

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.143/1999.

Date of decision : 14/02/03.

S.S.Bhalerao

Applicant.

Shri C.M.Jha

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri.Suresh Kumar

Advocate for
Respondents.


CORAM :

Hon'ble Shri A.S. Sanghvi, Member (J)
Hon'ble Shri G.C. Srivastava, 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.


(A.S.SANGHVI)
MEMBER (J)

B.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.143/1999.

Mumbai, this the 14th day of February 2003.

Hon'ble Mr.A.S.Sanghvi, Member (J),
Hon'ble Mr.G.C.Srivastava, Member (A).

S.S.Bhalerao,
Block No.1, Flat No.22,
Radha Nagar,
Barve Road,
Kalyan (W).
(By Advocate Shri C.M.Jha)

...Applicant.

v.

1. Union of India through
its General Manager,
Western Railway,
Churchgate,
Mumbai - 400 020.
2. Divisional Railway Manager
(Commercial),
Western Railway,
Mumbai Central,
(By Advocate Mr.Suresh Kumar)

: O R D E R :

By A.S.Sanghvi, Member (J)

The applicant who was serving as a Ticket Travelling Examiner is aggrieved by the orders dt. 16.3.1998 of the Respondents giving him proforma promotion and denying him the arrears of pay. According to the applicant, he was appointed as a Ticket Collector through Railway Service Commission in the scale of Rs.260-400 on 5.5.1980. The seniority list of the Ticket Checking Staff as on 10.3.1989 showed his name at Sl.No.234. According to the applicant Mr.Anil O.Sharma came to be promoted on or about 14.10.1983, though he was junior to him and was given the posting as Senior Ticket Collector by Respondent No.2 by order dt. 14.10.1983. No reason was given'

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for overlooking the seniority of the applicant. The applicant had preferred representation, but no reply was given to his representation. According to the applicant there was also no reason to supercede him. He was neither communicated with any adverse entries nor any departmental proceedings were pending against him and as such there was no reason for ignoring his seniority and not giving him promotion to the higher post of Senior Ticket Collector. The applicant has maintained that after due pursuance of about 15 years, the Respondents have issued the orders dt. 16.3.1988 whereby his pay has been fixed from 14.10.1983 to 1.5.1997 and he has been given proforma fixation for the period from 14.10.1983 to 30.1.1991, 3.5.1994 to 1.5.1996, 1.1.1996 to 1.5.1996 on a condition that no arrears would be paid. He again made a representation against the proforma fixation without arrears being paid, but the said representation has not been replied to by the Respondents. According to the applicant he was denied the promotion only due to the administrative errors and not for any of his fault. He, therefore, now cannot be denied arrears of the difference of salary on the ground of giving him proforma promotion. He prays that the Respondents be directed to pay the arrears of salary from the date of his notional promotion i.e. from 14.10.1983.

2. The Respondents, on the other hand, in their reply have contended inter alia that the applicant has suppressed certain facts about his inter-Railway transfer and his responsibility for the delay in his promotion order. According to them the applicant was transferred to the Central Railway vide orders dt. 4.12.1982. He had requested for the postponement of the transfer

vide application dt.17.2.1983. His request was considered and the transfer was deferred/postponed upto June, 1983 and he was advised accordingly. However, after June, 1983 the applicant neither carried out the transfer nor submitted any application for the cancellation of the transfer order. Since the applicant was under the orders of transfer to the Central Railway his name was deleted from the seniority list and his immediate junior was given promotions vide orders dt. 17.10.1983. The applicant ultimately showed his unwillingness for transfer and claimed promotion at par with his junior from 1983. His case was decided in the year 1998 and is given proforma promotion with his junior Mr.Anil O.Sharma w.e.f. 14.10.1983. His pay is also fixed on proforma basis in the scale of Rs.5500-9000 w.e.f. 1.5.1996 at par with his junior. In the case of unwillingness of his transfer, he was not considered to be employee of this Railway and as such his promotion was delayed. He has not been paid arrears as per the extant rules, but he has been given fixation benefit in view of the proforma promotion given to him. They have contended that he is not entitled to any arrears as he had not actually performed the duties and shouldered the responsibilities of the higher post. It is also contended by the Respondents that the cause of action for filing this OA had arisen in the year 1983 as he was not promoted and his junior was considered and promoted. The OA is therefore, barred by limitation and the applicant cannot ask for the arrears of difference of pay by way of this OA. Therefore, this OA be dismissed with costs.

3. We have heard the Learned Counsel for the parties and

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have considered the rival contentions.

4. . The short question that arises for our determination is whether the applicant is entitled to the arrears of difference of pay w.e.f. 1983. The grievance of the applicant that he was not given the promotion from 1983 when his immediate junior was promoted has been redressed to some extent by the action of the respondents in re-considering his case in the year 1998 and giving him proforma promotion w.e.f. 1983. He is however, declined the arrears though his pay is fixed in the promotional post w.e.f. 1983. He is aggrieved by the denial of the arrears and has therefore, moved this OA. The reason given by the Respondents for denying the arrears to the applicant is that the applicant himself had not informed the respondents in time about his unwillingness to carry out the transfer orders. According to the Respondents, the applicant was transferred to the Central Railway in 1982 and since applicant had avoided to carry out that transfer order and initially had asked for postponement of the transfer order, the same were postponed till June, 1983 at his own request. They have also contended that once the employee is transferred from one Railway to the other, he will lose his seniority in the parent Railway and gets a bottom seniority where he is transferred. In view of this position, when the applicant did not indicate that he was not going to carry out the transfer orders his name was deleted from the seniority list and he was not considered for promotion in this Railway when the promotional opportunity was available in the year 1983 itself. His junior was considered and promoted in 1983, but the applicant could not be considered and promoted as he had not declined the transfer

order and had not indicated that he was not going to resume in the Central Railway. They have also contended that when ultimately in 1986 the applicant gave in writing that he was not willing to go to the Central Railway, some departmental proceedings were pending against him and thereafter he was undergoing penalty and hence he could not be given promotion till 1998. Their stand is that for the delay in promotion, the applicant himself is to be blamed and the administration is not responsible in any way.

5. From the above narrated contentions, it is clearly evident that the respondents have tried to blame the applicant for the delay in his promotion. They have not advanced any other reason for not promoting the applicant at the time when his junior was considered for promotion and was given promotion orders. Apparently, in 1983 when the junior of the applicant was promoted except the transfer order there was nothing against the applicant which would have debarred him from being considered for promotion and being promoted. It transpires from the record that the contention of the Respondents that till 1986 the applicant had not communicated his unwillingness to join the transferred Railway is not correct. The letter dt. 31.12.1983 addressed to the Senior DCS/BCT by the applicant and produced (at 'L') clearly reveals that he had in no uncertain terms stated that he was not willing to carry out the transfer to the Central Railway. The endorsement on this letter of the Divisional Chief Inspector, Grant Road, Western Railway stating that No.E/C/L/III/4992 dt. 31.12.1983 forwarded for necessary action please, leaves no room for doubt that this letter was indeed wrote by the applicant to


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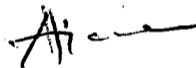
his Superiors and the same was also forwarded by his superiors. It is therefore, not open for the respondents to contend that the applicant had not communicated his unwillingness to carry out the transfer orders to Central Railway in the year 1983 and as such he was not considered for promotion till 1986. They further contend that in 1986 some departmental proceedings were pending, the applicant was undergoing penalty and hence he was not given the promotion. This contention is also not justified in view of the fact that in 1983 no departmental proceedings was pending against the applicant and there was no reason for not considering him for promotion in that year. It appears that ultimately the department had relented on the persistent demand of the applicant for promotion from the date his junior was promoted and reconsidering his case has given him promotion from the date his junior was promoted. He has further been denied the arrears though proforma pay fixation has also been given to him. We have no hesitation in concluding from the above narrated facts that the denial of arrears was also not justified, as the applicant could not have been blamed for his non-promotion at the right time. It is a settled position now that when promotion has been denied on account of the lapse on the part of the Administration and for non-promotion the administration is to be blamed, then the employee is entitled to the promotion with retrospective effect with back wages etc. In the instant case, we find that the applicant is as such entitled to claim the arrears w.e.f. the date of his promotion and he has been denied the arrears not on justifiable grounds.

6. This O.A. is however moved in the year 1999 by the

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applicant. The orders directing the respondents to pay the arrears therefore will have to be restricted only for one year prior to the filing of the OA in view of the application of limitation question. . Since arrears is the only prayer of the applicant, the same cannot be granted for more than one year prior to the filing of this OA and the direction for the payment of the arrears will have to be restricted to one year prior to the filing of this O.A. The applicant, has however, been paid the arrears from 1997 onwards and as such we cannot grant the relief regarding the payment of arears w.e.f. 1983. IN view of this position, we dispose of this OA by holding that the demand of the arrears on the part of the applicant beyond one year prior to the filing of this OA cannot be granted. The OA stands disposed of. No orders as to costs.


(G.C. SRIVASTAVA)
MEMBER (A)


(A.S. SANGHVI)
MEMBER (J)

B.