

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 889/93

Transfer Application No:

DATE OF DECISION 2.12.1994

M.D.Paralkar Petitioner

Shri M.S.Ramamurthy Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Shri Subodh Joshi.

Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman.

The Hon'ble Shri

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? No
3. Whether their Lordships ish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal? No


(M.S.DESHPANDE)
VICE-CHAIRMAN

NS/

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH, BOMBAY.

Original Application No.889/93.

M.D.Paralkar.

... Applicant.

V/s.

Union of India & Ors.

... Respondents.

Coram: Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman.

Appearances:-

Applicant by Shri M.S.Ramamurthy.
Respondents by Shri Subodh Joshi.

Oral Judgment:-

(Per Shri M.S.Deshpande, Vice-Chairman) Dt. 2.12.1994

By the present application the applicant seeks the benefit of two advance increments from 1968 and six advance increments from 1974 or in the alternative six advance increments from 1.1.1986 and consequential monetary benefits under the scheme framed by the Respondents on 14.5.1966.

2. The applicant's case is that he was recruited as an Apprentice Mechanic with the Central Railway in 1955 and was promoted after 5 years training as Chargeman 'A' in 1960. He passed Section 'A' examination of AMIE in 1968 and Section 'B' examination in 1974. Under the scheme framed on 14.5.1966 incentives to Class III Railway Employees/Apprentices acquiring higher or additional scientific/Technical/Accounts qualifications were given. Under Clause (d) on passing the relevant examinations the Railway employees were to be awarded for Part-I or 'A' Rs.200/- as Cash Award and for passing Part-II or 'B' Two advance increments. These incentives were to be granted only once and not twice over. Under Clause (a), the benefit was to be admissible from the date following the last date of the prescribed

examination and not from the date of publication of results in the grade in which he was working at the time of passing the relevant examination. The applicant alleges that he had applied for the incentive all along, but he was not given the incentive payments.

3. By the letter dt. 29.6.1989 Clause (d) of the Board's letter dt. 14.5.1966 was substituted by the following :

"Passing the relevant examinations, the following Rewards shall be given to the railway employees/apprentices :

- i) for passing part (i) or 'A' or Intermediate or pre-final examinations two advance increments,
- ii) for passing part (ii) or 'B' or final examination - four advance increments."

The rest of the earlier instructions were continued to be in force. By a subsequent letter dt. 14.2.1990 the same position was reiterated and by para 3 of that letter it was also clarified that the incentives would be admissible in terms of the extant rules, only if the higher qualifications had been acquired fully at the cost of the employee concerned and the Railways had not borne any part of the expenses.

4. The respondents have denied that the applicant had acquired any qualifications or had approached them for being granted the incentives. The applicant has produced several copies of letters with the application. The first being the letter dt. 7.10.1975 (Annexure - 'B') by which he had requested that the entry of passing AMIE examination be made in his Service Book accordingly and the incentives of two increments should be paid to him. By the letter dt. 7.10.1975 he asked for arranging for the entries being made early. The letter dt. 23.11.1975 (Annexure - 'D') shows that the Certificates in original were submitted for entries being made in the Service Book

for helping him in getting selected for deputation in Inspection Wing of the Rail India Technical & Economic Services in terms of the letter dt. 22.10.1975. By the letter dt. 14.10.1981 (Annexure 'E') he requested for arranging for giving him the benefits of the increments in view of his obtaining higher qualifications. By the letter dt. 21.11.1989 (Annexure - 'F') the Senior Personnel Officer of Central Railway Workshop, Matunga wrote to Shri Vadhavkar, Additional Chief Personnel Officer, Headquarters mentioning the benefits which could be given by the scheme which was modified by the letter dt. 10.3.1972. A copy of this letter was forwarded to the applicant and it was mentioned in the letter that since the applicant had passed AMIE in 1968 and 1974 it was for consideration whether the scheme was still applicable to him and if so, what benefit of advance increments could be extended to him. The letter stated that the employee-individual applied earlier in the past and the subject matter had been put up when he was due to retire in January, 1990. What replies were sent to these communications cannot be ascertained because none of the records have been produced by the Respondents, their contention being that none of those letters had been ~~issued~~ received. The xerox copies which have been produced were acknowledgements of the Officers concerned who have received these communications. It is therefore difficult to accept the contention of the Respondents that the applicant had not written any of these letters and had not made any claim for getting the additional benefits. Shri Ramamurthy counsel for the applicant produced the copy of the certificate issued by the

Institute of Engineers (India) on 15.5.1975 certifying that the applicant had passed Sections 'A' and 'B' of the examination in the Mechanical Engineering Branch in Summer 1968 and Winter 1974 respectively. With regard to the applicant's qualifications there is no dispute and the question would be to what benefit the applicant would be entitled to.

5. Shri Subodh Joshi, learned counsel urged that the communications which have been produced were of the year 1975 and 1981 which remained unresponded and would show that the applicant's claim was not within time and no benefit could be granted to him. So far as this aspect is concerned it is no longer res-integra in view of the decision in OA No.778/93 S.S.Amrile v/s. Central Railway decided on 3.2.1994. After considering para 1021 of the Indian Railway Administration and Finance and the provisions of Section 21 of the Administrative Tribunals' Act the applicant therein was found entitled to claim the amount of increment which he would have drawn for one year and which had not have been paid to him within the period of one year, because the cause of action was a recurring one and the language of the letter dt. 29.5.1989 showed that the benefit which was to be conferred by original Clause 'D' was enhanced while retaining the rest of the contents dt.29.5.1989 by letter dt. 14.5.1986. The letter was not to apply retrospectively and could not have lifted the bar that the benefit was to be conferred by the letter dt. 14.5.1966 only once on the basis of passing the relevant examinations. The applicant cannot therefore be granted the benefit of the Circular dt. 29.5.1989 and 14.2.1990, but would be entitled to the benefit of only the later four increments. With regard to the

actual relief it was held that the applicant would be entitled to fixation in the cadre to which he belonged at the time for passing Section 'B' examination and his pay shall have to be raised from the date of passing that examination by granting him two advance increments and on the basis of that notional fixation his entitlement at the time of his superannuation shall have to be worked out and he would be entitled to monetary benefits which he would have got only in May, 1969 and thus he will be entitled to revision in pension on the basis of the pay so fixed. Shri Ramamurthy, however, referred me to the letter dt. 17.8.1992 (Annexure A-2 to the petition) by the Chief Workshop Manager to the Organisation and Method Officer and Grievance Officer in which it was stated that the Chief Workshop Manager had reviewed the case for grant of incentive to the applicant and Chief Workshop Manager, MTN had accorded sanction for the grant of four advance increments from the date of his application, the arrears would be paid to him as were admissible to him. It was urged that the applicant's claim was admitted by virtue of this letter and communication to that Officer would be communication to the applicant. On behalf of the Respondents it was urged that the Chief Workshop Manager was not the person who could have accorded sanction to the grant of the advance increments. Firstly, this letter was not addressed to the applicant directly and cannot be construed as admission of his claim. Shri Ramamurthy referred to para 2 of the Scheme dt. 14.5.1966 which required the Heads of Departments to decide the qualifications on merits of each case that would entitle the employee to the grant of incentives. What was being urged

was that since the Workshop Manager would be the Head of the Department he could accord sanction. That is not what is being conveyed by para 2 above. The authority concerned was only to decide upon the qualifications and could not have decided upon the actual fixation benefits that could be granted. This clause would not therefore help the applicant and it would be only the authority which under the general scheme could have accorded sanction would be the authority to sanction and the letter dt. 17.10.1992 (Ex. 'A') would not confer any benefits on the applicant.

6. In the result, the application is partly allowed. Since the applicant has retired, it is directed that the entitlements of the applicant shall be fixed on the basis that he had drawn two increments by virtue of passing Section 'B' Examination in 1974. His last pay drawn prior to superannuation shall be computed on that basis and it would be on that basis that his pensionary benefits shall be worked out. The applicant will be entitled to arrears only for a period of one year prior to the filing of the application i.e. from August, 1992 onwards. The amount shall be calculated and paid to the applicant within three months from the date of communication of the order to the Respondents.


(M.S. DESHPANDE)
VICE-CHAIRMAN

B.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

R.P.No.26/95 IN O.A.No.889/93

M.D.Paralkar

... Applicant

Vs.

Union of India & Ors. ... Respondents

CORAM : Hon'ble Shri.M.S.Deshpande, Vice-Chairman

ORDER ON R.P BY CIRCULATION

(Per : Shri.Justice M.S.Deshpande, V.C)

20.2.95

In this review petition, the applicant seeks review of the judgment delivered in O.A. 889/93 on 2nd December, 1994. The main ground urged is that larger relief has been given to two other persons by another decision of the Tribunal which was a Division Bench judgment. It is not disputed that this judgment has not been pointed-out at the time of hearing this matter. It is also urged that two other persons had been granted larger relief by the respondents. That again is a matter which was not made a ground while advancing arguments, when the matter was heard on merits. The applicant desires review by a larger bench, which is impermissible. The grievance of the applicant seems to be that an erroneous decision has been reached. If that be the case, review application is not a remedy for it.

2. In the result, I see that no ground has been made out for review in the application. The Review Application is dismissed.


(M.S.DESHPANDE)
VICE-CHAIRMAN

J*