

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No./641/93
T.A. No.

DATE OF DECISION 17th December, 1993

P.M. Mahajan

Petitioner

Mr. S. K. Bukhari

Advocate for the Petitioner(s)

Versus

Union of India & others

Respondent

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N.E. Patel

: Vice Chairman

The Hon'ble Mr. K. Ramamoorthy

: Member (A)

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 ?

W

P.M.Mahajan,
residing at 14-A, Railway Employees
Co. Op. Housing Society, Nr. C.T.M.,
Ramlal Road, Amraiwadi,
Ahmedabad

: Applicant

Advocate : Mr.S.K.Bukhari

versus

1. Union of India, to be served
through the
General Manager (E),
Western Railway,
Churchgate,
Bombay

2. The Chief Commercial Superintendent,
Western Railway,
Churchgate,
Bombay

3. The Divisional Rail Manager,
Western Railway,
Pratapnagar,
Baroda.

: Respondents

ORAL ORDER

O.A.641/93

Date: 17.12.93

Per : Hon'ble Mr.N.B.Patel, Vice Chairman

Though A.D.Slip is not received
back, the notice was issued on 11-11-1993 and must be
deemed to have been served. The applicant and his advocate
are not present. Hence, dismissed for default.


(K.RAMAMOORTHY)

Member (A)


(N.B.PATEL)
Vice Chairman

Date	Office Report	Order
28.1.94		<p>None is present for the applicant In the interest of justice, adjourned to 11.2.94.</p> <p><i>R</i> (K. Ramamoorthy) Member (A)</p>
11.2.94		<p>*as*</p> <p><u>M.A.23/94 in O.A.641/93</u></p> <p>Heard Mr. Shevde. M.A. allowed. Order dismissing O.A.641/93 set aside and the said O.A. restored to file. It may be listed for admission hearing on 18-2-1994.</p> <p><i>R</i> (K. Ramamoorthy) Member (A)</p> <p><i>7</i> (N.B. Patel) Vice Chairman</p>
18/2/94		<p>*AS</p> <p>Bar Association has resolved to abstain from work as a measure of condolence on the death of Mr. Chimanbhai Patel, Chief Minister of Gujarat State, adjourned to 7/3/1994.</p> <p><i>R</i> (K. Ramamoorthy) Member (A)</p>

Date	Office Report	Order
7-8-1994	<p>Proceedings still not started. Date of hearing to be decided by date of filing of plaint from (A) side.</p> <p>Plaint from (A) side D.C.H. Notice issued on 09.8.94. R.P.A.D. for Applicant Advocate & Res No. 283 Case received.</p> <p><u>Arrival</u> 20.8.94</p> <p>(N.Ramamoorthy) Sampath (A)</p> <p>AP/8/1</p>	<p><u>Admitted.</u> Issue notice to the respondents to file reply within a period of 4 weeks. Applicant may file rejoinder, if any, thereafter within 15 days. After the pleadings are completed, the matter may then be fixed for final hearing in due course.</p> <p>L</p> <p>(K. Ramamoorthy) Member (A)</p> <p>AP.8.11</p>

DATE	कार्यालय टिप्पणी OFFICE REPORT	आदेश ORDER
24.08.99		<p>Mr. Shevde says that he will enter appearance for the respondents and also file reply or adopt reply filed in another O.A.</p> <p>Adjourned to 15.09.99.</p>
15/9/99		<p>Mr. Shevde prays for a short adjournment. Adjourned to 28/9/99.</p> <p>Mr. Bokhari present.</p> <p><i>AS</i> <i>VR</i> (A. S. Sanghvi) (V. Ramakrishnan) Member (J) Vice Chairman</p> <p>Adjourned to 29/9/99</p>
28/9/99		<p><i>AS</i> <i>VR</i> (A. S. Sanghvi) (V. Ramakrishnan) Member (J) Vice Chairman</p> <p>Place it before the special bench on 13.10.1999.</p>
29.9.99		<p><i>AS</i> <i>VR</i> (A. S. Sanghvi) (V. Ramakrishnan) Member (J) Vice Chairman</p> <p>vtc.</p>

तारीख DATE	कार्यालय टिप्पणी OFFICE REPORT	आदेश ORDER
13.10.99		<p>We find from the reply statement that the so-called juniors were given certain benefits as per the orders of the Hon'ble Supreme Court which was conveyed in letter dated 14.3.91. in OA/169/93</p> <p>We find from the Annexure A-7 issued by the Divisional Office Baroda that there is a reference to letter dated 14.3.91 of D.R.M. (E) Baroda and in letter of General Manager dated 21.2.91. The respondents should make available copies of these letters and also details of the Supreme Court's judgement.</p> <p>Adjourned to 19.11.1999.</p> <p><i>AS</i> <i>VR</i> (A.S.Sanghavi) (V. Ramakrishnan) Member (J) Vice Chairman</p> <p>pmr</p>

Date	Office Report	ORDER
19.11.99	<p>Copy of the order collected by Mr. Shevde on 25.11.99</p> <p><u>ANRAV</u> <u>25.11.99</u></p>	<p>Mr. Shevde prays for time to furnish the detailed particulars especially whether the persons stated to be junior to the applicant namely Y.T.Mody, V.S.Joshi, K.S.Shah etc. whose names figure in the order dated 4.6.92 as at Annexure A-4 has undergone a selection process before promotion to the scale of Rs.2000-3200 and also ^{for} the reasons as to why the applicant was not given benefit. A copy of the order be given to Mr. Shevde.</p> <p>Adjourned to 14.12.99.</p> <p><i>AS</i> (A.S.Sanghavi) Member (J)</p> <p><i>VR</i> (V.Ramakrishnan) Vice Chairman</p> <p>pmr</p>
14.12.99		<p>None for the parties. Adjourned to 17.1.2000</p> <p><i>VR</i> (V.Ramakrishnan) Vice Chairman</p> <p>vtc.</p>
17.1.2000		<p>Seen resolution of the Bar Association to the effect that they are abstaining from work today in protest against the proposed amendment to the Advocates Act. Adjourned to 8.2.2000.</p> <p><i>AS</i> (A.S.Sanghavi) Member (J)</p> <p><i>VR</i> (V.Ramakrishnan) Vice Chairman</p> <p>vtc.</p>

Date	Office Report	ORDER
08.02.2000		<p>Mr. Shevde prays for further time saying</p>
		<p>that these are old records. Respondents shall positively produce the detail particulars as per the our old order dated 19.11.99. which take</p>
		<p>Call on 02.03.2000.</p>
		<p><i>PN</i> (P.C. Kannan) Member (J)</p>
		<p><i>mb</i></p>
		<p><i>Order decked</i></p>
		<p><i>12</i></p>
23/2/		
		<p><i>PN</i></p>
		<p><i>order decked</i></p>
		<p><i>12</i></p>
00.02.2000	Office Report	Order dated 19.11.1999
		<p><i>PN</i></p>
		<p><i>order decked</i></p>
		<p><i>12</i></p>
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		<p><i>12</i></p>
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		<p><i>order decked</i></p>
		<p><i>12</i></p>

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. /641/1993
~~TAX NO.~~

DATE OF DECISION 2-3-2000

P.N. Mahajan

Petitioner

Mr. S.K. Bukhari

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 ?
2. To be referred to the Reporter or not ?
3. Whether their Lerdships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

P.N. Mahajan
Residing at 14-A Railway Employees
Co-op. Housing Society, Dr.C.T.M.Ramol Road,
Amraiwadi, Ahmedabad-26.
Advocate Mr.S.K.Bukhari
Versus

1. Union of India
(To be served through the
General Manager (E) Western Railway
Churchgage, Bombay-400 020.
2. The Chief Commercial Superintendent
Western Railway, Churchgate
Bombay-400 020.
3. The Divisional Rail Manager
Western Railway, Pratapnagar
Baroda-390 004.

Respondnet

Advocate: Mr. N.S. Shevde
Oral order
In
O.A./641 of 1993 Dated 2.3.2000

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

We have heard Mr. Shevde for the Railway Administration
and have also gone through ^{few} materials on record. We have perused
the relevant file shown to us by Mr. Shevde particularly the letter
dated 28.4.98 from the D.R.M. Baroda to the Union giving reasons
as to why some of the juniors to the present applicant were given
promotion.

2. The applicant had joined Railway service in the
Commercial Department as a Goods Clerk and rose to the level of

Head Goods Clerk which was in the scale of Rs. 425-640 (revised scale 1400-2300) On account of restructuring orders as per the Railway Board letter dated 16.11.84 a number of posts ^{over} upgraded to the higher level by reducing the posts at the lower level and a modified selection procedure was also laid down. As per this he was given promotion to the level of Chief Goods Clerk. He contends that some persons who according to him are his juniors were given proforma fixation of pay in the next higher grade of Rs.700-900 (revised scale Rs.2000-3200) and the same benefit has not been extended to him. The applicant has challenged the Circular dated 14.3.91 issued by the D.R.M. Baroda and also the order dated 4.6.92 giving proforma promotion to some other officials in the Railway service w.e.f. 1.1.84 in the scale of Rs.2000-3200.

3. The Railways have resisted the claim holding that the applicant was in the scale of 1600-2660 at the time of retirement and has not appeared in the selection test for promotion to the scale of 2000-3200 and hence the benefit of promotion to the scale of 2000-3200 cannot be given to him.

4. We find that the applicant who was Head Goods Clerk was promoted retrospectively as Chief Goods Clerk in the scale of

Rs.1600-2660 consequent to additional posts on account of restructuring orders. The Railway Board had prescribed in the restructuring orders a modified selection procedure to the effect that if the higher post is a selection post, the selection procedure shall stand modified in such cases to the extent that promotion will be based only on scrutiny of service records without holding any written or viva voce test. It is also clarified that this is available only in respect of vacancies which were existing as on 1.1.84 and not in respect of vacancies which had accrued after that date.

The Railways have resisted the claim holding that the applicant was in the scale of 1600-2660 and has not appeared in the selection test for promotion to the scale of 2000-3200 and hence the benefit of promotion to the scale of 2000-3200 cannot be given to him.

5. We may mention here that some general candidates had approached the Supreme court contending that the SCs and STs cannot be given reservation in excess of the prescribed percentage of 15% or 7 1/2% as the case may be in the entire cadre irrespective of vacancies in a particular recruitment. Some interim directions were given and consequent to such interim directions General Manager, Western Railway had issued an order dated

21.2.91 as at Annexure A-3. The relevant portion of this order reads as follows:-

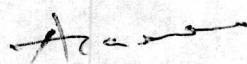
"I) Those SC/ST employees who were promoted with effect from 1.1.84, in excess of their prescribed percentage (i.e. 15 SC and 7 and half percent ST in contravention to the Board 's instructions envisaged in their letter No. 85 E (SCT)49/2 dated 26.2.1985 circulated under GM(E) CCG's letter No. E (SCT) 220/15 (i) (Court Cases dt.12.3.1985 (PS No. 71/85) are to be adjusted against the future vacancies and no recoveries are to be made from them.

II) The senior persons who could not be promoted against upgraded post with effect from 1.1.84 may be given proforma position only vis a vis their juniors, who have been promoted after 12.3.1985 and actual payment at the enhanced rate be made from the date of physically shouldering responsibility".

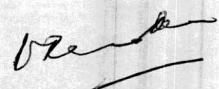
6. From the perusal of these orders it is seen that some additional posts became available in the grade of Rs.2000-3200 for general candidates w.e.f. 1.1.84 which is the date from which the restructuring orders took effect. The applicant had retired on 30th June, 1990 as seen ^{on} annexure ~~at~~ A-6 and while the Railway Board issued the orders in Feb.1991 consequent to the interim directions of the Supreme Court. A number of persons in the grade of Rs.1600-2660 were considered for the level of Rs.2000-3200 and these are Y.T.Modi, V.S.Joshi and K.S.Shah.etc. and they were promoted to the level of Rs.2000-3200 by the order dated 4.6.92. The applicant had retired well before the date on which the Railways letter dated 21.2.91 was issued and such a letter is in the

nature of a new decision. We also note that order of 4.6.92 while giving proforma promotion to the ~~applicant~~^{Officer} from 1.1.84 gives them actual financial benefit only w.e.f. the date of shouldering the responsibility. The applicant could not get the actual financial benefit and he retired prior to that date. In the circumstances the claim of the applicant that his pay should be stepped up at higher stage or he should be given the pay at higher level in the scale of Rs.2000-3200 cannot be agreed to.

7. In the light of the foregoing discussion we hold that the O.A. is devoid of merit and we dismiss the O.A. without any orders as to costs.



(A.S.Sanghavi)
Member (J)



(V.Ramakrishnan)
Vice Chairman

pmr