

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. /730/93
T.AxNO.

DATE OF DECISION 29.5.2000

G.P.Khadodaria Petitioner

Mr. P.H.Pathak Advocate for the Petitioner [s]
Versus

Union of India & another 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 ? ~

Girishchandra Premjibhai Khadodaria
17, Gandhi Colony
Vidhyanagar, Bhavnagar.

Applicant

Advocate Mr.P.H.Pathak

Versus

1. Union of India
Notice to be served through
General Manager, Western Railway
Churchgate, Bombay.
2. Chief Personnel Officer
Western Railway, Head of Department
Churchgate, Bombay.

Advocate: Mr. N.S.Shevde

Oral Order
In
O.A./730/93 **Date 29.6.2000**

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

Mr. P.H.Pathak is not present now. Mr. N.S.Shevde is present. On the last many occasions Mr. Pathak had submitted that he will not like to argue the matter and that the applicant himself would be making submissions. He has however not retired from the case. Even though a number of opportunities were given no steps have been taken nor has the applicant appeared before us in person. On 18.2.2000 it was adjourned to 23.3.2000 and it was made clear that no further time would be given. Again on 19.4.2000 it was adjourned to 9.5.2000 and on that day it was

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adjourned as a last chance to today. Neither Mr Pathak nor the applicant has appeared today also. The O.A. is dismissed for default.


(A.S.Sanghavi)
Member (J)


(V.Ramakrishnan)
Vice Chairman

pmr

DATE	OFFICE REPORT	ORDER
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6.10.2000

At the request of the Misc. applicant adjourned to 8.11.2000.


(A.S. Sanghavi)
Member (J)


(V. Ramakrishnan)
Vice Chairman

vtc.

8.11.2000

Mr. Pathak for the applicant not present and is reported busy in the High Court. Adjourned to 5.12.2000.


(A.S. Sanghavi)
Member (J)

Mo

5/12/2000

Adjourned to 09/01/2001

 
(A.S. Sanghavi) (V. Ramakrishnan)
Member (J) Vice Chairman

दिनांक
Dateकार्यालय टिप्पणी
Office Reportआदेश
Order

9.1.2001

Mr. Pathak and Mr. N.S. Shevde present.

The matter may be placed before the
Division Bench matter. Adjourned to 6.2.2001.(A.S.Sanghvi)
Member (J)

mv

6.2.2001

Mr. Pathak says he has retired from the case
and that Mr. Khadodaria, applicant himself will
argue in person. Mr. Khadodaria in person
confirms this position. Registry to note. At
the request of miscellaneous applicant, adjourned
to 9.3.2001.(V.Ramakrishnan)
Vice Chairman(A.S.Sanghvi)
Member (J)

sm

9.3.2001

At the request of Party-In-Person,
adjourned to 18.4.2001.(V.Ramakrishnan)
Vice Chairman(A.S.Sanghvi)
Member (J)

mv

2001

Mr. Khadodaria has filed a sick note.
Adjourned to 21.5.2001.(V.Ramakrishnan)
Vice Chairman(A.S.Sanghvi)
Member (J)

sm

दिनांक Date	कार्यालय टिप्पणी Office Report	आदेश Order
21.6.2001		<u>M.A 572/00</u>
		<p>M.A is allowed and the O.A is restored to the file. The applicant is ^{and} appearing in person says that he has given written arguments and that he will make oral submissions in this case. A copy of the written arguments has been handed over to Mr. Shevde. Mr. Shevde prays for an adjournment.</p> <p><u>M.A 170/2001</u></p> <p>Rejoinder is taken on record and a copy has been given to Mr. Shevde. M.A is disposed of. Adjourned to 18.7.2001.</p> <p style="text-align: center;">A</p> <p>(A.S.Sanghvi) Member (J)</p> <p style="text-align: right;">M</p> <p>(V.Ramakrishnan) Vice Chairman</p> <p style="text-align: center;">mv</p>

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p 23 // 1928-1929 & 1929-1930 the oil of 1928-1929
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दिनांक Date	कार्यालय टिप्पणी Office Report	आदेश Order
18.7.2001		<p>Mr. Shevde files sur-rejoinder. The applicant has filed his written arguments. We have heard Mr. Shevde and taken note of written arguments. Order dictated.</p> <p style="text-align: right;">(A.S.Sanghvi) (V. Ramakrishnan) Member (J) Vice Chairman</p> <p>sm</p>

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CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH, AHMEDABAD

O.A. 730/1993

Ahmedabad this the 18th day of July, 2001.

Hon'ble Mr. V. Ramakrishnan, Vice Chairman
Hon'ble Mr. A.S. Sanghvi, Judicial Member

Girishchandra Premjibhai Khododaria
17, Gandhi Colony
Vidhyanagar, Bhavnagar.

Applicant

Advocate: Mr. P.H. Pathak

Versus

1. Union of India
Notice to be served through
General Manager
Western Railway, Churchgate,
Bombay.
2. Chief Personnel Officer
Western Railway,
Head of the Department
Churchgate, Bombay.

Respondents

Advocate: Mr. N.S. Shevde

ORDER (ORAL)

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

The applicant who belongs to Scheduled Caste is aggrieved by the fact that persons belonging to general category and who are junior to him at the level of Asstt. Personnel Officer in the Railway Department has been promoted to the senior scale as Divisional Personnel Officer. In the OA he has sought the following reliefs:

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(A) The Hon'ble Tribunal be pleased to declare the impugned action on the part of the respondents not granting promotion to the applicant to the post of DPO/SPO in scale of Rs. 3000-4500, as arbitrary, illegal, unconstitutional and violative of Art. 14 & 16 of the Constitution of India and be pleased to direct the respondents to grant promotion to the applicant in the Sr. pay scale from the retrospective date i.e. from the date when his juniors are granted promotion.

(B) Be pleased to declare that the applicant is entitled to get promotion in the Sr. pay scale of Rs. 3000-4500 on the basis of reservation for Schedule Caste employee as well as on the basis of his merit in the panel list of Assistant Personnel Officer and therefore direct the respondents to grant promotion to the applicant from the retrospective date i.e. from the date since when the post in Sr. pay scale for Schedule Caste candidate is available vacant.

(C) Be pleased to declare that there is no justification available to the respondents to ignore the claim of the applicant for further promotion in the Sr. pay scale and the respondents have acted contrary to the settled legal position and therefore direct the respondents to grant all consequential benefits to the applicant, with 18% int.

(D) Any other relief to which the Hon'ble Tribunal deems fit and proper in interest of justice together with cost.

2. This OA is filed on 22.12.93. However, the respondents had promoted him by an order dtd. 20.12.93 and sent him as DPO to Bombay Central and pursuant to the above order the applicant joined as DPO, Bombay a few days after the issue of this order. The fact of this promotion by an order dtd. 20.12.93 was not known to the applicant when he filed the OA. When it came to his notice, he amended the OA to the effect that he should be given promotion to the senior scale from a retrospective date that is from

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the date of availability of Schedule Caste vacancy and as per the seniority of the applicant.

3. We have heard the applicant who has submitted his written arguments and Mr. Shevde for the respondents. We had taken into account the materials on record including the written arguments of the applicant.

4. The applicant joined the Railway service in the clerical cadre in 1958. He became a senior clerk and subsequently after clearing the requisite selection he was promoted to the post of Inspector of Hours of Employment Grade-II with effect from 6.5.77. He received further promotion as Inspector of Hours of Employment Grade-I in the scale of Rs. 700-900 on ad hoc basis with effect from 30.7.81. The post of Asst. Personnel Officer in the Railways is Group B post and as per the relevant recruitment rule, it is filled up from among the eligible candidates belonging to different cadres after a selection. The applicant was holding a post, which was in one of the feeder cadres for competing for the post of APO. He took the selection for Group B post. We find from the letter of the General Manager dtd. 16.11.83 that consequent upon the selection a number of class III staff of the Railways had been placed in the panel for promotion to the class II post of Asst. Personnel Officer in **order of merit.** (Emphasis added). We find from this letter that there were 17 persons in the panel and the applicant figured at serial no. 11. In other words there were 6 other persons belonging to general category including those from other feeder cadres like Chieff clerk, Inspector etc etc., who were below the applicant in

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order of merit. It is seen from this panel that the applicant was promoted to the level of APO on merit and not on relaxed standards. However, when posts were available at the level of DPO to be filled up on the basis of promotion from the level of APO the Railway Administration issued an order dtd. 30.11.93, by which it promoted a number of APO's to senior scale with immediate effect. A copy of this order dtd. 30.11.93 is at Annexure A/3. This order does not contain~~s~~ the applicant's name but it contains the names of a number of persons who had become APO on the basis of subsequent panel which was notified in 1988. To illustrate, this order promotes Mr. M.N.R. Nair, G.S. Bhatia, T. Sundarm etc. who figured in the panel notified on 25th November 1988 which is much after the 1983 panel. As the applicant's name did not figure in the order on 30.11.93, he had filed the present OA stating that he should be promoted from the date his immediate junior was given promotion as DPO. As stated earlier on his receiving promotion to senior scale by order of 20.12.93 he has amended the OA.

5. The respondents have taken the line that the applicant belongs to scheduled caste and no roster point of SC in the cadre of DPO was available prior to 20.12.93 and he was given promotion immediately when such point became available. They say that the reserved post at the level of DPO became available after about 20 days from 30.11.93 which is not material. The applicant in his written arguments has contested this position and says that he was senior most in the category of Asst. Personnel Officers and ⁱⁿ the list of seniority his name is shown at number 4 and the candidates who were promoted by an order dtd. 30.11.93 are from the next

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panel of 86,87 & 88 and they were all junior to him as shown in the seniority list. He also states that he was appointed as APO on merit and not on the basis of relaxed standards. He says that merely because he belongs to SC his seniority position cannot be ignored when a vacancy at the higher level is available. He also contends that the action of the Railway Administration is contrary to the ruling of the Supreme Court in the case of R.K. Sabarwal 1995 L&S 1618 and Virpal Singh Chauchan 1995 (6) SCC. ⁶⁸⁴ He brings out that there is no question of downward revision of his seniority at the level of APO when the post of APO was filled up from various cadres on the basis of merits and the fact that he might have received accelerated promotion in Group "C" cadre cannot adversely affect his interest. He relies in this connection on the decision of Jabalpur Bench of this Tribunal in the case of Ramsukh V/s. Union of India decided on 8.8.96 in OA 5/90. In the written argument he submits that he had a claim to be promoted when a reserve point became available which according to him was on 1.7.92 when Mr. M.N. Surti who belongs to SC had retired. He submits that in any case Shri Bhatia who is admittedly junior to him was promoted against a vacancy arising from the relief of Shri P.S. Soni who was a SC. As Shri Bhatia was promoted from 30.11.93, he should be promoted at least from that date. He has clarified this position in para 6 of the written ~~reply~~ arguments. In para 9 of the written arguments he has stated as follows:

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In view of the above, I pray your Lordships to grant me relief as per prayer and to grant me benefit of Senior Scale from retrospective date i.e. from 01.07.1992 or atleast from 30.11.1993 with all consequential benefits of pay etc., with interest.

6. Mr. Shevde for the Railway Administration has referred to the reply statement and also to the sur-rejoinder and says that the applicant was appointed to the Railways as reserved candidate and was subsequently promoted to Group B as Asst. Personnel Officer. Before, he reached the position in Group B he has availed himself of the benefit ^{of} accelerated promotion when he held Group 'C' post. It is also the stand of the Railway Administration that the number of post held by SC candidates in the concerned cadre was in excess of the prescribed percentage of 15 and in the context of the ruling of the Supreme Court reservation is not permissible for promotion to the level of DPO. They also state that the retirement of SC candidates on 1.7.92 would not give any right to the applicant for promotion as DPO since the percentage of SC candidate was in excess of 15% and that it was not possible to operate the roster point. Mr. Shevde however does not deny the contention that he was appointed as APO on merit and not by relaxed standards and he was also appointed as DPO in December 1993 on his own merit and not by applicant ^{of} relaxed standards.

7. In the light of the written argument of the applicant and materials on record and submission of Mr. Shevde the issues that ~~had~~ to be decided are as follows:

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- A. Whether the applicant was entitled to the promotion as DPO with effect from 1.7.92 and
- B. Whether the fact that the applicant belongs to SC and had received accelerated promotion in Group C can be a ground for delaying his promotion as DPO even after his juniors in APO's cadre had been promoted as DPO when he had been appointed as APO on merit.

8. As regards the first contention namely the claim that he had to be promoted with effect from 1.7.92, we note the categorical averments of the Railway Administration that the number of SC candidate in the concerned cadre was in excess of the prescribed percentage and that as per the law laid down by the Supreme Court and also the decision of the Bombay Bench in the case of 484/93 decided on 25.5.93 which had followed the decision in Malik's case the roster point cannot be operated in such a situation. The applicant in his written arguments has raised some doubts regarding the non-availability of the roster point and also refers to one Shrimali who was declared unfit. In the light of the categorical statement of the Railways filed in the reply statement and also in the sur-rejoinder dtd. 17.7.2001 we proceed on the basis that the number of persons belonging to SC in the concerned cadre were in excess of the prescribed percentage and as such roster point could not have been operated. Even otherwise there is no automatic right for any person to be promoted merely because a vacancy exists so long as his juniors had not been promoted. In the present case the requisite selection for DPO was held in 1993

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and there is no question of retrospective promotion. The request for retrospective promotion from 1.7.92 cannot be granted.

9. The applicant has prayed for an alternative relief that he should be promoted atleast from the date of 30.11.93 when Shri Bhatia was promoted. The only ground urged by the Railway Administration in deferring his promotion as DPO as compared to the juniors in APO cadre is that no post was earmarked for SC at the level of DPO prior to 20.12.93. It is not the case that the applicant was promoted as DPO on the basis of relaxed standards. On the other hand it is stated ^{by Mr. Ghosh} _✓ that the same standards applicable to the others were also enforced in respect of the applicant. It is also clear from the relevant seniority list that the applicant is admittedly senior to a number of others who are promoted by the order dtd. 30.11.93 and he in fact has been appointed as APO on the basis of the 1983 panel while the persons promoted in 1993 as DPO were appointed as APO as per the panel of 1986, 1987 & 1988. This is substantiated by the copy of the panel produced by the applicant and from the seniority list. As per the order dtd. 16.11.83 the applicant was appointed as APO and it made it clear that the panel has been drawn up on the basis of merit. The applicant is at serial no. 11 in that panel and six candidates are below him in that panel. As such it is not the case that the applicant has been promoted as APO on the basis of relaxed standards, which is not the stand of the Railway Administration also. The respondents have only stated that as he has received accelerated promotion in Group C before being appointed as Group B he has to wait for reserved post at the

level of DPO before he can be promoted as such. We do not agree with this proposition. The admitted position is that the applicant is senior to a number of others promoted as DPO by the order dtd. 30.11.93. He also has been appointed as APO as per his own merit and not on the basis of any relaxed standard. It cannot be the case that merely because a person belongs to SC, he has to wait till a roster point becomes available in the higher post irrespective of his seniority and his juniors in the lower cadre can be promoted against the general vacancies overlooking his seniority. Promotion to the higher level is not on the basis of the relaxed standards but on the basis of the same standards both for the general candidates and the Scheduled caste candidates. It is also not the stand of the Railways that his seniority as APO has been brought down below those promoted on 30.11.93.

10. The post of APO is filled up on from among eligible candidates of a number of cadres such as Welfare Inspector, Chief Clerk etc. etc. The applicant has rightly relied on the decision of the Jabalpur Bench of this Tribunal in the case of Ramsukh V/s. Union of India.

We may extract part of the observations of this Tribunal in that case.

The sum and substance of the legal position is that, a reserved candidate who takes a march over his senior general category candidate cannot have permanent advantage by becoming seniority (in the general category) in the promotional cadre over his senior in the feeder cadre. Thus, when the senior general category candidate is promoted, he regains

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his seniority in the promotional cadre over his reserved category junior. This seniority in the promotional cadre has to be readjusted accordingly.

At the time of promotion to the still higher grade, seniority as readjusted will be the governing factor. If the two do not belong to the same feeder cadre, the question of readjustment would not arise and the seniority of the reserved candidate based on his date of appointment to the promotional cadre will have to prevail. He cannot be denied promotion on the ground that there are no reserved vacancies in the still higher grade, for the simple reason, promotion in turn accordingly to the seniority does not depend upon the availability of reserved vacancies. In other words, promotion is sought in turn in his own right and not as a privilege claiming priority over seniors.

As such, the fact that the applicant might have received accelerated promotion in Group 'C' will not be a bar for his promotion as per his seniority and merit for the post of DPO where he had been appointed as APO on merit. The stand of the Railway Administration that merely because he belongs to SC he has to wait for roster point for promotion to the level of DPO and he can be denied promotion from an earlier date against general vacancies while promoting his juniors is clearly un-sustainable.

11. In the facts and circumstances of the case, we hold that the alternative relief sought by the applicant that he should be promoted with effect from 30.11.93 deserves to be granted. We direct the respondents to advance the date of the applicants promotion as DPO with effect from 30.11.93 and give him all consequential benefits including financial benefit. As the applicant

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has since retired they shall recalculate the arrears and terminal benefits on the basis of the advancement of the date of promotion. The entire exercise shall be completed within four months from the date of receipt of a copy of this order.

12. With the above directions, OA finally disposed of. No costs.

A.S. Sanghvi

(A.S. Sanghvi)
Member (J)

V. Ramakrishnan

(V. Ramakrishnan)
Vice Chairman

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