

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:857/96

DATE OF DECISION: 16-1-2001

Shri M.G. Bhalerao Applicant.

Shri K.B. Palreja Advocate for
Applicant.

Versus

The Chief Commercial Manager CST, Mumbai Respondents.
and others.

Shri R.R. Shetty Advocate for
Respondents

CORAM


Hon'ble Shri Kuldip Singh, Member (J)

Hon'ble Ms. Shanta Shastri, Member (A)

(1) To be referred to the Reporter or not?

(2) Whether it needs to be circulated to
other Benches of the Tribunal?

(3) Library.


(Kuldip Singh)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO:857/96

the day of JANUARY 2001

CORAM :Hon'ble Shri Kuldip Singh, Member (J)

Hon'ble Ms. Shanta Shastri, Member (A)

M.G.Bhalerao
Ex. Commercial Inspector
Office of the CCO/C.Rly
Mumbai CST, Mumbai.

... Applicant.

By Advocate Shri K.B. Talreja.

V/s

1. The Chief Commercial Manager
 Central Railway, Mumbai CST
 Mumbai.

2. The General Manager
 Central Railway
 Mumbai CST, Mumbai.

...Respondents.

By Advocate Shri R.R. Shetty.

O R D E R

{Per Shri Kuldip Singh, Member(J)}

The applicant in this OA is aggrieved of the fact that his retiral benefit and pension has not been properly granted due to wrong fixation of pay of the applicant on promotion to grade Rs. 455 - 700 (RS) and above which was not given to the applicant till his retirement. It is also stated that SPO by name had written letter to Sr. D.P.O. by name for this purpose vide (Exhibit 1) but his pay had not been re-fixed and his pension\$ has not been revised.

kn

2. The applicant also alleges that he was promoted from the grade of Rs. 425 - 640 to Rs. 455 - 700 (RS) and his panel position is at No.1. He was posted at (BB/VT)/CST as Chief Booking Clerk (Season Ticket) but was not relieved by the CCM and referred to promotion order (Annexure 3). He also says vide order No.14/86 dated 13.2.1986 he was transferred from the office of CCM MBCST to MB CST in grade of Rs. 455 - 700 (RS) but the applicant was not relieved. Copy of the order is Annexure 4.

3. Thus the applicant retired in the grade of Rs. 425 - 640 (RS). It is further stated that APO in his letter had written that applicant was under punishment penalty and he could not be promoted to grade of Rs. 455 - 700 but these averments are wrong and false. Thus the applicant claims he was wrongly denied grade of Rs. 455 - 700.

4. It is further submitted that respondents be called and direction be passed to fix the applicant in the grade and scale of pay which he was due at the time of retirement and consequential reliefs as prayed in para 8 be granted.

5. The respondents in their reply pleaded that since by present OA filed in 1977 applicant is seeking promotion to higher grade so same is barred by time.

6. The respondent further pleaded that the applicant had been repeatedly punished for misconduct on several counts so his pay was reduced.

kn

7. Despite penalties imposed, after the filing of OA his case was again considered and applicant was promoted in the scale of Rs. 1600 - 2660 (Revised) with effect from 6.6.1986 i.e. the date on which his junior R.B. Kale was promoted. Accordingly his pay has been refixed at Rs. 1850/- as on 1.6.1991 and thereafter his pension has also been revised. So no cause of action survives and OA should be dismissed.

8. The applicant has been given proforma pay fixation and claim for arrears is stated to be barred by time.

9. No rejoinder to the reply was filed.

10. We have heard the learned counsel for the parties and have gone through the record. Shri Talreja appearing for the applicant submitted that applicant was at serial No.12 and another SE candidate (Shri Nirbhavane) junior to him ^{at} ~~was~~ serial No.15 ^{when} ~~when~~ both were in pay scale of Rs. 425 - 640. In the seniority list for grade of Rs. 700 - 900 Shri Nirbhavane is at serial No. 32 and was given grade of Rs. 700 - 900 with effect from 1.1.1984. In the said seniority list placed at serial No.19 is shown as blank and infact it is meant for applicant and person above him was also given grade of Rs. 700 - 900 with effect from 1.1.1984. So it should be held that applicant was in fact given or otherwise entitled to pay scale of Rs. 700 - 900 with effect from 1.1.1984.

h

11. Counsel for the applicant further urged that vide order 13.2.1986 (Annexure 4) applicant was promoted and posted as CBS (Chief Booking Supervisor the post which carried pay scale of Rs.700 - 900) whereas all others were posted as CBC (Chief Booking Clerk grade Rs. 455 - 700). This also shows that applicant was to ^{get} ~~give~~ pay scale of Rs. 700 - 900.

12. The Counsel for the respondent was however unable to clarify as to why against the name of the applicant letters 'CBS' have been typed whereas against all other promotions in this very order against the names at serial 2 to 5 letters 'CBC' are mentioned.

13. However, we have meticulously scanned the available record and have come to the conclusion that even against ^{the} ~~the~~ name of applicant the letters should have been CBC and not CBS for the following reason.

14. Till the filing of M.P. vide which applicant has given his bio-data, the applicant had not claimed the scale of Rs.700-900 and for the purpose we refer to the legal notice dated 1.3.1996 issued by Shri Talreja, Advocate himself on behalf and under instruction of applicant which is at page 26 of paper book. In the notice applicant stated that he had been promoted to the grade of Rs. 455 - 700 with effect from 1.1.1986 and he called upon the respondents to grant him promotion to the grade of Rs.455 - 700.

h

15. Secondly as per para 215 (a) of IREM a railway employee should have worked for two years in the immediate lower grade to get the next higher grade on promotion.

16. According to own showing of applicant he was in the lower grade of Rs. 425 - 640 (RS) and was promoted to grade of Rs.455-700 vide order dated 13.2.1986. That also shows that grade of Rs. 425 - 640 is immediate lower grade to Rs. 455 -700. Then on the face of it the applicant could not have jumped in one go from Rs. 425 - 640 to Rs. 700 - 900, particularly in case of applicant it could never be since he was inflicted so many penalties in different cases as alleged in the counter, which fact has not been controverted by filing any rejoinder.

17. The statement made by applicant in the M.P. where he is comparing himself with some junior Mr. Nirbhavane is not reliable since it is not supported by any record. Whereas ^{Mr} Kale is shown immediately junior to applicant in the result of selection to grade of Rs. 455 - 700.

18. For the reasons stated above we find that allegations as alleged in the M.P. are altogether not supported by any documents.

19. On the other hand respondent had already granted the relief to applicant as claimed by him in his legal notice. In the OA also the applicant had claimed for grant of scale of

k

:6:

Rs.455-700 and claim for grant of pay scale of Rs. 700 - 900 seem to be after thought. So we find that nothing survives in the OA. Accordingly OA is dismissed.

Shanta S-

(MS. SHANTA SHASTRY)
MEMBER(A)

Kuldip Singh

(KULDIP SINGH)
MEMBER(J)

NS

41

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL MUMBAI

BENCH/MUMBAI.

REVIEW PETITION NO: 12 OF 2001.

IN

O.A.No.857/96.

Shri M.G.Bhalerao..... Applicant.

V/s.

Central Railway..... Respondents.

REVIEW PETITION ON BEHALF OF APPLICANT DUE TO ERRORS APPARENT

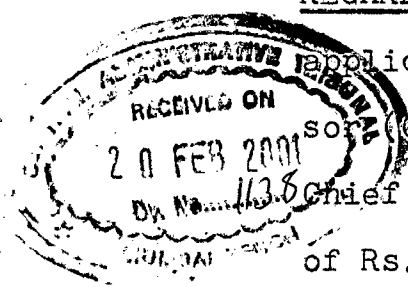
MAY IT PLEASE YOUR LORDSHIPS:

The applicant most humbly and respectfully submits as under:-

THIS is a case of retired poor SC community Commercial/Clerk/Inspector, who had not been fixed correctly and had approached your Lordships for assigning him correct position in seniority and according him the due scale of pay and get him the revised scale fixed and all his retirement dues may be got corrected after fixing him in the due scales of pay.

The judgement in the above matter has been rendered on 19.1.2001 and after going through the judgement and after getting instructions from the applicant, the following prima-facie errors are pointed out with a view to get justice and errors and anomalies removed for which the applicant shall ever be obliged and grateful. He is heart patient and is passing from a very pathetic condition due to financial and domestic problems as well.

REGARDING PARA NO:2: Annexure-3 of the O.A. shows that the applicant was promoted to the post of Chief Booking Supervisor (CBS) and not CBC as has been understood. The Grade of Chief Booking Supervisor (Season Ticket) is in the Grade of Rs.700-900(RPS) and not Rs.455-700(RS). Others have been



.....P2/-

promoted to the post of Chief Booking Clerks in the Grade of Rs.455-700(RS) and Scale of Rs.425-640 (RS) and 455-700(RS) have been merged as a result of IVth pay Commissions' recommendations (Railway Board's letter No.E(NG)-1-86-PMI/11 dated 5.2.1987-page 590 of AIRF's Compendium (January-December, 1987)). Annexure-4 of the O.A. clearly state that the applicant was as Chief Booking Supervisor and not Chief Booking Clerk i.e. CBS and not CBC. The grade of CBS is Rs.700-900 and of CBC is of 425-700/455-700 (merged).

Para No.4: According to para 4 of the judgement, the applicant has been given what he wanted, then the O.A. become infructuous and did not survive. Then why it has been erroneously concluded that O.A. is dismissed, when whatever does werethere, the applicant had got. The fact is that the applicant was to be promoted still higher and should have been elevated as no punishment was pending from 1984 till 1991. Had he been given correct seniority i.e. seniority No.19, which is erroneously kept blank, he would have been senior to Shri Nirbhavane in the grade of Rs.700-900(RS). To compare the seniority with Mr.Kale is erroneous and shall not lead to correct conclusion. Date of Appointment of Shri R.B.Kale is 27-10-1965 and he is still working in CCO office CSTM as CI.

Para No.6: The applicant is not claiming any promotion during the penalty period, but he is claiming promotion after expiry of the penalty period i.e. in between 1984 - 1991.

Para No. 7: Here it is admitted that there was error apparent and during the pendency of O.A. his pay has been fixed at Rs.1600-2660(Revised) with effect from 6.6.1986. This is wrong to compare him with Mr. Kale, he is comparable with Mr.Nirbhavane and not Mr.Kale. The Hon'ble Tribunal may call for the seniority of grade Rs.425-640/455-700/500-700/700-900. The picture and position of the applicant would emerge clearer to arrive at a correct conclusion. For ready reference xerox copies of official record of seniority List of Grades Rs.425-640(RS) dt. 31/5/1986 and Rs.700-900 (RS) dt. 13-12-1985 and posting orders as CBS(ST)/VT dt. 1-1-86 and posting order as CBS dt. 13/12/86 enclosed herewith alongwith xerox copy of letter forwarded to CPO(C) CST Mumbai /C.Rly dt. 4-10-2000 at page -53 (BF P-3).

Para No:8: The applicant is entitled for arrears for the reasons that his fixation is made wrong due to apparent inaction on the part of the Respondents as copy of the S.R. eventhough ordered 15.7.1997 was not supplied for more than 3 years with the result, the applicant was asked to give his Bio-data to work out the correct basic pay and also arrears. It was accordingly done in the form of M.P. dated 19.7.2000. Subsequently S.R. of the applicant was traced out and a copy of the same was given after filing of M.P. (Pages 36_40 of the paper book).

Perusal of the S.R. would reveal that there are no entries after 1980 onwards, which is a cause of non-fixation of pay correctly and incomplete seniority list, where serial No.19 is kept blank.

Para No.9: The Respondents were not having any record and the record was being prepared on the basis of data available with the applicant and as such the applicant had filed an M.P. giving the detailed Bio-data (P.36-40 of paper book).

Para No:10: Your Lordships have confirmed that your honour have perused the record and you might have been convinced that Sr.No.19 in the Seniority list is kept blank and Shri Nirbhavane is junior to me and as such I should be placed above him. This fact your Lordships have recorded that the applicant 's junior Shri Nirbhavane has been promoted to Grade-Rs.700-900 w.e.f.1.1.1984 and as such applicant too should have been promoted from this date at least. This fact also is corroborated by your Lordships in para-11 and it is also admitted that Respondents could not reply to this as stated in para 12 of the judgement. When the Respondents' Counsel was unable to clarify, then why the averement has not been confirmed from the department as to what is the grade of Chief Booking Supervisor and what is the grade of Chief Booking Clerks and whether the two posts are separate and there is no typographical error should have been clarified before coming to this conclusion.

Para No:13: It is wrong and erroneous to say that there was typographical error i.e. instead of writing CBC, a word CBS has been written against the applicants' name and for which reasoning is given, which are respectfully commented as under:-

It is wrong to say that the records have been meticulously scanned as the applicant can produce the letters from the Respondents, which are being exchanged between Division and H.Qrs office in which still information is being called from each other. As can be seen from the following letters :-

<u>Sr.No.</u>	<u>Letter No.</u>	<u>Dt.</u>	<u>What it speaks.</u>
1.	HPB/629/R/C/MGB from H.Qrs.	<u>30/9/99</u>	information is being collected from Division as the scale of Rs. 2200-3200(RPS) is being controlled by the Division.
2.	HPB/629/R/C/MIB. from -do-	1.11.99.	They wanted to verify further claim of the applicant in still higher grade i.e. Rs.2375-3500.
3.	HPB/629/R/C/MGB dt.24.11.99/-do-		Reminder for getting information.
4.	-do-	dt. 3.1.2000-do-	3rd reminder to get the exact position, which is yet to be furnished.
5	Copy of DRM(P) CSTM Letter No. BB/ P/C/MGB dt 19-8-1999 enclosed at page 54 : <u>SUB: Wrong fixation of pay and pension in Gr Rs 1600-2600 (RPS) insted of 2000-3200 (RPS)</u>		

AND IN FACE OF THIS INFORMATION AVAILABLE ON RECORD TO SAY THAT THE RECORDS HAVE BEEN METICULOUSLY SCANNED IS WRONG.

Para No:14: Your Lordships are referring to Advocate's legal notice dated 1.3.1996(P.26 of the paper book), which if read with the prayer i.e. para VIII-page-5 of the O.A., then it would appear that his prayer is accepted, and the O.A. does not survive at all, then where is the question of 'Dismissal of O.A. when during the pendency of the O.A. he had been given

this grade prayed for. But the applicant respectfully submits that when he scanned the seniority list, he came to know that his juniors have been promoted even from grade Rs.2000-3200 to grade Rs.2375-3500, then only he was shocked as to how because of his incomplete records and the records being tossed from Division to H.Qrs' office, the correct information is not being passed, which has resulted in loss of his promotion and grade and consequent loss in his emoluments and he is drawing less pension and has not been given correct pensionary benefits, which is a bone of contention.

This can be read with page-7-Annexure-I of the O.A., which is clear from the letter of the Respondents that the applicant is claiming promotion to Grade Rs.455-700(RS) and above, which includes Grade-Rs.2000-3200^(RPS) and 2375-3500^(RPS) etc. etc.

At page 5 of the Judgement para 215(a) of IREM has been quoted according to which a railway employee should have worked for two years in the immediate lower grade ~~xxxxxx~~ to get promotion to next higher grade. In this connection it would be pertinent to point out that two grades viz. 425-740 and 455-700 have been merged as a result of implementation of the recommendation of IVth Pay Commission as mentioned *ibid*.

Para No:16: As above. It is wrong to say that so many penalties had been inflicted on the applicant. Whatever penalties were there which were prior to 1.1.¹⁹⁸⁴~~1986~~ and to raise the bogie of penalties on and after 1.1.¹⁹⁸⁴~~1986~~ is wrong/erroneous and not correct at all. The question of Rejoinder would have arisen only after presentation of the copy of the S.R. ordered by this Hon'ble Court in the year 1997, which was given only at the time of 'Final hearing' and no chance could have been available~~ed~~ for filing the Rejoinder, for the reasons of non-availability of SR and Seniority lists.

Para No:17: Seniority list shall amply clarify this point.

Para No:18: It is erroneous. The documents are available with the Respondents, let them give the copies, the same shall be demonstrated before your Lordships.

Para No.19: If it is agreed to be correct that the Respondents have already granted the relief to the applicant as claimed by him in his legal notice, then also it is upto the Grade of Rs.455-700 and not for above and secondly if it is to be so as per legal notice, then also the O.A. becomes infructuous and does not survive, but does not required to be 'Dismissed'. It is admitted fact that the claim of the applicant for the grade of ^{RS 700-900(RS)} Rs.2000-3200 & above has arisen, when he had a look at the seniority list and at the S.R., which is shown to him after filing of M.P. and at the time of Final hearing, when he had no chance to file 'Rejoinder'.

P R A Y E R:

In view of the facts mentioned above , it is politely and respectfully prayed that the above judgement may kindly be corrected on the basis of Seniority lists and award him justice , who is the poorest Scheduled Caste candidate and is suffering from Heart ailment and is also encircled with domestic problems.

M.G. Bhalerao
(M.G. BHALERAO).

Applicant.

Verified by:

K.B. Talreja

Filed on 20.2.2001.

K. B. TALREJA
B.A.L.L.B.
ADVOCATE HIGH COURT
PHULWADI PLOT 16,
DEV SAMAJ ROAD, ULHASNAGAR-4.