

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 438/93
T.A.NO.

DATE OF DECISION 15.7.98

Chhotubhai Mistry Petitioner
Through: Legal Heirs

Mr.P.K.Handa 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.Radhakrishnan : Member(A)

The Hon'ble Mr.Mr.Laxman Jha : 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 ?

Chhotubhai Mistry

Legal Heirs:

Smt. Madhybhai -Widow

Kanubhai C -Son

Rameshbhai C -Son

Maheshbhai C -Son

Mukeshbhai C -Son

Orajashbhai C -Son

Address:

Block No.487,

Room No.336,

Railway Colony,

Opp.Vohra Ki Chawl,

Maninagar, Ahmedabad-380 008

: Applicants

(Advocate: Mr.F.K.Handa)

Versus

1. Union of India,
Owning & represented
by the General Manager,
Western Railway,
Churchgate, Bombay-400 020
2. Divisional Railway Manager,
Western Railway, Baroda Div.
Baroda-390 004.
3. Sr.Divisional Accounts Officer,
Western Railway,
Baroda-390 004.
4. Divisional Mechanical Engineer(Loco)
Western Railway,
Baroda-390 004.


: Respondents

(Advocate: Mr.N.S.Shevde)

O.A.438/93

Date: 15.7.98

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

The applicant has approached this Tribunal praying
for the following reliefs:-

"In view of the facts mentioned in para-4 above, the applicant prays to the Hon'ble Tribunal to direct the respondent to pay arrears from the date of his promotion i.e. from 5.1.84 upto the date of his actual promotion i.e. upto 21.7.86 based on Jankiraman's case decided by Hon'ble S.C. b) Any other reliefs which the Hon'ble Tribunal deems fit.

c) Cost of the suit be awarded."

The facts of the case are briefly stated as under.

The applicant while he was working as Driver 'C' was suspended on 27.2.1983. Subsequently, his suspension was revoked on 21.4.1983. It was also decided later that period of suspension to be treated as duty under letter dated 24.4.1987. Later he was issued a chargesheet but it appears that the department did not proceed with the charge-sheet and finally it was dropped. The applicant was promoted on 4.1.1984 the date on which his junior was promoted. Accordingly, he was given promotion to the post of Driver 'B' Diesel notionally w.e.f. 5.1.1984, but he was actually given the pay of higher post only w.e.f. 21.7.1986. The applicant claims that because of the denial of promotion to him from the xoriginal date he has been denied financial benefits from the period of he was notionally promoted. It was not his fault that he was promoted at a later stage but it was due to the administrative authorities who denied him the

him the promotion and hence he should be given full financial benefits from the date of notional promotion i.e. 5.1.1984.

The respondents in the reply have admitted that the applicant was not considered for promotion and proceedings were initiated against him in May, 1983 but subsequently the proceeds were dropped by the competent authority the inquiry conducted by the Assistant Mechanical Engineer, Ahmedabad could not be finalised due to various reasons. Further the appellate authority had decided that the period of suspension of the applicant should be treated as spent on duty. He was also promoted on 5.1.1984 notionally from the date of promotion of his juniors but he was given financial benefits only when he actually started working as Driver 'B' Diesel ie. only from 21.7.86.

Mr.Handa learned counsel for the applicant relied on the judgment of the Hon'ble Supreme Court in Janki Raman AIR 1991 SC 2010. In that case the Hon'ble Supreme Court decided that when the sealed cover is opened after exoneration of the charged official and he is found fit for promotion he is to be given the notional promotion from the date of promotion of his juniors with full pay and allowances from that date.

Mr.Shevde for the respondents argued that no doubt the charges against the applicant were dropped, later on the applicant was promoted as Driver 'B' but he actually assumed charge only from 21.7.1986 and from 5.1.1984 to 21.8.86 the applicant had not performed the duties of

the higher post and hence even though he has been given notional promotion from 5.1.1984 he cannot be given financial benefits from 5.1.1984.


While it is agreed that the applicant did not perform the duties of the higher post from 5.1.1984 to 21.8.1986 it was not due to his refusal to do so but because the authorities had proceeded against him. It was also not disputed that ultimately the proceedings were dropped and he was reinstated in service and the entire suspension period was treated as spent on duty. This would go to prove that the suspension of the applicant and disciplinary proceedings against him were not really having any foundation. In this connection the Hon'ble Supreme Court observed in Janki Raman's case AIR 1991 SC 2010 that "'No work no pay' is not applicable to cases such as the present one where the employees although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from the work for his own reasons though the work is offered to him". We are convinced that the case of the applicant actually falls within the ratio of the above judgment and demands that the applicant should be given full financial benefits for the period from 5.1.1984 to 21.7.1986. Accordingly, the application is allowed. The respondents are directed to pay the arrears of the pay and allowances of the applicant for the above period by refixing his pay from 5.1.1984 as Driver 'B'. The applicant has since expired, the heirs have been

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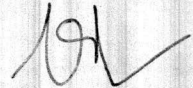
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brought on record. The arrears worked out above, shall be paid to the heirs of the applicant within three months from the date of receipt of a copy of this order.

With the above directions, O.A. stands disposed of. No costs.



(Laxman Jha)
Member(J)



(V. Radhakrishnan)
Member(A)

CENTRAL ADMINISTRATIVE TRIBUNAL DELHI

Application No.

of 19

as/438/93

Transfer application No.

Old Write 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:

24/7/98

Countersigned.

Section Officer/Court Officer.


Signature of the Dealing
Assistant.

MGIPRRND—17 CAT/86—T. S. App.—30-10-1986—150 Pads,

CAUSE, TITLE

CA 43893

NAME OF THE PARTIES

Chhotu Phaj Miston

VERSUS

4-02 Rev

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