given the actual financial benefit with effect from 1.6.90. While giving such benefit the Railways can adjust whatever has been given ^{to him} in the lower scale from 1.6.90. The revised fixation shall be taken into account for the purpose of retiral benefits and the same shall be recalculated and refixed and whatever arrears become due ~~should~~ also be paid to the applicant. The Railway Administration shall complete the entire exercise within three months from the date of the receipt of a copy of this order.

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7. With the above direction, the O.A. is finally disposed of. No costs.



(P.C. Kannan)
Member (J)



(V. Ramakrishnan)
Vice Chairman

vtc.