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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 355/88

Transfer Application No: 25

DATE OF DECISION 2-12-92

Shri Shankar Pandurang Sawant --- Petitioner

Shri D.V.Gangal _____ Advocate for the Petitioners

Versus

Union of India Through
General Manager, C.Rly.
Bombay VT Respondent

Shri V.G.Rege _____ Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri Justice S.K.Dhaon, Vice-Chairman

The Hon'ble ~~Shri~~ Ms. Usha Savara, Member (A)

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 ?

No

U. Savara
(Ms. Usha Savara)
Member (A)

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(9)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
BOMBAY

O.A.No.335/88

Shri Shankar Pandurang
Sawant

Applicant

vs

Union of India
Through General Manager
Central Railway, Bombay VT
and Ors.

Respondents

Coram: Hon'ble Justice S.K.Dhaon, Vice-Chairman

Hon'ble Ms. Usha Savara, Member(A)

Appearance:

Mr.D.V.Gangal Adv.
for the applicant

Mr. V.G.Rege,Adv.
for the respondents.

Dated: 7-12-92

Judgement

(Per: Hon'ble Ms. Usha Savara, Member(A)

The application has been filed with the prayer that the applicant be declared to be entitled to fixation of pay in the pay scale of Rs.425-640 and Rs. 550-750 with effect from 7.10.80 and 1.1.84 respectively, and he should be granted arrears and all retirement benefits including pensionary benefits.

The applicant, while working in the grade of Rs. 205-280 (425-640 revised) on regular basis, was medically decategorized from A/11 to C/1 in 1970. He was offered the post of commercial clerk in the pay scale of Rs. 110-200 (260-430 revised) and his pay was fixed at Rs.200, though he had been drawing Rs.226 in his original grade. He was given various promotions, and was given the pay scale of Rs.425-640 in Nov.1983, when he was promoted as Advice Note Clerk. On 1.1.80, he was further promoted as Asstt.Head Checking Clerk in the pay scale of Rs. 550-750, and his

pay was fixed at Rs.700 on 1.6.85. He superannuated with effect from 31.8.85. It is the applicant's case that under the Railway rules Chapter 26 of the I.R.E.M. provides for grant of alternative appointment in cases of medically decategorised employees. As far as possible, the employee should be absorbed in the alternate post equivalent to the original post. If such a post is not available immediately, temporarily the employee may be offered any post irrespective of the fall in emoluments, and on the occurrence of a vacancy, he may be absorbed in the appropriate pay scale, when he was offered the post of commercial clerk in 1970, he was in no position to refuse it, and therefore accepted it, but he should have been absorbed in his own pay scale, whenever a vacancy occurred subsequently. This exercise was not done by the respondents, on the other hand, Shri V.P.Jadhav was also medically decategorised on 29.5.83, but he was granted the pay scale of Rs. 425-640 immediately, though he was admittedly junior to the applicant.

In the reply filed by the respondents the facts are not denied, however, it is stated that no vacancy in the past carrying the pay scale of Rs. 425-640 was available for the applicant's absorption, and therefore, he was given the post of commercial clerk. This post was accepted without any protest by the applicant. When Shri Jadhav, who was junior to the applicant, was medically decategorised and was absorbed in the pay scale of Rs.425-640(RS), the applicant's case was reviewed in regard to the fixation of his seniority as per Railway Board's instructions contained in letter dated 11-1-79. He was assigned seniority above Shri Jadhav as indicated in the Seniority List of Commercial Clerks as on 31.12.83. Persons placed at Sr.No.1 to 10 were the original appointees in the Commercial Deptt.

(11)

and they were appointed prior to 1949, while the applicant entered service in 1951. The applicant is placed at Sr. No.11 and Shri Jadhav is placed at Sr. No.12. It is submitted by Shri Rege that the applicant's seniority is correctly shown, and is perfectly legal and valid. There is no question about fixing his pay in 1980; only when Shri Jadhav, who was prior to the applicant, was absorbed in the Scale of Rs.425-640(RS) the applicant's pay was suitably fixed in the same scale from 21.6.83. Shri Rege also raised the point of limitation. The seniority list was published in Nov.84. By letter dated 14.5.85, the respondents had replied to the applicant's representation, and agreed to give him proforma fixation of pay from 21.6.83, taking 14.5.85 as the date when the cause of action accrued to the applicant, the applicant should have filed the O.A. within one year, but the O.A. has been filed on 29.4.88. The application is, therefore, barred by limitation and deserves to be dismissed.

We have heard Shri Gangal for the applicant and Shri Rege for the respondents at length, we have perused Rules 2604 and 2605 of Chapter 26 of I.R.E.M. They deal with the grant of alternative appointment in case of a medically declassified employee. It is incumbent upon the railway authorities, to adjust the medically declassified staff, as far as possible, in posts which should be in allied categories, and where their background and experience in earlier posts could be utilised. If an alternative employment cannot be found, he should be granted six months leave, or even be given extraordinary leave, if he has not got 6 months leave to his credit. It should be possible to find alternative employment within this time. When the applicant was medically declassified in July 1970, there was no vacancy available in the same pay scale, and

therefore he was offered absorption in a lower grade, which he accepted immediately, and without any conditions. It is open to the employees to accept a lower grade with a request that if a vacancy occurs in the same grade as he was getting, he should be considered eligible for the same in preference to a junior medically declassified employee. The applicant did not make any such stipulation, but accepted the lower grade in 1970. It was only in 1983, when Shri Jadhav was promoted as Head Parcel Clerk, that the applicant awoke from slumber and protested to the respondents. A reply was given to him on 6.1.84 that he would be assigned relative seniority in Gr. Rs.425-640 (RS) while publishing the seniority in that grade. Accordingly, he was given proforma fixation of pay in Gr. Rs. 425-640(RS) from the date, his junior Shri Jadhav was posted in that Grade i.e. from 21.6.83 as per letter dated 14.5.85.

The applicant has nowhere averred that there were vacancies in 1970 in the grade in which he was working. He accepted the lower grade post, and continued to work on it for 13 years before he made a limited representation viz-a-viz Shri Jadhav's seniority. In view of this, the applicant is debarred from raising the issue at this late stage and claiming that he should have been absorbed in the same pay scale i.e. Rs. 425-640 with effect from 1980.

In view of the above discussion, we are of the opinion that besides being hit by limitation, the O.A. is also devoid of any merit, and the same is dismissed, but with no order as to costs.

Usha Savara
7.12.92
(Ms.Usha Savara)

Member(A)

S.K.Dhaon
(S.K.Dhaon)
Vice-Chairman