

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:877/2000

DATE OF DECISION: 8.6.04

Shri Sharad Rajaram Jadhav Applicant.

Shri S.V. Marne. Advocate for
Applicant.

Verses

The Union of India and others Respondents.

Shri V.S. Masurkar Advocate for
Respondents

CORAM

Hon'ble Shri Anand Kumar Bhatt - Member (A)

Hon'ble Shri Muzaffar Husain - Member (J)

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

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

✓(3) Library.


(Anand Kumar Bhatt)
Member(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 877/2000

8 the day of JUNE 2004

CORAM: Hon'ble Shri Anand Kumar Bhatt - Member (A)

Hon'ble Shri Muzaffar Husain - Member(J)

Sharad Rajaram Jadhav
Residing at
Railway Quarter No. R V-I/60-D
Railway Ganesh Colony,
Chalisgaon, Dist. Jalgaon.

...Applicant

By Advocate Shri S.V. Marne.

V/s

1. Union of India through
The General Manager,
Central Railway,
Headquarters Office
Mumbai CST, Mumbai.
2. Divisional Railway Manager
Bhusawal Division
Central Railway
Bhusawal.

...Respondents.

By Advocate Shri V.S. Masurkar

ORDER

{Per Anand Kumar Bhatt Member(A)}

The applicant has sought the following relief in the present OA.

(a) That this Hon'ble Tribunal be graciously pleased to call for records from the Respondents and after examining the same quash and set aside the orders at Annexures 1 and 2.

(b) To hold and declare that orders at Annexures 1 and 2 are illegal.

(c) To hold and declare that the Applicant is entitled to the benefit of seniority and promotion as Jr. Clerk w.e.f. 19.10.1982.

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(d) To hold and declare that the Applicant be granted the benefit of promotion to the post of Senior Clerk w.e.f. 05.03.1990, i.e. the date from which Shri S.E. Patil is granted the same benefit.

(e) To hold and declare that the Applicant be granted all consequential financial benefits w.e.f. 05.03.1990 as Sr. Clerk.

(f) Any other and further benefit in the interest of justice as the circumstances of the case demands with costs.

2. The facts of the case in brief are that the applicant was appointed as Khalasi on 2.4.1976. He was promoted on adhoc basis as Junior Clerk under the Permanent Way Inspector, Nandgaon with effect from 19.10.1982. In 1986 there was a selection for the post of Junior Clerk in which the applicant appeared and was *as also SE Patil. However, they were not empanelled because there were no vacancies* declared successful in the written test. His Junior S.E. Patil was promoted as Junior Clerk on adhoc basis with effect from 16.9.1983, and was regularised on 18.7.1988. Patil's adhoc services have been counted for seniority. The applicant has claimed the benefit on the same line as given to Shri Patil. There was another selection for the post of Junior Clerk in or about 1988. At that time the applicant was sick and could not appear for the selection. Shri S.E. Patil appeared for the selection and was empanelled and promoted as Junior Clerk on regular basis with effect from 19.7.1988. The applicant and others apprehend that they will be reverted from the post of Junior Clerk to the post of Khalasis. For this they had come to the Tribunal and the Tribunal had directed at that time that the applicant and others should not be reverted and they should be granted more chances to pass the selection. On the basis of that the applicant continued to work as Junior Clerk. Later there was

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another selection for the post of Junior Clerk and was empanelled with effect from 11.1.1996. From that date the applicant has been regularised as Junior Clerk. The applicant further states that the respondents have passed an order dated 3.7.1995 in favour of Shri S.E. Patil granting him seniority with effect from 16.9.1983 as Junior Clerk although he was regularised on 18.7.1988. As his Junior was promoted as Senior Clerk with effect from 5.3.1990, S.E. Patil was also granted the same benefit and was promoted on 5.3.1990 as Senior Clerk. The applicant wants the same benefit be given to him after counting his adhoc service from 19.10.1982 to 11.1.1996 for seniority.

3. The grounds taken by the applicant are that applicant should be treated equally in matters of employment and by not treating the applicant and Shri S.E. Patil equal, the respondents have violated Article 14 and 16 of Constitution of India.

4. In the reply submitted by the respondents preliminary objection has been taken that cause of action arose in 1982 for which the present OA has been filed on 15.12.2000 and therefore it suffers from delay and laches of about 18 years. Another objection taken by the respondent is that the applicant himself has not made any representation. It was the Union who had taken up the grievance in their letters dated 9.1.1998 and 19.6.1999. Reply was given to the Union. Thus the grievance of the applicant was by the letter dated 9.1.1998. The letter written by the respondents to the Union does not given cause of action to the applicant.

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5. On the facts of the case the respondents have stated that the applicant was appointed as temporary Gangman in the pay scale of Rs. 200-250 with effect from 2.4.1976 and was promoted on adhoc basis as Junior Clerk with effect from 19.10.1982 in the grade of Rs. 260-400 (RS) against the workcharged post in the Engineering Department vide order dated 7.10.1982. It was mentioned in the said order that the applicant will have no claim for promotion, seniority or continuance in the grade over his seniors. After qualifying in the selection of Junior Clerk he was promoted to the post of Junior Clerk in the grade of Rs. 950-1500(RPS) on regular basis vide order dated 16.4.1996.

6. The respondents have further stated that in implementation of the order of CAT, Mumbai Bench in OA 65/86 the lien of the staff of construction organisation was given in the respective division in geographical jurisdiction of ^{which} ~~the division~~ ^{*} where the employees were working in the cadre of Junior Clerk in the grade of Rs. 950-1500 from the date of their adhoc promotion, and also the names of the applicants in the said OA were interpolated in the seniority list of Junior Clerk vide CPO (E/C) letter dated 16.2.1995, and accordingly S.E. Patil's name was also interpolated. Meanwhile Shri S.E. Patil had appeared for selection of Junior Clerk on 18.7.1988 and was duly selected. The name of S.E. Patil vide letter dated 16.2.1995 ^{was} ~~was~~ interpolated in the seniority of Junior Clerks at Serial No. 64/A. He was also given performa seniority as Senior Clerk in the scale of Rs. 1200-2040 with effect from 5.3.1990. Thus S.E. Patil passed

suitability test in the year 1988 and on the basis of the judgement of the Tribunal in OA 65/86 claimed for regularisation. He passed the suitability test for regular employment in the year 1988 ^{and} ~~was~~ [^] was regularised as Junior Clerk with effect from 18.7.1988, whereas the applicant worked on adhoc basis without passing ~~any~~ ^{the} suitability test ~~since~~ ^{he held in} the year 1988 and his case is not comparable as he passed the suitability test only in the year 1996. The applicant did not appear for the selection for the post of Junior Clerk in the year 1988 in which S.E. Patil appeared and was successful. Therefore the two cases are not comparable at all.

7. In the oral submission Shri S.V. Marne for the applicant explained that the present OA was dismissed on 3.7.2003 and the present hearing is on the basis of the order given by the High Court on 20.1.2004 in Writ Petition No. 9499/03 by which the OA has been restored to the file of the Tribunal with the direction that the OA be decided on merits with respect to petitioner's claim concerning his seniority. He has stated that S.E. Patil had been promoted on adhoc basis as Junior Clerk on 16.9.1983. Shri Patil appeared in the selection test in 1988. However in the selection of 1988 the applicant could not participate. S.E. Patil has been given seniority with effect from 16.9.1983. The applicant should also be given the same benefit. He further contended that the applicant was promoted on adhoc post on the basis of having been successful in the suitability test. The applicant was never reverted. Shri S.V. Marne ^{relying} ~~relying~~ on the ^{which} ~~decision~~ of the Apex Court and Full Bench of the Tribunal ^{states} ~~states~~ that if an adhoc promotion continues and it has been done after

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following the regular selection procedure, the employee has to be given the benefit of adhoc service for counting his seniority.

8. Shri V.S. Masurkar, counsel for the respondents states that the applicant was promoted as Junior Clerk in construction organisation which is a purely temporary post. The applicant has not produced any seniority list. Shri S.E. Patil has not been impleaded. Shri Masurkar stated that the applicant had filed OA 328/87 as mentioned by him in para 4.3 of the OA and as the matter has already been disposed of by the Tribunal, constructive resjudicata applies to the present OA. However he readily admitted that in view of the order of the High Court this point has no value. He has stated that in the open line S.E. Patil was selected in the year 1988 whereas the applicant was selected in 1996.

9. In rebuttal Shri Marne pointed out that non impleading Shri Patil has not been mentioned by the respondents in their reply, nor the point of constructive resjudicata. He has relied on the decision in the case of Benjamin Kuruso 1997 2000 ATFBJ 239 and the Apex Court judgement in the case of Direct Recruit Class II Engineers Officers Association V/s State of Maharashtra AIR 1990 SC 1607 where the decision has been given on the point of adhoc appointee to be given the seniority even if the initial appointment has not been made according to rules but the appointee continues uninterrupted until regularisation of service. The Apex Court held that in such case the period of officiating service will be counted.

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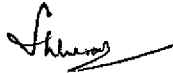
10. We have considered the case of the applicant on the ground of parity with S.E. Patil as both were promoted on adhoc basis on from the post of temporary Gangman to Junior Clerk. There was selection in 1986 in which Patil was not selected. However in another selection in 1988 Patil was selected and the applicant did not participate in this selection as according to him he was unwell. Later the applicant was regularised with effect from 11.1.1996 after clearing the selection process. Therefore claiming parity with SE Patil has no validity. There are a number of decisions based on the decision given by the 5 Judge Bench of the Apex Court in the case of K.C. Sharma V/s Union of India 1998 SCC L&S 226 where it has been held that if relief has been granted to an employee by the Court, there is no limitation ^{for} similarly placed persons to claim the same relief. However the facts in the present case are not exactly the same ^{as} in the case of S.E. Patil as has been discussed above. Had the applicant also appeared in the selection in 1988 and regularised alongwith S.E. Patil, his claim for parity with S.E. Patil could have been valid which is evidently is not the case. The judgement cited by the applicant i.e. Direct Recruit Class II Engineering Association V/s State of Maharashtra is not entirely applicable in the case of the applicant as he had to clear another suitable test which he did only in 1996. Therefore even though both S.E. Patil and applicant were promoted on adhoc basis in 1982 and 1983 to the higher rank, the facts in the case of the two employees become different later in their service and the applicant cannot be treated at par with S.E. Patil. Under



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the circumstances, we do not think that any case has been made out to give any kind of relief to the applicant.

11. The OA is dismissed. Costs easy.



(Muzaffar Husain)
Member(J)



(Anand Kumar Bhatt)
Member(A)

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