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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 268 of 1986
T.A. No.

DATE OF DECISION 8.10. '86

SHRI PRABHAKAR G. OTAWKAR

Petitioner

SHRI J. C. SHETH

Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS.

Respondent

SHRI 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 ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal.

Per: Hon'ble Shri P. H. Trivedi, Vice-Chairman

JUDGMENT

The applicants on the basis of the tests taken in this regard, were included in the panel for promotion to the post carrying a pay scale of 425-700, and were promoted accordingly by an order dated 5.10.'82, based on a panel made effective from 29.9.'82. Subsequently, the Chief Rolling Stock Examiner reported that the panel on the basis of which the promotions were made required to be cancelled, and the applicants apprehended that this is likely to be done. This matter was agitated before the Gujarat High Court and it ordered that before giving a hearing of the applicants, no orders of reversion should be passed and accordingly the respondents took some steps to give a hearing to some persons similarly placed as applicants. Apprehending that the panel on the basis of which the applicants were promoted would be cancelled and consequently their promotions may also face cancellation, the applicants have moved the Tribunal to declare that such action of the authorities concerning cancellation of the panel or the promotion consequently made should not be allowed. In reply, the respondents have admitted that the applicants were included in the panel and promoted as contended by them, but on various grounds indicated in their reply, the panel was not duly drawn up and the promotions consequently made were not in order and, therefore, action could be taken for cancellation of the panel and the promotion based therein.

We are not inclined to go into the merits of the interpretation regarding the procedures for selection for empanelment and the validity of the consequential promotion based thereon. We have to place due weight on the facts which are not disputed that the applicants were subjected to tests on the basis of which selection for empanelment was done and that this was done by

competent officers and promotions based on such panels were made in due course and that the applicants have been working in such posts for as long as three years and more. Whatever may be the reasons for disputing that the panel was made properly, it is difficult to uphold any attempt for cancellation of such panels and promotions based thereon at the present stage giving retrospective effect to any decision taken now. No plea, made by the learned advocate for the respondent regarding the merits of the case for cancellation of the panel has been found to be weighty enough by us in this regard. We, therefore, hold that there should be no tampering with the promotions of the applicants with effect from the date on which they were promoted. Regarding any action for cancellation or modification of the promotions prospectively, we hold that any such action, if and when contemplated, will have to follow the necessary procedure which Rules and natural justice require. This means that the respondents cannot proceed in any case on the basis that the promotion made have not taken place at all ab initio. We note that there is no order produced by the applicant in which cancellation of the panel or of the promotions have been communicated to them by the respondents. In the light of these observations, we direct that respondents should refrain from proceeding adversely regarding the applicants retrospectively, and that if they wish to do so, they could take such action as is justified, only according to Rules and requirements of natural justice, so far as the applicants are concerned, prospectively on the basis of the applicants having duly been promoted and having worked in promoted posts.

We make no order as to costs.

Arvind
(P. H. TRIVEDI)
Vice-Chairman

Amrit
(P. M. JOSHI)
Judicial Member