

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 1163/92

Transfer Application No: ---

DATE OF DECISION 14-12-1992

Manohar Atmaram Barapatre Petitioner

Mr.Y.R.Singh Advocate for the Petitioners

Versus

Union of India and ors.

Respondent

None

Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri Justice S.K.Dhaon, Vice-Chairman

The Hon'ble ~~Saxi~~ Ms.Usha Savara, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

no

MD

S.K.
(S.K.DHAON)
VC

NS/

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

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O.A.1163/92

Manohar Atmaram Barapatre,
C/o. Shri M.M.Sudame,
N-7, Laxmi Nagar,
Nagpur. .. Applicant

-versus-

1. Union of India
through
General Manager,
South Eastern Railway,
Garden Reach,
Calcutta.
2. The Divisional Railway
Manager,
South Eastern Railway,
Kingsway,
Nagpur. .. Respondents

Coram: Hon'ble Shri Justice S.K.Dhaon,
Vice-Chairman.

Hon'ble Ms.Usha Savara,
Member(A)

Appearances:

Mr.Y.R.Singh
Advocate for the
Applicant.

None for the
Respondents.

ORAL JUDGMENT: Date:14-12-1992
(Per S.K.Dhaon, Vice-Chairman)

The order dt. 2-10-1992 passed by the
Divisional Railway Manager, South Eastern Railway
Nagpur rejecting the representation dt.19-8-92
made by the applicant is being impugned in the
present application.

2. The applicant has come to this Tribunal
for the second time. Earlier the matter came
to this Tribunal on transfer from High Court
of Judicature at Bombay, Nagpur Bench. The case
was then registered as Tr.167/87. The relief
claimed in the earlier petition were, inter-alia,
these:

"(a) issue a writ in the nature of

certiorari or any other appropriate writ, order or direction to quash the impugned order of promotion dtd. 19-6-1975, 30-4-1981 and 30-12-1981;

- (b) by a appropriate writ, order or direction in the nature of mandamus direct the respondents 2 and 3 to consider the petitioner's claim for promotion in the reserved quota of Scheduled Caste/Scheduled Tribe and treat the petitioner as Scheduled Tribe candidate for the purposes of privilege concessions and protection granted to other similarly situated employees of respondent No.1."

This Tribunal on 9-8-1990 disposed of the aforementioned Tr.Application No.167/87. In paragraph 6 of its order it observed:

"At the time of hearing, counsel of the applicant submitted that the relief with respect to the quashing of the promotions allowed to respondents 4 to 6 is not pressed and that the applicant wants only a direction to the respondents 2 and 3 to treat him as belonging to the Scheduled Tribe and allow the benefits on that account. We are of the view that the applicant is entitled to the said relief."

In paragraph 8 it is observed that:

"In view of the above, we direct the respondents 2 and 3 to treat the applicant as belonging to the Scheduled Tribe and to accord him consequential benefits."

3. The applicant having obtained the order of this Tribunal, it appears, began the agitation before the respondents that the matter of his promotion should be re-opened. He, therefore, came before this Tribunal by means of contempt petition with the allegation that the direction given by this Tribunal in the aforementioned

Tr.Application are not being carried out. The matter came up before us on 17th July, 1992.

In paragraph 3 of our order we observed:

"It is difficult for us to find out as to what exactly the applicant desires the respondents to do in pursuance of the order of this Tribunal. We, therefore, direct that the applicant will file a detailed application before the Divisional Railway Manager, South Eastern Railway setting out the details of the consequential benefits, which, according to him, he is entitled to. After the receipt of the application, the Divisional Railway Manager concerned shall pass a speaking order....."

4. In pursuance of the aforementioned order passed by us, the applicant on 10-8-1992 filed an application before the Divisional Railway Manager, a true copy of which is before us in the form of Annexure V to the application. We have read and re-read this application. The ~~only~~ prayer or grievance made in this application is that one Shri B.R.Londhekar is junior to the applicant, the applicant being treated as a member of the Scheduled Tribe, he should be treated as such w.e.f. 19-1-1964 and all promotions given to his junior i.e. Shri B.R. Londhekar should be given to him. Further, the applicant should be placed in the seniority list above Shri B.R.Londhekar in each and every grade. The other prayer made by the applicant in the representation is that he should be promoted to the post of Goods Clerk "B" on 19-1-1964, Goods Supervisor on 13-7-75, Goods Supdt. on 28-4-79, Chief Goods Supdt. on 3.9.80, Asstt. Comml. Supdt. on 30-4-82 and Divl. Comml. Supdt.

on 26-7-89. In the impugned order, it appears, ~~and~~ only first prayer made by the applicant that his seniority should be fixed vis-a-vis Shri B.R.Londhekar has been rejected. We are, therefore, not expressing any opinion on the other prayers made in the representation.

5. Learned counsel vehemently urged that the earlier order of the Tribunal, if considered in its proper ^{ex}perspective, clearly meant that the applicant should be given promotion from the due date and he should be given seniority ^{to} from such juniors who had been promoted earlier to him. In particular, the applicant has set up the case that he should be placed above Shri B.R.Londhekar.

6. The question of determination of seniority vis-a-vis B.R.Londhekar and other juniors to the applicant, who had been promoted earlier, was directly an issue in the earlier transferred application. Whatever may be the reason, the Tribunal declined to grant the relief to the applicant. In our opinion, the applicant has raked up the issue of being placed at par with Mr.B.R.Londhekar only with a view to circumvent the hurdle of res-judicata. The applicant is trying to do something indirectly which he cannot do directly. First he came out with a case that his seniority should be determined vis-a-vis Shri B.R.Londhekar now he ~~ix~~ has come out with a case that he should be put ^{at} on par with Shri B.R.Londhekar. In substance, we find no difference between the two reliefs claimed by him. Even otherwise, in the earlier transferred

application the applicant could have claimed the relief which is being claimed now. This application, therefore, is ^{also} barred by principle of constructive res-judicata.

7. So far as other reliefs claimed by the applicant in the representation are concerned, we have already expressed our opinion that, ^{that are} that is not for adjudication before us.

8. This application is rejected summarily ^{but} with no order as to costs.

Usha Savara
14.12.92
(USHA SAVARA)
Member(A)

S.K. Dhaon
(S.K. DHAON)
Vice-Chairman

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