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CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 41/1991

Date of Decision: 11.7.97

Shri A. K. Sinha & Another.

Petitioner/s

Shri G. K. Masand,

Advocate for the
Petitioner/s

V/s.

Union Of India & Others,

Respondent/s

Shri S. C. Dhavan,


Advocate for the
Respondent/s

CORAM:

Hon'ble Shri B. S. Hegde, Member (J).

Hon'ble Shri M. R. Kolhatkar, Member (A).

- (1) To be referred to the Reporter or not? ✓
- (2) Whether it needs to be circulated to other Benches of the Tribunal?


(B. S. HEGDE)
MEMBER (J).

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 41/91.

Dated this 11th, the Friday day of July, 1997

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).
HON'BLE SHRI M. R. KOLHATKAR, MEMBER (A).

1. A.K. Sinha,
Senior Commercial Officer
(Catering), Central
Railway, Mumbai C.S.T.
- 400 001.
2. Indian Railways Promotee
Officers Federation through
its Working President,
Shri P.N. Kalra, having his
O/o. Chief Engineer (Const.),
6th Floor, New Administrative
Building, Central Railway,
Bombay V.T. - 400 001.

... Applicants

(By Advocate Shri G. K. Masand)

VERSUS

1. Union Of India through the
General Manager,
Central Railway,
Bombay V.T. - 400 001.
2. The Executive Director
(Establishment) (P & A),
Railway Board,
New Delhi.
3. The Chief Personnel Officer,
Central Railway,
Bombay V.T. - 400 001.

... Respondents.

(By Advocate Shri S. C. Dhavan)

: ORDER :

[PER.: SHRI B. S. HEGDE, MEMBER (J)]

The O.A. is filed by the applicant no. 1 for non fixation of pay in senior scale in Gazetted Service on account of denial on the part of the respondents to count ad-hoc service in Group 'B' for the purpose of promotion to Senior Scale. The second applicants are the Indian Railways Promotee Officers Federation. It is submitted that they are filing the O.A. alongwith the

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Applicant No. 1 in a representative capacity on behalf of Group 'B' Officers in the Railway Ministry.

2. The brief facts are - the Applicant No. 1 was initially appointed as Commercial Apprentice on 17.02.1966 and later on promoted from Commercial Inspector to Group 'B' post on 13.06.1984. The applicants in this O.A. seek promotion to senior scale on the basis of adhoc service in Group 'B' service. Their main grievance is that their adhoc service in Group 'B' has not been counted for the purpose of promotion and fixation of pay in the senior scale. It is contended that promotions from Group 'C' (Non-gazetted) to Group 'B' service (Gazetted) is made through a positive act of Selection of eligible staffs. It is further contended that as per the rules, selection from Group 'C' to Group 'B' is to be held every alternate year and the vacancies occurring during the preceding two years, including the anticipated vacancies are to be taken into account for forming panel of successful candidates. Since the respondents have failed to conduct the selection as and when due for the purpose of drawing up the panel of candidates eligible for the promotion for filling up vacancies which have occurred during the relevant period, as a result, as and when vacancies occur in Group 'B' service, they resort to promoting the persons found fit and suitable to hold such post on adhoc basis. The Learned Counsel for the applicant further contends that since the promotions are made on adhoc basis as against the regular post and continued for years together, for no fault of the employees promoted on adhoc basis, pending holding of selection, they are deprived of the services rendered on adhoc basis.



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The applicant no. 1 was promoted as Assistant Commercial Officer in Group 'B' Service in the pay scale of Rs. 2000-3500 (RPS) on 13.06.1984. The Railway Administration conducted a regular selection for the first time in April 1989. The applicant came out successfully in the said Selection and was placed at Sl. No. 2 in the Panel and as a result, promotion of Applicant No. 1 in which the applicant was promoted on 13th June, 1984, in clear and regular vacancies was regularised. The reasons advanced by the respondents is that there was good and sufficient administrative reasons for the inability of the administration to hold selection between 1984 and 1989 and promotions made during this period were therefore purely on adhoc basis, pending regularly selected persons being available to fill up the vacancies. Therefore, in the very nature of the things, promotions on adhoc basis cannot be treated as regular promotions. It is denied by the respondents that in all cases where adhoc promotions culminate in regularisation after holding of the selection, officers are entitled to count their entire working including the period spent on adhoc basis for all purposes including for purpose of seniority, further promotion, fixation of pay in promotion to higher post, etc.

3. As per rules governing promotion from Group 'B' to Senior Scale, the respondents submits that the contention of the applicants that requirement of minimum working of three years in Group 'B' and if an officer has put in the said required service of three years including service on adhoc promotion he become eligible to be promoted to senior scale, is incorrect.



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4. Heard the learned counsel Shri G.K. Masand for the applicant and Shri S.C. Dhavan for the respondents. The Learned Counsel for the respondents raised certain objections in the maintainability of the O.A. stating that the O.A. is not maintainable firstly on the ground that the petition filed by the applicant no. 2 is nothing but a public interest litigation, which is not permissible under the Administrative Tribunals Act, 1985. This Tribunal can determine any individual grievance before the Tribunal and not by way of public interest litigations. In the instant case, the applicants have not passed any resolution in terms of Rule 7 of the C.A.T. Rules of Practice, 1993, which reads as follows :-

" Production of authorisation for and on behalf of an Association :-

Where an application/pleading or other proceeding purported to be filed is by an Association, the person or persons who sign(s)/verify(ies) the same shall produce along with such application, etc. for verification by the Registry, a true copy of the resolution of the Association empowering such person(s) to do so :

Provided the Registrar may at any time call upon the party to produce such further materials as he deems fit for satisfying himself about due authorisation."

Therefore, the application filed by the applicant no. 2 is not maintainable either in relation or empowering the applicant no. 1 to appear on their behalf. Therefore, the O.A. is not maintainable. Further, the list of affected persons has not been furnished. As a matter of fact, the applicants were only allowed to look after the work of Senior Scale due to administrative exigency. The Railway Board letter dated 20.06.1980 has not been challenged in this O.A. nor the further reiteration vide their letters dated 12.08.1987^{and 13.11.1987} wherein it is clearly spelt out that Officers who have rendered not less than

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three years regular service in Group 'B' are only eligible for officiating service in Senior Scale, etc. After reconsideration by the Board, it was decided that Group 'B' Officers who have put in minimum service of three years, both fortuitous and non-fortuitous may be put to look after the duties of a post of Senior Scale on payment of fixed charge allowance of Rs. 150/- per month in addition to their pay in Group 'B' post. These officers would become eligible for fixation of their pay in Senior Scale only after completion of three years regular service in Group 'B' post. Therefore, it is made clear that they are only entitled to charge allowance and not the scale of pay. Further, it is an admitted fact that Group 'B' post is a selection post, ^{and} unless regular selection is made in accordance with the rules, one cannot get regular promotion. In this connection, the learned counsel for the respondents relied upon the decision of the Supreme Court in State of West Bengal & Others V/s. Aghore Nath Dey & Others [1993 (2) ATJ 156] which was preceded by another judgement of the Supreme Court [AIR 1991 SC 284] Keshav Chandra Joshi V/s. Union Of India wherein it was held that once an incumbent is appointed to a post according to rules, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. It is further reiterated in Full Bench decision in Ashok Mehta & Others V/s. Regional Provident Fund Commissioner & Others wherein it was held that promotion by way of adhoc or stop-gap arrangement made due to administrative exigencies and not in accordance with the rules cannot count for seniority. Further, the learned counsel for the respondents cited a decision of the Supreme Court in Mohd. Swaleh V/s. Union Of India & Others [1997 (4) SC 654] wherein it was held that claim for additional remuneration for holding current/additional of a higher post - Posts of Registrar,


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Joint Registrar and Deputy Registrar are Group 'A' posts - Whether Vice-Chairman, could without sanction of Central Government, have passed an order conferring powers and function of Registrar to enable Deputy Registrar to claim pay admissible to post of Registrar. The answer of the Apex Court is in the negative and the right to claim pay is governed by Rule 49 of the Fundamental Rules. In that case, the appellant working as Deputy Registrar in the High Court came on deputation as Deputy Registrar to Central Administrative Tribunal and he was conferred certain additional powers and functions under the orders passed by the Vice-Chairman of the Tribunal. The appellant requested for additional remuneration for discharging duties of Registrar. Whether he could be allowed additional remuneration ? The Apex Court answered in the negative. The learned counsel for the respondents, therefore, submits that the aforesaid decision squarely applies to the facts of the present case. In this case, the applicants were holding only additional charge and for that purpose they have been given charge allowance. They could be appointed on regular basis if they become eligible to be promoted to Senior Scale subject to availability of vacancy in the Senior Scale. Therefore, the contention of the applicant that he was holding the post of Group 'B' from 1984 onwards and that the entire period from 13.06.1984 should be considered for seniority, promotion, pay fixation, etc. is not tenable.

5. After considering the rival contentions of the parties, since the applicant has not furnished any citation in support of his contention, we are of the view, that there is no merit in the O.A. Apart from this, the O.A. is to be dismissed also on procedure angle.

Even on merit, he has not established a case before us and this decision is applicable only to Applicant No. 1. The application filed by the Applicant No. 2 is not maintainable and the same is rejected for want of compliance of procedure. Accordingly, the O.A. is dismissed. There will be no order as to costs.




(B. S. HEGDE)
MEMBER (J).

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6. I am inclined to agree with my learned brother Member(J) that the OA is liable to be dismissed. However, I would like to give my additional reasons.

7. The relief sought by the applicant is to count his seniority in Group B post w.e.f. 13-6-84 when he was initially promoted on adhoc basis till he was regularly promoted in April '89 for the purpose of seniority in Group B post, promotion to Senior scale and pay fixation in senior scale.

8. The grievance of the applicant is that the respondents delayed the holding of regular selection and the applicants are required to perform all duties and discharge all responsibilities of the senior post and the applicants are subjected to double loss viz. not counting their service for seniority and also not giving the regular pay scale. So far as the non grant of regular pay scale is concerned the matter is regulated by Railway Board instructions



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dt. 12.8.87 and 13-11-87 at Ex.1 and 2 to the written statement. These instructions are related to provisions of 2029 of Railway Establishment Code Vol.II corresponding to FR 35 applicable to employees in other central govt. department^s. The Ex.1 and 2 quoted above are really paramateria with instructions issued under FR 35. FR 35 is applicable when orders under FR 49 are not issued and therefore in terms of Supreme Court judgment in ~~Mhd.~~ Swaleh vs. UOI, 1997(4)Supreme 654 the action of the respondents in not giving the regular pay scale of the higher post cannot be faulted.

9. So far as non counting of adhoc service for seniority is concerned that matter stands settled by the Full Bench decision in Ashok Mehta & Ors. v. Regional Provident Fund Commissioner & Ors. reported at Kalra's Full Bench Judgment 91-93 page 118. Counsel for respondents also pointed out that the matter is res-judicata because the issue was settled by the Tribunal in its judgment in O.A. 176/86 and 184/87 decided on 19-6-89 (Om Prakash Khanna vs. UOI (Western Railway)) I have seen the judgment and it appears that, that OA was filed by Western Railway Group'B' Officers' Association on behalf of Class II Officers of Transportation(Traffic and Commercial)Br. of Western Railway. I note that the same points were raised in that OA and the Tribunal dismissed the OA^s. As the parties were not the same the judgment cannot be said to ~~operate~~ operate as res-judicata but the counsel for the respondents deserves compliments for having brought an old judgment to our notice because all the issues raised in this OA have already been considered

and disposed of in relation to the Western Railway
by that O.A. The matter can certainly be ^{said to be} res-integra
if not res-judicata.

10. This OA has therefore no merit and is
liable to be dismissed.

M.R. Kolhatkar

(M.R. KOLHATKAR)
Member(A)

-: O R D E R :-

OA is dismissed with no order
as to costs.

M.R. Kolhatkar

(M.R. KOLHATKAR)
Member(A)

B.S. Hegde

(B.S. HEGDE)
Member(J)

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