

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

OA/321/93

Date of Decision : 10/12/2000

Shri. Phool Singh B. : Petitioner (s)

Mr. M.K. Paul : Advocate for the petitioner(s)

Versus

Union of India & Ors. : Respondent(s)

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?

JPW

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Shri. Phool Singh B.
Hindu Adult, Retired Rly. Driver,
Aged about 61 years,
Residing at
C/o. Shri. S. V. Damor,
New Gujarat Housing Board,
Q. NO. 158,
Surendranagar.

-: Applicant :-

(Advocate : Mr. M. K. Paul)

Versus

1. The Union of India
Owing W.Rly.,
Through : The General Manager,
Western Railway,
Church gate,
Mumbai : 400 020.

2. The Divisional Railway Manager,
W.Rly., Kothi Compound,
Rajkot.

-: Respondents :-

(Advocate : Mr. N. S. Shevde)

JUDGMENT

O.A 321 OF 1993

Date : 10/01/2000

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

We have heard Shri. M. K. Paul, counsel for the applicant and Shri. N. S. Shevde, counsel for the respondents.

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2. The applicant is aggrieved against the action of the respondents in not granting promotion as Driver Grade A (Ordy.) from 06.01.86 in the scale of 1600 – 2600 (RP) when his juniors were promoted and for granting promotion as Driver Grade (Spl.) Mail / Express in the grade of Rs.1640 – 2900 (RP) when his juniors were promoted.

3. The case of the applicant is that he was working as Driver (Grade 'C') and was summarily dismissed from service vide order dated 31.01.81. At the appellate stage, the matter was remanded to the inquiry officer and after due inquiry, the applicant was exonerated from all the charges and was reinstated in 1988 with the specific order that the intervening period from the date of dismissal to the date of reinstatement will be decided later on. Subsequently, the competent authority issued orders and treated the entire period "as having been spent on duty for all purposes including pensionary benefits". Accordingly, the applicant was reinstated and posted as Driver Grade 'C' from which post he was removed. The applicant submits that after reinstatement, he was granted seniority as Driver Gr. 'C' at Sr. No. 96. The applicant submits that the respondents made several promotions between 1981 – 88 when he was not in service. The applicant states that Shri. Indulal who was junior to him as Driver Grade 'C' and certain others were promoted in 1986 and in the circumstances he should have been promoted as Driver Grade 'A' (O) w.e.f. 06.01.86 when his juniors were promoted and subsequent promotions as Driver (Spl.) Mail / Express in Oct ' 87 when his junior Shri. Indulal was promoted as Driver (Spl.) Mail / Express in the scale of 1640 – 2900. As against the claim of the applicant, the respondents promoted the applicant as Driver Grade 'A' (Ordy.) in

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Nov'89 and the applicant retired from service on 31.10.90 as a Driver Gr. 'A' (Ordy.).

4. The respondents in their reply stated that the post of Driver (Grade 'B') is a selection post and the applicant was called for selection against the notification dated 15.03.80 prior to his dismissal. The applicant along with his juniors were called for the said selection on 19.05.80 but the applicant did not appear in the selection. A second chance was also given to him in Nov'80 but the applicant vide his letter dated 10.11.80 intimated that he was not interested in the selection. Shri. Indulal, who was junior to the applicant appeared in the selection and he was included at Sr. No. 1 of the panel which was notified by the office letter dated 22.01.82. In the circumstances, the respondents submits that the applicant cannot claim seniority and the position above Shri. Indulal. The respondents further stated that Shri. Ram Kishan who is given at Sr. No. 14 of the seniority list dated 06.01.86 was officiating as Driver Gr. 'A' from 01.06.81. As the applicant had appeared in the selection in the year 1989, and qualified, it was submitted that the applicant's claim for seniority over S/Shri. Indulal and others is not valid. The respondents further submitted that after the 4th Pay Commission, the post of Driver Gr. 'B' has been merged with Driver Gr. 'A' and treated as selection post from 01.01.86.

4. Mr. Paul, counsel for the applicant submitted that after the order of reinstatement issued by the respondents treating the intervening period 1981 – 88 as

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period of duty, the applicant should have been given promotion as Driver Gr. 'B' from the date his junior Shri. Indulal was promoted and given consequential benefits. Shri. Shevde submits that the applicant was promoted as Driver Gr. 'A' w.e.f. 08.02.88 as per order dated 20.12.90 as at Annexure A-15 even though he had appeared in the selection in 1989 on the ground that his junior one Shri. Hari Om was promoted as Passenger Train Driver on 06.12.88.

6. We have carefully considered the submissions of both counsel and examined the pleadings. The applicant was holding the post of Driver Gr. 'C' at the time of his dismissal in 1981. The main contention of the applicant is that he should have been promoted as Driver Gr. 'A' in 1986 when his junior Shri. Indulal was promoted. No other material has been placed before us to urge that the applicant is entitled to be promoted as Driver Gr. 'A' in the year 1986 or in the subsequent years.

7. The post of Driver Gr. 'B' is a selection post and when selection was conducted in May'1980, the applicant did not appear in the selection. Shri. Indulal and certain others who were juniors to the applicant had attended the selection and qualified in the same. After the 4th Pay Commission Report in 1986, Driver Gr. 'B' has been merged with Driver Gr. 'A' and accordingly Shri. Indulal and certain others have been posted as Driver Gr. 'A' from 06.01.1986. We therefore, find force in the submissions of the counsel for the respondents that the applicant, in the facts and

circumstances cannot claim seniority over Shri. Indulal G. and others. The action of the respondents in promoting the applicant as Driver Gr. 'A' w.e.f. 08.02.88 from the date his junior one Shri. Hari Om was promoted appears to be in accordance with the rules and instructions.

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

Place of

(P. C. Kannan)
Member (J)

V. Ramakrishnan
(09/12/2000)

(V. Ramakrishnan)
Vice Chairman

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CENTRAL ADMINISTRATIVE TRIBUNAL, DELHI

Application No.

681/321/93

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

Amber
24-1-2000

Section Officer/Court Officer.

Signature of the Dealing
Assistant

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

CAUSE TITLE O.A. /

NAME OF THE PARTIES

VERSUS
U.O.I. & ORS.

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