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O. A. No. 189/86

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
AT AHMEDABAD.

Application No. 3 of 1986.

Shri. Girdharilal Mehanlal and
42 Others.

...Applicants/plaintiffs.

v/s

The Union of India and
others.

....Respondents/Defendants.

-: Order :-

1.. This application arises out of a civil
litigation as mentioned below :-

The plaintiffs (who are Respondents No.4 & 5) filed R.C.S.No.841/83 in the Court of Civil Judge (S.D.) at Rajkot. The plaintiffs are serving as a 'Fireman' with the Western Railway. It appears that on 31.7.83, they were promoted on adhoc basis as 'Fireman-A'. However, that order was withdrawn or cancelled on 10.8.83 on the ground that claims of other fireman who are senior to the plaintiffs remained to be considered. In the suit, plaintiffs challenged this second order dt; 10.8.83 and prayed for temporary injunction restraining the reversion of the plaintiffs from 'Firemen-A' to their substantive posts of 'Fireman-II'. The Trial Court initially granted ex-parte injunction in plaintiffs' favour. However, after hearing Railway Administration, as also other Railway employees (who are applicants in this application), the Trial Court vacated that

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order. The plaintiff's filed Civil Misc. Appeal No. 210 of 1985 in the District Court at Rajkot against this dismissal order and again applied for temporary injunction prohibiting the plaintiffs' reservation. The Jt. District Judge at Rajkot passed the ex-parte order of injunction in favour of the plaintiffs on 30.10.85. However, the confirmation or vacating of that ex-parte order could not be heard by the District Court Rajkot as in the intervening period i.e. 1.11.85 this Tribunal was constituted, the District Court ~~ceased~~ to have any jurisdiction.

2.. The Original defendants No. 4 to 13 further made this application that said ex-parte injunction granted by the District Court, Rajkot should be vacated. The notice of this application was issued to the Railway Administration namely present Respondents No. 1 to 3 and also to the ~~Respondents~~ original plaintiffs (who are Respondents No. 4 & 5 in this application.) These original plaintiffs have filed their objection. Similarly the Railway Administration has also filed its say. The said Administration did not oppose the application, but the original plaintiffs did oppose. In my view, the grant or refusal of interim relief by way of injunction would be a discretionary relief. The Trial Court in its detailed order came to the conclusion that plaintiffs' adhoc promotion was cancelled as there was obvious mistake in promoting them on 31.7.83 without considering the claims of other senior Firemen. Mr. Gogia also submitted that plaintiffs who were 'Fireman-II' were mistakenly promoted on adhoc basis as 'Fireman-A', though there is intervening

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promotion of grade of 'Fireman-B'. He has also stated that there are certain 'Fireman-B' (whose grade is above that of 'Fireman-II') whose cases have been left out of consideration when the first order dt; 31.7.83 was passed. Similar statement was made by Mr.Udani,during the course of his arguments.

3.. In this back ground and particularly when the promotion of plaintiff under Order dt; 31.7.83 was an adhoc promotion, I do not think that plaintiffs have any primaracie case for continuing to hold said adhoc promotional post,particularly in the back ground of the case of Railway Administration as also the present applicants that the plaintiffs' promotion was ordered in obvious/mistaken manner.

4.. Thus ex-parte ad-interim injunction granted by the District Court in Civil Misc.Appeal No.210 of 1985 deserves to be vacated and accordingly I vacate it. Before closing I may state that observations made in this order are for the limited purpose of deciding as to whether ex-parte injunction granted in "Misc. appeal should be confirmed or not and that at this stage,I do not propose to consider the merits of the appeal. The order dt; 30.10.85 which has effect of continuing the plaintiffs on the promotional post of 'Fireman-A' is hereby vacated.

dt; 7.3.1986.

B.C.Gadgil

(B.C.GADGIL.v.c.)

Heard Mr.Paul for the original plaintiffs,Mr. Udani for the Railways and Mr.Gogiya for the Original Defendants Nos. 4 to 30. The question is as to whether

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ad-interim temporary injunction granted by the District Court Rajkot in Misc.Civil Appeal No. 210 of 1985 would be confirmed or vacated. This matter was already heard by me on 7-3-86, and that injunction was vacated. However, at that time, Mr. Paul could not remain present and the matter was heard in his absence. On 8-3-86, Mr. Paul made an application for staying my earlier order and for hearing the matter afresh. After hearing both the sides, I stayed order till today with a direction that the matter will be heard by me.

2.. My earlier order dt; 7-3-86 has given detailed history of the litigation. Today, Mr. Paul produced a list of 10 documents. The document at serial No.4 is a letter dt; 20-12-85. Initially in 1977, a decision was taken as to how the vacancies of Fireman Grade 'A' should be filled. Certain criterian was prescribed. But by letter dt; 5-6-78, these orders were held in abeyance. Thereafter, the question arose as to how vacancies of the Fireman Grade 'A' should be filled in. ^{By} 30-4-82, there were 101 such posts. The process for filling those vacancies was undertaken and a ~~panel~~ of 101 persons for such promotion was made. From out of that panel, 65 vacancies have already been filled in while remaining 36 vacancies still remained to be filled in. This could not be done obviously on account of filing of the suit No. 841 of 1983 and the temporary injunction order that has been passed by the Trial Court. Though that injunction was vacated, still ad-interim ex-parte injunction was granted by the District Court. The said letter dt 20-12-85 has been relied upon

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by Mr. Paul for the purpose of contention that a specific procedure is provided for the selection of the Fireman Grade 'A' and that in that background it will not be open for the present defendants No.4 to 30 to claim their promotion. In my opinion, this submission is not well-founded. I am inclined to observe that letter dt; 20-12-85 in clear terms provides that 101 vacancies up to 30-4-82 have to be filled in not on the basis of the contemplated selection process, but they have to be filled in on the basis of the earlier action taken. Mr. Udani for the Railway Administration contended that the Administration wants to do is to fill in remaining 36 vacancies as per the earlier decision. In my opinion, the Administration cannot be prevented from taking such action.

2. Mr. Paul then drew my attention to the another letter dt; 27-3-86 (document at serial No.7 in the list) wherein General Manager has directed that the selection of fireman Grade 'A' should be processed and that till the ^{panel} of those selected candidates is finalised, the existing arrangements may continue. Mr. Paul submitted that the direction to continue existing arrangements would mean that the applicants (original plaintiffs) should be continued in the promotional posts. In my opinion, there is a fallacy in the submission of Mr. Paul. But for the injunction that was granted in favour of the plaintiffs, they would not have continued in the post of Fireman Grade 'A'. On the contrary, the other defendants whose claims would have been permissible within the remaining 36 vacancies, would have been promoted and it is really this -

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to be

arrangement that has continued, the plaintiff's cannot take advantage of the temporary injunction which does not deserve to be continued. The net result therefore is that temporary injunction that was granted by the District Court in appeal No.210 of 1985 stands vacated. To be more specific, the order dt; 30-10-85 ~~is~~ passed in Misc.Appeal No.210 of 1985 does not remain in force and it stands vacated.

3.. At this stage, Mr. Paul prayed that some time may be granted to the applicants for obtaining orders from the Supreme Court. In my opinion, the applicants have continued to hold the post on the basis of an injunction which ought not to have been granted. Staying of this order would prejudicially affect the interest of the defendants No.4 to 30. Mr. Gogya drew my attention to the fact that one of the defendants, Mr. Thomas, who is one of the defendants from No.4 to 30, has already retired yesterday without getting promotional post, though he was entitled to have the same. Mr. Udani also opposed prayer of Mr. Paul. According to him, interest of Railway Administration would be suffered as the persons who are not eligible to hold the post, are occupying the posts. In view of these circumstances, I do not think that this is a fit case for staying the operation of this order. Request to that effect is rejected.

dt; 1-4-1986.

B.C.Gadgil
(B.C.Gadgil.v.c.)

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CORAM : (1) Hon'ble P.H. Trivedi (Vice Chairman)
(2) Hon'ble P.M. JOSHI (Judicial Member)

Neither the parties nor the counsels are present.

30-7-86. The case is therefore adjourned to 13th October 1986.

(P.M. JOSHI)

J.M

(P.H. TRIVEDI)

V.C.

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CORAM : Hon'ble Mr. P.H. Trivedi .. Vice Chairman
Hon'ble Mr. P.M. Joshi .. Judicial Member.

13/10/86

The Registry has registered O.A/189/86 in which the RCS.84/83 was called for and have been registered T.A/630/86. The learned advocates for the respondent Mr. Udani and Mr. Gogia reported that the case is ready for hearing and that Mr. Paul learned advocate for the applicant on the record is also appears for the applicant. The case is accordingly adjourned to 25th November 1986 for hearing. The Registry to inform the learned advocates for the applicant with abundant caution. With this order OA/189/86 stands disposed of.

P.H. Trivedi

(P.H. Trivedi)
Vice Chairman

P.M. Joshi

(P.M. Joshi)
Judicial Member.