

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 396/95

DATE OF DECISION: 20/10/2000

Shri P.K.Barve

Applicant.

Shri H.Y.Deo

-----Advocate for
Applicant.

Versus

Union of India & 2 Ors.

-----Respondents.

Shri S.C.Dhawan

-----Advocate for
Respondents.

CORAM:

Hon'ble Shri S.L.Jain, Member(J)
Hon'ble Smt. Shanta Shastry, Member(A)

1. To be referred to the Reporter or not? *No*
2. Whether it needs to be circulated to other Benches of the Tribunal? *No*
3. Library. *Yes*

Shanta F
(SHANTA SHASTRY)
MEMBER(A)

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO: 396/95
DATED THE 20th DAY OF OCT. 2000

CORAM: HON'BLE SHRI S.L.JAIN, MEMBER(J)
HON'BLE SMT SHANTA SHASTRY, MEMBER(A).

1. Shri P.K.Barve,
(Retired Assistant Yard Master)
"Ramkripa"
516-B, eth, yan
Pune 411 030.

... Applicant

By Advocate Shri H.Y.Deo

V/s.

1. Union of India,
Through General Manager,
Central Railway,
Bombay V.T.,
Bombay.
2. Divisional Railway Manager,
Central Railway,
Bombay V.T.,
Bombay - 400 001.
3. Divisional Officer,
Personnel Branch,
Central Railway,
Bombay V.T.,
Bombay - 400 001.

... Respondents

By Advocate Shri S.C.Dhawan

(O R D E R)

Per Smt.Shanta Shastri, Member(A)

The applicant is aggrieved that he has been denied retrospective promotion to the grade of Rs.700 to 900/2000 - 3000 w.e.f. 1/8/82 as was granted to his junior Shri Jundre. He has therefore prayed to quash and set aside the letter dated 12/8/1994 issued by respondent No.2 with a direction to the respondents to promote the applicant retrospectively w.e.f. 1/8/1982 before his junior is granted the promotion retrospectively and to fix the pay accordingly and to pay the

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arrears, also to refix and recalculate his pension and arrears arising thereof.

2. The applicant was working as Assistant Station Master in the grade of Rs.205-280 with respondent No.2 in Pune. The Respondent No.2 published a seniority list of Assistant Station Masters vide letter dated 21/11/1979. In this list some juniors of the applicant viz. Shri V.R.Lele, Shri V.D.Kamble, Shri S.N.Jundre and Shri B.S.Khaladkar were shown senior to the applicant. The applicant states that he represented against this wrongful seniority list but no cognizance was taken. On the contrary, in the meantime, promotions to the next higher grade of Assistant Station Master in the scale of Rs.450-700 were granted in accordance with the very same seniority list in 1980. The applicant did not get the promotion. The said seniority list was modified vide letter dated 15/11/1983. In this revised seniority list the applicant is shown at Sr.No.442, senior to Shri Lele and the three others who are placed at Sr.No.466 and onwards.

3. Again in 1985 selection was made for promotion to the next higher grade of Assistant Station Master i.e. Rs.700-900. The so called juniors i.e. Shri Lele and others were selected ignoring the claim of the applicant. Tests were held at the time of the selection. Applicant got his promotion to the grade of Rs.700-900 vide order dated 25/3/1987. He retired in 1989. After retirement he came to know that the respondents had fixed the pay of his junior Shri S.M.Jundre in the higher grade by granting him retrospective promotion w.e.f. 1/8/82 as per order/circular dated 27/1/93 issued by Respondent No.3. Shri Jundre also got arrears of pay. The applicant represented vide his letter dated 12/10/93 asking for similar benefit to him but

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his request was regretted vide the impugned letter dated 12/8/94.

4. The stand of the respondents is that the applicant had retired before finalisation of the subsequent panel and he was not empanelled earlier in 1986 alongwith Shri Jundre therefore the benefit of giving the higher scale with retrospective effect from 1/8/1982 cannot be extended to him.

4. It is the contention of the applicant that Shri Jundre was all along junior to him, he was promoted on 24/6/1987 to the higher grade of Rs.700-900 whereas the applicant was promoted from 25/3/1987. In the seniority list of 1983, Shri Jundre is shown junior to the applicant.

5. The respondents have opposed the relief. They have taken the preliminary plea that the application cannot be maintained as it is time barred. The claim arose on 1/8/82 which is more than three years prior to the establishment of the Tribunal, Even if the date of 3/4/86 when the junior was empanelled were to be taken as the date when the cause of action arose, the application having been filed in 1995 suffers from delay and laches.

6. Secondly, the applicant has not joined the alleged juniors like Shri Lele and others including Shri Jundre who are necessary parties as they are vitally affected. Therefore the application is liable to be dismissed.

7. It is the contention of the respondents that the applicant was always aware of the seniority list of November 1979 but he did not point out any mistake or make any representation against it within one month as required under the rules. The respondents deny having received any representation except in 1993. It is further denied that any juniors were placed higher in the seniority list above the applicant. The applicant was

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promoted in the grade 550-750 from 1/8/82 on proforma basis as per modified selection against restructuring of the cadre. He was also paid arrears by order dated 27/1/93.

8. A provisional panel was published on 3/4/86. Shri Jundre and the other alleged juniors were empanelled. The applicant was also considered by the selection committee but he was not selected for empanelment. The panel of 3/4/86 was published as final on 15/1/91. The applicant cannot now reagitate the same. The respondents have further denied that Shri Jundre was promoted later than the applicant. The letter of 15/1/1991 has not been challenged nor has it been impugned.

9. The applicant was promoted to the grade of Rs.700-900 only provisionally and continued to work in the grade till his superannuation. According to the respondents the applicant is not entitled to the relief claimed.

10. The learned counsel for the applicant denies that his application is not within the prescribed time limit. The cause of action arose in 1993 when his junior Shri Jundre was given retrospective promotion.

11. We have given careful hearing to the rival contentions made by the counsel for the applicant and the respondents. We shall first take up the objection on the ground of limitation. No doubt the cause of action arose in 1982, at the most in 1986 when the panel was prepared for the grade of Rs.700-900. However, fresh cause of action has arisen in 1993 when Shri Jundre, junior to the applicant was granted retrospective ^{promotion} ~~effect~~ from 1/8/82 and arrears from 1983. The applicant represented immediately on 12/10/93 which was finally decided on 12/8/1994. The application has been made on 13/3/1995 well within one year

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from the date of final reply. It cannot therefore be said to be grossly time barred. The plea of limitation is therefore rejected.

12. Next, it is contended that the applicant has not joined Shri Jundre and other alleged juniors as parties. We accept this. The applicant has failed to implead them as parties. Therefore the application needs to be dismissed on this ground alone.

13. On merits, it is seen that the applicant's case was examined carefully by the Pension Adalat and then rejected. No doubt the applicant is shown senior to Shri Jundre in the seniority list of 15/11/1983 however, the post of Assistant Station Master in the grade of 700-900 being a selection post, merit is the criterion. Shri Jundre was selected in 1986 and was empanelled on 3/4/86. The applicant certainly has a right to be considered but not for promotion. Accordingly, he was also considered but not selected. He cannot therefore make a grievance of that. In our considered view the respondents are justified in rejecting the claim of the applicant.

14. In the facts and circumstances of the case, the OA is dismissed. No costs.

Shanta Shastri
(SHANTA SHASTRY)
MEMBER(A)

S.L. Jain
(S.L. JAIN)
MEMBER(J)

abp.