

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No.- 306/2001
T.A. No.

199

DATE OF DECISION 31.10.2002

GANPAT LAL GORA

Petitioner

MR. NAND KISHORE

Advocate for the Petitioner (s)

Versus

UNION OF INDIA AND OTHERS

Respondent

MR. U.D. SHARMA

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice G.L. Gupta, Vice Chairman

The Hon'ble Mr. Gopal Singh, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(Gopal Singh)
Administrative Member

May kindly see
(G.L.Gupta)
Vice Chairman

Hon'ble V.C. J.W.

In the Central Administrative Tribunal
Jaipur Bench:Jaipur

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Date of Order : 31.10.2001

O.A.NO. 306/2001

Ganpat Lal Gora S/o Shri Laxman Ram Gora,
aged 59 years, Senior Pharmacist, GLO -
Dispensary, Western Railway, Ajmer,
Resident of Kalyanpura, Ward No. 44, Near
Mayo College, Ajmer.

..... Applicant.

versus

1. The Union of India through
The General Manager,
Western Railway, Churchgate,
Mumbai - 20.

2. The Divisional Railway Manager,
D.R.M's Office,
Western Railway,
Ajmer.

3. Shri M.M. Khan,
Chief Pharmacist, Grade-II,
Railway Hospital,
Abu Road.

..... Respondents.

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CORAM :

Hon'ble Mr. Justice G.L. Gupta,
Vice Chairman

Hon'ble Mr. Gopal Singh, IAS
Administrative Member

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Mr. Nand Kishore, Advocate, present for the applicant.

Mr. U.D. Sharma, Advocate, present for the respondents.

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ORDER

PER MR. GOPAL SINGH ADMINISTRATIVE MEMBER :

In this application, under section 19 of the Administrative Tribunals Act, 1985, applicant, Ganpatlal Gora has prayed for a direction to the respondents to promote him in the scale of Rs. 5500-9000 with effect from the date his junior Shri Ashok Chauhan had been promoted. It has further been prayed that the applicant be promoted in the scale of Rs. 6500-10500 against the vacancy caused due to retirement of Shri Parsu Ravani. The applicant has also prayed for quashing the order dated 17th March, 2001 (Annex.A/1) promoting one Shri M.M.Khan (Respondent No.3).

2. Applicant's case is that he was initially appointed with the Railways on 12th November, 1963 in Bhavnagarpara Division of Western Railway and transferred to Ajmer Division on 28th January, 1970. The applicant has been removed from service on 22nd September, 1975. The applicant approached this Tribunal through O.A. No. 858/89 which was decided on 11th May, 1993 with the following observations :-

"4. We have considered the other aspects of the case and we are of the view that the interests of justice will be served if the applicant is reinstated without the benefit of back wages. The orders of the Disciplinary Authority and the Appellate Authority are modified suitably so that the applicant be reinstated with immediate effect in service. However, he will not be entitled for any back wages from the date of removal to the date of his joining back in service. The Consequential order, enabling the applicant to join service will be passed within one month from today.

Gopal Singh

5. As far as continuity of the service and the pensionary benefits on retirement are concerned, the applicant will be entitled to these benefits. However, he will not be entitled to claim any benefit of promotion and will also not be entitled to the benefits extended to his juniors on account of the removal order, during the intervening period from 1975 to 1993. The applicant should obtain a copy of this order and should submit the same before the Disciplinary Authority i.e. DRM, Ajmer, so that the authorities can pass necessary orders immediately."

In compliance to the orders of the Tribunal dated 11th May, 1993, the applicant was re-appointed at the minimum of the scale in Railway service and posted under the Medical Officer, Sojat Road without the benefit of his past service, seniority, promotion, increment and back wages for the period of removal and his past service to be counted for purposes of pensionary benefits only.

The case was taken up with the Apex Court by the applicant through Special Leave Petition (Civil) No.6987/2000 converted into Civil Appeal No. 6333/2000. The said civil appeal was disposed of by the Apex Court on 6th of November, 2000 with the following observations:-

" It will be noticed that while the order of the Tribunal requires the government to reinstate the appellant with continuity, the order passed by the government describes the appointment as "reappointment" and not the reinstatement. Learned Additional Solicitor General points out that the order abovementioned is the translation of the original order which is in Hindi and that it is clarified in committor affidavit that the Hindi version of the order does not use word reappointment but uses the word reinstatement.

Be that as it may, the order dated 11/16-6-93 will be treated as an order of reinstatement and if the order is treated as reinstatement the appellant's grievance is redressed. We clarify that the order of the government should be treated as one of reinstatement.

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The other directions given by the Tribunal will, however, stand and the other terms of the order passed by the authorities are in conformity with the earlier order of the Tribunal. The appeal is disposed of accordingly. There shall be no order as to costs."

Further, in clarificatory order dated 4th February, 2002 passed in Civil Appeal No. 6333/2000, the Apex Court has observed as under :-

"Heard learned counsel for the parties and perused the record."

Keeping in view the direction of the Central Administrative Tribunal and the order passed by this Court, it is clear that the appellant is entitled to notional seniority and pensionary benefits on the post of pharmacist grade III with effect from his initial appointment made on 12.11.1963 till the date he was removed from service on 22.9.1975. The aforesaid period has been allowed to be given credit to the appellant by the Tribunal for the purpose of continuity in service and the pensionary benefits of retirement only and not for payment of any amount for the aforesaid period. The order of this Court is modified accordingly by giving the appellant continuity and the pensionary benefits of service for the period from 1963 to 1975."

3. A close reading of this Tribunal's order dated 11th May, 1993 and judgement of Hon'ble the Supreme Court dated 6th November, 2000 and clarification thereon dated 4th February, 2002, would reveal that :

- (i) The applicant would be treated as reinstated and not as re-appointed vide order dated 11/16.6.1993 ;
- (ii) He will not be entitled to any back wages prior to re-instatement ;

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(iii) The period from 22.9.1975, the date of removal from service to the date of re-instatement i.e. 12.6.1993, would be counted towards continuity of service and, therefore, the applicant would be entitled to pensionary benefits for this period as also notional seniority ;

(iv) Since the period from 22.9.1975 till 11.6.1993 would count for notional seniority, the applicant would be entitled to promotion as per his notional seniority at par with his juniors and the applicant will not be entitled to claim any benefit of promotion during the intervening period from 1975 to 1993 ;

(v) The applicant will also not be entitled to the benefits extended to his juniors on account of his removal order during the intervening period from 1975 to 1993.

4. In reply to M.A No. 467/2002, the respondents have stated that consequent upon re-instatement of the applicant on 12.6.1993 he was placed at the bottom in the seniority list of Pharmacist in the scale of Rs.1350 - 2200 and his name appeared at S1.No. 8 of the said seniority list. In compliance to Apex Court's order dated 6.11.2000 (Annex. 4) respondents have given him the benefit of

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past service and the applicant was placed at Sl. No.1 of the seniority list of Pharmacist Grade-III. The applicant has also been given promotion to the next higher grade of Pharmacist Grade-II in the pay scale of Rs. 1400-2600 with effect from 8.11.1993, the date on which his next junior was promoted as Pharmacist Grade-II in the pay scale of Rs. 1400-2600. The applicant was assigned seniority as Pharmacist Grade-II between Shri Ashok Kumar Chauhan (Sl.No.10) and Shri Om Prakash Kulmi (Sl.No.11). The applicant has also been given all the consequential benefits arising out of the said promotion in the pay scale of Rs. 1400-2600, vide their order dated 23.3.2001 (Annex.R/9). It has, therefore, been contended by the respondents that the benefits arising out of the Apex Court's order dated 4.2.2002, had already been extended to the applicant vide their order dated 23.3.2001.

5. The learned counsel for the applicant has relied upon the seniority list issued by the respondents vide letter dated 25.3.2001 (Annex.R/4) in pressing his claim for promotion over Shri Ashok Kumar Chauhan. In this seniority list applicant's name figures at Sl. No. 23 while that of Shri Ashok Kumar Chauhan figures at Sl.No. 30. It is pointed out that this was a provisional seniority list. The final seniority list was published by the respondents vide letter dated 5.6.2001 (Annex.R/5). In this seniority list dated 5.6.2001, the name of the applicant which was earlier figuring at Sl.No. 23 has now

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been placed below Sl.No. 31 (Shri Krishna Jai Ram Chaudhary) and above Sl.No.32 (Shri Kailash Chand Bhati). The name of Shri Ashok Kumar Chauhan continued at Sl.No. 30, thus, Shri Ashok Kumar Chauhan was senior to applicant in the scale of Rs. 1400-2600. This letter dated 5.6.2001 (Annex.R/5), was never challenged by the applicant. Therefore, the claim of the applicant for promotion at par with Shri Ashok Kumar Chauhan, on the ground that Shri Chauhan was junior to the applicant, is not maintainable. The applicant has also in this application prayed for quashing the order dated 17.3.2001 (Annex.A/1) whereby one Shri M.M. Khan, was promoted. The learned counsel for the applicant has adduced the arguments that applicant is senior to Shri Khan on the basis of base grade seniority. It is pointed-out here that Shri M.M. Khan was shown at Sl.No. 3 of the seniority list of Pharmacist Grade-III (Annex.R/4) and in that seniority list applicant was placed at Sl.No. 23. As has been pointed-out above, this seniority list was further modified and applicant was assigned seniority between Sl. Nos. 31 and 32. Thus, the applicant cannot have right of seniority over Shri Khan.

6. It is also pointed-out that applicant had earlier approached this Tribunal vide O.A. No. 289/95 for promotion in the higher pay scale of Rs. 1400-2600 as he was the only qualified Pharmacist and also for removing Shri Mahadev Prashad Vajpayee and Shri Hari Narayan (respondents No. 4 & 5) from the post of Pharmacist. It was the contention of the applicant in that O.A. that

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respondents No. 4 & 5 were not qualified Pharmacist. In terms of this Tribunal's order in OA No. 858/1998, where specific directions were given that the applicant will not be entitled to claim any benefit of promotion given to his junior from the date of his removal till reinstatement i.e. from 22.9.1975 to 11.6.1993. The respondent No. 4 was promoted in the scale of Rs. 1400-2600 with effect from 1.1.1984 and in the scale of Rs. 1640-2900 with effect from 17.11.1988 and respondent No. 5 was promoted to the scale of Rs. 1640-2900 in the year 1990 and has since retired. These promotions were effected during the period from 1975 to 1993 when the applicant stood removed from service and as such, in terms of Tribunal's order passed in O.A. No. 858/1998, he cannot seek parity at par with respondents No. 4 and 5. The said O.A. was also found barred by limitation and, therefore, the O.A. was dismissed on merit as also on limitation.

7. Reverting back to Para No.3(i & iii) it would be seen that the applicant has been re-instated with effect from 11.6.1993 in terms of respondents' order dated 11/16.6.1993. The period of removal from 22.9.1975 till 11.6.1993 has been counted for continuity of service for the purpose of pensionary benefits as also for notional seniority for purpose of promotion to higher grades. The applicant has accordingly been promoted to the post of Pharmacist Grade-II in the scale of Rs. 1400-2600 at par

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with his junior Shri Q.P.Kulmi with effect from 8.11.1993.

8. In the light of above discussions, we are of the opinion that whatever benefits were required to be extended to the applicant in terms of this Tribunal's Order dated 11.5.1993 and Orders of the Apex Court dated 6.11.2000 followed by a clarificatory Order dated 4.2.2002, all the benefits have been extended to the applicant. His further claim of promotion at par with Shri Ashok Kumar Chauhan and Shri M.M. Khan, are not tenable. In this view of the matter, nothing survives in this application. Thus, the Original Application has become infructuous and deserves to be dismissed.

9. The Original Application is accordingly dismissed with no order as to costs.

Gopal Singh

(Gopal Singh)
Administrative Member



(G.L. Gupta)
Vice Chairman