

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

Transfer Application No.8/86

Manohar Sitaram Nandanwar,
R/o. Wani, Tq.Wani,
Distt.Yavatmal.

,, Applicant (Plaintiff)

vs

The Union of India
New Delhi.

.. Respondent (Defendant)

Coram: Vice-Chairman B.C.Gadgil

Member J.G.Rajadhyaksha

Present: 1) Plaintiff
2) Mr.Khatau for Defendants

Judgement:

(Per B.C.Gadgil, Vice-Chairman)

Date: 30-6-1986

This application was originally Regular Civil Suit No.266/84 filed in the Court of the Civil Judge, Senior Division, Yavatmal. After the constitution of this Tribunal the said suit has been transferred to the Tribunal.

It would be convenient to refer to the parties as Plaintiff and Defendant instead of the Applicant and the Respondent. The dispute in question is a very short one. Practically, all the facts are admitted on behalf of both the sides. The Plaintiff (the present applicant) joined the service of the Postal Department in 1956 as a Telephone Operator. He was confirmed in the post on 1.3.1965. Earlier there was some controversy as to the date from which his services should be counted for fixing the seniority. The Postal department of the Union of India (The Defendant) fixed the seniority of the Plaintiff on the basis of his confirmation on 1.3.1965. The next promotion for the post of the operator is that to the

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post of Supervisor. Plaintiff's contention is that his seniority should have been fixed on the basis of continuous service w.e.f.1956. This dispute was not solved for a number of years. However, in 1979, the seniority of the Plaintiff and other persons was re-fixed and the principle of continuous service (even without being confirmed) was adopted ^{at} that time. The Plaintiff thus obtained a seniority at a very much higher level. However, before this seniority was re-fixed (from the date of confirmation) the Plaintiff was promoted as a Supervisor w.e.f.20.9.77. It is material to note that w.e.f.1.6.74 a number of Telephone Operators deserved to be promoted as Supervisors. In 1976, such promotions were ordered with retrospective effect from 1.6.74. However, the Plaintiff was not able to avail of this promotion as at that time his seniority (on the basis of the date of confirmation) was such that he did not come within the Selection Zone.

After the Plaintiff's seniority was re-fixed on 20.8.79, certain consequential orders were passed on 12-2-81. As far as the Plaintiff is concerned that order states that though the Plaintiff was promoted on 20.9.79 he should be deemed to have been promoted as Supervisor w.e.f.1.6.1974. As far as the financial benefits are concerned that order has laid down as follows:- "They (persons whose seniority has been fixed) are not entitled for arrears of pay and allowances, but their pay may be fixed as per DG P&T New Delhi letter No.45-1/74-SPB.II dated 7.8.1978". The effect of the above direction is that though the Plaintiff's then current pay was re-fixed on the basis of the deemed date

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of promotion, still he did not get the financial benefits from 1.6.1974 to 19.9.77. It is this direction that is being challenged before us. Plaintiff's contention is that revised seniority is declared to remedy the earlier erroneous fixation of seniority, and that error has been corrected in 1981. He submits that if this seniority was in existence in 1976 he would have obtained promotion as per the revised seniority list as he was actually senior to those persons who were promoted from 1.6.74. He further contends that those promotees who have been promoted from 1.6.74 were granted all the financial benefits including arrears of pay from 1.6.74 to 1976. According to him, refusal to pay similar amount of arrears to the Plaintiff is a discrimination. Plaintiff took the matter to the higher authorities by making representations. Ultimately, the said representation was finally rejected on 19.3.84. Thereafter, the Plaintiff filed the suit which now stands transferred to us.

The Defendants resisted the suit. It was contended that in view of the specific order dt. 12th February, 1981 the Plaintiff would not be entitled to arrears of difference of pay from 1.6.74 to 19.9.77. It was also contended that the Plaintiff's suit may be barred by time.

We have heard the Plaintiff in person. Mr. Khatav from the Postal Department argued the matter on behalf of the Defendants. It is not in dispute that the Plaintiff would have received all the arrears of the difference of pay from 1.6.74 had his seniority been correctly fixed earlier. The Plaintiff did not get promotion till 1977 on account of wrong

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seniority lists prepared by the Department. The error has been rectified by the Department on 12.2.1981. The effect of the rectification is that the Plaintiff became so much senior in service that he would have been promoted ~~as~~ along with others who were promoted in 1976. Not only that, the Plaintiff would have received all the arrears of difference of pay from 1.6.74 just as the other promotees of 1976 got them. It is the impugned order dated 12th February, 1981 which has specifically directed that the Plaintiff should not get arrears of pay. However, the Plaintiff would be entitled to a better seniority on the basis of that order itself. In our opinion, it would be very difficult to accept the contention of the Defendants that the Plaintiff is not entitled to any arrears. This is more so when the 1976 promotees got arrears from 1.6.74 and the Plaintiff would have had similar benefits if the seniority list was correctly framed. By such corrected seniority he himself would have been promoted from 1976 along with other persons. In view of this position the Plaintiff is right in his contention that he is entitled to get an amount of Rs.2,154.09 as claimed in the suit.

The next question is about the limitation. The Defendant's contention is that the impugned order is dated 12.2.81 and, therefore, the suit filed on 30.8.1984 would be barred by time. It would be beyond 3 years from 12.2.81. However, one cannot forget that the Plaintiff had a right to make a representation against that order. The records

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shows that he has been making representations and ultimately it is on 19.3.84 that the Director General has rejected the Plaintiff's claim. It cannot be disputed that the suit is within time from this date i.e. 19.3.84. In our opinion in the peculiar facts of the case and more particularly in the background of the Plaintiff's representations having remained undecided till 19.3.84, there would not be any bar to the Plaintiff.

The Plaintiff has paid Court Fee stamp of Rs.175/- He had also engaged an Advocate in the Civil Court. The Plaintiff would be entitled to the costs of litigation and we quantify that cost at Rs.350/- It is needless to say that the Plaintiff should be paid interest on the amount of Rs.2,154.09 from 1981 @ 12% per annum till actual payment. Hence we pass the following order :-

The Defendant (the Respondents in these proceedings) should pay to the Plaintiff (the Applicant in these proceedings) Rs.2,154.09 and the cost of Rs.350/- together with interest @ 12% p.a. on Rs.2,154.09 from 12.2.81. We further direct that the Plaintiff would be entitled to recover all this amount from the Defendant.

B.C.Gadgil

(B.C.GADGIL)
Vice-Chairman

(J.G.RAJADHYAKSHA)

Member