

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 339/93
T.A. No.

DATE OF DECISION 27-10-94

Mr. N.C. Dhyani Petitioner

Mr. Y.V. Shah Advocate for the Petitioner(s)

Versus
Union of India and Others Respondent

Mr. Anil Kothari Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. K. Ramamoorthy Member (A)

The Hon'ble Mr. Dr. R.K. Saxena Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

No

Narendra C. Dhyani
 I.O.W. (T)
 C/o. Dy. Chief Engineer (C) II
 Western Railway, Ahmedabad.

Applicant.

Advocate Mr. Y.V. Shah

Versus

1. Union of India
 through the General Manager
 Western Railway, Churchgate,
 Bombay.
2. Chief Admn. Officer,
 Western Railway, Churchgate,
 Bombay.
3. Chief Engineer (C)
 Head-quarter, Western Railway
 Churchgate, Bombay.
4. Divisional Railway Manager
 Western Railway, Baroda.
5. Shri Ranjit singh
 I.O.W. (C)
 C/o Dy. Chief Engineer (C)
 Western Railway, Jaipur.

Respondents

Advocate Mr. Anil Kothari

J U D G M E N T

In

Date: 27-10-94

Q.A. 339/93

Per Hon'ble Dr. R.K. Saxena

Member (J)

This is ~~a~~ third round of litigation because
 whatever judgments were given in the matters relating to the

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parties, they were not complied with. The applicant therefore approached the Tribunal for seeking relief with respect to his seniority and consequential promotion.

2. The brief facts of the case are that the applicant was appointed as Sub-oversear-Mistry on 9-6-1961 in the Survey and Construction department of the Western Railway. The respondent no.5, Shri Ranjitsingh was also appointed as Sub-oversear-Mistry in the said Survey and Construction Department on 9-10-1961. The applicant was promoted on the post of Assistant-Inspector of Works now designated as Inspector-of-Wroks Grade III on 1-1-1970 and he continued to work till 6-1-1975. During the dis-charge of his duties as public servant, he met with an accident at the site of construction. He was, therefore, given sick leave from 6-1-1975 to 25-3-1976. Since the Medical Officer who had treated him, had advised light duty, an alternative employment was sought. Although before accident he was working as Inspector-of-Works Grade III which was equivalent to that of Senior Estimator, he could not be accommodated on that equivalent post and was given the post of Junior Estimator which was equivalent

to Sub-Oversear-Mistry. During this period Shri Ranjitsingh who was junior to the applicant, was promoted on 17-8-1976 as Inspector-of-Works, Grade III. The applicant represented his case but the respondents paid no heed. Ultimately the applicant filed Special Civil Application No. 1035/76 in Gujarat High Court which was decided on 15-11-1979 and the plea of the applicant was upheld. Hon'ble High Court of Gujarat held that there would be no justification for keeping the petitioner a comparatively senior man to be reverted and many persons junior to him continuing in and enjoying that higher post of Assistant-Inspector-of-Works with further benefit of the promotion which had been reaped by them during the course of expansion of work. The High Court then directed the respondents to continue the petitioner (the present applicant) as Assistant-Inspector of Works Grade III and further directed them to grant such other and further reliefs as would be due to him in the normal course, including the arrears of pay and seniority. Despite this judgment, the applicant was not given the seniority although he was posted as Assistant Inspector of Works, Grade III. The result was that Shri Ranjitsingh

who was junior to the applicant was allowed to continue as Inspector-of-Works Grade III and subsequently on 23-5-1983, he was promoted as Inspector of Works, Grade III. The applicant on the other hand could be promoted only on 2-12-1991. The plea of the respondents in the matter was that Shri Ranjitsingh continued because a writ was filed in Bombay High Court and stay was granted. The applicant has filed a copy of the judgment Annexure A-9, in Special Civil Application No. 2518/74 decided on June 19, 1978 in which directions of preparing combined list of all the employees working on open line and Survey and Construction Division, were given. On the plea that the combined list was not prepared, the case of the applicant could not be taken up. He was, therefore, constrained to approach this Tribunal through O.A. 246/88 raising the question of seniority. This O.A. was decided on 18-8-1992 in which directions were given to consider the representation of the applicant in the matter. Consequently the representation was moved by the applicant but as usual, the same was rejected by the Chief Engineer (Churchgate, Head quarters, Western Railway, Bombay) and was communicated to the applicant vide letter dated 8-1-1993, Annexure A-8. It is therefore, that the applicant has again approached the Tribunal.

3. The respondents contested the case on the same grounds which ~~were~~^l taken before the Gujarat High Court, in Special Civil Application No. 1035/76 decided on 15-11-1979 Annexure A-1 and the plea of dispute of seniority, which was decided by the Bombay High Court in Special Civil Application No. 2518/74 decided on June 19, 1978, Annexure A-9 and in O.A. 246/88. We fail to understand as to why the question of the applicant being not promoted as Inspector of Works Grade III on regular post is being taken when it was finally decided by Gujarat High Court and directions were given to the respondents to post him as Inspector of Works Grade III, because his juniors were also promoted. Nothing has been shown if the judgment of Gujarat High Court was challenged by the respondents in any manner. It is, therefore, clear that it was finally decided between the parties that the applicant was to be promoted as Inspector of Works Grade III if not right from the date 1-1-1979 on which he was actually given this promotion, from the date when his juniors were promoted. Admittedly Shri Ranjitsingh, respondent No. 5, was junior to the applicant and therefore, there was no question of the applicant being demoted from the post of Inspector of

Works, Grade III on which he was posted on 1-1-1970 when ^{on 17.8.1976} Ranjitsingh himself was promoted on that basis. Any way, the matter is finally settled ^{by} with the judgment of the High Court of Gujarat. Sofar as the mode of determination of seniority was concerned, it was decided by the Bombay High Court. It is pointed out by the learned counsel for the applicant that the judgment of the Bombay High Court was challenged by the respondents by filing Special Leave Petition in the Supreme Court but the same was not admitted. In this way, even the judgment of the Bombay High Court becomes final.

4. This Tribunal in O.A. 246/88 had given directions to consider the representation about the seniority of the applicant but it was rejected without keeping these facts in mind. It is really surprising that Shri Ranjitsingh, respondent no.5, was promoted on the post of Inspector of Works Grade II on 23-5-1983 whereas the applicant who is admittedly senior to the respondent No.5, could be promoted only on 2-12-1991. The plea taken by the respondents is that Shri Ranjitsingh belongs to Ajmer Division whereas the applicant belongs to Baroda

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Division and their seniority was maintained Division-wise.

It is also contended that Shri Ranjitsingh was given promotion locally and therefore he continued as Inspector of Works Grade III. When Bombay High Court had decided the issue~~s~~ of seniority and also laid down the guide-lines as to how the seniority shall be determined by all the Divisions combinedly, the respondents are not left with the plea that the seniority is being kept Division-wise. This ~~act~~ is leaning towards arbitrariness rather than following the dictum of the Courts given in various cases. No doubt, the learned counsel for the respondents has drawn our attention that certain Rules of Seniority or of service were framed - but they have not been shown to us.

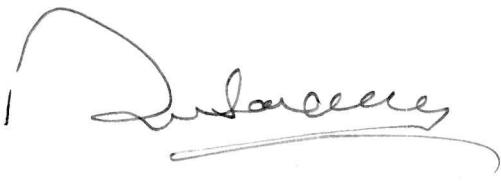
5. Looking to all these circumstances and the facts of the case, we are of the opinion that if Shri Ranjitsingh could be promoted to the post of Inspector of Works Grade II~~s~~ there is no reason why the applicant who is senior to Shri Ranjitsingh, cannot be promoted on that post. Since promotion of Shri Ranjitsingh on the post ~~is~~ of



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Inspector of Works Grade II is given on 23-5-1983, we also direct that the applicant should also be considered for promotion of Inspector of Works, Grade II from that date.

6. On consideration of all these facts, the application is allowed with special cost of Rs. 500/-



(Dr. R.K. Saxena)
Member (J)



(K. Ramamoorthy)
Member (A)

*AS.

CENTRAL ADMINI
AHMEDABAD

Application No. 041329193 of

Transfer Application No. _____ of

CERTIFICATE

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

Dated : 25-11-94

Countersign :



Section Officer

ccclap
Signature of the Dealing
Assistant

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AT AHMEDABAD BENCH

INDEX SHEET

CAUSE TITLE 041339193 CF 19

NAME OF THE PARTIES Mrs. N. C. Dhyani

VERSUS

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