

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

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C.A. No.

T.A. No. 467/87

198

DATE OF DECISION 7-3-1991

Mr. W. J. Kadam Petitioner

Mr. G. D. Samant Advocate for the Petitioner(s)

Versus

Union of India & Others Respondents

Mr. V. G. Rege Advocate for the Respondent(s)

CORAM

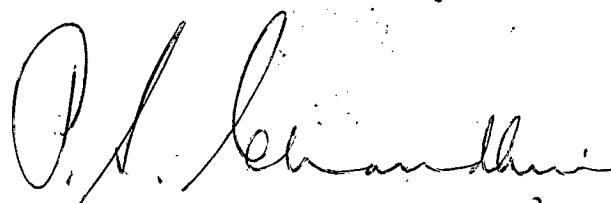
The Hon'ble Mr. P. S. Chaudhuri, Member (A)

The Hon'ble Mr. J. P. Sharma, 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 ?

Yes

Yes


(P. S. CHAUDHURI)
M(A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

Tr.A.No. 467/87

Mr. William James Kadam

... Applicant

V/S

Union of India & Others.

... Respondents

CORAM: Hon'ble Member (A) Shri P.S. Chaudhuri
Hon'ble Member (J) Shri J.P. Sharma

Appearance

Mr. G.D. Samant
Advocate
for the Applicant

Mr. V.G. Rege
Advocate
for the Respondents

JUDGEMENT

Dated: 7-3-1991

(PER: P.S. Chaudhuri, Member (A))

This application has come to the Tribunal by way of transfer from the Bombay High Court in terms of its order dated 17.9.1987 on Writ Petition No. 3252/82 which was filed before it on 26.10.1982. In it the applicant (Petitioner) who is working as a Driver Grade 'C Selection' on Central Railway at Daund is seeking an order quashing and setting aside the seniority list dated 22.4.1982 and connected and consequential reliefs.

2. The applicant's case, in brief, is as follows. On 10.2.1955 he joined Central Railway as a Yard Khalasi. In 1958 he was promoted on ad-hoc basis as Second Fireman, which is equivalent to the post of Fireman 'C'. On 1.12.1960 he was called for a test to assess his suitability for being sent to Bina for a Driver's course. He attended this test, was found suitable, was sent to Bina for the Driver's training

course and passed this course. Thereafter, on 16.10.1963 he was promoted as Driver Grade 'C'. He worked in this post on Solapur Division from 1963 to 1966. While doing so, in a seniority list of Drivers Grade 'C' on Solapur Division as on 1.4.1965 he was shown at S.No.267. Two other seniority lists of Drivers Grade 'C' on Solapur Division were prepared in 1967 and 1971 but he did not find a place in these lists as by then he had been transferred to Bhusawal Division. In 1966, on administrative grounds he was transferred to Bhusawal Division in the same post and, while on that Division, by order dated 27.1.1971 he was confirmed in this post. In 1978 he was transferred back to Solapur Division. By order dated 27.7.1980, in order of seniority and as per criteria laid down he was appointed to the Selection Grade of Driver Grade 'C'. On 22.4.1982, a provisional seniority list of Drivers Grade 'C' on Solapur Division as on 1.4.1982 was published and the applicant was surprised to find that his name had been shown in it at S.No. 270 whereas it should have been shown at S.No.35. Being aggrieved, he preferred an appeal to the Divisional Railway Manager but by order dated 24.6.1982 this appeal was rejected. Thereafter, he filed another representation on 13.7.1982 and when this was not answered within a reasonable time, he filed this writ petition on 26.10.1982. While the matter was in the Bombay High Court, by order dated 3.2.1983 the High Court restrained the respondents from promoting over the petitioner, any one who has a shorter service as Driver Grade 'C' irrespective of the Division in which the persons have worked as Driver Grade 'C'.

3. The respondents have opposed the application by filing their written statement. It is their case that when the applicant was sent for training for ad hoc promotion to the

post of Driver Grade 'C' the claims of some senior candidates were overlooked. In 1969, one S.M.Shinde, Second Fireman, filed Special Civil Application No. 2680 contending that the respondents had ignored the service rendered by him in the ex-Barsi Light Railway prior to its merger in 1954. By judgement and order dated 9.7.1973 the Bombay High Court allowed the petition, quashed the seniority list of 1968 and directed the respondents to prepare a fresh seniority list in the light of the judgement. The fresh seniority lists were published in 1974 and resulted in some reversions. The reversion order was challenged by Y.T. Pandhare and others through Writ Petitions No. 1550/74 and 826/75. These Writ Petitions were decided on 9.1.1980 when the Bombay High Court held that ^{the said Y.T.} Pandhare and others including W.J.Kadam, the present applicant, who were Second Firemen etc. had been put to officiate locally as Driver Grade 'C' vide order dated 16.10.63 with no prescriptive right to them and they were due to be reverted as and when seniors in the categories of Shunters/First Firemen become available as per terms and conditions expressly incorporated in the said order. The Court also observed that the rules permitted promotion to each of the categories (Fireman 'C' to Fireman 'B', to Shunter 'B' and to Driver 'C') on seniority-cum-suitability and that there was no rule permitting promotions in the manner in which the petitioners were actually promoted on 16.10.63, disregarding the claims of their seniors in the cadres, or the posts in a superior cadre and in the absence of any other rule, the terms of the order of 16.10.1963 will determine the rights of the employees affected as if it were a contract. The Court held that petitioners could have no grievance if they were reverted in terms of the conditions of the order dated 16.10.1963 in preference to their seniors and that mere length of the period of officiating service did not confer any rights on them nor could it deprive the respondents of their rights flowing from their seniority. It was observed that no employee could claim any vested right in the benefit accrued to him inadvertantly on account of mistake, error or negligence.

In the light of these observations a fresh seniority list was prepared in 1982, taking into consideration the length of service in the lower grade and the promotion to the higher grade based on seniority-cum-suitability. On this basis the petitioner has been placed correctly at serial No.270. All those who were senior to him in the lower grade were placed above him and all those who were junior to him were placed below him. Thus justice has been done as contemplated by judgement and order of the High Court in Writ Petition No. 2680/1969. On the formation of the South Central Railway Zone on 2.10.66 Solapur Division was merged with this Zone. Daund-Manmad Section which was then part of Solapur Division was transferred to Bhusawal Division of Central Railway. The applicant opted to serve in Bhusawal Division of Central Railway, carrying with him his disputed seniority in the Solapur Division, in October 1966. He was confirmed in the Bhusawal Division on 27.1.71. On further reorganisation on South Central Railway and Central Railway on 2.10.77 the Solapur Division was placed under Central Railway and Daund-Manmad Section was once again attached to Solapur Division. The applicant opted to go over to Solapur Division. Had the applicant remained in the Solapur Division he would have been due for reversion along with the said Y.T.Pandhare and others who were senior to him and who had been promoted along with him as Driver 'C' on 16.10.1963. It is the case of the respondents that the applicant had his lien to the post of Driver 'C' in Bhusawal Division. He had no such lien on the post of Driver 'C' in Solapur Division. Further, confirmation is not a decisive factor in determining seniority. The confirmation of the petitioner in the cadre of Drivers 'C' was made by the Bhusawal Division on the basis of the position on that Division. It will have no impact on the cadre of Solapur Division. The applicant having come to his original cadre it is obvious that his position on Solapur Division will continue to be under the jurisdiction of the decision of Bombay High Court.

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4. However, the said Y.T. Pandhare and others filed Civil Appeal No. 358/80 before the Supreme Court against the judgement and order of the Bombay High Court dated 9.1.1980 (supra).

5. We have heard Mr.G.D.Samant, learned counsel for the applicant and Mr.V.G.Rege, learned counsel for the respondents.

6. We were informed by the learned counsel for both sides that Civil Appeal No. 358/80 had been decided by the Supreme Court on 10.1.1990 and a copy of the judgement and order of the Supreme Court was produced before us. On a perusal thereof it is clear to us that this judgement and order is fully applicable in the present case. The learned Counsel for both sides are also in agreement with this view. In that case the Supreme Court has held

"the applicants who are 16 in number initially held the post of Firemen Grade B in the Loco Running Staff in Sholapur Division. They were selected and sent for training for having suitability test for Drivers Grade C. On successful completing the training, they were appointed as Driver Grade C by order dated 16.10.1963 against clear vacancies. The respondent authorities on the basis of seniority in the lower grade reverted the appellants on the ground that they had not been confirmed on the post of Driver Grade C and further their promotion was made in local arrangement which conferred no prescriptive right on them to hold the posts to which they had been promoted. The appellants challenged the validity of their reversion and fixation of seniority before the High Court which was seriously contested by the respondents. The High Court dismissed the appellants' writ petition. Hence this appeal.

There is no dispute that the appellants were promoted to the post of Driver Grade C in the Loco Running Staff against clear vacancies under the order dated 16.10.1963. There is further no dispute that they all continued to perform their duties successfully on their posts till the impugned order of reversion was passed on 29.6.1974. Thus, the appellants have been holding the post of Driver Grade C after successfully passing the suitability test and undergoing the requisite training, for a period of 11 years. They further continued to hold the post during the pendency of the writ petition before the High Court and also during the pendency of appeal before

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this Court. Thus, the appellants have successfully continued to function as Driver Grade C for a period of more than 26 years. There is no dispute that the appellants possessed the requisite qualifications prescribed under the Rules and instructions issued by the Railway Board and their work and performance have been found satisfactory and the order of reversion has not been passed on account of any fault found in their work or conduct. In the circumstances, we are of the opinion that reversion of appellants after such a long period of their successfully functioning on the post of Driver Grade C to which they had been promoted after passing the requisite test would be unreasonable and unjustified. By reverting the appellants they are being deprived of the benefit of the length of service rendered by them as Driver Grade C. The respondents plea that as no order of confirmation has been passed, the appellants acquired no prescriptive right is devoid of merit, having regard to the peculiar facts and circumstances of the case.

We accordingly allow the appeal set aside the order of the High Court as well as the order of reversion passed by the respondents reverting the appellants from the post of Driver Grade C. The appellants are entitled to the benefit of length of service rendered by them on the post of Driver Grade C during all these years. Since the appellants have been working during all these years successfully on the post of Driver Grade C their appointments should be treated regular and they shall be deemed to be confirmed in accordance with the rules. So far as the question of inter se seniority of Driver Grade C is concerned, we express no opinion on the question, the respondent authorities may determine the same in accordance with the Rules. The appeal is allowed."

Mr. Rege informed us that the respondents would be preparing a fresh seniority list on the basis of the judgement and order of the Supreme Court and that the applicant would be placed at his appropriate serial number in it.

7. What applies in the case of Y.T. Pandhare applies with even greater force in the applicant's case. It is not as if there have been any orders reverting him to a lower post. In fact, on the contrary, he was confirmed as a Driver Grade 'C' on Bhusaval Division over 20 years ago.

Further, there are no pleadings or submissions on record that at the time he was given an option in or about 1977 to come back to Solapur Division from Bhusaval Division he was cautioned about the fact that his confirmation as Driver Grade 'C' on Bhusaval Division would have no impact on the cadre of Solapur Division. Based on this position, we propose passing a similar order in this case.

8. We accordingly order that the applicant is entitled to the benefit of length of service rendered by him in the post of Driver Grade 'C' and higher posts during all these years. His appointments in these posts shall be treated as regular. So far as the question of inter se seniority of Driver Grade 'C' is concerned, we express no opinion on the question. The respondents may determine the same in accordance with the Rules and publish a seniority list of Drivers Grade 'C' on Solapur Division of Central Railway within a period of six months from the date of receipt of a copy of this order. If the applicant is aggrieved as a result of such revised seniority list of Drivers Grade 'C' on Solapur Division of Central Railway he is at liberty to approach the Tribunal afresh in the matter. There will be no order as to costs.

J. P. Sharma
(J.P.SHARMA)
MEMBER (J) 4.3.91
At New Delhi

P. S. Chaudhuri
(P.S.CHAUDHURI)
MEMBER (A)

7-3-1991