

(13)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
CIRCUIT SITTING AT NAGPUR.

O.A.NO. xx
TR.A.NO. 123/87

199

DATE OF DECISION 3.11.1993

Shri R.Krishnamurthy

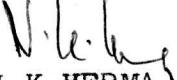
Applicant(s)

Versus

Union of India & Ors.

Respondent(s)

1. Whether it be referred to the Reporter or not ? NO
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? NO


(N.K.VERMA)
MEMBER (A)


(M.S.DESHPANDE)
VICE CHAIRMAN

mbm:

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,

BOMBAY BENCH, CAMP AT NAGPUR.

Tr. Application No.123/87.

Shri R.Krishnamurthy. Applicant.

V/s.

Union of India & Ors. Respondents.

Coram: Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,
Hon'ble Shri N.K.Verma, Member(A).

Appearances:-

Applicant by Shri M.M.Sudame.

Respondents by Shri P.N.Chandurkar.

Oral Judgment:-

(Per Shri M.S.Deshpande, Vice-Chairman) Dated: 3.11.1993.

Heard Shri M.M.Sudame, counsel for the petitioner and Shri P.N.Chandurkar, counsel for the respondents.

2. The question raised in this transferred application is about the seniority of the applicant in the promotional cadre of Train Examiner which came to be altered to his disadvantage by the instructions issued subsequently regarding the manner of seniority in the base cadre of Fitters.

3. The applicant was selected as an Apprentice Gr.II in 1962 and was absorbed as a Fitter w.e.f. 19.1.1966. He was sent for ~~a~~ training for the promotional post of Train Examiner in 1969 and after completion of the training was promoted as Train Examiner w.e.f. 18.2.1970 in the scale of Rs.425-700. He was denied the promotion to the post of Head Train Examiners because of the alteration in the seniority list. The applicant made a representation on 27.8.1979 and followed it up with several representations upto 19.8.1982. Since the representations did not evoke a favourable response, the applicant moved the High Court by filing a Writ Petition on 26.9.1982 and that Writ Petition came to be transferred to this Tribunal after its establishment.

4. The Petitioner stood at Sl.No.92 in the seniority original/list of Carriage Fitter dt. 26.3.1968, As on 31.12.1965 which was the date of completion of Trade Apprenticeship, The seniority was changed to Sl.No.90 on 5.4.1969 by taking into consideration 19.1.1966 as the date of absorption as Fitter Gr.III after the completion of Trade Apprenticeship. By the seniority list dt. 15.3.1971 he was brought down to Sl.No.99 by regarding 19.1.1966 as the date of absorption as Fitter Gr.III, considering the date of panel and merit position of Trade Apprenticeship. Apparently, the change which was brought about by taking the different guidelines for preparing the three seniority list should not affect the applicant's position for the promotional cadre of Head TXR. The position was governed by para 21 of the Railway Establishment Rules which provides that :

"Where passing a departmental examination is essential for promotion to a higher post, the employees passing the examination earlier will be senior to those passing ~~the~~ such examination latter. The staff passing in the same examination will, however, be promoted in accordance with their seniority."

The applicant's contention is that Respondent No.3 Shri Hanumantha Rao and Respondent No.4 Shri R.K.Phuley were appointed respectively, initially on 4.6.1956 and 20.2.1963, Shri S.A.Thakare was promoted on 16.2.1970, whereas, Shri M.Hanumanthrao was promoted on 21.11.1971. The applicant's name appeared at Sl. No.31 in the provisional seniority list (Annexure - I) appended to the application and as the date of promotion as TXR was shown as 18.2.1970, he ranked senior to Shri Phuley by virtue of his date of appointment being 31.12.1962, while Shri Phuley's date of appointment was 20.2.1963. When the Union had raised an objection

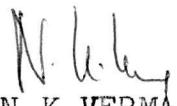
to the seniority given to the applicant, the factual position was stated in the letter dt. 30th May, 1980 and it was because of that S/Shri S.A.Thakare and M.Hanumanthrao were promoted as Painters on 9.12.1964 and 15.7.1965 and as TXR on 16.2.1970 and 21.11.1971 respectively. Shri R.K.Murthy could not be sent for training as TXR in January, 1969 as he was found unsuitable for training. He attended for training in 1970 and passed the promotional course on 31.5.1971 and he was promoted as ad hoc TXR on 28.7.1973. With regard to the applicant it was stated that he was promoted to the skilled grade on 19.1.1966 and the relevant seniority between him and others was fixed basing on the date of promotion as TXR protecting their inter se seniority in the said grade. He could not have been promoted as TXR because there should not have been any occasion for denying the seniority which the applicant had obtained according to the then existing rules in the promotional cadre and only because different norms were adopted for changing the seniority in the base cadre of Fitter, his seniority could not thereby in the promotional cadre of TXR be changed to his prejudice.

5. Shri P.N.Chandurkar, the learned counsel for the Respondents stated that the applicant's position in this respect is crystalised by the letter dt. 30.11.1979 in which it was mentioned that the seniority of the applicant came to be disturbed because of the change in the base seniority of Fitters, that was the reason why his representation came to be rejected.

6. We find that the applicant could not have been divest of seniority once it was obvious that

he was promoted before the others in regular manner in accordance with rules. We, therefore, find that the applicant is entitled to the relief sought for.

7. In the result, we quash the impugned orders at Annexure I and IV with a direction to place the Petitioner in the seniority list at Annexure I at Sl.No.21 immediately after Shri S.A.Thakare and also direct the Respondents No. 1 and 2 to consider him for promotion to the post of Head TXR in pursuance of the criteria seniority cum eligibility over and above the junior promotees. These directions shall be implemented within a period of six months from the date of receipt of this order. The applicant shall be given a deemed date of seniority and consequential financial benefits from the date from which his next junior in service got those benefits. There will be no order as to costs.


(N.K.VERMA)
MEMBER(A)


(M.S.DESHPANDE)
VICE-CHAIRMAN

B.