

CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH

OA .No.394/91

:Date of Decision: 13.7.99

Shri Narshibhai & Ors.

:Petitioner(s)

Mr.M.S.Trivedi & Mr.T.R.Mishra

:Advocate for the petitioner(

Versus

Union of India & Ors.

: Respondents

Mr.N.S.Shevde

: Advocate for the responde

**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?

*No*

1. Shri Narshibhai
2. Shri Manilal
3. Shri Keshavprasad
4. Shri Ramanlal
5. Shri Revabhai
6. Shri Dawoodbhai
7. Shri Gnanchand
8. Shri Jabbar Ahmed
9. Shri Nagindas
10. Shri Balvantrai
11. Shri Bajrarsing Udhasing
12. Shri Kanyabhai

Address: All are working  
As Diesel Mechanic Gr.I  
At Sabarmati.

: Applicants

Advocates: Mr.M.S.Trivedi & Mr.T.R.Mishra

Versus

1. Union of India  
Through:  
The General Manager,  
Western Railway,  
Chruchgate, Bombay
2. Divisional Railway Manager,  
Western Railway,  
Ajmer (Rajasthan)
3. Divisional Railway Manager,  
Western Railway, Kothi Compound,  
Rajkot.
4. Sr.Divisional Manager(Diesel)  
Abu Road, Rajasthan
5. The Divn.Mechanical Engineer(Diesel)  
Western Railway, Sabarmati,  
Ahmedabad.

: Respondents

Advocate: Mr.N.S.Shevde

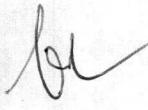
**JUDGMENT**  
**O.A.No.394/91**

Date: 13-7-99

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

Heard Mr.P.S.Upadhyay for Mr.T.R.Mishra and Mr.N.S.Shevde, learned advocates for the applicant and the respondents respectively.

2. The applicants were initially working in Loco-shed at Sabarmati and subsequently posted in Diesel-shed. It is stated that certain employees working in Diesel-Shed, Abu Road who were juniors to the applicants were transferred to Diesel shed, Sabarmati and they were made senior to the applicants. These junior persons were granted promotion in 1980 and 1981 to Diesel Mechanic Grade -III while the applicants did not get the promotion. Being aggrieved by this, the applicants filed petitions in the Hon'ble High Court of Gujarat which were subsequently transferred to this Bench. The applicants had prayed that a proper seniority list should be prepared as per their original date of appointment in Railways and all promotions should be made as strictly as per seniority list and junior persons should not be promoted before senior persons. The Tribunal disposed of the Transfer Application with direction to the respondents to review the matter and pass a speaking order after giving opportunities to all concerned. The applicants filed representations stating that they should be given seniority from the date of their original date of appointment as per rules subject to passing of the trade test. The respondents held a joint meeting with all concerned parties on 25.2.1985 to determine the seniority of the concerned staff (Annexure R-I). Based on the decision of the meeting the respondents issued orders dated 2.5.90 promoting the applicants on proforma basis from 13.6.1981 but with financial effect from the actual date of promotion i.e.



1985-86. They were also promoted to Grade II from 1.6.87 but financial benefit given only from the date of actual date of promotion. The applicants contend that once their representations has been accepted and they were promoted on proforma basis from 1981-82 and they should be given financial effect also from that date and not from the date of their actual promotion as the respondents have committed mistake of not promoting them earlier from the date of their juniors were promoted. Hence they have prayed for the following reliefs:-

- "(1) The respondents and their sub-ordinates officers may be directed to pay arrears to applicants with effect from 13.6.81 and onwards for promotion in Grade-III and Gr.II and Gr.I from actual date of promotion till the decision of this application.
- (2) That your Lordship be pleased to issue directions to Respondents authority to pass speaking orders and with reference to Railway Board Circular dated 22.8.85 give promotions to applicants with effect from 1.1.84."

3. The respondents have contested the application. They have admitted the fact that they reviewed the case of the applicants after issuing of the order of the Tribunal. They have stated that the applicants have been given financial benefits of promotion from the date of their actual promotion. They have also taken the contention that the cause of action arose in 1985 and the present application is filed in 1991 and at this stage it is time barred.

4. We have heard both the learned advocates and gone through the documents. Dealing with the first question of limitation raised by the respondents, we may state that there is no basis and in the same it is seen that the applicants have been agitating the matter first by representation to respondents and when they failed to receive any response, they had filed

two petitions in the Hon'ble High Court of Gujarat which were transferred to this Central Administrative Tribunal and the Tribunal gave directions dated 2.9.1988 to consider the representations of the applicants by a speaking order .After issuing of the directions the respondents rectified the mistake and took action to revise the seniority list of the applicants and gave them proforma promotions from the date of their juniors were promoted. Accordingly, we reject the contention of the respondents as the application is time barred.

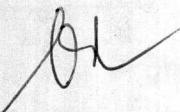
5. Mr.Upadhyaya , learned counsel for the applicants during the arguments stated that the applicants were not promoted due to the inaction of the respondents even though they were senior to the persons promoted earlier to them. After issuing of the directions of the Tribunal the respondents took action to revise the seniority list of the applicants and gave them proforma promotions from the date of their juniors were promoted but restricted the financial benefit from the date of their actual taking over the charge. He vehemently argued that it is not the fault of the applicants that they did not take over from the date of their original appointment as they could take only from the date the respondents issued the promotion orders. The respondents have rectified the mistake after direction of the Tribunal and gave them proforma promotion in Grade III and Grade II in August 1989 and May, 1990. As the applicants were not promoted due to the fault of the administration they are entitled for pay and allowances in the higher grades from the date of their promotion promotions. He based his arguments on the basis of the judgment in Nathaniel Bernard Toppo versus Union of India & Another (1991) 15 ATC 260 wherein it was decided that where a person is superceded on account of wrong determination of seniority and subsequently the seniority is corrected and notional promotion with

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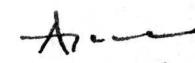
retrospective effect is given, in such circumstances, notwithstanding that the employee had not worked in the promotional post, his claim to arrears of salary from the date of promotion was allowed. In the other case in R.A.Devashayam vs. Union of India (Through Secretary Ministry of Defence) and others (1987) 4 ATC 149 it was held that where the applicants overlooked in promotion during posting abroad, have a right to promotion from the dates when juniors were promoted and the benefit of seniority as well as pay shall be admissible to the applicants from the date of proforma promotion.

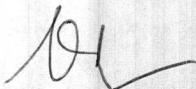
6. Mr.Shevde, learned counsel on behalf of the respondents first took the question of limitation and argued that as the applications have considered within the limitation, the arrears should be limited for a period prior to one year from the date of filing of the application.

7. There is no dispute about the fact that the respondents had promoted the juniors to the applicant after receipt of the directions of the Tribunal and as a result of the application filed by the applicants, they have revised the seniority and granted proforma promotions to the applicants from the date of their juniors were promoted as evident from the orders issued by them. They have accepted the fact that the applicants were not given promotion due to administrative inaction. If so, there is no fault on the part of the applicants that they were not given promotion from the date they were originally due. The only question arises for consideration is as to whether the financial benefits should be given from the date of notional promotion or from the date of actual date of higher post. There is no doubt that non-promotion of the applicants is due to the inaction of the respondents and the applicants could take over the post only from the date of issue of orders. We have no hesitation to come to a conclusion that the applicants are entitled for financial benefits from the date of their juniors were promoted i.e. from the date of their proforma promotion . 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 & S) 590 wherein it was decided that where the juniors of the applicant 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 applicants are entitled for higher pay in Grade III and Grade II in D.L.Mechanic from the date of their proforma promotions and not from the actual date of taking over the respective grades. We order accordingly. However, the applicants shall be entitled for arrears only for the period beginning one year prior to the date of filing of the OA i.e. from 19.11.90. The respondents shall take action to pay the arrears of higher pay to the applicants within a period of three months from the date of receipt of a copy of this order. No order as to costs.

  
(A.S.Sanghavi)  
Member(A)

  
(V.Radhakrishnan)  
Member(J)

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