

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 449/89

198

XXXXXX

DATE OF DECISION

29/8/91

Shri Gurcharan Singh Panfer, PetitionerShri G.K. Masand

Advocate for the Petitioner(s)

Versus

Union of India and ors.

Respondent

Mr. S.C. Dhavan

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. JUSTICE U.C. SRIVASTAVA, VICE-CHAIRMAN,

The Hon'ble Mr. M.Y. PRIGULKAR, 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 ?

(9)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

ORIGINAL APPLICATION NO: 449/89

Shri Gurcharan Singh Panfer,
Working as Chief Foreman (T.M.),
Central Railway, Kalyan, Dist. Thane. Applicant

Vs.

The Union of India through the
General Manager, Central Railway,
VT Bombay. and others Respondents

CORAM : HON'BLE JUSTICE SHRI U.C.SRIVASTAVA, Vice-Chairman,
HON'BLE SHRI M.Y.PRIOLKAR, Member (A)

Appearance:

Mr. G.K. Masand, Adv,
for the applicant

Mr. S.C. Dhavan, Adv,
for the Respondents

JUDGMENT

(PER : JUSTICE U.C.SRIVASTAVA, Vice-Chairman)

DATED : 29.8.91

By means of this application, the applicant
who is working as Chief Foreman in the Central Railway
at Kalyan has challenged the seniority list issued
by the Chief Personnel Officer Central Railway on 20/24
May 1988 modified by order dated 14th June 1988. He has
also challenged the order dated 22nd February 1989 by which
his representation dated 28th December 1988 against the
seniority assigned to him was rejected. The applicant joined
as Apprentice APWI on 21.6.1971 and was posted as APWI
from 2.10.1972 in Track Machine Organisation against the
Ex-cadre post of Asstt. Foreman/Chargeman 'A' in the grade
of Rs.550-750 on 6.3.1978 after he volunteered for the same.

The Track Machine cadre was declared the permanent cadre of the Civil Engineering Department with effect from 1.1.1980 and the employees working in the ex-cadre post Track Machine including the applicant were regularised with effect from 1.1.1980. The post of foreman Grade in scale of Rs.700-900 in the Track Machine Cadre was a selection post and the applicant was regularly promoted to this grade with effect from 1.1.1984 after due selection although he had been working on the said post on adhoc basis since May 1979. Thereafter the applicant was promoted on adhoc basis as Foreman in the Grade of Rs.840-1040 (RS) and was posted at Jhansi on 5.12.1984. As a result of restructuring of the Tract Machine cadre the applicant's services as Foreman Grade Rs.840-1040 were regularised with effect from 1.1.1984, and he was promoted as a Foreman and Transferred to Bhusaval on 23.2.1985. The applicant being senior most and a vacancy of Chief Foreman having arisen, he was promoted on adhoc basis as such in the grade of Rs.840-1040. According to the applicant his promotion on both the posts was against the clear and regular vacancy and he continued to officiate without any break in service of Chief Foreman since December 1984. The Selection for the Chief Foreman was held in the month of November/December 1984 for giving regular promotion in the Grade of Rs.700-900 to the eligible employees and the applicant was also regularised in the same, though as per averment the applicant had already been earlier promoted as Chief Foreman in the Grade of Rs.840-1040. Thereafter the applicant went out of country on deputation as he volunteered for the same. In the year 1988 selection for the promotion of Class-II service took place in Civil Engineering Department. The same was notified

on 20/24 May 1988 and in the list of eligible candidates the name of applicant did not find place although the name of his junior appeared therein. According to the applicant it appears that the applicant services in the Grade of Rs.700-900 were taken with effect from 1st January 1984 even though he was promoted against clear regular vacancy of Foreman in the Grade of Rs.700-900 on 10.5.1979, that is a year prior to its becoming cadre post. The applicant, contended even if, seniority starting from the grade of Rs.550-750 is taken into account, he was senior to many persons who entered in the Grade of Rs.550-750 after 6.3.1978 when he was promoted as Asstt. Foreman. The applicant made representation against his expulsion and thereafter a revised notification was issued including the name of the applicant along with others in the said eligibility text. The applicant not being satisfied with the revised notification approached higher authority but not satisfied with their assurance, he appeared in the test, and was declared to have passed in the same thereafter appeared in the vivo-voce test, according to him, he passed in the same too. The respondent declared a provisionsl panel, but the name of the applicant did not appear in the same. The applicant made representation again in the matter of seniority and prayed that the same be fixed above those persons who had entered to the Grade of Rs.700-900 after him i.e. 10.5.1979, but the representation was rejected after which he has approached this Tribunal. The respondent, have stated that the post of Foreman Gr.700-900 was a selection post and service rendered in the Grade on adhoc

basis same cannot be counted for the purposes of seniority, and as such applicant service prior to 1.1.1984 cannot be counted. Further the applicant not having been empaneled the question of his promotion to Class-II did not arise.

*Concurred
V.M. 4/12/88*

According to the applicant his services were ~~not~~ regular with effect from 1.1.1984 on the post of foreman in the Grade of Rs.700-900 and also in the grade of Rs.840-1040 that is two different grade on the same date and there is no explanation for the same and by such regularisation on a particular date along with regularisation on higher grade he cannot be deprived of his seniority. The selection for regularisation in fact took place in December 1983 and not in November 1984 and before the declaration of the result there was restructuring of Tract Machine cadre. And even after restructuring the respondents were bound to regularise service at least from 1.1.1980 according to the applicant and not from 10.5.1979 from which date he officiating in this Grade. In the list of staff who were to be regularised, the name of the applicant appeared at No.4 in the grade of Rs.700-900 and the date from which he was to be regularised was shown as 1.1.1980 and yet benefits of the same were denied to him. The service rendered by him was in regular vacancy as such the period can ^{not} be ignored or bypassed for seniority or regularisation. The facts and circumstances of the case makes abundantly clear that the applicant earlier was working from the year 1979 against Ex-cadre post but later the post was included in the cadre and the applicant in the year 1980 the applicant who was senior most continued to officiate at the same time. It may be a

selection post but the services of the applicant were regularised and whatever the applicant appointment was against quota and regular vacancy. Subsequently his appointment was also regularised and thus the applicant cannot be deprived of the entire period of adhoc officiation at least from the date the post became a cadre post viz from 1.1.1980. The legal position in this behalf is now settled. The respondent thus deprived the applicant's from his seniority at ~~last~~ with effect from 1.1.1980 and the said period cannot be said to be fortuitous treated to be period of service. ^{not should be}

The applicant was regularised on two grades on the same date. Unless he was not regularised on the lower grade he could not have been regularised as higher grade post. There cannot have been any regularisation on the higher post on the same date. There is fallacy in the case of the respondent ^{who} they have pleaded that the applicant is not entitled to this period entire fixation will ~~not~~ ^{be} ~~be~~ ^{the} seniority ~~cannot be~~ ^{from the date of his services regularised}. Thus the application in view of the above said observation deserve to be allowed and the respondents are directed to assign the seniority to the applicant in the grade of Rs.700-900 with effect from 1.1.1980 and the correct the seniority list accordingly and give all the consequential benefits to the applicant in this behalf, and the period from 1.1.1980 included have ~~working~~ ^{for the period} in the Grade of Rs.700-900 for the ~~period~~ integrated seniority list. Let it be done within a period of three months of the above direction. Accordingly, the application is finally disposed of, there will be no orders as to the costs.


(M.Y. PRIOLKAR)
MEMBER(A)


(U.C. SRIVASTAVA)
VICE-CHAIRMAN