

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 350/96

DATE OF DECISION: 26/7/2000

Shri M.V.R.Somayajulu & 7 Ors.

Applicant.

Shri G.K.Masand

-----Advocate for
Applicant.

Versus

Union of India & Anr.

-----Respondents.

Shri S.C.Dhawan

-----Advocate for
Respondents.

CORAM:

Hon'ble Shri A.V.Haridasan, Vice Chairman
Hon'ble Shri Govindan.S.Tampi, Member(A)

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal?
3. Library.

(GOVINDAN.S.TAMPI)
MEMBER(A)

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:350/96
DATED THE 26th DAY OF JULY, 2000

CORAM:HON.SHRI A.V.HARIDASAN, VICE CHAIRMAN
HON.SHRI GOVINDAN.S.TAMPI, MEMBER(A)

1. Shri M.V.R.Somayajulu
SCO (CP) CCO's Office,
Central Railway,
Bombay V.T.
2. Shri Ved Kumar Sharma,
Sector No.4-Plot No.51,
Raj Nagar,
New Gaziabad (U.P.)
- 2A. Smt.Sheela Sharma W/o.late
Shri Ved Kumar Sharma, Applicant
No.2, residing at Tapowan,
Plot No.51, Sector No.4,
Raj Nagar, New Ghaziabad.
3. Shri M.S.Raza, E-103,
1st Floor, Tanwar Nagar,
Kausa Mumbra,
Thane.
4. Shri J.C.Agnihotri,
Shiv Darshan,
Opp.Dr.Warke Nsg. Home,
Kolsawadi,
Kalyan, Dist.Thane.
5. C.A.P.Vittal,
10, Murli Villa,
Opp.Trpiwala College,
Mulund (West),
Bombay.
6. Shri R.S.Tulaskar,
Sr.Works Study Officer,
G.M.'s Office,
Central Railway,
Bombay V.T.
7. Shri R.N.Shriwastava,
Divisional commercial Manager(Catering),
D.R.M.'s Office,
Central Railway,
JHANSI (U.P.)

... Applicants

By Advocate Shri G.K.Masand

V/s.

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1. Union of India through the
General Manager,
Central Railway,
Bombay V.T.
2. The Chairman,
Railway Board,
Ministry of Railways,
Rail Bhavan,
New Delhi. Respondents

By Advocate Shri S.C.Dhawan

O R D E R

Per Shri Govindan.S.Tampi, Member(A).

Shri M.V.R.Somayajulu and seven others have come up with
this OA(350/1998) seeking the following reliefs.

- i) deemed promotion to class II service as Asst.Commercial Supdt/Asst.Operating Supdt. w.e.f. November 1979 when their juniors Shri N.C.Sharma and T.N.S.Subramaniam were given adhoc promotion which continued upto regularisation in 1983, with benefit of pay and increments.
- ii) deemed promotion to Senior Scale w.e.f. 24/9/95 when Shri N.B.Pathak, their junior got promotion
- iii) entitlement for promotion to JAG in IRTs Group A w.e.f. 22/8/1990 when their junior Shri Gokhe was inducted to Group A.
- iv) grant of arrears of pay on the deemed promotion
- v) grant of interest @ 12% per annum and
- vi) cost of petition.

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2. Applicants had in 1985, filed (Writ petition before the High Court of Bombay seeking certain reliefs in terms of seniority and promotion, which was transferred in OA.No.389/1987. The same was disposed of by this Bench on 24/4/91 with the following observations.

"Petitioners claim for seniority is justified and is on the sound footing. Accordingly the application is allowed and seniority of 1981, 1983 are quashed and respondents are directed to prepare a fresh seniority list and give promotion to the applicants with retrospective effect i.e. on the basis of selection of 1978 and prior to 1979 when subsequently selected candidates were given notional test. A fresh seniority list will be prepared and placement of the applicants made above other respondents in accordance with the law and observations made in the judgement. S.L.P. filed against the above decision was dismissed by the Apex Court."

As the respondents did not implement the order, a contempt petition No.71/92 was filed by the applicants, on receipt of which, ^{by} an order No.HPB/129/G/TC/85 dated 18/6/92, applicants were promoted without prejudice to the rights of their seniors, and the applicants names were interpolated in the panel published on 20/4/83, with the direction that they would get the benefits from the dates when the juniors got promoted. The Tribunal, had also while permitting the request of the respondents to effect promotions, directed that five vacancies be kept for the applicant, as two have already been promoted. Tribunal's direction on 24/4/91, were that retrospective promotions be given to the applicants on the basis of selection in 1978 and prior to 1979, when the subsequently selected candidates were given the ~~test~~ ^{list} ie before the respondents in that OA were considered for

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promotion. It was not that the applicants were to be promoted along with those regularly promoted in 1983, as some of the juniors had already been promoted on adhoc basis and enjoyed the benefits uninterruptedly even in the matter of increments. Still by their order dated 18/6/92, respondents had done just the same, in purported compliance of the Tribunal's order, but in flagrant violation thereof. The contempt petition filed by the applicants was disposed of by the Tribunal on 1/11/93, holding that it was concerned only with the regular promotions, based on which seniority was accorded to the applicants over their juniors, the matter rested at that point. Applicants reiterate that they are correctly entitled for promotion w.e.f. 1979 which was directed by the Tribunal's order in OA 389/97, (In fact the applicants did not receive arrears even on the socalled promotion of 1983) with consequential benefits, while the juniors did enjoy the benefit of promotion alongwith monetary gains, by way of fixation of pay, increments, etc. Applicants plead that they are correctly eligible for promotion before the adhoc promotions granted to Shri T.N.S.Subramaniam and N.C.Sharma and for other benefits flowing therefrom.

3. Replying to the applicants, it is pointed out by the Respondents, that the direction given by the Tribunal for granting promotion on 1978 selection was based on erroneous 'conception'. Still according to them they have promoted the applicants to Group B post w.e.f. 1/3/1983 and to Sr.Scale on w.e.f. 1/3/1986. This was done by necessary interpolation of the names of the applicants in the fresh seniority list. Contempt

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Petition No.71/92, having been dismissed, the adhoc promotions, if any, issued before 1983 stood disposed of and the applicants have no right of action against the promotions of the "alleged juniors Shri Subramaniam and Sharma". The respondents also dilate at length about the restructuring ordered by the Railways in the meanwhile and point out that the directions dated 24/4/91 of the Tribunal having been satisfactorily complied with by them by promoting the applicants as ACs w.e.f. 1/3/83 and to Senior Scale on 1/6/86, no cause of action remained with the applicants to be agitated. The OA therefore cannot be allowed, hold the respondents. Rejoinder by the applicants on 28/8/1996 and the Sur Rejoinder by the Respondents reiterate the above with some details.

4. Heard the Counsels on 19/7/2000. Shri G.K.Masand, the learned counsel for the applicants argues that the Railways had not properly given effect to the decision of the Tribunal, dated 24/4/91, as the applicants had not been given the benefit of retrospective promotion on the basis of the selection of 1978 and prior to 1979. Respondents plea that they had been given regular promotion with effect from 1/3/83 was no answer or compliance, especially as individuals, admittedly junior to them had been given adhoc promotion in 1979, and were given pay fixation and increments uninterruptedly till 1983 when they were regularised, alongwith the applicants. What the applicants desire is the extension of the benefit of Tribunal's decision to them, from the dates their juniors got it and it was immaterial whether it was adhoc or regular. They should also get promotion on the relevant

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dates, based on their performance brought out in their records for the relative periods. In support of their case he also referred to the decision of the Apex Court in the case of CBDT v/s. O.N.Tripathi & Others (1991 Supreme Court Cases (L&S) 736) and Balkishan V/s. Delhi Administration and Anr (1991 Supreme Court Cases (L&S) 879). On behalf of the respondents, Shri Dhawan contended that they had correctly and properly complied with the direction dated 24/4/91 of the Tribunal and that the applicants have been given promotion on the regular basis w.e.f. 1/3/83 and subsequently on 1/3/86. A lot of events have intervened, the applicants name were also sent for consideration for promotion to Group A and none of theose juniors promoted alongwith them regularly have been placed above them. They also say that some of the applicants were considered for promotion in J.A.g. but were not found fit. In view of the above, what has been done by the Respondents was correct and has to be endorsed according to him.

5. Rival contentions have been carefully considered and we are convinced that despite all the protestions by the respondents it is evident that the directions of the Tribunal issued on 24/4/91, while disposing the OA.No.389/97 have not been complied with. The specific direction of the Tribunal was to quash the seniority lists of 1981 and 1983, "prepare a fresh seniority list and give promotion to the applicants with retrospective effect i.e. on the basis of selection of 1978 and prior to 1979 when subsequently selected candidates were given notional, test." It was also directed that a fresh seniority

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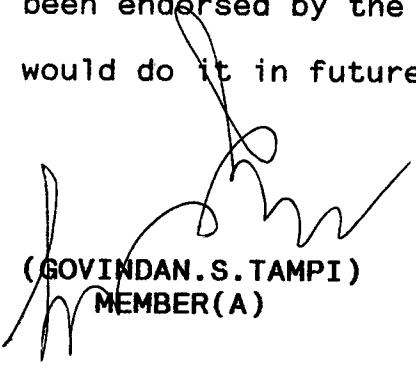
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list be made and the placement of the applicants made above other respondents in accordance with the law and observations made in the judgement. This direction is only marginally complied with by the issue of Office Order No.305/1992 dated 18/6/92 promoting the applicants, with ^{the} somewhat mischievous and unwarranted rider' without prejudice to the rights of the seniors.' Inspite of this order, persons who were given adhoc promotions w.e.f. 1979 like C.N.S.Subramaniam and N.C.Sharma, who were juniors to the applicant were at an advantageous situation vis-a-vis the applicants, in the matters of fixation of pay, increments, etc. Therefore, the plea by the respondents that the Tribunals directions only referred to regular promotion, more as the contempt petition 71/92 was dismissed, deserves outright rejection. Unless and until the applicants are given the benefit of retrospective promotion from 1979, in this case from the date on which their juniors Subramaniam and Sharma were promoted, their grievance would remain unredressed. And it is the bounden duty of this Tribunal to ensure that earlier order passed by it and upheld by the Apex Court is adhered to both in letter and spirit. The two decisions of the Apex Court cited by the Applicant- CBDT V/s. O.N.Tripathi and Balkishan V/s. Delhi Administration also support their case. Therefore the reliefs sought by the applicants, we hold deserve our favourable consideration.

6. In the result, we allow the application. It is directed that the applicants are deemed to have been promoted to Class II Service as Asst. Commercial Superintendent/Asst.Operating

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Superintendent w.e.f. November 1979, when the applicants erstwhile juniors N.C.Sharma and T.N.S.Balasubramaniam were promoted to the said posts on adhoc basis and continued till regularisation in 1983, with all the consequential benefits. Respondents shall consider the requests of the applicants for promotion to Senior Scale from 24/9/85 and to Group A from 22/8/1990, when their juniors made the grades, depending on their eligibility and suitability worked on the basis of their promotions to Class II in November 1979 and on the basis of their performance relevant to those periods. The applicants would also be entitled to arrears of pay and allowances on account of the antedating of their promotion to November 1979, though we are not granting the request for interest on arrears. However, before parting with the application, we would like to remark that the respondents should have been more responsive and alive to the rightful claims of the applicants, especially after the same have been endorsed by the Tribunal and the Apex Court. We hope they would do it in future. No order on costs.


(GOVINDAN.S.TAMPI)
MEMBER(A)

abp


(A.V.HARIDASAN)
MEMBER(J)

CENTRAL ADMINISTRATIVE TRIBUNAL, MUMBAI BENCH

CP No.95/2001 in OA 350/1994

Mumbai, this 27th day of June, 2002

Hon'ble Shri Justice Birendra Dikshit, VC(J)
Hon'ble Shri M.P. Singh, Member(A)

M.V.R.Somayajulu & 6 others .. Petitioners
(By Shri G.K.Masand, ^{W.M.} through Mrs. S.S.Marne, Advocate)

versus

Union of India, through

1. General Manager, Central Rly
Bombay VT
2. Chairman, Railway Board
New Delhi
3. R.N. Malhotra
Railway Board, New Delhi
4. B.S.Sudhir Chandra
GM, Central Railway, Mumbai
5. S.K.Bajpai
Dy. Chief Personnel Officer
Central Railway, Mumbai

Respondents

(By Shri S.C. Dhawan, Advocate)
Shri Suresh Kumar, Advocate

ORDER

Shri M.P. Singh, Member(A)

OA 350/94 filed by the petitioners (original applicants) was disposed of by this Tribunal vide order dated 26.7.2000 with the following directions:

"6. In the result, we allow the application. It is directed that the applicants are deemed to have been promoted to Class II Service as Asstt. Commercial Superintendent/Asstt. Operating Superintendent w.e.f. November, 1979, when the applicants' erstwhile juniors N.C.Sharma and T.N.S. Balasubramaniam were promoted to the said posts on adhoc basis and continued till regularisation in 1983, with all the consequential benefits. Respondents shall consider the requests of the applicants for promotion to senior scale from 24.9.85 and to Group A from 22.8.1990, when their juniors made the grades, depending on their eligibility and suitability worked on the basis of their promotions to Class II in November, 1979 and on the basis of their performance relevant to those periods. The applicants would also be entitled to arrears of pay and allowances on account of

ante-dating of their promotion to November, 1979, though we are not granting the request for interest on arrears. However, before parting with the application, we would like to remark that the respondents should have been more responsible and alive to the rightful claims of the applicants, especially after the same have been endorsed by the Tribunal and the Apex Court. We hope they would do it in future. No order as to costs."

2. The grievance of the petitioners in present CP is that though they have made a representation on 29.8.2000 to the respondents alongwith a copy of the aforesaid judgement of the Tribunal, the latter have not cared to implement the judgement till 2.2.2001. According to them, petitioners No.1 to 6 have retired from service on various dates between 1992 and 1994, while petitioner No.7 is still in service. It is also stated that petitioner No.2 had passed away on 31.7.95. Respondents filed MP 95/2001 seeking extension of time by six months for complying with the order dated 26.7.2000 which was granted to them. But even after that, respondents have not implemeneted the order dated 26.7.2000. They have therefore prayed that respondents may be punished for contempt of court.

3. Respondents in their reply affidavit have stated that they have already implemented the orders of this Tribunal inasmuch as all the 7 applicants have been granted promotion in Class II service as ACS/AOS w.e.f. 7.11.79 and have been granted similar benefits and placed at par with Shri N.C.Sharma and T.N.S.Balasubramaniam. The pay of the applicants have been fixed with regard to the pay

of Group B as on 7.11.79 and granted further increments till the time they were regularly promoted in the year 1983. Payment of arrears of pay and allowances has also been made. Besides, requests of the applicants for promotion to senior scale from 24.9.85 also have been considered and granted.

4. Respondents further contend that applicants No.1, 2, 5 to 7 have been promoted to Group A w.e.f. 21.8.1990 while applicants No.3 and 4 were not empanelled as per rules and therefore not included for induction to Group A and subsequently they retired w.e.f. 30.6.93 and 31.5.1992 respectively. Therefore, nothing survives in the present CP, which may be dismissed and notice discharged. Respondents have tendered their unconditional and unqualified apology for the delay caused in the implementation of Tribunal's order dated 26.7.2000.

5. Petitioners have filed further affidavit on 13.12.2000, to the following effect:

- (a) Respondents have promoted the applicants only on ad hoc basis from November, 1979 and not on regular basis;
- (b) Respondents have given only adhoc and not regular posting to applicants in senior scale from 24.9.85;
- (c) Respondents have not called for review DPC after 26.7.2000 to consider the claim of applicants for promotion to JA Grade on adhoc and regular basis from the date their juniors were considered;

6.. On the other hand, respondents have stated in their reply affidavit, in respect of the above points, as under:

- (a) Applicants were granted adhoc promotion w.e.f. November, 1979 at par with their erstwhile juniors as per directions of this Tribunal and that they were granted promotion on regular basis sw.e.f. 1.3.1983;
- (b) Senior scale posts are Group A posts; unless applicants are inducted to Jr. Scale Group A/IRTS, they cannot claim promotion on regular basis to the senior scale. They were granted the same benefit which ~~came to be~~ was granted to their erstwhile juniors and in the due and drawn statement, arrears towards the charge allowance have been included and paid w.e.f. 24.9.85;
- (c) Applicants' case for induction to Group A, considering their regular promotion w.e.f. 1.3.83 in Group B, was considered by the Review DPC and accordingly they (except Applicants No.3 & 4) were inducted into Group A w.e.f. 21.8.90. As there is no change in Group B seniority, no further review DPC is called for.

7.. Respondents have also stated that grant of change of seniority in Group B was not directed by this Tribunal in its order dated 27.6.2000. Applicants having been granted adhoc promotion to Group B w.e.f. November, 1979 they cannot claim seniority on that basis. That apart, in the absence of any direction in respect of promotion to Junior Admn. Grade in the judgement dated 26.7.2000, applicants cannot claim the same in the CP. Since the orders of the Tribunal stand complied with fully, the CP be dismissed.

8.. We have considered the explanation of Respondents

and heard Counsel for Respondents. The order of this Tribunal directing Respondents to declare that the applicants are deemed to have been promoted to Class II Service as Assistant Operating Superintendent w.e.f. November, 1979, when the applicants erstwhile juniors N.C.Sharma and T.N.S.Balasubramaniam were promoted to the said post on ad hoc basis from November, 1979. The Respondents Counsel has justified the stand of Respondents on the basis of their explanation and claim that there was no wilful disobedience of the order. We have examined the arguments and we find that on the basis of said order, applicants were given promotion on ad hoc basis being regularised in 1983. However, the applicants have pressed that they are entitled for regularisation from 1979 on the basis of the order passed by this Court.

By counsel for respondent it is pointed out that under Rules if applicant was to be regularised in 1983 then he could not be granted promotion for 3 years from date of regularisation where as under order they were to be promoted to senior scale from 24.9.1985. On consideration of explanation in the light of arguments, prima facie we are not satisfied with the reply filed by Respondent. As we are satisfied that there is a prima facie case against respondent No.2, who does not admit that he has committed contempt, we would like to proceed to frame the charge in accordance with Rule 13 (b) (i) of Contempt of Courts (CAT) Rules, 1992 read with Form No.3.

As the Rules require that the charge to be framed are to be read out to Contemners, we direct personal presence of Respondent No. 2 B.S.Sudhir Chandra in Court on 26.7.2002 when charges would be framed.

M.P.S.
(M.P.SINGH)
MEMBER(A)

B. Dikshit
(BIRENDRA DIKSHIT)
VICE-CHAIRMAN

B.

Order/Notice sent despatched
to Applicant/Respondent(s)
on 27.6.2002
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