

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

5

O.A. NO: 297/89

199

T.A. NO:

DATE OF DECISION 15.10.91

Shri S.T. Papalkar

Petitioner

Shri E.K. Thomas

Advocate for the Petitioners

Versus

Union of India and others

Respondent

Shri V.M. Pradhan.

Advocate for the Respondent(s)


CORAM:

The Hon'ble Mr. Justice U.C. Srivastava, Vice Chairman.

The Hon'ble Mr. M.Y. Priolkar, 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 ? ✓

mbm*


(U.C. Srivastava)
Vice Chairman.

6

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, BOMBAY BENCH.

....

Registration O.A. No. 297 of 1989

Shri S.T. Papalkar, Assistant Superintendent
(Telegraph Traffic) in the office of the Sr.
Superintendent (Telegraph Traffic) Pune Division,
Pune Applicant.

Versus

Union of India and others Respondents.

Coram :-

Hon'ble Mr. Justice U.C. Srivastava, V.C.
Hon'ble Mr. M.Y. Priolkar, Member (A)

Appearances:-

Sri E.K. Thamas for the Applicant.
Sri V.M. Pradhan, for the Respondents.

Judgment:

(By Hon'ble Mr. Justice U.C. Srivastava, V.C.)

Dated: 15/10/91

The applicant who was promoted to the cadre of Assistant Superintendent (T.T.) as a result of qualifying examination which took place in the year 1980 and after undergoing prescribed pre-appointment training, he was appointed as Assistant Superintendent (T.T.) on 26.9.1981 in the scale of Rs. 425-750 and by means of this application, he claimed the stepping of his salary as the salary of his junior is higher than his salary. The applicant was appointed as a clerk in the pay scale of Rs. 110-240 on 20.8.1963 after undergoing training for 3 months while the respondent Sri Sonawane was appointed as Telegraphist in the pay scale of Rs. 110-240 on 14.10.1963 after completing his training of more than that of 3 months. The applicant has changed his cadre of the Clerk in Telegraphic Department in the year 1970, and benefit of advance increment was also given to him. Shri J.B. Sonawane was drawing same pay as the applicant in the scale of Rs. 110-240 prior to the qualification of the applicant in 1979 departmental examination for the post of

Contd ... 2p/-

(X)

Assistant Superintendent (T.T.) in which Shri J.B. Sonawane failed to qualify. The applicant after 9 months departmental training was appointed as Assistant Superintendent but the respondent Sri Sonawane who could not qualify in the year 1979 was granted promotion in selection grade on 3.9.1979 and his pay was fixed from 3.9.1979 at the stage of Rs. 470. The applicant was thus promoted directly to the post of Assistant Superintendent without ever being placed in the selection grade like the said respondent. Now in the gradation list the applicant is at Sl. No. 74 and the respondent Sri Sonawane is at Sl. No. 82. i.e. the applicant is senior to the respondent, and on his promotion as Assistant Superintendent (T.T.) his basic pay was fixed Rs. 530 under Fundamental Rule-22 (c). Thus an anomaly occurred wherein applicant's junior got more pay on his promotion as Assistant Superintendent though both were drawing same basic pay of Rs. 444-00 till August, 1979 i.e. before any promotion of them. The applicant, in these circumstances, after stepping of his salary, approached to this Tribunal.

2. The respondents have ^{resisted} ~~restricted~~ the claim of the applicant stating that the said Sonawane was not junior to him although in the cadre of Assistant Superintendent, he was junior to him in as much as in the gradation list the applicant was ^{at number} ~~in the pay scale of~~ Rs. 1033 in the year 1977 whereas that of Shri J.B. Sonawane was ^{at} ~~584~~ 584. The applicant was receiving the same pay as that of Sri Sonawane in the year 1979 so the applicant was not senior to the said Sonawane.

3. On behalf of the applicant, it was contended that it is the date of appointment which determine the seniority and from this very date the period of continuous officiation is taken into account and not the period of training. Now in the instant case, it has not been either pleaded or contended that the training period is also counted towards service and no rules or instructions in his behalf has been ^{which may run counter to the provisions of 'Apprentice Act' and the definition of said} pointed out. It has also not been pointed out that the benefit of ^{word}

(8)

training period is also given seniority and one is deemed to be full-fledged government servant during this period. In the absence of any rules or directions, it is the date of appointment which will determine the initial seniority, although the cadres were different but in view of the fact that the applicant ~~was appointed~~ entered into service initially few days prior to the respondent who was appointed after him, the applicant ^{could} ~~was~~ be deemed to be senior. It is true that in the gradation list of 1977, the applicant's name was shown much below the name of the respondent Sonawane. On behalf of the applicant it was contended that the applicant was not affected by the same and his seniority could not be affected but as he crossed that cadre and entered into a higher cadre in the year 1979 and in that cadre the respondent was promoted later on and thus he is junior to the applicant. It is true that the respondent was placed in the selection grade but the applicant was not placed in the selection grade but the selection grade ~~does~~ not determine the seniority as such. On behalf of the applicant, reliance is placed in the case of Shri Govind Prasad Gupta Vs. Union of India and others, decided decided by the Principal Bench of the Tribunal dated 28.4.1989. In this case the dispute is also between the Assistant Superintendent Telegraph Traffic and with same plea for stepping of his grade. In the ^{case} said the applicant was promoted to the post of Assistant Superintendent Telegraph Traffic after departmental examination in September, 1982 and in pursuance of the scheme some officials junior to him were placed in the next higher scale of pay before ^{being} promoted to the post of Assistant Superintendent Telegraph which resulted in an anomaly. The principal Bench held that the case of the applicant was covered by the office memorandum dated 15.2.1983 and one of the requirements for stepping of pay under the said memorandum is that the scale of pay of the lower post i.e. ^{grade} ordinary ~~pay~~ and the higher post in which both juniors and seniors are entitled ^{to draw pay} / should be identical. The second condition was that the

senior employees should have been eligible for appointment to the selection grade but for working in the higher post on or before date on which the the/junior was appointed to the selection grade. The 3rd condition is that the junior should not have drawn ~~the~~ more pay than the senior by virtue of fixation of pay under the normal ~~@@@~~ rules or any other advance increment granted to him in the lower post and the anomalies should be directly result of the junior person holding selection grade in the higher scale at the time of his promotion in the higher grade. In the instant case it was further held that the object of the said office memorandum is to remove anomalies of the kind which has arisen in the present case. This application can not be restricted to the selection grade introduced at any particular point of time or in any particular department of ministry, and accordingly on this post the applicant is entitled @@ to the same pay scale ^{respondent's} ~~as the~~ ^{accordingly} and ~~as such~~ the application is allowed and his prayer for quashing the order dated 22.9.1981 is ^{also allowed. The said order is quashed} ~~rejected~~. The respondents are directed to step up the pay of the applicant to the level of that of the respondent ^{Sn. Sanwane}. The applicant shall also be entitled for consequential relief by way of payment of arrears arising ~~out~~ from stepping up of the pay. The respondents shall comply with the directions within 2 months from the date of receipt of the copy of this judgment. The application is disposed of with the above observations without any order as to the costs.

Member (A)

Bombay Bench.

(n.u.)

Vice-Chairman

15.10.91