

(10)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, BOMBAY-1

O.A. No. 48/91

C J Jacob

..Applicant

V/s.

Union of India & Ors.

..Respondents

Coram: Hon.Shri Justice M.S.Deshpande, V.C.
Hon.Shri M.R.Kolhatkar, Member (A).

JUDGMENT:
(PER: M.R.Kolhatkar, Member(A))

DATED:

18-1-94

This is an application under Section 19 of the Administrative Tribunals Act, 1985. The applicant challenges the order dated 14.11.1990 in Annexure A1 which is reproduced below:

"With reference to the representation of Shri C J Jacob, it is stated that Shri C.J. Jacob was appointed on 24.7.58 as a Typist and subsequently his request for change of cadre was agreed to by the Administration. A reference was made to the Railway Board for their approval to Shri C.J.Jacob being given seniority from the date of his initial appointment, but the Board did not agree to the proposal. Shri Jacob is therefore, eligible for seniority w.e.from 9-4-62 only. CE(C)'s ex Post-facto sanction has already been accorded in this case."

2. The respondents have contended that the letter dated 14.11.1990 was reiteration of the position already communicated to the applicant as far back as 26.3.1970 on the basis of Railway Board letter dated 11.3.1970. The Railway Board letter dated 11.3.1970 at Exhibit R2 is reproduced below:

1724
Government of India
Ministry of Railways
(Railway Board)

No. E(NG)168RC1/80 New Delhi dated 11.3.1970

The General Manager
Central Railway
Bombay

Sub.: Recruitment of Class III staff -
Shri C J Jacob, Typist in the Office
of Engineer in Chief, Jabalpur.

11

" Reference your letter no. HPB/201/R/E(C)/D (Non-Tech) dated 16.1.70. The Board regret that they do not agree to the proposal made therein.

Sd/-

Asstt. Director, Establishment, Railway Board.

Exhibit R 2 itself was a reply to a letter dated 16.01.1970 which is reproduced below:

HPB/201/R/E(C)/D(Non-Tech) 16.1.1970

The Secretary(E)
Railway Board
New Delhi

Recruitment of Class III staff - Shri C J Jacob, Typist in the office of Engineer-in-Chief, Jabalpur, now working in the office of Executive Engineer(Doubling) Jabalpur.

Railway Board's letter No.E(NG)168/RC/80 of 12.8.1968.

In reply to this Railway's letter No. STF/CE(C)/RSC/V dt. 9.5.1968 the Board vide their letter cited above communicated their sanction for regularisation of appointment of Shri C J Jacob, as a Typist in the office of the Engineer-in-Chief, Jabalpur. This Administration had given seniority to Shri Jacob, w.e. from 9.4.1962 as originally recommended to the Board vide our letters No. 22612-S-XV dated 7.3.1962 and STF/CE(C)/BSC/V of 9.5.1968.

Shri Jacob has now submitted a further representation stating that he may be given seniority from his date of appointment i.e., 24.7.1958 instead of 9.4.1962.

It is pointed out that Shri Jacob was locally recruited as a typist in the Gr.Rs.110-180(AS) w.e. from 24.7.1958 against a post sanctioned for the Bina Bhopal doubling. This post was current upto 30.9.1961. Meanwhile Shri Jacob was transferred to the Executive Engineer(D) Itarsi with effect from 16.3.1961. The Executive Engineer(D) Itarsi utilised the services of Shri Jacob as a Typist chargeable to the Jabalpur-Madan mahal doubling. The currency of this post existed upto 9.4.1962. While recommending the regularisation of the appointment of Shri Jacob vide this Railway's letters dated 7.3.62 and 9.5.68 under reference, it was recommended that he may be absorbed in a vacancy on the regular cadre of the Civil Engineering Department subsequent to 9.4.62 i.e., after

expiry of the temporary sanction for Jabalpur-Madanmahal doubling. However, in view of the fact that Shri Jacob's services have been continuous on the Construction Organisation from 24.7.1958 i.e., from the date of his local recruitment, it is considered Shri Jacob's plea for his seniority being counted from 24.7.1958 may be considered sympathetically. This recommendation is being made in view of the fact that there was acute shortage of typists and Shri Jacob was switched on from one construction unit to another in Administrative interest.

In the circumstances explained above, the Board are requested to convey their approval for Shri Jacob being given seniority w.e. from 24.7.1958 i.e., from the date of his initial appointment as a local recruit in the construction

Sd/-xxx
(S H Desai)
for General Manager".

3. The purpose of reproducing this correspondence in original is to highlight the basic facts of the case. The applicant has alleged non-application of mind, contravention of rules and malafides on the part of Chief Personnel Officer, Central Railway, Bombay VT. In his application the applicant has given a detailed account of how he has suffered because of fixing his date of seniority from 9.4.62 instead of 24.7.58. All these contentions do not appear to be to the point. The applicant was not able to produce any rule under which the locally recruited typist who was subsequently regularised could count his seniority from the date of his initial appointment. During the course of the arguments the applicant stated without specifying that there are Supreme Court rulings to the effect that the date of appointment is the deciding factor. The applicant invited our attention to the letter sent by him to the Railway Counsel on 3.5.91. We have seen that letter which calls on the Counsel for the respondents to admit certain acts in the absence of written statement. We also noticed several such letters to the Counsel

for the respondents and also a number of M.Ps. Since the respondents have filed a written statement on 16.1.92 we do not think it necessary to take a special notice of the letter dated 3.5.91 highlighted by the applicant.

4. When the applicant claimed an earlier date for for regular appointment and he was allwed for cogent reasons a subsequent date which is about three years and nine months later than the original date, the applicant ^{can not} claim seniority over the people who are regularly appointed prior to the date on which the applicant was regularly appointed, but subsequent to the date which the applicant claims to be his rightful date. Since the grievance of the applicant about supersession relates to his being superseded by his presumed juniors it is hypothetical and therefore need not detain us. We hold that the representation is basically against a decision conveyed to the applicant in 1970 and is hopelessly barred by time. The allegations relating to malafides or non-application of mind or violation of rules have also not been substantiated. We, therefore, dispose of the application by passing the following order:

ORDER

This application is dismissed. No order as to costs.

M.R. Kolhatkar
(M.R. Kolhatkar)
Member(A)

M.S. Deshpande
(M.S. Deshpande)
Vice Chairman

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

15

R.P.NO. 31/94

IN

OA.NO. 48/91

Shri C.J.Jacob

... Applicant

V/S.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande
Hon'ble Member (A) Shri M.R.Kolhatkar

Tribunal's Order (By Circulation)
(PER: M.R.Kolhatkar, Member (A))

Dated: 24-3-94.

Several grounds have been urged in this review petition but the main ground urged is that the Supreme Court judgement in Direct Recruits Case has not been noticed by the Tribunal and that the judgement is erroneous. We have considered the matter. We have rejected the application not only on the ground of limitation but we had also noted that the allegations relating to malafides or non-application of mind or violation of rules have also not been substantiated. We are satisfied that the Supreme Court judgement referred to does not help the applicant and that no cogent case is made out for review of our judgement. The Review Petition is rejected.

M.R. Kolhatkar
(M.R.KOLHATKAR)
MEMBER (A)

M.S. Deshpande
(M.S.DESHPANDE)
VICE CHAIRMAN

mrj.

18/2/94

16

I am notified to allow RA 31/94 in OA 45191.
The Applicant relies on Direct recruits case ~~which~~ for
query which has no application to the case.

NI R. K. H. C.

member (A)

VC

24/3/94
Order/Judgement despatched
to Applicant/Respondent (s)
on 29/4/94

2
3/10/97