

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.293/1999.

Date of decision : 21.2.2003

A.G.Kulkarni through Heirs & Legal
Representatives Smt.Prabhavati
Arun Kulkarni & Ors.

Applicants.

Shri D.V.Gangal

Advocate for
Applicants.

Versus

Union of India & Ors.

Respondent(s)

Shri V.S.Masurkar

Advocate for
Respondents.

CORAM :

Hon'ble Mr.S.L.Jain, Member (j),

Hon'ble Smt.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. ✓

Shanta Shastri
(SHANTA SHASTRY)
MEMBER (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.293/1999.

Mumbai, this the 2nd day of February 2003.

Hon'ble Mr.S.L.Jain, Member (J),
Hon'ble Smt.Shanta Shastry, Member (A).

Arun Ganesh Kulkarni
through Heirs and Legal Representatives
a) Smt. Prabhavati Arun Kulkarni,
b) Shriram Arun Kulkarni,
c) Smt.Renuka Manoj Tokekar,
d) Kiran Arun Kulkarni,
e) Mahesh Arun Kulkarni,
House No.3101/315,
Kulkarni Plots,
Bhusawal - 425 201
Dist : Jalgaon.
(By Advocate Mr.D.V.Gangal)

...Applicant.

v.

1. The Union of India, through
the General Manager,
Central Railway,
Headquarters Office,
Mumbai CST,
Mumbai - 400 001.

2. The Divisional Railway Manager,
Central Railway,
Bhusawal.
(By Advocate Mr.V.S.Masurkar)

...Respondents.

: O R D E R :

By Smt. Shanta Shastry, Member (A)

This OA is filed by the applicant seeking various reliefs as in para 8 of the O.A. Since the applicant expired on 25.12.2000 during the pendency of this OA, the legal heirs of the deceased applicant have been allowed to be brought on record.

2. The ^{late} applicant was removed from service w.e.f. 1.10.1975. He filed a Civil Suit (No.542/76) challenging his removal from service. The Civil Court decreed the suit holding the applicant entitled to reinstatement in the same grade and post held by him as on 30.9.1975 and also that he is in continuous service since then. This was by Judgment dt. 26.2.1982. This Judgment was challenged by the Respondents before the Court of District Judge,

Jalgaon, which came to be transferred to this Tribunal and was registered as Transferred Application No.62/88. The appeal was dismissed on 13.9.1995.

3. In the meantime, the applicant was reinstated, but he was denied the backwages, so he filed an application before the Labour Court at Jalgaon (Appli. IDA No.22/92) for granting him back wages under section 33-C-(2) of the Industrial Disputes Act. By Judgment and Order dt. 19.7.1995 his application was allowed by the Labour Court directing the Railway Administration to pay a sum of Rs.2,63,828/- with 12% interest. The order of the Labour Court was challenged before this Tribunal and an SLP was also filed before the Hon'ble Supreme Court (SLP No.CC4955/1997), which was dismissed on 10.10.1997. Thereafter, the Railway Administration again challenged the matter before the Bombay High Court, Aurangabad Bench in Writ Petition No.5599/1997. The Writ Petition was disposed of on 3.7.1998 directing the respondents to pay the applicant an amount of Rs.1,61,131.35 on or about 31.8.1998. It was also ordered that the applicant shall be entitled to all consequential benefits. As the order was not complied with, the applicant made a representation on 28.8.1998 claiming consequential benefits. Thereafter, the applicant has approached this Tribunal.

4. The contention of the applicant is that when the High Court has directed to pay him the consequential benefits, he is entitled to all monetary and non-monetary benefits. He is, therefore, entitled to promotions. His period from the date of removal to the date of reinstatement has not been treated as on duty for all purposes. He is also entitled to Productivity Linked Bonus (for short, PLB) as also to

leave. The Learned Counsel for the applicant submits that Rule 1344 of the IREM provides that if dismissal/removal is set aside on merit and Court directs reinstatement, then applicant shall be entitled to treat the whole period of removal from service to the date of reinstatement as on duty for all purposes.

5. The applicant submits further that he is entitled to be granted promotion to the post of Fitter Gr.II and Gr.I, Master Craftsman, Chargeman Gr.II and Gr.I, Assistant Foreman and Foreman. He was appointed on 27.3.1970 as an Electric Fitter. Whereas, the employees who are at Sl.Nos. 1 to 16 as per the list provided by the ^{applicant} respondents are junior to him by virtue of their date of appointment. Employees at Sl.Nos. 1 to 5 and 7 are at present working as Section Engineer. Employees at Sl.Nos. 6, 8 and 12 are working as Junior Engineers and Employees at Sl.Nos. 13 to 16 are functioning as Master Craftsmen. So the applicant is also required to be promoted vis-a-vis his juniors. The applicant submits that Respondents have already agreed to his leave account being updated and completed. However, the same requires to be expedited.

6. The Respondents submit that they have complied with the directions of the High Court and have paid an amount of Rs.1,61,131.35 to the applicant.

7. In regard to seniority, promotion and pay fixation and the Productivity Linked Bonus, the Respondents state that the applicant was holding the post of Skilled Fitter Gr.III in the scale of Rs.950-1500. As per channel of promotion the next post is that of Fitter Gr.II in the scale of Rs.1200-1800. The applicant was given a Trade Test. However, he failed in the test

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as per the result dt. 16.8.1995. Subsequently, again, in the year 1997 he was called for the Trade Test and he qualified for the post of Fitter Gr.II and was promoted vide order dt. 9.6.1997 and he has been awarded seniority from that date with his batchmates. Consequent upon his failure in the Trade Test at the first attempt in 1995, the consequential benefits of promotions in the higher grades i.e. for Fitter Gr.II from retrospective date does not accrue to him.

8. Further, in addition to the amount of Rs.1,61,131.35 paid to the applicant on 30.7.1998, arrears for the period from 1.5.1992 to 31.8.1998 on account of restoration of Annual Increments/Re-fixation in the revised pay from 1.1.1996 and further Re-fixation on promotion to the post of Highly Skilled Fitter Gr.II on 9.6.1997. The Respondents have paid arrears amounting to Rs.76,323/- from which the P.F. of Rs.4,180/- and Professional Tax of Rs.1,050/- have been recovered. The balance amount was paid by order dt. 17.6.1999.

9. The Respondents state that the applicant cannot be granted PLB for the years 1978-79 to 1988-89 because PLB is related to productivity and since he has not participated in that he cannot be paid the PLB and he is not entitled to it. According to the respondents, the definition of PLB is as under:

"the grant of Productivity Linked Bonus is intended to provide substantial motivation towards achieving higher productivity by way of increased output by the employees and improved quality of service."

There is nothing on record to show that the applicant has increased the output etc. and therefore, the Senior Accounts Officer has rightly rejected the claim of the applicant for

PLB. The Respondents further submit that the leave account of the applicant has been re-cast^d treating the period from 1.10.1975 to 1.11.1985 as on duty and full credit of leave has been given to him. Therefore, the respondents are opposing the OA.

10. The applicant contends that merely because he failed in the first Trade Test in the first attempt he cannot be deprived of retrospective promotions. In the Railways, number of chances are given for passing the Trade Test and therefore, mere failure in the first attempt cannot deprive him of his promotion from the date from which his juniors were promoted. Even assuming that he has passed the Trade Test in the second attempt, at best he could be supergced by his batchmates who passed the Trade Test in the first attempt. He has to be placed on par with those of his batchmates who passed in the second attempt or with the employees in the next batch who passed in the first attempt. He has to be promoted, therefore with retrospective dates i.e. from 12.2.1979 when his juniors were promoted to Fitter Gr.II. He should be further promoted to Fitter Gr.I from 2.5.1984 and as Section Engineer from 1.11.1994. The applicant further contends that he needs to be granted the PLB, as it is not his fault that he was kept unemployed, but it was due to faulty removal from service. Had he not been removed from service, he would have continued to work and therefore, he is entitled to the PLB.

11. We have heard Learned Counsel for the applicant, as well as, the Respondents and we have given a careful consideration to the pleadings. Although the applicant had obtained orders from the Labour Court and the City Civil Court, the final order is

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that of the High Court of Bombay, Aurangabad Bench. The High Court has clearly directed to pay an amount of Rs.1,61,131.35 and to pay all consequential benefits. Therefore, the applicant is entitled to the consequential benefits. The applicant has already been paid the amount as directed by the High Court, as well as, the arrears for the period from 1.5.1992 to 31.8.1998 on account of annual increments and refixation on promotion. Therefore, what remains is the retrospective promotion and PLB. In our considered view, the period from removal to reinstatement of the applicant have ~~not~~ been treated as on duty. He is entitled to promotion from the date when he had become due for promotion had he been in service at the relevant time. Now that the period has been treated as on duty for all purposes, the applicant's promotion has to be from the date he ~~was~~ due for the same. The applicant has given the list of his juniors who were promoted in 1979 to Gr.II. However, an employee has to pass a Trade Test before he can be promoted. The applicant has passed the Trade Test in the second attempt. Therefore, the applicant shall not be entitled to a promotion with his own batchmates who passed the Trade Test in the first attempt. Since he has passed in the second attempt, he shall have to be given the promotion from the date when the next Trade Test was conducted in 1979-80 and the results were declared. He would thus be entitled for promotion on par with those juniors who had either passed the Trade Test in the second attempt or ^{above the employees} who having joined service later than the applicant had passed the next Trade Test. The applicant, therefore, shall be entitled to the promotion accordingly and not from 9.6.1997 as has been granted to him by

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the Respondents. Since the applicant has not actually worked, he shall not be entitled to any arrears of pay it shall be only a notional promotion. On the same basis, the applicant has to be considered for further promotions as and when he would have become due based on his seniority arrived at in the post of Fitter Gr.II. The Respondents, therefore, shall have to consider him for further promotions accordingly on the due dates. The promotions will be on notional basis only for purposes of seniority and pay fixation. There shall be no arrears.

12. In regard to the PLB¹ in normal circumstances, in the absence of any productivity, one cannot be granted the same. However, in this case, it is not the fault of the applicant that he was removed from service erroneously by the Respondents. Once he has been treated as on duty and has been paid salary for the period, in our considered view, he is also entitled to the PLB. Accordingly, the applicant shall be paid the PLB for the period from 1978-79 to 1988-89 as prayed for.

13. The order of the High Court is dt. 3.7.1998. The High Court had directed that the amount of Rs.1,61,131.35 should be paid within four weeks from the date of the order, otherwise the petitioners would be liable to pay 12 % interest on the said amount from 1.5.1992. It is seen that the Respondents have paid the amount to the applicant within the stipulated time. Therefore, the question of any interest on the same does not arise. In view of the discussion and reasons recorded above, the OA is partly allowed. We, however, do not order any costs.

Shanta S
(SHANTA SHASTRY)
MEMBER(A)

S.L. Jain
(S.L.JAIN)
MEMBER (J)

B.