

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 207 OF 1986.
~~ExxNex~~

DATE OF DECISION 1-12-1986

GIRDHARLAL WAGHJIBHAI PATEL Petitioner

GIRISH PATEL Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS. Respondents.

J.D. AJMERA Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. TRIVEDI, VICE CHAIRMAN

The Hon'ble Mr. P.M. JOSHI, JUDICIAL MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes.*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes.*
4. Whether it needs to be circulated to other Benches of the Tribunal. *No.*

JUDGMENT

Per : Hon'ble Mr. P.M. Joshi, Judicial Member.

The petitioner, Shri Girdharlal Waghjibhai Patel now working as a Farm Radio Reporter, at Baroda, claims seniority over the respondent No. 4 Mr. D.L. Solanki, Farm Radio Reporter, working at Rajkot, in this application under section 19 of the Administrative Tribunals Act, 1985. He has challenged the combined seniority list of Farm Radio Reporters working in All India Radio Station as on 1.6.1985 on the ground that the criteria adopted in fixing seniority is arbitrary, irrational and violative of article 14 and 16 of the Constitution of India. According to him, when the post of Farm Assistant (F.A.) came to be upgraded to the post of Farm Radio Reporters (F.R.R.) from 1.1.78 there was no post of F.A. in existence from 1.1.78 and as such, there could be no promotion from F.A. to F.R.R. after 1.1.78 and therefore the respondents' action of so called promoting Shri D.L. Solanki on 3.1.78 from F.A. to F.R.R. was merely superfluous and without significance and on the basis of said alleged promotion, the respondent can not confirm higher seniority on Shri Solanki. It is therefore prayed that the seniority list at Annexure 'I' be quashed and the respondents be directed to prepare a fresh seniority list by assigning the petitioner, the seniority of 1.1.78 or in the alternative seniority of 16.2.1978 in the cadre of F.R.R. and grant all consequential relief. By virtue of the order dated 15.4.1986, Mr. D.L. Solanki was allowed to be impleaded as a party respondent with a direction that the applicant should serve the notice on the respondent. The petitioner has not produced any record to show that the notice has been duly served upon the respondent No. 4 Mr. D.L. Solanki.

The respondents however have opposed the application and have filed their affidavit-in-reply. It is inter-alia contended that on abolition of the post of F.A. on All India Radio, Rajkot and Baroda with effect from 1.1.1978, the post of F.R.R. at (All India Radio,) Rajkot was to be filled in on promotion basis amongst two surplus F.A., both of whom were otherwise qualified. According to the respondents, since this filling-up of post of F.R.R. was on promotion, the roster point had to be taken into account. Accordingly on the reserved quota basis i.e. reserved for Schedule Caste Candidate Shri D.L. Solanki though junior to the petitioner was considered by the D.P.C. held on 29.7.77 for filling-up this post, whereas the petitioner was accommodated at Baroda on ad-hoc basis.

A short question for determination is what should be the proper date from which the seniority list has to be reckoned in the case of the petitioner? It is strenuously urged by Mr. Sharad Pandit for Mr. Girish Patel, the learned counsel for the petitioner that since the post of F.A. stands abolished from 31st December, 1977 vide orders No. 28/29/77-5ii dt. 23.12.1977 contained under telex message of Deputy Director, (Adm) the post of F.A. was upgraded and the petitioner should be deemed to have been posted as F.R.R. from 1.1.1978. Thus according to him, the seniority as F.R.R. ought to be reckoned from 1.1.78 in the case of the petitioner, as that being the date on which he would have been so appointed in the clear vacancy at Rajkot, but the same was unjustly and illegally denied to him. It was however, contended by Mr. J.D. Ajmera, the learned counsel for the

respondents that the date i.e. 29.1.80 has been validly reckoned and shown in the impugned list (Annexure 'I') for the seniority, as, on that day the petitioner was confirmed on the said post.

It is undisputed that the post of F.A. stands abolished with effect from 1.1.77 (mistakenly stated as 1.1.73 in para 4 of the respondents' reply). It is borne out from the memorandum dated 3.1.1978 issued by Station Director, Vasubahen that Shri L.D. Solanki F.A. with All India Radio, Baroda, was offered a temporary post of F.R.R. in the establishment of All India Radio at Rajkot in the scale of Rs. 470-15-530 EB-20-650-EB-25-750. While issuing the said memorandum the Station Director had informed the Director General (All India Radio, New Delhi) that the petitioner Shri G.W.Patel F.A. working in her office, is being shown against the post of F.R.R. till Shri Solanki reports for duty as F.R.R. It was further indicated that Shri Patel may be considered for appointment as F.R.R. in any other station of All India Radio where vacancy of F.R.R. was available, as he possessed requisite qualification for the said post. Mr. Solanki (Respondent No.4) was promoted and appointed as F.R.R. with effect from 7.1.78. The petitioner, however, has not preferred to bring on record his order of appointment and promotion. In view of this position, it is not possible to infer that, there was an automatic upgradation as a result of abolition of the post of F.A. There was a question of filling in the post of F.R.R. on promotion basis amongst the two surplus F.A. (The petitioner and respondent No.4). Now in view of the subsequent orders passed in their case, their

date of appointment will be material for consideration.

The petitioner is officiating on the post of F.R.R with effect from 16.2.1978. The seniority of the petitioner therefore can be legitimately reckoned from 16.2.1978 and not from 1.1.1978 as contended by him.

The Station Director forwarded the seniority list under the office letter No. AHM-1(6) 78-5 dated 8th November, 1978 wherein the date 16.2.1978 has been referred to as the date of continuous appointment in the grade of F.R.R. as against the name of the petitioner (G.W.Patel) and he has been also shown senior to Mr. Solanki. In this regard, the respondents, in para 5 of their reply, have stated that the Station Director was not aware of any regular vacancy of F.R.R. at any other station against which post the applicant could be absorbed as F.R.R. on ad-hoc basis. It is submitted by Mr. Ajmera that Mr. G.B. Patel who was working as F.R.R was promoted as F.R. Officer on ad-hoc basis and he was finally absorbed on 29.1.80 on regular basis. According to him, the petitioner was appointed as F.R.R at Baroda on ad-hoc basis vice Mr.G.B. Patel and when Mr. G.B. Patel was absorbed on 29.1.80, ~~and~~ that is the correct date required to be reckoned for seniority in the case of the petitioner. We do not find any substance in the submission made in this regard.

It is pertinent to note that when Shri Solanki became surplus at Baroda on 1.1.78 he was transferred and posted at Rajkot on 7.1.78 in clear vacancy vide order dated 3.1.78. Accordingly his seniority was reckoned from 7.1.78. Admittedly the petitioner had ~~was~~ joined the service on 19.9.70 and he made permanent on his post of F.A. on 21.4.1975 and thus he was senior in

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service to Shri Solanki (respondent No. 4) by about four years. With the plea and the stand taken by the respondents, they try to regard as if the petitioner's confirmation as F.R.R. did not involve or depend upon the appraisal of his performance but solely on fortuitous circumstances of confirmation of Mr. G.B. Patel the holder of the promotion post of F.R.O. It is strenuously urged by Mr. Sharad Pandit that the assignment of seniority, on the basis of such extraneous and fortuitous circumstances like Shri G.B. Patel's ad-hoc promotion as F.R.O. and his subsequent confirmation to such promotional post is arbitrary and illegal. In our opinion, the submission made in this regard, has great force and merits consideration. The impugned seniority list ranking seniority of F.R.R. on such basis is illegal and can not be sustained.

In this view of the matter, we hold that the petitioner should be assigned seniority of 16.2.78 in the cadre of F.R.R. However the seniority vis-a-vis, the petitioner and respondent No. 4 and other contenders can not be decided behind their back. We are told that the petitioner's representation against seniority list are already forwarded to the Director General and he has intimated to the authorities vide U.O. No. 12474-13-S-ii dated 13.9.83 that the whole question is re-examined and fresh seniority list will be circulated as number of representations against the earlier seniority list have been received. It will be therefore in the fitness to direct the respondent to decide the question of seniority between the petitioner and the respondent No. 4 and other contenders interse.

In the result, the application is partly allowed. It is hereby directed that the respondents

shall assign the petitioner the seniority in the cadre of F.R.R. from the date of his officiating on the said post on 16.2.1978 as against the date 29.1.80 shown in the seniority list Exhibit - 'I' against the petitioner's name. It is further directed that the question of seniority between the petitioner and the respondent No. 4 be decided by the competent authority after giving them a personal hearing within six months from the date of this order. With these directions, the parties are left to bear their own costs of this application.

Prem
(P.H. TRIVEDI)
V.C.

J.M.
(P.M. JOSHI)
J.M.

IN

OA/207/86

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CORAM : Hon'ble Mr. P.H. Trivedi : Vice-Chairman

30-11-1987

Mr. Sharad Pandit representing G.W. Patel in OA/207/86 appeared and stated that contempt petition Stamp No. 24/87 required to be taken up immediately because under Section 20 of Contempt of Court's Act read with (13) thereunder (page 572, AIR Manual Civil and Criminal IVth Edition) required that the notice be issued before 1-12-1987 as the judgment of the Tribunal in OA/207/86 is dated 1-12-1986 and after one year thereof proceedings cannot be initiated under the Contempt of Court's Act.

The judgment referred to requires seniority to be fixed after a personal hearing within six months from the date of the order. This takes the period of compliance to 30-6-87. Within 1 year thereof only the bar under Section 20 of the Contempt of Court's Act will arise i.e. from 1-7-88. The letter issued earlier allows time to the respondent to report compliance by 9-12-86. The stage at which the case stands will not be affected by any bar operating under section 20 of the Contempt of Court's Act. The case be put up after reply from the respondent is received.


(P.H. Trivedi)
Vice Chairman.

Coram : Hon'ble Mr. P.M.Trivedi : Vice Chairman

11.12.1987

Heard learned advocates Mr.Sharad Pandit for Mr.Girish Patel and Mr.J.D.Ajmera for the applicant and the respondents.

The respondent authority namely: Superintending Engineer, All India Radio, Ahmedabad under his letter No.AHM.21(GWP)/87-S, dated 8th December, 1987 has reported that the seniority list of Farm Radio Reporters circulated vide Directorate General, All India Radio, New Delhi's letter No.28/1/85-S II dated 4.6.85 has been withdrawn by the Director General, All India Radio and in its place the seniority list circulated vide letter No.28/1/81-SII, dated 4.1.82 wherein the petitioner Shri G.W.Patel has been assigned seniority with effect from 16.2.78. It is further reported by him that the assigning of seniority to Shri Patel with effect from 16.2.78 does not affect adversely, Shri D.L.Solanki, Respondent No.4, it was not considered necessary to give a personal hearing in this case.

In view of the above compliance report, Mr.Sharad Pandit for Mr.Girish Patel learned advocate for the applicant withdraws contempt petition Stamp No.24/87 and it is disposed of accordingly.



(P.H.Trivedi)
Vice Chairman

a.a.bhatt

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CORAM : Hon'ble Mr. Birbalnath, Administrative Member.

Hon'ble Mr. P.M. Joshi, Judicial Member.

Mr. Girish Patel, Adv. for the Applicant.

Mr. J.D. Ajmera, Adv. for the Respondents.

Date: 14-11-1986.

Pronouncement of
The judgment is further deferred as Hon'ble Vice-Chairman is on leave. The next date of pronouncement of judgment will be notified on the Notice Board, when he resumes his duties.


14/11/86
(BIRBALNATH)
Administrative Member.


(P.M. JOSHI)
Judicial Member.