

(11)

CAT/11/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI
NEW BOMBAY BENCH

O.A. No.
T.A. No. 426/87.

198

DATE OF DECISION 17.7.1989.

Shri Mohamed Jalil Mohamed Vakil Petitioner

Shri G.S. Walia Advocate for the Petitioner(s)

Versus

Union of India & Others Respondent

Shri N.K. Srinivasan Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.B. Mujumdar, Member(J).

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

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

[Handwritten signature]

(12)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Transferred Application No. 426/87.

Shri Mohamed Jalil Mohamed Vakil
Room No. 128, Ground floor,
Bakhar Chawl, Ist Gela Bhai Street,
Madanpura,
BOMBAY - 400 008.

...Applicant.

V/s

- 1) Union of India,
Through Ministry of Law,
Aayakar Bhavan, Annexe,
New Marine Lines,
BOMBAY - 400 020.
- 2) The General Manager,
Western Railway,
Churchgate,
BOMBAY - 400 020.
- 3) The Deputy Chief Electrical
Engineer(POH),
Mahalaxmi Workshops,
Western Railway.

...Respondents.

Coram: The Hon'ble Member(J), M.B. Mujumdar.

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

Appearance:

Mr. G.S. Walia,
learned Advocate,
for the applicant.

Mr. N.K. Srinivasan,
learned Advocate,
for the Respondents.

ORAL JUDGMENT:-

Date: 17.7.1989.

(Per M.B. Mujumdar)

The applicant is a diploma holder in Electrical Engineer. On 1.6.1976, he was appointed as Chargeman Grade 'B' as a direct recruit. On 30.11.1979 he was promoted as Chargeman Grade 'A'. The Railway Board issued instructions in its letter dt. 16.11.1984 regarding cadre review and restructuring of Groups 'C' & 'D' staff. According to these instructions the applicant was entitled to be promoted to the higher post of Assistant Shop Supervisor/Senior Electrical Forman, which was a selection post. According to the instruction No.5, for the purpose of implementation of the

order of the Railway Board of

P.T.O.

orders of the Railway Board regarding restructuring, if an individual railway servant becomes due for promotion to only one grade above the grade of the post held by him on a regular basis and such higher grade post as classified as a 'Selection' post, the existing selection procedure would stand modified to the extent that the selection would be based only on scrutiny of service records without holding a written test and /or viva voce test. Accordingly the service record of the applicant was considered alongwith others. As the confidential reports of the applicant for the years 1980-1981 to 1984-1985 were adverse he was found unfit for the promotion to the higher grade in the restructuring scheme.

2. However, on the repeated representations made by the applicant his case was reconsidered and as the adverse remarks for these years were not communicated, by order dated 10.10.88, he was promoted to officiate as Senior Electrical Forman with effect from 1.1.1984 against one of the upgraded posts. He was also given proforma fixation of pay and seniority from 1.1.1984. We may point out that he was given ad-hoc promotion as Senior Electrical Forman from 23.12.1986. He was given arrears of pay from that date but he was denied arrears of pay from 1.1.1984 to 22.12.1986.

3. Now the only point that survives for consideration is whether the respondents were justified in denying arrears of pay to the applicant for the post of Senior Electrical Forman, from 1.1.1984 to 22.12.1986.

4. It is clear that the respondents have not given the arrears of pay and allowances to the applicant for that period because he had not actually worked as Senior Electrical Forman during that period. But the three cases cited by Mr. Walia, learned Advocate for the applicant, show that the view taken by the respondents is not legal.

5. The first case relied upon by Mr. Walia is, Shaikh Mehboob v. Railway Board, 1982(1) SLR 455. In that case letter of the Railway Board dated 17.9.1964 had come up before the Karnataka High Court for consideration. In this case also the respondents have relied on the same letter ^{while} which denying the arrears of pay and allowances to the applicant. Respondents ^{have} attached a copy of this letter as R.II to their reply. After quoting the letter in Para 3 of the Judgment, the High Court has held that the denial of arrears of salary to the petitioner could not be supported, as the petitioner had a right to be considered for promotion on the date when it was due and the said right could not be denied, ⁱⁿ the first instance and thereby denying him the opportunity to render service in the higher post and subsequently make it ^a ground for justifying denial of the arrears of pay.

6. The second case cited by Mr. Walia is, Mrs. R.K. Jain v. Delhi Administration, (1987) 2 ATC 530. In that case the Principal Bench of this Tribunal has held that when the petitioner was denied promotion for no fault of ^{hers} ~~his~~ and orders for promotion with retrospective effect are issued subsequently, she would be entitled to pay and allowance on the basis of ~~his~~ pay fixation from the date of retrospective promotion. While taking this way the Principal Bench has relied on a Judgment of the Supreme Court in P.S. Mahalle v. Union of India, AIR 1984 SC 1291. This Judgment of the Principal Bench is followed by Calcutta Bench of the Tribunal in Bhopatikumar Sarda v. Union of India & Others, (1989) 10 ATC 209.

7. We are bound the Judgments of this Tribunal and hence we hold that the respondents were not justified in denying arrears of pay and allowance to the applicant of the

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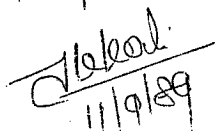
post of Senior Electrical Forman for the period from 1.1.1984 to 22.12.1986. Hence we pass the following order:-

Respondents are hereby directed to pay to the applicant the difference in pay and allowances of the post of Senior Electrical Forman for the period from 1.1.1984 to 22.12.1986, within three months from the date of receipt of a copy of this Order. With this direction the application is disposed of with no order as to costs.


(M.Y. PRIOLKAR)
MEMBER (A).


(M.B. MUJUMDAR)
MEMBER (J).

Decree dated 17/7/89
sent to parties on
11/9/89.


11/9/89