

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH :: GUWAHATI-5.

O.A. NO. 50/94  
T.A. NO.

DATE OF DECISION 9.6.1995

Shri Brij Raj Bahadur

(PETITIONER(S))

Shri D. Sarma

ADVOCATE FOR THE  
PETITIONER (S)

VERSUS

Union of India and others.

RESPONDENT (A)

Shri B.K. Sharma, Railway Counsel with  
Shri S. Sarma.

ADVOCATE FOR THE  
RESPONDENT (S)

THE HON'BLE JUSTICE SHRI M.G. CHAUDHARI, VICE-CHAIRMAN  
THE HON'BLE SHRI G.L. SANGLYINE, MEMBER (A)

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

yes

NO

Judgment delivered by Hon'ble Vice-Chairman.

*Brij Raj Bahadur*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No.50 of 1994

Date of decision: This the 9th day of June 1995.

The Hon'ble Justice Shri M.G. Chaudhari, Vice-Chairman  
The Hon'ble Shri G.L. Sanglyine, Member (Administrative).

Shri Brij Raj Bahadur  
Residing at Railway Qrs. No.585/A,  
New Colony, Bongaigaon.

.... Applicant

By Advocate Shri D. Sarma.

-versus-

1. Union of India, through the  
General Manager,  
N.F. Railway, Guwahati.

2. Chief Mechanical Engineer(P)  
N.F. Railway, Guwahati.

3. Deputy Chief Mechanical Engineer,  
N.F. Railway, New Bongaigaon.

.... Respondents.

By Advocate Shri B.K. Sharma, Railway Counsel.

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ORDER

CHAUDHARI.J. V.C.

Mr D. Sarma for the applicant.

Mr B.K. Sharma with Mr S. Sarma for the  
respondents.

We are satisfied that injustice has been done to  
the applicant and strongly feel it deserves to be removed,  
although the applicant has retired from service and  
although the submissions urged by Mr B.K. Sharma on behalf  
of the respondents have force in them.

2. The applicant was, at the material time, holding  
the post of Head Typist in the service of N.F. Railway.

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He became eligible for being considered for promotion to the next higher post of Chief Typist which is a selection post. The Chief Mechanical Engineer(P) decided to hold a selection in order to form a panel of Chief Typists for three vacant posts which were all unreserved posts. That is seen from Annexure-A dated 8.5.1989. Names of three candidates were mentioned in that panel, namely, (1) S.K. Nath, (2) S.K. Dey and (3) M.L. Paul. All of them were Head Typists. The name of the applicant was not included in the list. It is an admitted fact that M.L. Paul placed at serial No.3 was junior to the applicant. All the three candidates mentioned in the aforesaid list were selected for promotion and were temporarily promoted to the post of Chief Typists by order dated 14.9.1989 issued by the Chief Mechanical Engineer(P), Annexure A-1.

3. It appears from the written statement that the applicant represented at that stage that M.L. Paul was wrongly promoted as he was junior to him, i.e., the applicant, and his supersession was wrong. As soon as this grievance was received and the error was detected, namely, that though applicant was senior he had been excluded, the respondents <sup>the candidates</sup> withheld the promotion order of all and that was thereafter never given effect to. It is seen from Annexure-B to the written statement dated 8.3.1990 issued from the office of CME(P) that although order for promotion of M.L. Paul was issued on 15.9.1989 he had not joined till then and he need not be spared since some modification was likely to take place within the cadre consequent on representation of senior man against the selection. This was a letter written to DRM(P), KIR. Obviously, the reference was made with reference to the representation of the applicant who was senior. The promotion of M.L. Paul was thus withheld

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before it was actually effected. The said Paul retired from service on 31.11.1991 as Head Typist. The respondents held a selection at which the applicant was empanelled and was approved and selected and order of his selection to the post of Chief Typist was issued by CME(P) (Annexure-C to the written statement). The applicant describes this selection as supplementary selection, whereas the respondents describe it as a fresh selection. The applicant retired as Chief Typist on 30.9.1991. He has filed the instant original application seeking limited relief that his pay be directed to be refixed in the scale of Rs.1600-2600 in terms of Rule 228 of IREM with effect from 14.9.1989 when his erstwhile junior was promoted.

4. The applicant has based his claim on the ground that his junior was promoted and, therefore, he is entitled to be given proforma promotion from the date on which the junior, namely, Paul was promoted, i.e. 14.9.1989. With this premise, the learned counsel for the applicant, Mr D. Sarma relies upon the Railway Board's letter No.E(NG)63 PMI/92 dated 15/17-9-1964 (Annexure-A/4). That letter provides the guidelines that where the staff who have lost promotion on account of administrative errors should on promotion be assigned correct seniority vis-a-vis their juniors already promoted irrespective of their date of promotion and that pay in the higher grade may be fixed proforma at the stage which the employee would have reached if he was promoted on time and further that the enhanced pay may be allowed from the date of actual promotion, but no arrears on this account shall be payable as such incumbent did not shoulder the duties and responsibilities of higher grade posts.

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5. The contention of the respondents in this respect is that since on the representation of the applicant himself the promotion of M.L. Paul was withheld and did not at any time become effective, so much so, that he was not even spared from the grade of Head Typist this is not a case which can fall within the purview of the aforesaid guidelines of the Railway Board and, therefore, the applicant cannot get any advantage of that circular. Although Mr D. Sarma, the learned counsel for the applicant, emphasised the fact that an order of promotion of Paul had been issued which means according to him that for all purposes and particularly for the purpose of the Railway Board's guidelines he must be deemed to have been promoted resulting in depriving the benefit of promotion to the applicant due to administrative error which entitles the applicant to claim fixation in the higher grade on proforma basis from the date of order by which M.L. Paul, his junior, was promoted, we are not impressed by that submission for the reason that the promotion of Paul had never become effective and in substance, therefore, he was never promoted. It is seen from Annexure-A that there were three posts of Chief Typist's which were to be filled and three names were proposed to be considered. The applicant does not dispute that the persons at serial Nos. 1 and 2, i.e. S.K. Nath, and S.K. Dey were senior to him. According to him his name should have figured at serial No.3 instead of M.L. Paul. It is submitted by Mr D. Sarma that since there was error in including the name of Paul <sup>hence on</sup> ~~as a result of~~ correction of that error the applicant should be deemed to have been placed at serial No.3 in that list. ~~Mr B.K. Sharma draws~~ <sup>Mr B.K. Sharma draws</sup> our attention to Annexure-A/5 to the original application, which is the reply sent by the General Manager(P), N.F.

Railway.....

*Mr B.K. Sharma draws*

Railway to the applicant in respect of his grievance made before the Pension Adalat, wherein in para v it has been stated that he was selected in continuation selection and promoted. The learned counsel, therefore, submits that selection of the applicant on 12.11.1990 was not a fresh selection, but in continuation of the earlier selection. The sequitur thereof being that the applicant will be deemed to have been selected only on 12.11.1990 and for whatever reason he may not have been selected earlier the fact that the effective date will be 12.11.1990 cannot be erased. As stated earlier the applicant has described his selection as a supplementary selection. Apart from these two descriptions in para 6 it has been described as a fresh selection. In this situation <sup>of W.S.</sup> ~~in or~~ to determine the nature of the selection of the applicant, two circumstances which are revealed from the record have to be taken into account. In the first place the initial panel dated 8.5.1989 (Annexure-A) stated that selection was to be held for three posts and order for promotion of three persons in pursuance thereof was issued on 14.9.1989, Annexure-A. Thereafter only the promotion of M.L. Paul was withheld, ~~that means that~~ which implies that nothing contrary was shown by either side that the first two persons in the list, namely, S.K. Nath and S.K. Day <sup>could</sup> have got the promotion under the order dated 14.9.1989 effectively on the basis of selection held for that purpose in the year 1989. Since, therefore, the promotion of M.L. Paul who was one of the selected candidates from that panel was withheld and it was discovered that the name of the applicant had not been included in the panel erroneously the applicant will have to be assumed to have been mentioned in place of M.L. Paul in the original selection list. Now since Paul was junior to the applicant

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✓ and <sup>if</sup> the applicant were to be included in the panel for selection initially he would have been placed at serial No.3. Since the promotion of Paul was withheld it will follow that one of the posts for which selection was held in 1989 had remained vacant and that was filled in subsequently on 12.11.1990 by promoting the applicant to that post. It not being the case of the respondents that the entire panel of three persons and the entire order of promotion including that of S.K. Nath and S.K. Dey was cancelled and a fresh selection was held in 1990 it must mean that the selection of the applicant is relatable to the original selection made in 1989 <sup>and</sup> but for the administrative error he would have been included in the panel and promoted on 14.9.1989 itself. That in our view being the position the guideline in the Railway Board's letter, Annexure-A/4, would apply.

6. The second pertinent fact to be noticed is that in the order of promotion of the applicant dated 12.11.1990, Annexure-A/2, it has been stated that the name of the applicant is interpolated at serial No.4 below M.L. Paul in the original panel. It is difficult to understand as to how when admittedly M.L. Paul was junior to the applicant and when his promotion could not be upheld or effected yet the applicant was assigned a position below him in the original panel. What seems to have been missed is the fact that the applicant had to be considered in the place of Paul and not below him. Moreover, that has clear reference to the original panel and that ~~sets~~ <sup>rules</sup> out the selection of the applicant being described as a fresh selection. Thus there is a close nexus between the order of promotion of the applicant with the original panel and selection from which he had been kept out due to an administrative error.

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In the face of this situation the stand of the respondents that as no junior was promoted and the applicant was selected only in 1990 does not sound convincing although may not be necessarily wrong. We are, therefore, inclined to hold that the promotion of the applicant to the post of Chief Typist by order dated 12.11.1990 is relatable to the selection made on 14.9.1989 and he should be deemed to have been promoted alongwith S.K. Nath and S.K. Dey with effect from 14.9.1989. The applicant, therefore, will be entitled to proforma fixation of his pay in the higher grade, but he will not be eligible to get any arrears on that account as he did not shoulder the duties and responsibilities of the higher grade between 14.9.1989 and 12.11.1990.

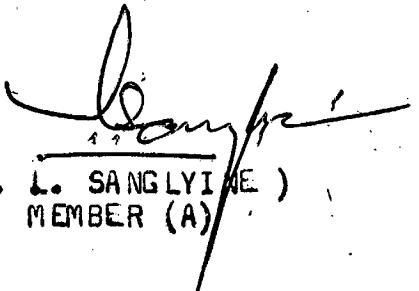
7. Before parting with the matter we would like to mention that although the relief has been sought with reference to what happened in the year 1989 and the application has been filed as late as on 6.3.1994 the claim of the applicant is not liable to <sup>be</sup> ~~out~~ thrown away on the ground of bar of limitation. We are inclined to hold so in view of the statement in para 9 of the written statement that his appeal was once again examined in detail and the applicant was replied on 28.6.1992 that his claim could not be accepted. Since the appeal was entertained and as it was examined in detail which means on merits the date of result of that appeal in our view should come to the rescue of the applicant to overcome the bar of limitation. We, therefore, hold that the application is not barred by limitation.

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8. In the result we pass the following order:

The respondents are directed to refix the pay of the applicant in the higher grade of Chief Typist proforma at the stage at which he would have reached on the date of retirement if he was promoted with effect from 14.9.1989 and recalculate his retiral benefits on that basis and give him the benefit thereof as expeditiously as possible, but not later than within a period of four months from the date of receipt of a copy of this order. It is made clear that the applicant is not entitled to any arrears of pay on the basis of refixation for the period from 14.9.1989 till 12.11.1990.

9. The application is accordingly allowed. No order as to costs.

  
( G. L. SANGLIANE )  
MEMBER (A)

  
( M. G. CHAUDHARI )  
VICE-CHAIRMAN

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