

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO./491/1992
T.A.NO.

DATE OF DECISION 17th Aug. 2000

E. Ramaswamy

Petitioner

Mr. K.K. Shah

Advocate for the Petitioner [s]

Versus

Union of India & Others

Respondent

Mr. N.S. Shevde

Advocate for the Respondent [s]

CORAM

The Hon'ble Mr.

V. Ramakrishnan, Vice Chairman

The Hon'ble Mr.

A.S. Sanghavi, Member (J)

JUDGMENT

- 1, Whether Reporters of Local papers may be allowed to see the Judgment ? *Yes*
- 2, To be referred to the Reporter or not ? *Yes*
- 3, Whether their Lordships wish to see the fair copy of the Judgment ? *Yes*
- 4, Whether it needs to be circulated to other Benches of the Tribunal ? *Yes*

B. Ramaswamy
Permanent Way Inspector (c)
Bulsar

Address for notice:

c/o. Kiran K. Shah, Advocate
3, Achala Yatan Society, Div. II
Navrangpura, Ahmedabad.

Applicant

Versus Advocate: Mr. K.K. Shah

1. Union of India
Notice to be served through the
General Manager
Western Railway, Churchgate
Bombay.
2. The Chief Engineer (s & c)
Western Railway
Chief Engineer's Office
Ahmedabad Railway Station
Ahmedabad.
3. Executive Engineer (Construction) II
Western Railway, Ahmedabad.
4. Chief Engineer (S&C)
New Building
Churchgate
Bombay.

Respondents

Advocate: Mr. N.S. Shevde-

JUDGEMENT

IN

Dated 17th August 2000

O.A./491/1992

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

The applicant who was appointed as Permanent Way Mistry in 1964 and received promotion to the next higher level of Permanent Way Inspector-Grade- III in 1985 has approached the Tribunal seeking a direction to the respondents to step up his pay on par with Shri L.C. Patel who according to the applicant is his junior.

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

3. Mr. K.K. Shah submits that the applicant was appointed as a Permanent Way Mistry in 1964 by order dated 13.11.64. Due to expansion of Railways in the relevant period, a large number of employees were appointed in the Construction Department of the Western Railway. Mr. Shah further submits that as per the seniority list of Permanent Way Mistry in the Survey and Construction Department as circulated in 1983, the applicant was senior to Shri L.C.Patel and many others at this level. He therefore had a right to be considered for promotion including ad hoc promotion to the next higher level of P.W. Grade-III Inspector/(PWI Gr.III) before Shri Patel. The respondent department initially promoted him as PWI Gr.III by letter dated 18.1.83- Annexure A-3. Mr. Shah claims that the applicant was not relieved by the Executive Engineer Construction Ahmedabad. It is alleged that L.C.Patel was given ad hoc promotion ignoring the applicant and this was done on parochial grounds. The applicant had approached the Hon'ble High Court of Gujarat and High Court was informed that he would be accommodated in the new project at Sabarmati but he was not accommodated. He had to approach the High Court again and the order of promotion was issued in August 1985 as PWI Gr.III.

Mr. Shah says that applicant is senior to L.C. Patel and he ought to have been promoted on the same day as his junior instead of 2½ years later. As this was not done, the relief sought for namely that his pay should be stepped up to the level of L.C. Patel should be granted. Mr. Shah submits that the applicant has since retired and stepping up of pay would result in increase in pension. According to the learned counsel even if the court is of the view that financial arrears may not be given, a direction may be issued to increase his retiral benefits on the basis of higher pay as was granted to Shri L.C. Patel.

4. The respondents do not agree that the applicant is senior to L.C. Patel. According to them, seniority list given by the applicant cannot be relied upon as the Serial number has not been given by the applicant. Respondents also claim that applicant's seniority was kept in Baroda Division in the original category whereas the seniority of L.C. Patel is maintained at Ajmer Division where his lien is maintained and as such the applicant's seniority and L.C. Patel's seniority cannot be compared with each other.

It is their stand that applicant was considered but was found unfit for promotion to the level of P.W.I. Grade-III. It is also contended by the respondents that he had rendered service under Executive Engineer, Construction-II, Ahmedabad and was transferred to Jamnagar in 1983 but he did not join Jamnagar but remained absent of his own accord from 15.4.83 to 26.8.85 and the period from 15.4.83 to 26.8.85 was regularised as leave without pay.

The respondents have also emphatically denied the allegation that there was any prejudice against the applicant or that L.C. Patel was favoured on parochial consideration.

5. The applicant in the rejoinder denies that he was considered unfit for ad hoc promotion as PWI Gr.III as, according to him, this contention was never taken in the various cases before the Gujarat High Court.

6. We have considered the contentions of both sides.

7. At the outset we may state that the allegation that the applicant was denied his rightful promotion due to parochial consideration is baseless as the applicant has not given any material whatsoever in support of such allegation.

8. The applicant's prayer is that he be promoted on promotion as P.W.I. Gr.III. It is shown

up on par with that of L.C. Patel. The reason as to why L.C. Patel has drawn more pay than the applicant is because he received ad hoc promotion as FWI Grade- III more than two years before the applicant. It is also stated that the applicant was on extraordinary leave with the result that he had to forego increments for that period earlier. In this O.A. the applicant has not challenged his non- promotion as FWI Grade- III earlier and the treatment of relevant period as E.O.L. L.C.Patel's ad hoc promotion took place in 1983 and the applicant was promoted in 1985. We also find from the orders of the Hon'ble Gujarat High Court dated 3.5.83 (copy at Annexure A-15) that the High Court had observed that the applicant was keen to stay in the vicinity of Ahmedabad for personal reasons and was not willing to go to Jamnagar, Rajkot, Bhuj etc. The High Court had further noted that the applicant wanted to stay only at Sabarmati- Ahmedabad and as the work at Sabarmati was to commence shortly, he was willing to proceed on leave. It was therefore ordered that the period of absence of the petitioner will not be treated as a break and it will be regulated having regard to the service rules that are applicable to him. It is clear from this that the applicant was unwilling to accept the ad hoc

promotion at Jamnagar which was offered to him by letter dated 18th January 1983- copy at Annexure A-3 but he insisted on staying in or near Ahmedabad and that is the reason why his absence has to be treated as E.O.L. It is evident from the above narration that the applicant drew less pay than L.C.Patel, because L.C.Patel got ad hoc promotion earlier whereas the applicant had not got such promotion and the applicant's absence for some time was treated as extraordinary leave ~~when~~ increments could not be earned. This is quite apart from the contention of the Railways that L.C.Patel and the applicant do not belong to the same seniority unit.

9. The circumstances in which the stepping up of pay can be given have been gone into by the Tribunal and Supreme Court in a number of cases. The Full Bench of this Tribunal sitting in Hyderabad in November 1996 had observed that stepping-up of pay has to be related to a legal right and cannot be granted on considerations of equity.

The Government of India have laid down the circumstances in which stepping up of pay can be considered. The O.M. dated 4.2.66 provides for removal of ~~notional~~ ^{seniority} pay of a senior drawing less pay than the junior and lays down some conditions on whose fulfilment the senior's pay could be stepped-up. The applicant does not fulfil these conditions.

There is another O.M. dated 4.11.93 in the Department of ^{Personnel and} Training & ~~Personnel~~. We may in particular reproduce para 2 (a) and (b) of the Circular below:-

"2(a) Where a senior proceeds on Extra Ordinary Leave which results in postponement of Date of Next Increment in the lower post, consequently he starts drawing less pay than his junior in the lower grade itself. He, therefore, cannot claim pay parity on promotion even though he may be promoted earlier to the higher grade;

(b) If a senior foregoes/refuses promotion leading to his junior being promoted/appointed to the higher post earlier, junior draws higher pay than the senior. The senior may be on deputation while junior avails of the ad-hoc promotion in the cadre. The increased pay drawn by a junior either due to ad-hoc officiating/regular service rendered in the higher posts for periods earlier than the senior, cannot therefore be an anomaly in strict sense of the term."


The provisions in this O.M. will be directly applicable to the present applicant and the applicant cannot claim stepping up of pay when he drew less pay on account of his going on extra-ordinary leave and by availing ad hoc promotion later than the so-called junior.

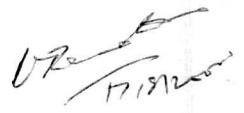
10. The Supreme Court in the case of Union of India and another vs. R. Swaminathan (1997(5) SLR 593 in para 11 to 13 of the Judgement noticed the provisions of O.M. dated 4.2.66 and O.M. dated 4.11.1993 and had stated that higher pay received by a junior on account of his earlier officiation in the higher post because of local

officiating promotions does not give any right to senior to step up his pay. We may refer to the Head Note which is reproduced below:-

" Constitution of India, Article 16- Fundamental Rules, Rule 22 (1) (a) (1)- Pay/Stepping up pay on promotion- The difference in the pay of Junior and a senior in the instant case is not as a result of application of Fundamental Rule 22 (1) (a) (1)- ~~The~~ higher pay received by a Junior is on account of his earlier officiation in the higher post because of local officiating promotions- Because of the proviso to Rule 22 he may have earned increments in the higher pay scale of the post to which he is promoted on account of his past service and also his previous pay in the promotional post has been taken into account in fixing his pay on promotion. It is these two factors which have increased the pay of the juniors- This cannot be considered as anomaly requiring the stepping of the pay of the seniors. (Paras 8,11,12,14,15 & 16)".

11. In the light of the foregoing discussion and the law laid down by the Supreme Court in the case of Swaminathan referred to supra, we hold that the applicant is not entitled to the relief sought for and the O.A. is dismissed with no orders as to costs.


(A. S. Sanghavi)
Member (J)


(V. Ramakrishnan)
Vice Chairman

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