

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 753 of 1987

T.A. No.

198

DATE OF DECISION 08.06.1990

Shri Shankar Baidoo Rane PetitionerShri D.V. Gangal Advocate for the Petitioner(s)

Versus

Union of India & another RespondentAdvocate for the Respondent(s)

## CORAM

The Hon'ble Mr. M.Y. Priolkar, Member(A)

The Hon'ble Mr. D.K. Agrawal, 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 ?

D.K. Agrawal

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY

ORIGINAL APPLICATION No. 753 OF 1987.

Shri Shankar Baidoo Rane,  
R/at Rly. Qtr. No. 1061,  
RB-II, 15 Block,  
Varangaon Road,  
Bhusawal - 425 201.

.. Applicant

V/s.

- 1) Union of India, through  
The General Manager,  
Central Railway,  
Bombay V.T.
- 2) The Divisional Railway Manager,  
Central Railway,  
Bhusawal.

.. Respondents

Coram: Hon'ble Member(A), Shri M.Y. Priolkar  
Hon'ble Member(J), Shri D.K. Agrawal

Appearances:

- 1) Mr. D.V. Gangal, Advocate  
for the applicant.

JUDGMENT:

Dated: 8.6.1990.

Per: Shri D.K. Agrawal, Member(J)

By this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant seeks a declaration for fixation of pay in the pay scale of Rs. 700-900 w.e.f. 15.6.1973 and the consequential benefits like arrears of salary, provident fund, gratuity and pensionary benefits.

2. The facts are that the applicant joined the service in the Central Railway on 4.10.1942 initially as a Khalasi in Class IV category and step by step he was promoted to the post of carriage inspector/carriage foreman in the scale of Rs. 700-900 in the year 1977 and actually promoted to the post of carriage foreman w.e.f. 7.1.1978 and retired on 31.1.1978. It may be mentioned at this very stage that although the applicant was promoted to the post of carriage

*DK Agrawal*

(12)

foreman in the scale of Rs.700-900 w.e.f. 7.1.1978 but he was given benefit of proforma promotion and his pay accordingly fixed in the scale of Rs.700-900 w.e.f. 14.7.1976, the date when his junior was locally promoted against a vacancy of carriage foreman in Jhansi Division. The applicant's claim is that he should be entitled to the pay of carriage foreman w.e.f. 15.6.1973. The applicant made various unsuccessful representations. Thereafter, he filed an application under Section 33(c)(2) which was rejected by Central Government Labour Court, Bombay by judgment and order dated 5.2.1985. Against the said judgment of the Labour Court the applicant filed Writ Petition No. 1071/1985 before the High Court, Bombay which was also rejected on 25.2.1987. The applicant thereafter filed a review petition before the Bombay High Court which was also rejected. Finally, appeal No. 1022/87 was filed which was also rejected vide order dated 14.9.1987 on the ground that Section 33(c)(2) cannot be utilised for determining the monetary benefit of promotion denied to the applicant. It was then only that the applicant filed the present application before this Bench of the Tribunal on 23.11.1987.

3. The respondent's contention is that the three named juniors, viz. S.G.Indulkar, F.X.Lobo and S.D.Phadke earlier were not promoted earlier than the applicant. For this purpose we had called for the documents after the conclusion of the arguments on 4.6.1990. The documents were produced by a representative of Railway Administration on 6.6.1990 in the presence of the counsel for the applicant. The learned counsel for the applicant was heard in short (as desired). We, however, did not permit the learned counsel for the applicant to reopen the entire arguments because the arguments already advanced on 4.6.1990 were sufficient for our understanding of the case.

*Dr. Agrawal*

4. The first point for consideration is as to whether the application is within limitation. The facts as they stand indicate that the applicant was promoted on adhoc basis as carriage inspector and posted in that capacity at Nagpur sometime in 1973. But the order did not take effect for some reasons, therefore, the applicant remained on the same post at Bhusawal. He went on making representations complaining of denial of his rights. Thus, the cause of action as alleged accrued to him in the year 1973. The applicant's grievance was that promotion as carriage foreman had been denied to him. The Labour Court had no jurisdiction to adjudicate the question of promotion. Therefore, it is obvious that the applicant chose a wrong forum. If so, that does not save the limitation. In any case, the Administrative Tribunals Act, 1985 clearly lays that the Tribunal has no jurisdiction to entertain a case in regard to the grievance of a person which arose three years prior to 1.11.1985 unless the applicant had agitated the matter for redressal of such grievance before the High Court or any other court having jurisdiction over the matter. In view of this, the application, in our opinion, does not lie with the Tribunal.

5. We are of the opinion that since arguments at length have been heard and we have also perused the record, therefore, we may express opinion on merits also. Promotion is a condition of service within the meaning of Article 309 of the Constitution. However, 'promotion' only means that a person is to be considered for promotion along with others including his juniors for a post, whether it is a selection or a non-selection post, in accordance with the relevant recruitment rules. In the instant case promotion of the juniors was not made earlier than 14.7.1976. It would

*Dr. A. S. Rawal*

14

appear from the pleadings itself (contained in para 6.7 of the petition) that the applicant was declared successful for the post of carriage foreman by a letter dated 5.12.1977. He was consequentially given promotion w.e.f. 7.1.1978. However, he was further given notional promotion from 14.7.1976 from the date from which his immediate junior was placed on the promotion post. Thus, promotion from due date was never denied to the applicant. It appears that the applicant is harbouring under a belief that if a person junior to him has been given adhoc promotion on local seniority basis in one of the divisions of railway, he is entitled to claim fixation of pay on that basis. We hasten to say that no such rule has come to our notice. We cannot also accept the applicant's contention that he has a right to have his pay fixed in the higher post from 15.6.1973 ~~only~~ <sup>only</sup> for the reason that an office order was issued on that day promoting him but it did not materialise for certain reasons and he did not assume <sup>charge</sup> ~~ways~~ of the higher post. Nor do we see any evidence of malafides in this case as alleged by the applicant. In the circumstances, we have no hesitation to hold that the claim of the applicant is totally misconceived. Consequently the application is liable to be dismissed. The same is dismissed with no order as to costs.

*D.K. Agrawal*  
(D.K.AGRAWAL)  
MEMBER (J)  
8.6.90

*M.Y. Priolkar*  
(M.Y.PRIOLKAR)  
MEMBER (A)  
8.6.90