

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

R.A. NO. 06 OF 1997 in
~~O.A.NO.~~ 562 OF 1993.
~~T.A.NO.~~

DATE OF DECISION 28-01-1997.

M.M.Pandya Petitioner

Mr.G.R.Malhotra Advocate for the Petitioner [s]
 Versus

Union of India and ors. Respondent

____ Advocate for the Respondent [s]

CORAM

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

The Hon'ble Mr. T.N.Bhat : 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 ?

Shri Manilal Pandya,
Retired as Chief Booking Clerk,
Sabarmati under Divisional Manager(C),
Baroda.

Resident of :

150, Dharmanagar Society,
2nd Division,
Opp : Milan Mandir,
Sabarmati,
Ahmedabad.

...Applicant.

(COUNSEL : MR.G.R.MALHOTRA)

Versus

1. Union of India, through
the General Manager,
Western Railway,
Churchgate,
Bombay.
2. Sr.Divisional Commercial Manager(E),
Divisional Manager's Office,
Pratapnagar,
Western Railway,
Baroda.

...Respondents.

(DECISION BY CIRCULATION)

	<u>ORDER</u>	
R.A.NO.	06	OF 1997
	IN	
<u>O.A.NO.</u>	<u>562</u>	<u>OF 1993.</u>

Date : 28-1-1997

Per : Hon'ble Mr.T.N.Bhat : Member (J)

We have gone through the contents of the R.A.
and also perused the copy of the judgment delivered
by us in the O.A. on 23.8.1996.

2. In the O.A. the review applicant, had assailed
the order/letter dated 30.10.1992 by which his
representation for stepping up of his pay ^{at par} with the pay
drawn by his juniors was rejected. The review
applicant had been promoted alongwith others to the
post of Chief Booking Clerk, but due to administrative

reasons he was not relieved till the time the other persons similarly promoted, some of whom were junior to the applicant, had joined the higher posts. The representation of the applicant had been rejected on the basis of a letter issued by the Railway Board on 14.2.1975, according to which the benefit of stepping up of pay with reference to juniors was not permissible in cases where the promotion of the senior employee could not be carried out immediately due to ^{delay} in relieving him on administrative grounds.

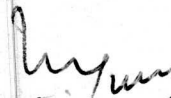
3. After hearing the arguments of the learned counsel for the parties we dismissed the O.A. on the ground that the Railway Board letter dated 14.2.1975 did go against the review applicant and in the face of that letter the claim of the applicant could not be allowed. It was also observed by us that since the applicant had not challenged the validity and vires of the aforesaid letter of the Railway Board he cannot get the relief claimed by him.

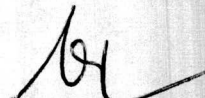
4. In the R.A. the applicant has sought to raise the same points as had been raised in the O.A. and which have been dealt with and answered in the Judgement/order dated 23.8.1996. The review applicant has not pointed out any error apparent on the face of the record nor any fresh evidence which the applicant could not produce earlier despite exercising due diligence. The only point raised now is that in his rejoinder the review applicant has stated in para 4 that the Railway Board's letter *ibid* is not clear

by

not binding upon the applicant as the same is discriminatory and against the fundamental Rules 22(C). Such plea raised in the rejoinder without a specific prayer in the O.A. cannot amount to challenge to the validity of the Railway Board's letter. We may also mention that the applicant did not take any steps to amend his O.A. in order to pray for the relief of quashing the aforesaid Railway Board's letter.

We are convinced that no grounds for the review of the Judgement/order dated 23.8.1996 have been made out. Accordingly, this R.A. is dismissed, by circulation.


(T.N.Bhat)
Member(J) 28.1.97.


(V.Radhakrishnan)
Member(A)

ait.

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENC.

Application No. RA-21/53/96

Transfer Application 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 : 03/01/97

Countersign :

6/1/97
Section Officer.

Signature of the Dealing
Assistant

1. Judgment / Order by

(i) Hon'ble Mr. V. Radhakrishnan and
(ii) Hon'ble Mr. T. N. Bhat

2. Both the aforesaid Members are functioning in this Tribunal.

2. Hence to be placed before the said Members i.e.
Hon'ble Mr. _____
Hon'ble Mr. _____

3. Hon'ble Mr. V. Radhakrishnan still belongs to Local Bench but Hon'ble Mr. T. N. Bhat is now a Member/V.C. of Chandigarh Bench.

3. Hence may be sent for consideration by circulation to the said Members i.e.,
Hon'ble Mr. V. Radhakrishnan &
Hon'ble Mr. T. N. Bhat

4. Both the aforesaid Hon'ble Members have ceased to be Members of the Tribunal.

4. Hence to be placed before Hon'ble V.C. for constituting a Bench of any 2 Members of this Bench.

5. Hon'ble Mr. _____ has ceased to be Members of Tribunal but Hon'ble Mr. _____ is available in this Bench.

5. Hence may be placed before Hon'ble V.C. for constituting a Bench of Hon'ble Mr. _____ who is available in this Bench and of any other Members of this Bench for preliminary hearing.

6. Both the aforesaid Members are now Members of other Benches namely Ahmedabad and Chandigarh Benches.

6. May be placed before Hon'ble V.C. for sending the R.A. to both the Members for consideration by circulation. If one of the Members is of the view that the petition merits a hearing, reference may be made by Hon'ble V.C. to the Hon'ble Chairman seeking orders of the Hon'ble Chairman.

7. The case is not covered by any of the above contingencies.

7. Therefore, orders of the Hon'ble Chairman are required to be obtained by Hon'ble Vice - Chairman.

15/10/96

S.O. (5)

15/10/96

DAIS
15/10/96

P.T.O.

Submitted:

On scrutiny, following defects are found.

- ① Index not filed
 - ② Copy not served on the other side
 - ③ Affidavit incomplete. in 'C' file
- Notification is placed below, for signature.

Jan
15/10/96

S.O. (G)

15/10/96

DR (G)

Submitted:

Objections not complied with within the time granted. If approved, the matter will be placed before the Hon. Bench for orders.

Jan
7/11/96

S.O. (G)

7/11/96

DR (G)

I undertake to supply the copy of RA to the opposite party, in case notice is issued.

Given

Adm. Sec.

R/Sub.

Kindly see orders of Hon. Bench dtel. 16-12-96 and above undertaking.

Index has been filed today. All the objections have been complied with. For orders.

Jan
9/1/97

S.O. (G)

9/1/97

DR (G)

8/11/96

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, AHMEDABAD.

R.A.No. 6 1996

IN

O.A.No. 562 of 1993.

M.M.Pandya Applicant.

Vs.

Union of India Respondents.

I N D E X .

Sr.No.	Annex.	Particulars	Page No.
1.	RA-1	Memo of Application	1 to 6
		Copy of the Order dt.23.8.96 passed by this Honourable Tribunal in O.A.No.562 of 1993	7 to 12

Ahmedabad
dated:

Ganesh
Advocate for the Applicant

G.R. Mathur

3-10-96

Dr. J. Edgar Hoover
A. J. R. 111

RAst 53/96

R.A.

R. A. No. 6 of 1996

IN

O. A. No. 562 of 1993

...

Applicant

Vs.

• • •

Respondents

The applicant most respectfully files this Review Application against the order and judgement dtd. 23-8-1996 passed by this Hon'ble Tribunal, and the copy of the said judgement was received by applicant's Advocate on 2-9-1996.

1. The applicant filed O. A. No. 562/93 for claiming the benefit of promotion from the date his junior, C.S. Shukla was promoted from 24-1-¹⁹⁸⁷~~1988~~, to the promotional post of Chief Luggage Clerk, scale 1,600 -- 2,660 (R.P.) as the applicant was not relieved on promotion immediately due to administrative lapses and as per extent Rules he was required to be relieved earlier than that of Mr. C.S. Shukla in the order of priority.
2. The applicant, thereafter, made many representations to the respondents and also to their subordinate officers and finally, the applicant sent representation dated ~~30-10-1992~~ ²⁶⁻⁶⁻¹⁹⁹² addressed to D.P.C., B.R.C.

for considering the benefit of pay as well as stepping up his pay from Rs: 2,300 to Rs: 2,375 =equal to that of his junior, Mr. C.S. Shukla, who was drawing Rs: 2,375/- in the promotional scale of Rs: 2,000 - 3,200 as Chief Booking Supervisor; and the copy of which is annexed along with the O. A. No. 562/93, at Annexure A/11. The respondents in response to the said representation, under Sr. D.C.M (E), B.R.C. letter No. EC/M/113(L) dt. 30-10-92 forwarded the copy of the order passed by Headquarter office to the applicant without considering the stepping up of the pay of the applicant, but on the basis of the relevant letter with reference to the Headquarter office letter No. even dated 27-11-1990 advised the applicant that the benefit of proforma fixation of Pay vis-a-vis junior is not permissible on the basis of relevant letter 14-2-1975, without giving the copy of the said copy of the order. Therefore, the headquarter order refusing the proforma fixation was challenged in the said O.A. and this Hon'ble Tribunal had rejected the claim of the proforma fixation of the applicant to that of his junior Mr. Shukla in the Scale Rs: 1,600 - 2,660, without considering the facts and proper interpretation of the Rules and, therefore, the said order is hereby challenged on the following grounds :

- a) The learned Tribunal has decided the O.A. against the facts of the case and also against the substantive question of law, whether the relevant circular dated 1975 is in consonance with any provision of law, specially, with reference to

Article 14 and 16 of the Constitution of India and, therefore, there is an error apparent on the face of the record of Judgement.

b) The Hon'ble Tribunal has erred in holding that the respondents have rejected the claim of the applicant for stepping up of pay to Rs: 2,375 equal to that of his junior who was drawing Rs: 2,375 in the scale Rs: 2,000 - 3,200 vide his representation at Annexure A/11.

c) The learned Tribunal ought to have held that the reply of the respondents at Annexure A/12 of the application was about the proforma fixation of the applicant vis-a-vis his junior, but not the rejection of the claim of the applicant for stepping up and for which, the applicant draws the attention of the Tribunal to Annexures A/11 and A/12 of the O.A. to appreciate the facts of the case in a proper and judicial manner so as to avoid mis-carriage of justice to the applicant.

d) The learned Tribunal has erred legally in holding that the Annexure A/13 of the O.A. is not applicable to the applicant's case so far the stepping up pay of the applicant is concerned. As the respondents and their ^{Subordinate} ~~commanding~~ officers never decided the case of the applicant by stepping up his pay equal to that of his junior on the scale of Rs: 2,000 - Rs: 3,200 and, there-

fore, the attention of the Hon'ble Tribunal is invited to Annexure A/8 under which the promotion order of the applicant as well as of Mr. Shukla is issued in the scale of Rs: 2,000 to 3,200 in which Mr. Shukla is shown junior to Mr. Pandya and as per extant Rules dated 31-12-1990 at Annexure A/13, the applicant was entitled to stepping up of pay to Rs: 2,375 equal to that of his junior from Jan., 1991 and this part of stepping up was never rejected by the respondents and, therefore, there is a legal error apparent on the fact of the record of the judgement dt. 23-8-1996 with reference to para 2 of the judgement. As this part has not been decided by this Hon. Tribunal. As the applicant's case is covered by the relevant order dt. 31-12-1990 details of which are annexed at A/13 with the O. A.

- e) The Hon'ble Tribunal ought to have appreciated that after annexure of the R/1 with the reply submitted by the respondents, the Rlv. Board's order at R/1 ~~of~~ the reply was challenged in the rejoinder submitted by the applicant. And, therefore, it is not legally correct to hold that the vires of the Rlv. Board order had not been challenged as has been held by the Tribunal.

f) The Hon. Tribunal ought to have held that on the facts of the case and on the question of vires of the relevant order at Annexure R/1 was properly argued and, therefore, the Hon. Tribunal ought to have held that such order was discriminatory, bad and hit by Articles 14 and 16 of the Constitution of India. And, therefore, the applicant was entitled to proforma fixation according to Rules of natural justice and equity in the interest of justice.

g) The applicant submits that there is a bonafide mistake in mentioning the name of the applicant as Mr. Manilal Pandya instead of Shri Mayashanker Manilal Pandya. And, therefore, this part of the order is required to be corrected so as to be binding on the applicant. The applicant craves leave to amend, to delete or to add any of the paras or to argue any other point of law in case the matter is reviewed in the light of the order of the Supreme Court in AIR 1989 SC 1522, according to which all the benefits are to be given to the applicant as per seniority.

3. In view of the circumstances and the facts of the case, the applicant, therefore, prays for the following reliefs :

- 6
- A. To admit the application in the interest of justice.
- B. To review the judgement and order passed by the Hon'ble Tribunal on 23-8-1996 or to modify the order to allow the applicant to file a separate application to challenge the vires of the order dated 1975;
- C. To direct the respondents to consider the case of the applicant for stepping up of his pay to that of his junior, Mr. C.S. Shukla in the scale of Rs. 2,000 - 3,200 which was never rejected by the respondents, and still not decided by this Hon. Tribunal.
- E. To pass any other order/better relief which may be deemed fit, proper and just.

Affidavit

I, the above-named applicant, solemnly affirm and state that the contents of the above paras is true to my knowledge based on documents as well as on legal advice. I further declare that I have suppressed any material fact. Annexure A is the true copy of the judgement and order dated 28-3-1996.

Ahmedabad,
3 - 10 - 96

Sharp G.R. Malhotra Deponent
I know the applicant personally who has appeared before me on request in my presence.
Gau (G.R. Malhotra)

A-RA 7

CAT/J/13

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 562 OF 1993

~~T.A. NO.~~

DATE OF DECISION 23-8-1996.

Shri Manilal Pandya, Petitioner

Mr. G.R. Malhotra, Advocate for the Petitioner (a)

Versus

Union of India & Ors. Respondent s

Mr. A.S. Kothari, Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. V. Radhakrishnan, Admn. Member.

The Hon'ble Mr. T.N. Bhat, Judicial Member.

IN THE OFFICE OF THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

J U D G M E N T

O.A.No. 562 OF 1993

Date: 23-8-1996.

Shri Manilal Pandya
Retired as Chief Booking Clerk,
Sabarmati under Divisional
Manager(C) Baroda.

Resident of;
150, Dharmanagar Society,
2nd Division,
Opp: Milan Mandir,
Sabarmati, Ahmedabad.

.... Applicant.

Versus.

1. Union of India through
the General Manager,
Western Railway,
Churchgate, Bombay.
2. Sr.Divisional Commercial
Manager(E)
Divisional Manager's office
Pratapnagar, Western Rly.
Baroda.

.... Respondents

Mr. G.R. Malhotra, learned counsel for the applicant.

Mr. A.S.Kothari, learned counsel for the respondents.

CORAM; (1) Hon'ble Mr.V.Radhakrishnan, Admn.Member.

(2) Hon'ble Mr. T.N. Bhat, Judicial Member.

Per; Hon'ble Mr. T.N. Bhat, Judicial Member.

1. Heard Mr. Malhotra and Mr. A.S. Kothari,
the learned advocates for the applicant and the
respondents, respectively.
- 13.8.96*

2. The applicant joined the western Railway as Assistant Commercial Clerk in the year 1954 and he was promoted as Head Booking Clerk with effect from 1.1.1984. Thereafter orders were issued for his promotion as Chief Booking Clerk on 4.9.1986 (Annexure A-1). However, the applicant was not relieved to join the post of Chief Booking Clerk at Dabholi due to administrative reasons. It is the case of the applicant that his junior Shri Shukla, who joined the post of Chief Booking Clerk on 1.1.1987 started drawing higher pay due to his earlier joining at the post. In the panel prepared for the promotion to the post of Chief Booking Supervisor the applicant is shown as senior to Shri Shukla (Annexure A-8). The applicant was also promoted in the scale 2000-3200. The applicant made a representation to step up his pay to Rs. 2375/- which was the pay drawn by Shri Shukla, while applicant was fixed at Rs. 3200/-. The applicant made representation to Senior D.P.O. dated 26.6.92 for consideration of his case for stepping up of his pay as his retirement benefits at the time of retirement could be effected. vide letter dated 30.10.92, Annexure A-12, the respondents rejected the contention of the applicant on the ground that in view of the letter of the Railway Board No.E(NG)I-73/PEL/130 dated 14.2.75 the benefit of

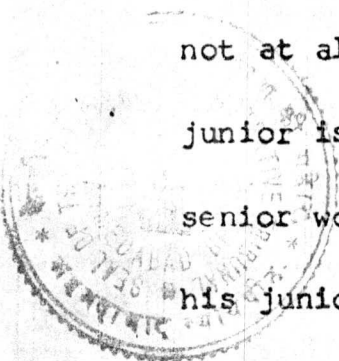
stepping up of pay with reference to juniors is not permissible in case senior employees whose promotion could not be carried out immediately due to delay in relieving him on administrative grounds.

3. The respondents have contested the O.A. by filing the reply in which they have relied on the aforesaid instructions of the Railway Board (R-1). It is further contended that this fact was conveyed to the applicant vide letter dated 12.12.90 in which a specific mention was made of the aforesaid instructions of the Railway Board. A reference has also been made to another Railway Board letter dated 7.8.90 in which it was provided that past cases decided prior to issue of Board's letter dated 11.6.90 should not be reopened.

4. The applicant has also filed rejoinder to the reply statement of the respondents in which he has stated that the Railway Board letter of 1975 ibid (R-1) has no legal force as it is discriminatory and violative of Rules of natural justice, equity as well as Articles 14 & 16 of the Constitution of India.

5. During the course of arguments, the learned counsel for the applicant, relying upon some other instructions, stated that in the case of persons who had not at all been promoted initially as also in case of those persons who had been promoted but

not on the date from which they should have been promoted, proforma fixation of pay at par with the pay drawn by the juniors is permissible. However, as regards R-1 the counsel has stated that the aforesaid letter violates Articles 14 & 16 of the Constitution of India and ^{is} ~~are~~ not, therefore, valid. It was pointed out to the learned counsel for the applicant that he could have challenged the vires of the aforesaid Railway Board letter and that merely taking a plea in the rejoinder that the aforesaid instructions had no legal force would not be sufficient. The learned counsel, in reply, cited two judgments to support his contention that his client is entitled to stepping up of his pay at par with the pay drawn by the junior. The judgments cited are; 1983(1) SLR 242 and ATR 1987(1) CAR 114. We have gone through the copies of these judgments furnished by the learned counsel. Both these judgments are distinguishable on facts. In those cases the aforesaid Railway Board instructions were not at all at issue and it was held that when a junior is promoted and the senior is ignored, the senior would be entitled to promotion from the date his junior was promoted. In the instant case it is not the case of the applicant that he was not promoted along with the junior. As already mentioned, the applicant could not be relieved for administrative



Amrinder

12

reasons. The Railway Board instructions specifically provide that in such a case stepping up of pay at par with the pay of the junior can not be allowed. The applicant ought, therefore, to have specifically challenged the validity and vires of the aforesaid Railway Board instructions (R-1) which have statutory force. The action of the respondents in refusing stepping up of the applicant's pay is justified under the aforesaid Railway Board instructions and there are no grounds to interfere with the decision taken by the respondents.

6. For the foregoing reasons, the O.A. is dismissed as being devoid of force. No costs.

Sd/-
(T.N. Bhat)
Member(J)

Sd/-
(V.Radhakrishnan)
Member(A)

15/12/18

vtc.

24/12

LCN
CR