

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH.

Original Application No. 45/88

Transfer Application No.

Date of decision 17.8.1993

Mr. John Thomas Petitioner

Mr. S. Natarajan Advocate for the Petitioner

Versus

General Manager, W.Rly. & Ors. Respondent

Shri A.L.Kasturey Advocate for the Respondent(s)

Coram :

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

The Hon'ble ~~Shri~~ Ms. L. Swaminathan, Member (J)

1. Whether the Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not ? No
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

*Swaminathan*  
 (MS. L. SWAMINATHAN)  
 MEMBER (J)

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

(9)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, BOMBAY

OA. NO. 45/88

Mr. John Thomas

... Applicant

v/s.

General Manager,  
Western Railway & Ors.

... Respondents

CORAM: Hon'ble Member (A) Shri M.Y. Priolkar  
Hon'ble Member (B) Ms. L. Swaminathan

Appearance

Shri S. Natarajan  
Advocate  
for the Applicant

Shri A.L. Kasturey  
Advocate  
for the Respondents

ORAL JUDGEMENT

Dated: 17.8.1993

(PER: M.Y. Priolkar, Member (A)

The grievance of the applicant in this case is that his pay has not been stepped up to the level of his junior on his promotion to the post of Head Ticket Collector from 17.5.1982.

2. The applicant was working in 1978 as Senior Ticket Collector when options were called for from employees holding that post ~~for franchise on permanent basis~~ to the post of Head Ticket Collector. In the notice dated 4.1.1978 asking for willingness/unwillingness for the post of Head Ticket Collector on adhoc basis, it was specifically stated that such willingness or unwillingness was only with a view to filling up of existing ten vacancies of Head Ticket Collector. It appears that while the applicant did not give his willingness for such adhoc promotion, one of his juniors Mr. Sharma gave his option for adhoc promotion to the post of Head Ticket Collector. But it is not in dispute that when the orders promoting Mr. Sharma him on adhoc basis to the post of Head Ticket Collector were actually issued, he did not accept

the post for some personal reasons. Admittedly, all these ten vacancies were filled up on regular basis in December, 1979 <sup>and Thereabout</sup> ~~after selection~~ conducted during December 1979 and January 1980 but both the applicant as well as Mr. Sharma did not find a place in the panel as both of them were juniors to persons selected. Subsequently, another vacancy of Head Ticket Collector arose in July 1980 and Mr. Sharma was promoted on adhoc basis to that post. It is not in dispute that no willingness or unwillingness of the eligible candidates was ascertained before this adhoc promotion of Mr. Sharma was ~~done~~ <sup>ordered</sup>. Subsequently, a regular selection was held in 1982 for promotion on regular basis to the post of Head Ticket Collector and both the applicant as well as Sharma were selected and regularly promoted as Head Ticket Collector w.e.f. 17.5.1982. The applicant then started representing for stepping up of his pay at par with the junior Mr. Sharma right from 1982. ~~Finally~~ By letter dated 22.6.1984 he was informed that the pay of Sharma had been wrongly fixed and was being stepped down. But when this was not done and the applicant started representing ~~further~~ and also had a personal interview with the authorities, he was ~~finally~~ informed by letter dated 25.6.1987 that he was not entitled to the stepping up of his pay at par with that of his junior Mr. Sharma. It is this letter dated 25.6.1987 rejecting his representation that is being impugned in the present ~~application~~.

3. Learned counsel for the respondents argued that when Sharma was promoted in 1983 on adhoc basis, it was not considered proper by the administration to obtain willingness or unwillingness of the applicant since the applicant had not shown his willingness when this was ascertained in 1978. He also states that ~~since~~ it <sup>is</sup> a well-known fact that by and large the Travelling Ticket Inspector and Senior Ticket Examiner who are under the category

of Mobile Staff and can draw Travelling Allowance for the purpose, do not like to work in a stationary post ~~of~~ <sup>like</sup> Head Ticket Collector even on promotion which causes loss in the total emoluments. It is difficult for us to accept this contention of the respondents. ~~As~~ As already stated above, ~~that~~ the earlier willingness was only in respect of ten vacancies which all got filled up in 1980. Therefore, when a fresh vacancy had occurred, a fresh willingness should have been obtained from the eligible employees. In fact, by letter dated 9.7.1985 the Headquarter Office of the Western Railway has specifically directed the Divisional Railway Manager that fresh willingness of the staff ~~should~~ be called for as and when <sup>ad hoc basis</sup> ~~it~~ was considered necessary, ~~since~~ normally when a person submits his unwillingness/refusal, he is debarred for one year and thereafter he can be reconsidered for promotion. In the present case, not only a period of two years had elapsed since willingness had obtained in 1978 but while obtaining willingness, it was mentioned that it ~~was~~ only for ten vacancies which had all been filled up and the adhoc promotion to the post on which Sharma was appointed was an additional vacancy which had arisen after filling up of ten vacancies to which 1978 option related. In view of this, we do not find any justification for refusing the request for stepping up of pay of the applicant vis-a-vis his junior Mr. Sharma. The learned counsel for the applicant has also brought to our notice a number of judgements of the Tribunal in which similar prayers had been granted. Only one of this may be cited here, viz. in the case of Smt. N. Lalitha & Ors. vs. Union of India & Ors. (1992) 19 ATC 569. The SLP filed before the Supreme Court against this judgement also stated to have been rejected.

4. Accordingly, the applicant succeeds. We direct that the pay of the applicant on his promotion to the post of Head Ticket Collector on 17.5.1982 should be fixed at par with that of his junior Sharma. The applicant will also be entitled to all consequential benefits including arrears of pay and also for benefit of this increased pay to all his retirement benefits. Payment may be made within a period of six months from the date of receipt of a copy of this order. No order as to costs.

*Leelam Sankaran*  
(MS.L.SWAMINATHAN)  
MEMBER (J)

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

mrj.