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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

<u>O.A. No.</u>	20	198 6
<u>T.A. No.</u>	1024	1986

DATE OF DECISION 29-10-1986

Thomas Nanji Mackwan Petitioner

Mr. K. S. Jhaveri Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent
(W. Rly.)

Mr. R. P. Bhatt 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 ?
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*

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T.A. No. 1024 OF 1986.

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O.A. No. 20 OF 1986.

Date : 29-10-1986.

J U D G M E N T

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

This petition under Article 226 of the Constitution of India comes up before us on transfer from the Gujarat High Court under section 29 of the Administrative Tribunals Acts, 1985. The petitioner, Thomas Nanji Mackwan, prays for issuing a writ of mandamus or order directing the Respondent to place the petitioner alongwith one Shri Mayurdhwaj B. Patel and Mohamad Rashid Khan, who were appointed alongwith him and give him due posting as per his seniority. He has also prayed for the issuance of direction to the Respondents Railway Authority to call him for the trade test in the Electrical Wing as per the Notice dated 7.5.84 at Annexure 'N' and consider him for due promotion for the scale of Rs. 330-480 (R). During the pendency of this petition, he has filed O.A.No. 20/86 before this Tribunal wherein he has prayed that the Respondents be restrained from taking trade test as per the order dated 18th November, 1985 for the Grade-II i.e., the scale of Rs. 330-480 (R). Both these applications are being decided by rendering a common judgment with the consent of the parties, as they involve common questions of law and fact.

Shorn of all details the petitioner's case is : that he was initially inducted as a casual labour on 28th July, 1973 alongwith one Shri Mayurdhwaj and Mohamad Rashid Khan, but due to the Railway general strike he was arrested when on duty on 3rd May, 1974. He was discharged on the same day and the case was withdrawn against him on 16th - January, 1975. On his representation, he was reinstated

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vide Divisional Office letter dated 1.4.1977 (Annexure 'A') whereby he was treated on duty from 4th May, 1974 till he resumed his duty on the basis of 'No work, no pay'. He was granted temporary status from 27th January, 1974 (see Annexure 'A'). Despite this fact, he was not called for screening test of substitute for the post of DL (Elec.) cleaners, but only Shri Mayurdhwaj and Mohamad Rashid Khan were called and subsequently appointed at Sr. No. 127 & 128 as shown in Annexure 'C' dated 12.7.1979. The Divisional Asstt. Mech. Engineer, under his letter dated 17th May, '80 (Annexure 'D') addressed to Sr. Divisional Manager, Mech. Engineer, Ratlam, pointed out that the petitioner should be considered eligible for the trade test of ELF Gr. III scale Rs. 260-400 (R). Later on, Sr. B.P.O. Ratlam informed Sr. B.P.O. Baroda expressing his inability to notify the seniority list of regular Electric Cleaners (Diesel), who will become eligible for trade test of ELF Grade III and requested him to send complete seniority list to enable him to arrange trade test (see Annexure 'E'). In the meantime, the petitioner was appointed as substitute cleaners from 11.4.77. The Union having represented the petitioner's case, the Baroda Divisional Office Order No. 64/81 dated 16th - March, 1981 (Annexure 'H'), placed the petitioner for recruitment of Class IV service for absorption of screening empanelled substitute against regular vacancies ADI area.

According to the petitioner, eventhough, he was appointed as Electric Cleaners on 11th April, 1977 and three other employees viz; (1) Ajuji C. (2) Kadarali I. (3) N.N. Pandya, who were appointed in 1979 and who were also declared passed alongwith him as per Annexure 'J' dated 20.10.1981, they were shown senior to him in the seniority list Annexure 'I' dated 5.2.1982. It is further submitted by the petitioner that he has been denied his seniority right and the benefit of appearing the trade test during the year 1978 to 1980 and further trade test held

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on 7th May, 1984, eventhough he was much senior to the above referred three employees. In brief the petitioner has claimed the relief contending that he has been denied his rightful place in the seniority and the benefits accruing thereon, as a result of the errors committed by the Respondents authority. The petitions are opposed on the sole plea that Shri M.R. Khan and Shri M.B. Patel were in continuous service and were screened and absorbed in regular service in the year 1979 and Shri Ajuji C. Kedar ali and Pandya were appointed as Electric Cleaners in 1979 on compassionate grounds and not as a casual labour in the regular course as in the case of the petitioner. Mr. M.R. Bhatt, the learned counsel appearing for Mr. R.P. Bhatt on behalf of the respondents relied on the copy of the minutes dated 6.8.1986 of the meeting held on 28.7.1986 wherein it was decided that all the divisions and the Dy. CE(C) will prepare a list of their existing project casual labour, showing the details like the date of recruitment, place of recruitment and the number of days worked, date from which treated as temporary etc. for each casual labour. We are surprised how such a decision is relevant in the present case ?

Mr. K.S. Jhaveri, the learned counsel for the petitioner has taken us through the Circular dated 20.10.1975 (Annexure 'K') which lays down the principles governing the seniority list in respect of Grade-III scale 110-180 (A) / 260-400 (R) which is reproduced in extenso as under :

"GR. III Scale Rs. 110-180 (A) / 260-400 (R)

The staff who have been posted from different units, have been designed seniority from the date of their promotion/absorption in skilled category Scale Rs. 110-180 (A) 260-400 (R) keeping in view their relative position as per normal rules.

- (ii) The staff who have been promoted or directly recruited have been assigned seniority from their dates of promotion in case of Rankers and from the date of absorptions. In case of direct recruit keeping in view their relative seniority."

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It is true a burden to establish that he has been denied his rightful seniority is on the petitioner. It is for him to satisfy the Tribunal that although he satisfied all the required conditions, he was denied his rightful place in the seniority and that others were given unjustifiable preference over him (see S.R. Bhate V. Union of India, A.I.R. 1976 S.C.p. 363). On the plain reading of the Rules governing the seniority as referred to above, the plea raised by the Respondents that number of working days put by the casual labour was taken into account in calling for screening according to seniority, is absolutely misconceived. Moreover, the defence raised by them for placing Shri Ajuji C. Kadarali I. & N.N. Pandya over the petitioner because they were appointed in 1979 on compassionate ground, is hardly convincing and tenable at law.

The fact that the petitioner was inducted in the year 1973 alongwith other two employees viz; Mayurdhwaj and Mohamad Rashid Khan is not at all controverted. As could be seen from the Annexure 'I' the petitioner was appointed on 11.4.1977 as Electrical Cleaners in the scale of Rs. 196-232(R) whereas Shri Ajuji, Kadarali and Pandya were appointed in the year 1979. They all passed trade test in the year 1981 as per Annexure 'J' dated 20.10.1981.

Moreover, when the Senior DME had ordered to reinstate the petitioner on duty, as casual labour treating the period from 4.5.1974 till he resumed his duty, as no work no pay, he was granted temporary status from 27.1.1974 (see Ann. 'A' letter dt. 1.4.1977). As per para-6 of the circular dated 6.4.1977 (Ann. 'B'), it was envisaged as a matter of policy, that the substitutes and casual labour whose services were terminated at the time of the strike, should be taken back in service forthwith. They were also required to be restored to their original position in the seniority list (emphasis supplied) held in each unit before the strike and they will


considered for placement in the select list for absorption in regular service on the basis of that seniority. In view of this clear direction, it was expected of the Railway authority to invite the petitioner for the test when similarly situated employees viz; Mohamad Rashid Khan and Mayurdhwaj were invited and ultimately appointed for the post of DL (Elec.) cleaners as per Annexure 'C' dated 12.7.1979. This error was also pointed out by DAME (DL)'s office, letter dated 17.5.1980. While giving the background and the position held by the petitioner, Thomas Nanji and another employee Pratap Jiva, who were also working as substitute electric cleaners, it was categorically brought to the notice of the higher authority that they should be considered senior to Mr. Ajuji, Khadarali and Pandya. It was also emphasized that they should be considered eligible for the trade test of ELF Grade-III scale of Rs. 360-400 (R). The higher authority conceded this position of the seniority. However, it seems, that no action was taken, perhaps, under the pretext that there was no complete seniority list was available in the office. On this account they expressed their difficulty to notify, who will become eligible for trade test of ELF Grade III. This situation can hardly be justified, as the inaction on the part of the authority had resulted in great injustice to the petitioner in respect of his holding the higher post and the seniority involved thereon.

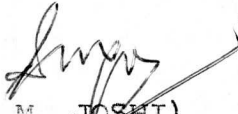
Now, when the petitioner was holding the post of a substitute (Elec.) Cleaners since 11.4.1977, we have no doubt in our minds that the petitioner, whose case was on par with Mohamad R. Khan and Mayurdhwaj, who had been offered screening test and regular employee status, would be entitled to be placed in the same category and that too from the date 12.7.1979. In this view of the matter, the petitioner has been successful in establishing that he has been denied his right place in the seniority, from

the date when Mr. Mayurdhwaj and Mohamad Rashid Khan, who were appointed at Sr. No. 127 & 128 as per Annexure 'C' dated 12.7.1979. Accordingly the petitioner succeeds. We, therefore, allow both the applications and pass the following order :-

O R D E R

Both the applications viz; T.A.No. 1024/86 and O.A. No. 20/86 are allowed. The respondents are directed to fix the petitioner's seniority, in the light of the observations made in the judgment and place him over Mr. Ajuji C., Kadarali I. and H.M. Pandya in the Seniority List of ELF GR. III Scale Rs. 260-400 (R)-KKF DL-WDS 4B (Annexure 'B') produced by the Respondents alongwith Affidavit-in-Reply. The respondents are also directed to grant and work out the monetary benefits available to him on the basis of the said seniority, within three months from the date of this order. The respondents are directed to pay Rs. 750/- being the cost of these applications, to the petitioner.


(P.M. TRIVEDI)
VICE CHAIRMAN


(P.M. JOSHI)
JUDICIAL MEMBER.