

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 307 of 1993
~~Ex.No.~~

DATE OF DECISION 17/1/00

Shri. Kantilal M. Dubal Petitioner

Mr. Vyas 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. Ramakrishnan : Vice Chairman

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 Lordships wish to see the fair copy of the Judgment ?
- 4, Whether it needs to be circulated to other Benches of the Tribunal ?

} NO

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Shri. Kantilal M. Dubal
Office Superintendent,
C/o. Dy. Chief Engineer,
(Construction) II,
Western Railway,
Ahmedabad.

= Applicant =

(Advocate : Mr. Vyas)

V/s.

1. Union of India
Through General Manager
W. Rly., Church gate,
Bombay : 400 020.
2. Chief Engineer (S & C)
W.Rly., Church gate,
Mumbai : 400 029.
3. Chief Engineer (c),
2nd Floor, Station Bldg.,
W.Rly., Ahmedabad.

= Respondents =

(Advocate : Mr. N. S. Shevde)



JUDGMENT

O.A 307 OF 1993

Date : 17/01/2000

Per Hon'ble Shri. P. C. Kannan : Member [J].

The applicant has filed the above O.A and prayed for the following reliefs :-

" [A]. Be pleased to re-fix the seniority of the applicant from 19.06.1978 and to grant Special Pay in line with stepping up of pay in case of Mr. B. D. Bhatt who was junior to the applicant and who was unjustifiably continued in preference to the applicant.

[B]. Be pleased to grant Special Pay at the rate of Rs.35/- P.M. from 05.05.1979 upto 01.01.1984 with other consequential benefits.

[C]. Be pleased to grant the resultant the benefit arising out of re-fixation of seniority and of stepping up of the pay from 19.06.1978. "

2. The case of the applicant is that he entered the service under the respondents as Clerk in the Open line in 1955 and he was promoted on ad-hoc basis as Senior Clerk in the open line on 17.09.62. Subsequently, he was posted in the Survey and Construction Department (S & C dept.) w.e.f. 09.05.72 as Senior Clerk against an existing vacancy (Annexure C). The applicant submits that on the basis of certain Judgment dated 19.06.78 of the Bombay High Court, he ought to have been given seniority from 08.11.55, when he entered service as Clerk in the Open line. In this connection, he refers to the seniority list dated 23rd / 25th March, 1983

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(Annexure D) published by the respondents. In the said seniority, he was given 103rd position and Mr. Bhatt and 6 others were shown as juniors to him. He submits that Mr. Bhatt & six others who were juniors, were holding the post of Head Clerk on ad-hoc basis prior to 1983 but he was not given such promotion. However, after the publication of the seniority list in March'83, he was given promotion from 01.01.84 as Head Clerk. The applicant submits that he ought to have been granted ad-hoc promotion as Head Clerk and granted special pay of Rs.35/- when he was holding the post of Senior Clerk in 1979 as he was entitled to the same from 05.05.79. He submitted representations in this regard in December'79 (Annexure E) but the same was rejected by the respondents in February'80 (Annexure F). Subsequently also he submitted number of representations till October' 92 (Annexure G) and the respondents rejected the same (Annexure H).

3. The respondents in their reply had stated that the applicant joined the respondents as Clerk in the open line in 1955 and retired from service on 31st May 1993 on attaining the age of superannuation. The applicant was only appointed in Railways in Kota Division on 08.11.55 and he was promoted as Senior Clerk in the Kota division in 1964 and was confirmed in the said post on 06.09.68. The applicant joined S & C department as senior clerk on 09.05.72. In terms of the Bombay High Court Judgment dated 19.06.78, the seniority of the staff in the same grade would be from the date they joined the S & C department. As the applicant joined as senior clerk on 09.03.72, he was given seniority from that date and the seniority list was published on 23.03.83. The respondents further stated that one Shri. D'souza was also assigned seniority at sr. No. 102 in the said list on the basis of his date of joining



the S & C department and Shri. Rathod was assigned seniority at sr. No. 104 on the basis of his date of joining S & C department on 03.06.72. In the facts and circumstances, the respondents submits that the seniority of the applicant was correctly fixed and the applicant did not challenge the same. So far as ad-hoc promotions of Shri. B. D. Bhatt and six others are concerned, the respondents stated that they were not given any proforma benefits. It was stated that they were promoted on ad-hoc basis as Head Clerk prior to the notification of the combined seniority list. As ~~such~~^{ad-hoc} promotions were made prior to the finalisation of the seniority list, such ad-hoc promotion cannot be considered for the purpose of granting proforma benefits to the applicant. It was also stated that the applicant was not eligible to be promoted prior to the publication of the said seniority list. After the publication of the revised seniority list, the applicant was given the benefit of promotion to the post of Head Clerk w.e.f. 01.01.84. With regard to the claim for the grant of special pay, the respondents stated that the applicant was junior to certain others and his position in the combined seniority list was at Sr. No. 150 and the special pay was granted to the employees between Sr. No. 9 to 35 only. They also denied that any of the juniors to the applicant were granted the special pay. It was stated that the applicant was granted special pay of Rs. 35/- w.e.f. 01.01.84 in accordance with the rules.

4. We have heard Mr. Vyas for the applicant and Mr. Shevde for the respondents. Mr. Vyas submitted that the applicant was the senior-most person in the grade of Senior Clerk and he was posted to the S & C department and in

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circumstances, he ought to have been given seniority from the date of his initial appointment as Senior Clerk in the open line and in the facts and circumstances, the applicant is entitled to re-fixation of his seniority and consequential benefits including the grant of special pay from 05.05.79 to 01.01.84 and stepping up of pay from 19.06.78. Mr. Shevde, counsel for the respondents submitted that in terms of the Bombay High Court Judgment, the applicant was entitled to seniority from the date of his appointment in the S & C Department and not from the date of his promotion in the open line. Accordingly, the respondents published the seniority ^{list} in 1983 and the seniority of persons similar to the applicant were also fixed on the basis of their date of appointment in the S & C Department. The applicant did not challenge the same before the Court till the filing of the present O.A in 1993. He also submitted that before the finalisation of the seniority list, certain ad-hoc promotions were made and after the finalisation of the seniority list, ad-hoc promotions were reviewed and regular appointments were made and the applicant was promoted from 01.01.84. In the facts and circumstances, he submitted that the applicant is not entitled to any relief.

5. We have carefully considered the submissions of both the counsel.

The applicant seeks promotions prior to '80 when Mr. B. D. Bhatt & six others were promoted on ad-hoc basis as Head Clerk. The facts as stated by the respondents show that ad-hoc promotion made prior to 1983 (the date of publication of the combined seniority list) was on the basis of earlier seniority list in which the applicant was shown as junior to Shri. Bhatt and six others. After the publication of the revised seniority list in 1983, all the ad-hoc promotions have been reviewed and regular promotions were made and the applicant was also promoted from

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January'84. In the circumstances, we hold that the applicant is not entitled to promotion as Head Clerk prior to 01.01.84.

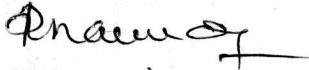
6. The next contention of the applicant is that he ought to have been given seniority from 08.11.55 when he entered as a Clerk in the open line. He also relies upon the Judgment of the Bombay High Court. However, the facts show that the respondents published the revised seniority list on 23rd / 25th March 1983 and the applicant did not challenge the same in any proceedings. It is only after 1993 after his retirement, he has filed the present O.A. No cogent reasons were given by the applicant for this inordinate delay.

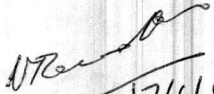
7. The Hon'ble Supreme Court in the case of Maloom Lawrence Cesil D'Souza V/s. Union of India 1975 SLR 409 held that the seniority matters cannot be re-opened after long delay. In this regard, we may refer to the following observations of the Hon'ble apex Court in its Judgment at para 9 :-

" 9. The matter can also be looked at from another angle. The seniority of the petitioner qua respondents 4 to 26 was determined as long ago as 1956 in accordance with 1952 rules. The said seniority was reiterated in the seniority list issued in 1958. The present writ petition was filed in 1971. The petitioner, in our opinion, cannot be allowed to challenge the seniority list after lapse of so many years. The fact that a seniority list was issued in 1971 in pursuance of the decision of this Court in Karnik's case (supra) would not clothe the petitioner with a fresh right to challenge the fixation of his seniority qua respondents 4 to 25 as the seniority list of 1971 merely reflected the seniority of the petitioner qua those respondents are already determined in 1956. Satisfactory service conditions postulate that there should be no sense of uncertainty amongst public servants because of stale claims made after lapse of

14 or 15 years. It is essential that any one who feels aggrieved with an administrative decision affecting one's seniority should act with due diligence and promptitude and not sleep over the matter. No satisfactory explanation has been furnished by the petitioner before us for the inordinate delay in approaching the Court. It is no doubt true that he made a representation against the seniority list issued in 1956 and 1958 but that representation was rejected in 1961. No cogent ground has been shown as to why the petitioner became quiteicent and took no diligent steps to obtain redress. "

8. In the facts and circumstances, the O.A fails and is dismissed. No costs.


(P. C. Kannan)
Member (J)


17/11/2000
(V. Ramakrishnan)
Vice Chairman

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CENTRAL ADMINISTRATIVE TRIBUNAL, DELHI

Application No. OA/307/93 of 19 .

Transfer application No. _____ Old Writ Pet. No.....

CERTIFICATE

Certified that no further action is required to be taken and the case is fit for consignment to the Record Room (Decided).

Dated: 24-01-2000

Countersigned: ANR
24-1-2000

~~Section Officer/Court Officer.~~


Signature of the
Dealing Assistant.

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

CAUSE TITLE O.A. / 307 / 93
NAME OF THE PARTIES Mr. K.M. Dubey
VERSUS
U.O.I. & ORS.

SR. NO.	DESCRIPTION OF DOCUMENTS	PAGE
01.	O.A.	1 to 76
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04.	Reply	83 to 88
05.	Attal in Rejoinder	89 to 100
06.	Judg. dtd. 17-01-2000	(8 pages)