

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

Original Application No.695/94

Dated this _____ the 26th Day of April, 2000.

Coram : Hon'ble Shri D.S. Baweja, Member (A)
Hon'ble Shri S.L. Jain, Member (J)

Mr.K.A. Rahman,
Retired X.E.N./CS/Churchgate,
residing at B-19, Abhilasha
Apartments, Mathuradas Road
(Extn.), Kandivli (W),
Bombay - 400 067.
(By Advocate Shri C.M. Jha)

... Applicant

Vs.

1. Union of India, through
General Manager,
Western Railway, Churchgate,
Bombay - 400 020.

2. Secretary,
Railway Board, Rail Bhavan,
New Delhi.
(By Advocate Shri M.S. Ramamurthy)

.. Respondents

O R D E R
(Per : Shri D.S. Baweja, Member (A))

The applicant is a retired Executive Engineer of Western Railway. The applicant had earlier filed a Civil Suit in November, 1975 which was transferred to Ahmedabad Bench and registered as T.A.No.37/88. The same was decided as per the order dated 28.4.1989 with the following directions in para 15:-

- "15. We therefore, pass the following orders:
(i) The respondents shall interpolate the name of the applicant in the panel published in their letter No.1024/5/2 dtd.1.8.1972.
(ii) The respondents shall give all such promotion and make all such payments as ...2..

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the applicant would have been entitled to had he been so empanelled in the 1972 panel.

- (iii) The requisite action shall be finalised and all the payments involved shall be made within a period of four months from the date of receipt of a copy of this order".

2..... The applicant filed a contempt application 2/90 in TA 37/88 alleging non implementation of the order dated 28.4.1989. The Respondents was filed an affidavit in reply stating that action as per the directions of the Tribunal has been taken and the amount due to the applicant has been paid to him through two cheques. The applicant however, contested the amount paid to the applicant through two cheques. While disposing the contempt application, the Bench made the following observations in the order dated ¹²⁻¹⁰⁻⁹³~~27.5.1994~~:

"There is controversy between the applicant and the respondents as to whether the respondents had started the process of calculating the amount payable to the applicant and then in making payment to him in right earnest. We, therefore, feel that it would be better if the applicant files a fresh O.A. claiming interalia if he feels that there was inordinate delay in complying with the directions of the Tribunal. The present Contempt Application is, therefore, disposed of keeping it open to the applicant to approach the respondents for payment of additional amount, if according to him, anything more is still required to be paid to him over and above the amount of two cheques pursuant to the judgement of the Tribunal. It will also be open to the applicant to file a fresh application, if so thought fit by him, for claiming interest on the ground of unreasonable delay or on the ground of non-compliance with any Rules as to the period within which the payment of retirement benefits should be made to him pursuant to the judgement of the Tribunal".

3..... The present O.A. has been filed on 27.5.1994 after disposal of the contempt application as per order dated 12.10.1993. It is ^{the} a case of the applicant that allowing

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proforma promotions with the payment of consequential arrears which become due as per order dated 9.7.1992 is not as per the directions in the order dated 28.4.1989 in TA No.37/88. The applicant submits that as per order dated 28.4.1989, he is entitled for full payment of arrears on account of promotions to the various grades with respect to his juniors not on proforma but actual basis. The following payments are due to the applicant.

- (a) Assistant Engineer - From 25.7.1972 to 16.11.1980
- (b) Executive Engineer - From 17.11.1980 to 29.10.1987
- (c) Dy.Chief Engineer - From 2.12.1987 to 30.9.1988

The applicant has filed the present O.A. seeking quashing of the impugned order dated 9.7.1993 with the direction to the respondents to make full payment of the arrears of pay and allowances with actual promotions in the various grades as due with interest of 18% from the date of order dated 28.4.1989.

4. The respondents have filed written statement opposing the O.A. The respondents maintains that the applicant has been allowed proforma promotion as due as per the order dated 9.7.1993 in compliance with the directions of the Tribunal in the order dated 28.4.1989 and the dues arising out of the same on fixation of pay have been paid to the applicant through two cheques as brought out in the order dated ^{12.10.93}~~27.5.1999~~ on the contempt application. It is the stand of the respondents that the order has been fully implemented ~~with~~ ^{with} and the payment of Rs.51,512/having been made to the applicant and noting this compliance of the directions of the Tribunal, the Contempt of

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Court proceedings were dropped. The representation^{has} made by the applicant dated ^{26.12.93}~~28.12.1992~~ after the disposal of the contempt application and the same has been replied as per letter dated 4.4.1994. The applicant was asked to furnish the details of the payment which are still due as per the applicant but the applicant has not furnished any details so far. It is further stated by the respondents that they are even now prepared to consider the claim of the applicant in addition to payments already made ^{are} of proper and specific details ~~have~~ furnished. As regards the claim of the applicant for promotion as Dy. Chief Engineer in reference to his junior Shri Venkataswamy, the respondents state that Shri Venkataswamy was given only charge of the post and was not actually promoted and that this fact was brought out in the affidavit filed in the O.A. before Ahmedabad Bench. With these facts, the respondents plead that the applicant has no case and OA deserves to be dismissed.

5. The applicant has filed rejoinder reply. While controverting the submissions of the respondents, the applicant has reiterated that issue of the impugned order allowing proforma promotions in the various grades is in violation of the directions of the order dated 28.4.1989. The respondents have infact committed the contempt of court for non compliance of the order. The applicant also submits that he has already furnished the details of various amounts still due in his representation dated 5.6.95 brought on the record with the rejoinder reply. As regards the promotion to the grade of Dy.Chief Engineer, the applicant submits that the applicant claims the same promotion as

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given to Shri Venkataswamy i.e. his junior and he should also be paid charge allowance of Rs.2000/- which was paid to Shri Venkata swamy as per the order of the Tribunal.

6..... The respondents as per order dated 7.7.1999 were directed to consider the claim made by the applicant for the payment of additional dues as detailed out in his representation dated 5.6.1995, brought on the record with the rejoinder reply. With reference to this order, the respondents have filed additional written statement, the respondents however have reiterated their earlier stand stating that proforma promotions have been allowed to the applicant as per the directions of the Tribunal to the post of Assistant Engineer and Executive Engineer and the payments of the dues arising consequently have been ^{made} paid to the applicant and no further amount is due to the applicant.

7.....The applicant has reacted to the additional written statement by filing another rejoinder reply. The applicant has stated that to escape contempt proceedings, the respondents before the Bench in the contempt application made a statement that any amount still due will be paid to the applicant which showed that the respondents had not fully implemented the order of the Tribunal. The ^{Submission} ~~statement~~ now made by the respondents in the additional ^{reply} ~~statement~~ that nothing is due to the applicant is mis-leading and this amounts to committing contempt of the Court.

8..... We have heard arguments of Shri C.M. Jha, Learned Counsel for the applicant and Shri M.S. Ramamurthy, Learned Counsel for the respondents.

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9. From the rival submissions, it is noted that controversy centres around the impugned order dated 9.7.1993. As per this order, the applicant has been allowed promotions to the post of Assistant Engineer as well as Executive Engineer on pro forma basis and arrears of pay and allowances arising as a consequence have been paid to the applicant. It is the case of the respondents that the order dated 9.7.1993 fully complies with the directions of the Tribunal in the order dated 28.4.1989 and no further dues are payable as claimed by the applicant. The applicant on the other hand contests this and states that as per the order dated 28.4.1989, the placement on the panel dated 1.8.1972 of Assistant Engineer and subsequent promotion as Executive Engineer with reference to junior is to be on actual basis and not on notional basis. We have carefully considered the rival contentions. It is noted from the pleadings in the OA. that the applicant has ^{nr}sought quashing of the impugned order dated 9.7.93 ~~not~~ on legal grounds. He is claiming that as per the order of the Tribunal dated 28.4.89, the promotion are to be allowed on actual and not on notional basis. Therefore the order dated 9.7.93 is in violation of the directions in the order dated 28.4.89. This would imply that no findings are required to be recorded after considering the reliefs prayed for on merits but to endorse the reading of the order as the applicant does. Thus the scope of the present OA is only to interpret the directions in the order dated 28.4.89. In fact the applicant in the rejoinder reply has stated while replying to the submissions in the written statement that respondents in issuing the impugned order have committed Contempt of the Court. The Counsel of the

respondents on the other hand argued that any interpretation of the order would amount ^{by review} to reviewing of the order and therefore the order dated 9.7.93 cannot be set aside in the fresh OA. We are not impressed by the submission of the Counsel for the respondents. As stated earlier the controversy with regard to implementation of the order dated 28.4.89 has been noted by the Bench with reference to the impugned order dated 9.7.93 while disposing of the Contempt Application and liberty ^{has been} granted to the applicant to agitate the matter in a fresh OA if the applicant has not been paid all the dues. Therefore it is imperative to resolve the controversy raised in the present OA. On going through the order dated 28.4.89, we note that the Bench has recorded finding that the applicant was overlooked for promotion when due on account of oversight / administrative error. Further the Bench has also noted in para 14, that if required, supernumary post or posts may be created to accommodate the applicant. In the light of these recordings, the plain reading of para 15(ii) of the order dated 28.4.89, ^{or} ~~and~~ make all such payments as the applicant would have entitled to had he been so empanelled in 1972 panel ^{or} would imply that the applicant is entitled for payments on the basis of actual promotion and not on notional basis. We are therefore of the view that allowing notional promotion as per the impugned order is against the directions in para 15(ii). Thus the impugned order dated 9.7.93 deserves to ~~the extent of~~ ^{to the extent of} to be set aside according ^{to} granting of the promotion on notional basis.

10. The applicant has also referred to denial of promotion as Deputy Chief Engineer in the pleadings in the OA. We find that

the applicant has not sought any specific relief for the same in para 8 of the OA. Further the averments made are to sketching to go into the merits of the same.

11. In the ^{issue} request of the above, we allow the OA by setting aside the impugned order dated 9.7.93. The applicant will be allowed the due promotions as covered in this order on actual basis and not on notional basis. Additional arrears as become due accordingly are to be paid to the applicant within a period of 4 months from the date of receipt of the order. The applicant will be not entitled for payment of any interest on the arrears. No order as to costs.

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

D.S. Bawale
(D.S. Bawale)
Member (A).

C. 101/01
for order on
22-10-07

1) 22-10-2001 C.P. No: 101/01

Heard shri G.K. Masand
along with smt. S.S. Maune,
counsel for applicant.

from the facts stated in
the application, we are satisfied
that action under section 11 of
the contempt of courts Act is
to be taken.

ADMIT. Issue notice to
Respondent/contemnor No. 2,
shri V.D. Gupta, General
manager, Western Railway,
churchgate, Mumbai.

The case against Respondent
No. 1 shall be considered at
subsequent stage.

case posted to 3/12/2001.

B.S.

(B.N. Bahadur).
MCA)

B. Dikshit
N/C.

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Notice is issued to
Contemnor No. 2
on 21/11/07

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