

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

O.A.No.381 of 1998

Hon'ble Shri R.K.Upadhyaya, Administrative Member-
for consideration pl.

J.K. Kaushik
(J.K.Kaushik)
Judicial Member
2.5.2003

I agree
U. Upadhyaya
2.5.03

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 381 of 1998

Jabalpur, this the 5th day of May, 2003

Hon^{ble} Mr. R.K. Upadhyaya - Administrative Member
Hon^{ble} Mr. J.K. Kaushik - Judicial Member

S.D. Paranjpe son of Late D. Paragpe,
aged about 44 years, Occupation Senior
Wireless Operator, Central Railway,
Resident of Dixitpura, Jabalpur

- Applicant

(By Advocate Shri D. Sharma)

Versus

1. Union of India through its General Manager,
Central Railway, Mumbai.
2. Chief Signal and Telecommunication Engineer,
Central Railway, Mumbai.
3. Chief Personal Officer, Central Railway,
Mumbai

- Respondents

(By Advocate Shri S.P. Sinha)

O R D E R

By J.K. Kaushik, Judicial Member -

Shri S.D. Paranjpe has filed this O.A. with the
following prayer-

"to direct the respondents to modify the impugned seniority list (A-3) assigning the applicant that the promotion in the present grade w.e.f. 1.10.87 instead of 25.10.88. The respondent be also direct to make the payment of arrears of salary w.e.f. 1.10.87 including interest".

2. The brief facts of the case necessary for resolving the controversy involved in this application are that the applicant entered in the service as Group-D employee on 27.11.1978. In due course, he was allowed the promotion to the post of Senior Wireless Operator Grade Rs. 1400-2300 with effect from 25.10.1988 vide Annexure-A-5. He filed an OA No. 485 of 1993 before this Bench of the Tribunal claiming seniority over S/Shri P.G. Tembhurnekar, M.K. Kulkarni and R.C. Chaurasia. The same came to be allowed vide order dated 27.11.1997 (Annexure-A-2) and a direction was given to the respondents to correct the seniority of the applicant and place him above these persons, who were respondents 4 to 6 in that O.A.

Contd...2/-

3. In implementation of the aforesaid order dated 27.11.1997 in OA 485/1993, a seniority list was issued and the applicant was placed above the aforesaid juniors. However, his promotion date has been shown as 25.10.1988 instead of 1.10.1987. A representation was made in the matter. It has been further mentioned that in order dated 1.10.1987 (Annexure-A-4) one Shri V. Laxman was shown to have been promoted with effect from 1.10.1987, despite that he retired from the service. Had this not been done, the applicant could have been promoted and posted to officiate on the said post of Senior Wireless Operator with effect from 1.10.1987 itself. The respondents have been given reasonable time to review the applicant's case with full scope of order of this Tribunal but there has been no outcome of the same. Therefore, the impugned order is arbitrary and has been issued in violation of Article 14 of the Constitution of India.

4. A return has been filed on behalf of the respondents. It has been admitted that in compliance with the order passed in OA 485/1993 corrected seniority list was issued and the applicant has been assigned seniority above the persons over whom the seniority was claimed. The said juniors were promoted from the same date i.e. 25.10.1988 from which the applicant was promoted and there was no direction from this Tribunal that the promotion of the applicant should relate to a back date i.e. 1.10.1987. The further defence as set out in the reply is that the applicant did not challenge his promotion order dated 25.10.1988 and by now more than 10 years have elapsed, therefore the original application is not tenable and the claim is barred under the principle of res judicata. As regards Shri V. Laxman, the respondents have stated that Shri V. Laxman was promoted in the year 1987 and by now more than 10 years have passed, the applicant did not challenge the same.

Contd.....3/-

5. A rejoinder has been filed on behalf of the applicant reiterating some of the facts in the Original Application.

6. We have heard the learned counsel of the parties and have bestowed our consideration to the pleadings and the records of the case.

7. Precisely the learned counsel of the applicant has centered his argument on the point that one Shri V. Laxman who was admittedly senior to him was wrongly promoted with effect from 1.10.1987 and had this mistake not been committed, the applicant was the next person who would have enjoyed the promotion. He was confronted with a very specific query as to whether the order passed in OA 485/1993 by this Bench of the Tribunal has been complied with or not and as to whether any of his juniors have been promoted prior to the date of his promotion. The learned counsel of the applicant was at difficulty to give his reply in positive. However, he unsuccessfully repeated the contentions raised in the OA. The learned counsel of the applicant also could not satisfy and countenance objection of the constructive res judicata and also the point of limitation in regard to the fact as to why the matter regarding his promotion was not agitated in his previous OA or at the time when Shri V. Laxman was promoted.

7.1 The learned counsel of the respondents reiterated the facts and grounds raised in the reply to the OA and has also argued on the tuning and ^{on} the query made by this Tribunal as mentioned above, he has made a clean break of the facts and has submitted that Shri V. Laxman was very much senior to the applicant and even complete details are not indicated in the O.A. Further, it has been asserted that the Government can afford to keep a post vacant and the post is required to be filled in after following the prescribed procedure in the Recruitment Rules but all such details are not mentioned in the O.A. Not only this, the applicant has been admittedly promoted vide order dated 25.10.1988 (Annexure-A-1) but there

is no challenge to the same, regarding his modification and having the date from a back date.

8. We have considered the rival contentions raised on behalf of both the parties. The admitted position of the case is that the matter regarding the promotion was not the subject matter in the earlier OA and this OA seems to have been filed just to have full implementation of the earlier judgment. It is also admitted that none of the juniors to the applicant has been promoted prior to the date of his promotion. It is also admitted that neither the order of promotion - so called wrong order in respect of Shri V. Laxman and also that of the applicant which have been issued in 1987 and 1988 respectively are under challenge. By the time the OA was filed, more than 10 years have elapsed. The contention of the learned counsel of the respondents is that the application is hit by the doctrine of res judicata as well as law of limitation are well founded and have force.

9. We are constrained to observe that a very vague and ambiguous prayer has been made and even such relief can never be granted. How can date of promotion be changed in seniority list until the very promotion order is challenged. There is no challenge to the actual promotion order and the applicant wants that his seniority should be given from an earlier date i.e. by changing his date of promotion. As a matter of fact the seniority is the offshoot of date of promotion and seniority cannot be assigned prior to the date of promotion. So long the date of promotion of the applicant remains indicating the date as 25.10.1988, there is no question of changing the same to an earlier date. The OA is hopelessly time barred as well as the same is misconceived. Hence the same deserves to be dismissed.

10. The upshot of the aforesaid discussion is that the OA is bereft of any merits as well as is hit by the law of limitation and constructive res judicata. The same fails

and is hereby dismissed with cost, which is quantified at Rs.1000/- (Rs. one thousand only). The applicant shall pay the cost to the respondents within a period of two months from the date of receipt of a copy of this order.

(J.K. Kaushik)
Judicial Member

(R.K. Upadhyaya)
Administrative Member

rkv.

पूठांकन सं ओ/व्या.....जबलपुर, दि.....

प्रतिनिधि द्वारा किया—

- (1) सचिव, जबलपुर नगरपालिका, जबलपुर
- (2) उपस्थित,के काउंसल D. Sharma, Adm.
- (3) उपस्थित,के काउंसल SP Sinha, Adm.
- (4) उपस्थित,

सूचना के अनुसार जारी किया गया

(J.K. Kaushik)
9.5.03

Issued
on 12.5.03
BJ