

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

:Date of Decision: 19.7 .99

OA .No.331/91

Shri Prayag T.Patel. :Petitioner(s)

Mr.K.K.Shah : Advocate for the petitioner(s)

Versus

Union of India & Ors. : Respondents

Mr.N.S.Shevde : Advocate for the respondents

CORAM

Hon'ble Mr. V. Radhakrishnan : Member(A)

Hon'ble Mr.A.S.Sanghavi : 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?

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Shri Prayag T.Patel,
T & M Fitter,
BRC

: Applicant

Address for service of notice:

Shri Kiran K.Shah,
3, Achalayatan Society,
Div.II, B/H Hemnagar Fire
Station, Navrangpura,
Ahmedabad-380 009.

Advocate: Mr.K.K.Shah

Versus

1. Union of India,
Notice to be served through:
General Manager, Western Railway,
Chrucghate, Bombay.
2. Divisional Railway Manager,
Baroda Division,
Western Railway,
Pratapnagar,
Baroda.
3. Divisional Personnel Officer,
Western Railway,
Baroda Division,
Pratapnagar,
Baroda.

: Respondents

Advocate: Mr.N.S.Shevde

JUDGMENT
OA/331/91

Date: 19 -7-99

Per: Hon'ble Mr.V.Radhakrishnan : Member(A)

Heard Mr.K.K.Shah and Mr.N.S.Shevde, learned advocates
for the applicant and the respondents respectively.

2. The petitioner who was a Group 'C' employee was decategorised on medical ground. Thereafter he was offered a Class IV post which he accepted but later claimed that he should have been given any post in Group 'C'. He claimed that he was working in the Group 'C' post of Diesel Assistant on ad hoc basis and on decategorisation the respondent authorities should have found a suitable post for him in Group 'C' post. The claim of the applicant was rejected by the respondents and he approached the learned Civil Judge (S.D.), Godhra who decided that the applicant was entitled to be posted on alternative class III post and he was allowed to continue in Class III as per the ad interim relief order.

3. The respondents filed appeal in the Court of District Judge, Panchmahals. This case was transferred to this Tribunal. The Bench after examining the case gave the judgment on 16.2.88. It was pointed out in the judgment that the relevant rules clearly indicated that a suitable alternative employment should be given to the employee on medical decategorisation which has to be approximately as close as possible to the post previously held by him before such decategorisation. In fact the rules say that on decategorisation it should not be necessary to revert such employee. Hence, the respondents were directed to ascertain whether there was availability of post of the same pay scale as that which was held by the applicant prior to decategorisation and failing which any post of closest approximation thereto for which he was medically fit and suitable. This should be done as long as the applicant's junior continued on the ad hoc basis in the promotion post.

4. After issuing of the above directions of the Bench the respondents examined his case and he was found fit for the post of Tool & Maintenance Fitter Gr.III . Accordingly, orders were issued for posting him on that post from 20.11.1974 i.e. the date on which he was actually absorbed as Store Khalasi and his fixation was fixed as follows:-

"Rs.390 + 3 PP from 20.11.74 [He was drawing Rs.302/- p.m. in scale Rs.290-350 (R)]

Rs.400/- from 20.11.75

Rs.400 + 10 PP from 1.7.83 [Stagnation increment)]

Revised pay in scale Rs.950-1500 (RP)

Rs.1400/- from 1.1.86

Rs.1475/- from 1.1.89

Rs.1425/- from 1.1.87

Rs.1500/- from 1.1.90

Rs.1450/- from 1.1.88"

5. It is also ordered that he will be given only proforma fixation from 20.11.74 but actual payment will be made from the date he actually resumes duty as "Tool & Maintenance Fitter Gr.III" under LF BRCY. It is also clearly stated that the applicant is entitled for benefits which his juniors are availed as Fitter Grade II. It is also ordered that he will be promoted as Tool & Maintenance Fitter Gr.II after passing the trade test of Gr.II and will be given proforma fixation as Grade II w.e.f. 1.1.84.

6. The applicant contests proforma fixation without giving him the actual financial benefits as Tools and Maintenance Fitter Grade III and Tool Maintenance Fitter Grade II. Accordingly, he has prayed for the following reliefs:-

" (1) That the Hon'ble Tribunal be pleased to direct the required to make payment of outstanding dues

consequent to its order dated 16.2.88. As such the respondent railways are required to make payment of outstanding due as under:-

- i) As Tool & Maintenance Fitter Gr.III from 20.11.74
 - ii) As Tool & Maintenance Fitter Gr.II from 1.4.84 with 18% interest per annum till the date of payment.
- (2) The Hon'ble Tribunal may be pleased to direct the Respondent railways to produce the "Due" & Drawn statement of arrears for satisfaction of the Tribunal and applicant year-wise from 1974 onwards.
 - (3) The application be allowed with costs.
 - (4) The Hon'ble Tribunal may be pleased to pass such other order or directions as may be deemed fit in the interest of justice."

7. The respondents have contested the claims of the applicant. They have stated that the applicant accepted the post of Khalasi in Class IV when it was offered to him and he was working in that post only. However, as per the direction of the Tribunal he was given the post of T & M Fitter Grade III w.e.f. 20.11.1974. As he had not shouldered the responsibility of T & M Fitter Grade III, he had been given the proforma promotion from the date on which he assumed duty.

8. So far as the promotion to T & M Gr.II is concerned, he was trade tested and the result was declared on 20.9.90 that he had passed the test. They have also taken the objection of limitation as the cause of action arose in 1974, the Tribunal has no jurisdiction in entertaining any claims relating to the period prior to 1.11.1982. Accordingly, they have prayed for rejection of the application.

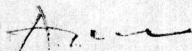
9. We have heard both the learned advocates and gone through

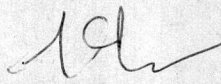
the documents on record. So far as the contention of the respondents that the OA is barred by limitation, it is pointed out that the applicant was pursuing his case before various Courts which has kept cause of action alive and hence the question of limitation does not arise. Accordingly, the contention of the respondent is rejected.

10. There is no dispute about the fact that the juniors to the applicant were working in Grade II post as seen from the order of the Tribunal. This case was reexamined by the respondents and he was given the post of T & M Fitter Grade II w.e.f. 20.11.74. It is also not disputed that the juniors to the applicant were working in Fitter Grade II w.e.f. 1.1.1984 and he could not be promoted earlier because his case was subjudice and after the direction of the Tribunal, the respondents issued order dated 19.6.90 fixing his grade as Grade III w.e.f. 20.11.1974. Thereafter he was tested for promotion to T & M Fitter Grade II and he was promoted after passing the same w.e.f. 1.1.84 on proforma basis and actual basis from the date of his assuming duty as T & M Fitter Grade III. It is seen from the above facts and circumstances that it was not the fault of the applicant that he could not be posted as Fitter Grade III post with effect from 20.11.74. He was also due for promotion on 1.1.84 in the higher grade of T & M Fitter Grade II as his juniors had been promoted on that date. Once the respondents have accepted the claim of the applicant for the post of T & M Fitter Grade III from 20.11.74 and T & M Fitter Grade II from 1.1.1984, he cannot be denied the financial effect from the respective dates on which he was given proforma fixation. We are supported in this view by the judgment of the Hon'ble Supreme Court in Vasant Rao Roman vs. Union of India 1993 SCC (L &

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590 wherein it was decided that where the juniors of the applicants were promoted and after the mistake was rectified the applicants were promoted, the applicants are entitled for financial benefits from the date of their juniors were promoted. Accordingly, in the present case the applicant is entitled for financial benefits from the date on which he was given proforma promotion in T & M Fitter Grade III and II. However, in so far as the arrears payable to him are concerned, it is limited to one year prior to the date of filing of the OA i.e. from 16.9.90 onwards only. The respondents shall take action to pay the arrears to the applicant within a period of three months from the date of receipt of a copy of this order. No costs.


(A.S.Sanghavi)
Member(J)


(V.Radhakrishnan)
Member(A)

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