

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A.234/87

M.B.Bansode,
C/o.Shri G.S.Walia,
89/10,Western Railway
Employees Colony,
Matunga Road,
Bombay - 400 019.

.. Applicant

vs.

1. Union of India
through
General Manager,
Western Railway,
Churchgate,
Bombay - 400 020.
2. General Manager,
Western Railway,
Churchgate,
Bombay-400 020.
3. Divisional Railway Manager,
Bombay Division,
Bombay Central,
Bombay-400 008.
4. Sr.Divisional Commercial
Superintendent,
Bombay Division,
Bombay Central,
Bombay - 400 008. .. Respondents

Coram:Hon'ble Member (A)Shri C.Venkataraman

Hon'ble Member (J)Shri M.B.Mujumdar

Appearances:

1. Shri G.S.Walia
Advocate for
the Applicant
2. Shri A.L.Kasturey,
Advocate for the
Respondents.

JUDGEMENT

(Per Shri C. Venkataraman, Administrative Member,
Dated: 7-9-1988)

The applicant in this case was working as Guard, Grade (A) Special at Bombay Central Station in the scale 425-640 and he was medically declassified on 23-11-1983. He was offered an alternative appointment as Head Booking Clerk in the scale 455-700 and it was accepted by him on 17-12-1983. He however represented on 22-12-1983 pointing out that he was eligible to be absorbed in the grade 550-700 as that was the only identical grade for absorption of a Guard, Grade (A) Special. He was even prepared to wait for the availability of a vacancy in the scale 550-750. On 31-12-1983 he was offered another alternative employment by the Senior D.C.S. Bombay Central with the post of Chief Goods Clerk in the scale of pay of 550-750. He was directed to send his

joining report to the office early. The applicant was empanelled on 24-7-1984 for promotion as Chief Goods Supervisor (700-900) and he was promoted to that grade on adhoc basis as per letter dated 30-1-1984 with effect from 1-2-1984. The Railway Board under their letter dated 16-11-1984 filed as Ex.B communicated orders restructuring certain posts in Groups 'C' and 'D'. According to that letter staff selected and posted against additional higher grade posts resulting from restructuring were entitled to have their pay fixed with effect from 1-1-1984. The applicant's case is that he is entitled to be appointed to the post of Chief Goods Supervisor (700-900) with effect from 1-1-1984. However, on 16-5-1985 the respondents wrote to him intimating that it was proposed to take action to delete his name from the panel for appointment as

Chief Goods Supervisor (700-900) since he was not ~~on~~ holding the books of Chief Goods Clerk scale of 550-750 as on 1-1-1984. The applicant was allowed to submit such representation as he ~~may~~ desire, ^{might} on proposal to delete his name from the panel for appointment as Chief Goods Supervisor. This letter is filed as Ex.C. The applicant sent his representation by way of reply to Ex.C on 27-5-1985. Thereafter on 11-6-1986 Office Order No.92 was passed according to which he was declared ineligible for consideration to the post of Chief Goods Supervisor (700-900) ~~on~~ against ~~the~~ upgraded post since he was not holding the post of Chief Goods Clerk (550-750) on 1-1-1984.

The learned counsel for the applicant Shri G.S.Walia, appearing before us, stated that the order dated 11-6-1986 filed as Ex.E is

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illegal and the applicant is entitled to all the benefits in the post of Chief Goods Clerk from the date he was decategorised as Guard (A) Special. He pointed out that even though he was in the scale of 425-640 as Guard (A) Special, running allowance has to be added to his pay to the extent of 30 per cent of his grade pay, for the purpose of determining the appropriate scale in the event of absorption after decategorisation. It was on this basis that even though the respondents had wrongly offered him a/lower scale of pay, in December, 1983, subsequently he was offered a post in the scale 550-750. As early as on 22-12-1983 the applicant had accepted that scale. If the respondents had acted promptly and issued the appointment order, the applicant would have joined immediately and would have been in position well before 1-1-1984 as Chief Goods

Clerk in the scale 550-750. For no fault of the applicant he is now denied the benefit of promotion to a restructured post with effect from 1-1-1984. The learned counsel further submitted that the offer of appointment having been made to him and the same having been accepted by him on 22-12-1983, the relevant date for the purpose of determination of his absorption as Chief Goods Clerk should be at least 22-12-1983 if not ~~a~~ the date of his medical decategorisation as Guard Grade (A) Spl.

The next point urged by the learned counsel is that the order of the Railway Board dealing with cadre review and restructuring of posts talks only of posts which existed as on 1-1-1984. It has nothing to do with persons actually in position as on that date. Paragraph 5.2 of that order of the Railway Board indicates that

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if as a result of the ~~the~~ restructuring orders, an individual railway servant becomes due for promotion to a grade more than one grade above that of the post held by him, the first step promotion should be on the basis of mere seniority and even if the post ~~is~~ is a selection post, the criterion of a selection need not be gone through. The learned counsel then submitted that the criterion to be followed was mere seniority for promotion as Chief Goods Supervisor against a restructured post. He has pointed out that it has not been disputed by the respondents that the applicant was ~~not~~ senior enough for being appointed as Chief Goods Supervisor. As he had accepted the offer of appointment as Chief Goods Clerk on 22-12-1983, his seniority in the grade should really be with reference to the period of service rendered by him even as Guard, Grade (A) Spl., because that is the post which is found to be

equivalent to the post of Chief Goods Clerk in the grade 550-750, having regard to the fact that running allowance at 30% has to be added to the scale of pay of the Guard. He also pointed out that the Railway Board's order dated 16-11-1984 does not deal with seniority and it deals only with pay fixation. When the applicant was promoted apparently on the basis of seniority, all that is contemplated in the Railway Board's order is that the pay fixation in the post of Chief Goods Supervisor should be given to him as on 1-1-1984. He particularly stressed that if the applicant had not been found senior for appointment as Chief Goods Clerk, his name would have not been included in the panel prepared on 24-7-1984. The criterion according to the Railway Board's letter was the post which a person was holding at present. The applicant was holding a post at the relevant time in the scale of 550-750. Once it is established that he is entitled to promotion on the basis of seniority all that Ex. 'B' order of Railway Board states is that the benefit of pay fixation should be given from 1-1-84.

The learned counsel then invited our attention to a decision of the Supreme Court in

Amarjit Singh v. State of Punjab, AIR 1975

SC 984. According to that, it is not always

necessary that seniority in a post should

count only from the date of joining the post.

It has been brought out in the said judgement

of the Supreme Court that only where an order

of appointment states that it takes effect from

the date on which a person assumes charge, it

becomes obligatory to reckon the person's

service for seniority in that post from the date

of his joining. There could be other types of

appointment orders where there is either no

mention about the date of joining or where

it states that it takes effect immediately.

According to the learned counsel, in such cases

the seniority has to be reckoned in the new

post from the date on which the appointment order

is issued. In this case the applicant had

accepted the offer of appointment to the scale

550-750 on 22-12-1983 and after some delay on the part of the respondents for which the applicant was not in any way responsible, the actual appointment order was issued on 31-12-1983. Therefore, it has to be taken as a case where it will take immediate effect and the applicant should in any case be deemed to have been in the cadre of Chief Goods Clerk at least on 31-12-83. In the light of the above, he prayed that the prayer in the application viz., that the Tribunal may be pleased to quash O.O. No.92 dated 11-6-1986 and the respondents directed to include the name of the applicant in the panel dated 24-7-1986 circulated on 8-8-1984 for the post of Chief Goods Supervisor and the applicant be treated as having been promoted with effect from 1-1-1984, be allowed.

Shri A.L.Kasturey, the learned counsel for the respondents stated that at the outset the applicant in his letter dated 22-12-1983

requested the respondents to absorb him in any category having the grade 550-750. His request was considered and he was posted as Chief Goods Clerk in that grade by a letter dated 31-12-1983. He joined that post on 2-1-1984. Having done so, he pointed out, that the applicant is ^{asking for} estopped from changing the date of entry in to the Goods cadre ~~from~~ ^{to} 22-12-1983 or even as on 1-1-1984. The applicant having joined as Chief Goods Clerk only on 2-1-1984 AN, he becomes a member of the cadre on the goods side only from that date and not earlier. He also invited our attention to the detailed counter affidavit filed by the respondents.

The main question for our consideration here is whether the applicant is entitled to the benefit of restructuring and consequential posting in the grade of 700-900 as on 1-1-1984 even though he joined the cadre only on 2-1-84 AN,

in a lower scale of 550-750. The learned counsel for the applicant had urged that the order dated 16-11-1984 of the Railway Board talks only of cadre strength as on 1-1-1984 and pay fixation as on 1-1-1984. In other words, according to him, irrespective of his date of joining in the goods cadre whether it is 1-1-84 or any later date, if he could be promoted to a higher post in accordance with seniority, then he should be given the benefit of pay of the higher post with effect from 1-1-1984. We, however, are not able to accept this contention since the applicant was borne in the ^{Goods} cadre of Goods ~~Supv.~~ only ^{from} on 2-1-1984 AN. No doubt the cadre restructuring with effect from 1-1-84 made available for the goods cadre a large number of posts in different scales of pay by shifting some of the posts in a lower scale to higher scales. The posts might exist on 1-1-1984 but

only ^{are} the person who ~~is~~ in position on 1-1-1984 in the cadre in any of the scales of pay ~~alone~~ will be eligible for being considered for appointment to posts in higher scales. A person who is a late comer i.e. after 1-1-1984 to the goods cadre cannot have any claim to a post which had come into ~~exist~~ existence in the goods cadre on 1-1-1984 in a higher scale.

The learned counsel had drawn our attention to the decision of the Supreme Court in Amarjit Singh v. State of Punjab. That relates to the determination of inter se seniority of persons in the Provincial Civil Medical Service and Public Health Service units in Punjab when they were integrated with effect from 15-7-1964. In paragraph 10 of the Supreme Court's judgement therein it has been brought out -

"An order of appointment may be of three kinds. It may appoint a person with effect from the date he assumes charge of the post or it may appoint him with immediate effect or it may appoint him simpliciter without saying as to when the appointment shall take effect. Where the order of appointment is of the first kind, the appointment would be effective only when the person appointed assumes charge of the post and that would be the date of his appointment. It would be then that he is appointed. But in a case of the second kind, which is the one with which we are concerned since the order dated 8th April 1964 appointed respondents Nos. 3 to 19 to P.C.M.S. Class I 'with immediate effect', the appointment would be effective immediately irrespective as to when the person appointed assumes charge of the post. The date of his appointment in such a case would be the same as the date of the order of appointment."

On the above mentioned basis, the case before the Supreme Court was decided. We note that in this case the order of appointment was on 31-12-1983. (Ex. 'A')^{The} order does not state that the appointment is with immediate effect. On the contrary it says "he is offered alternative appointment and posted at JOS(AT) as Chief Goods Clerk in the scale 550-750". It also further states that "joining report should be sent to this office early." From the above, it would be clear that stress was laid on the fact

a joining report should be sent. In the absence of anything to indicate that the order dated 31-12-1983 should take immediate effect without reference to any joining report, we are not convinced by the plea advanced by the learned counsel for the applicant that the entry of the applicant in the goods cadre should be deemed to have been with effect from at least 31-12-1983 if not from the earlier date 22-12-1983 when he accepted the offer of appointment in that scale.

The learned counsel has also urged us to consider the fact that the applicant having accepted the offer of appointment on 22-12-1983, if there had been any delay in the issue of the appointment order to him, it should not visit him with adverse consequences. As a general proposition this may be sound. However, what has happened in this case that even within nine days of the acceptance of the offer, the respondents have issued the order dated 31-12-83.

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In our view this is not an unreasonable period for an organisation like the Railways to receive the letter from the applicant and act on it by issue of a regular order. Having regard to this factor, we are of the view that we cannot accept the plea advanced by the applicant in this respect.

To sum up, as the applicant had actually joined the post in the goods cadre only on 2-1-1984 AN and as he was not holding any post in the goods cadre as on 1-1-1984, he is not entitled to the benefit of promotion to the post of Chief Goods Supervisor on 1-1-1984.

The application is dismissed.

Chukkettanaray
7/9/88

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(M.B.MIJUMDAR)
JUDL MEMBER

(C. VENKATARAMAN)
ADMV. MEMBER

7-9-1988

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Index: Yes/~~No~~