

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:942/93

DATE OF DECISION: 21 June 2000

Shri Tukaram Govindrao Telang Applicant.

Ms. Neeta V. Masurkar. Advocate for
Applicant.

Versus

Union of India and others Respondents.

Shri S.C. Dhawan.. Advocate for
Respondents

CORAM

Hon'ble Shri B.N.Bahadur, Member(A)

Hon'ble Shri S.L. Jain Member(J)

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

(2) Whether it needs to be circulated to no other Benches of the Tribunal?

(3) Library. yes

S.L.Jain
(S.L.Jain)
Member (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 942/93

the 21st day of JUNE 2000

CORAM: Hon'ble Shri B.N.Bahadur, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

Tukaram Govindrao Telang
Block No.A-130/260
Kurla Camp, Ulhasnagar,
Dist. Thane.

...Applicant.

By Advocate Ms. Neeta V. Masurkar.

v/s

1. Union of India through
The General Manager
Central Railway having
his office at Bombay V.T.
2. Divisional Railway Manager,
Central Railway,
Bombay V.T.

...Respondents.

By Advocate Shri S.C. Dhawan.

O R D E R

{Per Shri S.L.Jain, Member(J)}

1. This is an application under Section 19 of the Administrative Tribunals Act 1985, seeking to quash and set aside the order dated 26.9.1991 with a declaration that the applicant is entitled for the promotion to the post of O.S.(II) in 1978 and O.S. (I) in 1980 as his junior Mr. Nachankar was so promoted in these years with consequential benefits of arrears of wages; revision of pension fixed on the basis of applicant's entitlement to the post of O.S.(I).

2. The applicant has filed a Plaintiff in City Civil Court Bombay, registered as SC Suit No. 5805/79, it was transferred to this Tribunal and registered as Tr. Application No. 15/90. The

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said case was decided on 25.3.1991 and operative part of the order is as under:

"Accordingly, the applicant is entitled to the claim for his seniority and for grant of further increment and promotions on the basis of the date of his initial appointment in the clerical cadre in the office of the Goods Superintendent, Central Railway, with effect from 9.4.1958 and also entitled to higher post on the basis of the facts and of the orders issued by the Central Railway Administration for the post of the Office Superintendent in the office of the Central Railway Administration. The respondent is directed to refix the pay of the applicant in the respective grades to which he is entitled from time to time in the office of the Central Railway Administration. The respondents are directed to comply with the above directions within a period of three months from the date of receipt of the copy of order".

3. The applicant has filed Contempt Petition No. 75/91 which was decided on 6.8.1992 and the following order is passed:

"In paraagraph 4 of the reply, details have been given of the manner in which the respondents have tried to give effect to the directions. We are satisfied that the respondents have made a fair attempt to comply with the directions of this Tribunal. If the applicant feels that some injustice has been caused to him, he has still a remedy to come to the Tribunal by means of proper application under Section 19. No occasion exists for initiating contempt proceedings. C.P. 75/91 is disposed of accordingly."

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4. Para 4 of the reply to the Contempt Petition deals with the defence raised by the respondents with regard to non promotion of the applicant for the post of O.S.(II) and O.S. (I).

5. On perusal of the same we find that junior clerk grade of Rs. 60-130(PS)/110-180(AS) has been revised from the date of initial appointment in Clerical cadre with effect from 9.4.1958 between Shri W.G. Sable (SC) Serial No. 28 and Shri L.S. Ghodke, Serial No. 29 in the seniority list of junior Clerk in the office of GS WB. The applicant is also promoted to the post of Senior Clerk with effect from 20.12.1974 and given the benefits of proforma seniority and fixation as Senior Clerk from the date on which his Junior belongs to SC community Shri G.R. Nachankar has been promoted on 30.7.1971 against 10% of vacancies of Senior Clerk filled in on the basis of competitive examination. The applicant has been given seniority immediately above Shri G.R. Nachankar (SC) even though the applicant did not pass the competitive examination held in 1971.

6. The applicant failed to qualify the selection conducted on 22.9.1979, 24.9.1981, 4.2.1982 and 17.9.1982. His immediate junior Shri G.R. Nachankar qualified in the selection conducted. On 23.4.1985 while restructuring cadre in terms of Railway Board's letter dated 16.11.1984 wherein the written test was suspended as one time exception, the applicant was promoted to the post of O.S.(II) with effect from 1.1.1984.

7. The Tribunal had decided the Tr. Application NO.15/90 on 25.3.1991. The respondents have failed to incorporate the same in the written statement, while the said defence was available to them and the facts were within their knowledge.

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8. The defence that the post of OS (II) is a selection post and the applicant failed in the selection which was not raised earlier, now the respondents are not entitled to take such defence in view of principle of Res-judicata.

9. The principle of Res-judicata applies. If the respondents fails to incorporate the said grounds in their earlier reply now the respondents are not entitled to agitate the matter after a decision in the said proceedings on 25.3.1999.

10. The principle of res judicata also comes into play when by the judgement and order a decision of a particular issue is implicit in it, that is, it must be deemed to have been necessarily decided by implication; then also the principle of res-judicata on that issue is directly applicable. When any matter which might and ought to have been made a ground of defence or attack in a former proceeding but was not so made, then such a matter in the eye of law, to avoid multiplicity of litigation and to bring about finality in it is deemed to have been constructively in issue and, therefore, is taken as decided.

(The Workmen of Cochin Port Trust V/s The Board of Trustees of the Cochin Port Trust and Anr. AIR 1978 SC 1283. and Forward Construction Co. and Ors. V/s Prabhat Mandal (Regd) Andheri and Ors. 1986 (1) SCC 100.

11. Now the respondents are duty bound to comply the order passed in Tr. Application No. 15/90 as the order is clear and they are bound to comply the same "and also entitled to higher post on the basis of the facts and of the order issued by the Central Railway for the post of OS in the office of Central Railway

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Administration." It further provides "that the respondents are directed to re-fix the pay of the applicant in the respective grade to which he is entitled from time to time."

12. The applicant is also entitled for the costs for the reason that the respondents have not complied the order of this Tribunal dated 25.3.1991 but also defended the case on the grounds not available to them. Hence it is ordered that the respondents shall pay cost of Rs.650/- (Rs. 500/- as Legal practitioner's fee + Rs. 150/- as other charges) to the applicant.

In the result the OA deserves to be allowed. The order dated 26.9.1991 deserves to be quashed and set aside with a declaration that the applicant is entitled for the promotion to OS (II) from 1978 and OS (I) from 1980 when his junior Mr. Nachankar was so promoted alongwith arrears of wages and revision of pension. The applicant is entitled to compound interest yearly at the rate of 11% per annum from the date it become payable to the date of payment alongwith cost of Rs. 650/-. The respondents are directed to comply with the order within a period of three months from the date of receipt of copy of this order.

S.L.Jain
(S.L.Jain)
Member(J)

B.N.Bahadur
(B.N.Bahadur)
Member(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

C.P. NO. : 31 of 2001 IN O.A. No. 942/93.

Dated this Monday, the 16th day of July, 2001.

CORAM : Hon'ble Shri Justice B. Dikshit, Vice-Chairman.
Hon'ble Shri M. P. Singh, Member (A).

Tukaram Govindrao Telang,
Block No. A/130/260,
Kurla Camp No. 421 004,
Ulhasnagar, Dist. Thane.

... *Applicant.*

(By Advocate Shri K. R. Yelwe for
Smt. N. V. Masurkar)

VERSUS

1. Rajendra Nath,
General Manager,
Central Railway,
C.S.T., Mumbai - 400 001.

2. Vinay Sahay,
D.R.M., Bombay Division,
C.S.T., Mumbai - 400 001.

... *Contemners.*

(By Advocate Shri Suresh Kumar).

TRIBUNAL'S ORDER

A certified copy of the judgement of Supreme Court of India passed on S.L.P. No. (C) CC 2891/2001 filed against the judgement dated 03.10.2000 passed in Writ Petition No. 5287/00 has been filed before us wherein the Apex Court has granted stay in following words :

"Delay condoned.

Leave granted.

Notice on stay application.

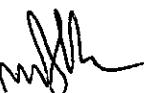
Stay in the meanwhile."

B. Dikshit

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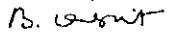
2. Under the aforesaid circumstances, we cannot consider contempt petition no. 31/2001 on merits. Proceedings against the Respondents are dropped. Notice is discharged without prejudice to the right of petitioner to take action in case necessity arises at any stage for implementing the order after appropriate orders have been passed in the S.L.P.

3. Subject to the above observation, the contempt petition stands dismissed.



(M. P. SINGH)

MEMBER (A).



(B. DIKSHIT)

VICE-CHAIRMAN.

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