

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 313 of 1986
T.A. No.

DATE OF DECISION, 21.10.86

SHRI GOKALDAS P. LODHIA

Petitioner

SHRI P. H. PATHAK

Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS.

Respondent

SHRI M. N. UDANI

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.

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

JUDGMENT

The applicants were promoted on different dated i.e. 21.9.'78 (for applicants 1 to 4) and 31.7.'83 (for applicants 5 to 10). The relevant appointment orders specifically state that the promotions are ordered on a provisional basis. Subsequently, in August '86, the applicants were reverted to the post of Cleaner. The applicants have challenged such reversions on the ground of being arbitrary and contravening the rules, taking the stand that they were promoted on seniority and suitability basis and cannot be reverted without giving any reason and following necessary procedure. The applicants have taken a further ground that some junior employees to the applicants, named in the application, have not only been retained but promoted to higher grades, in the time scale of pay of Rs. 260-400, and this policy is therefore discriminatory contravening the Article 14 & 16 of the Constitution. The learned advocate for the applicants have cited certain instructions from the Railway Establishment Manual, from which it is seen that adhoc promotions in non-selection post should not exceed 2 months as a rule, and 4 months in any case.

2. In reply, the respondents have taken the stand that the applicants were promoted on a purely provisional and adhoc basis and the reversions have been brought about due to contraction of cadre, as

they were found surplus on account of introduction of diesel engines and surrendering of certain trains. The respondents have stated that the promotion of Babu Mohan, Gilder Uka, Bachubhai M. and Harilal M. to the scale of Rs. 290-350, was brought about because they were earlier working as fireman 'B' in the pay scale of Rs. 260-350, which is higher than that of the applicants' being Rs. 210-270. As vacancies of fireman 'A' are to be filled up after passing the prescribed selection test, they were so promoted, but the applicants have not been even eligible to appear for the test for the post of fireman 'A', and therefore were not called for attending selection of that post. Although some promotional and refresher training courses were made available to the applicants, such courses are not for giving them any right to promotion, but only for improving their capabilities, according to the respondents.

3. While it is true that adhoc original promotions do not confer any right on the promotees and that such promotees could be reverted, the respondents cannot ignore the instructions on the subject which appear to us to be consistent with considerations of justice. These instructions state that normally whenever there is a vacancy, only a seniormost eligible person as per his turn, should be promoted, that panels should be formed within time to avoid adhoc promotions and care should be taken that those who have been working satisfactorily on adhoc basis are not declared unsuitable in the interview. Adhoc promotions are also not to be made for non-selection

posts for more than two months as a rule and four months in any case. So far as possible, adhoc promotions should also be given as per seniority, in any case from the employees within 3 times the number of adhoc promotees. Within the same seniority unit, a senior man should not be ignored unless he has been declared unsuitable. These instructions, therefore clearly indicate that adhoc promotions beyond the period of four months, have to be treated differently from promotees who have not completed four months. In this case, it is not disputed that the adhoc promotees have continued in some cases for nine years, and in some cases for more than three years.

4. Even when provisional or adhoc promotees are later required to be reverted, it is necessary that respondents should have a proper procedure for giving effect to such reversions. While the respondents have taken the plea of contraction of cadre rendering the applicants surplus, there is nothing in the orders of reversion, showing that this was the reason for reversions. Again, there is nothing to show whether the applicants have been reverted because in the order of seniority, their turn had come for reversions. It would have been helpful, if the respondents had readily available seniority lists which were earlier finalised and fully published, so that with reference to it their reversion could have been explained to the applicants. The applicants are left with a lingering doubt and suspicion that they have been unjustly dealt with. So far as the plea of the applicants, regarding their junior having been promoted even to higher posts resulting in, according to them,

discriminatory treatment against applicants is concerned, the reasons given by the respondents are satisfactory. We do not find that any clear case has been made out, that any junior to the applicants has been preferred to the applicants, for reasons which are not valid.

5. While we do not hold that the applicants have any claim to promotions to the post of fireman grade II, we have reservations regarding the action taken by the respondent in reverting them to the posts of Cleaner on the plea taken by the respondent of contraction of cadre and seniority of the applicants rendering them necessary to be reverted. We have noticed in this and in a number of cases, the tendency of the respondent organisation to make averments without adducing necessary documents or instructions, although full opportunity is given to them for doing so. It is difficult to accept the plea, that contraction of cadre brought about by introducing diesel engines or rendering certain trains surplus should necessarily result in reversions of employees who were promoted more than three years ago, after working satisfactorily for such long periods. If the respondents apply positively and constructively, it is difficult to resist the impression that alternatives could have been found by which the applicants or atleast some of them, who had rendered long periods of service, need not have been reverted.

6. In this and some other cases we have found that a number of tests are being made available and are prescribed. Some tests are required to be passed

for establishing suitability. Instructions require such tests to be regularly held, but, often these tests are not held and sometimes the plea is taken that these tests are required to be held only when there are vacancies, lest if they are held without vacancies, they may raise claims which cannot be satisfied. We urge upon the respondent to make a complete review of the policy and the instructions regarding such tests. We feel that if suitability is to be judged according to tests, such tests should be regularly held and on the basis of the results thereof, panels should be prepared from which promotions even of provisional or adhoc nature should be made. It is for want of holding such tests, that panels of persons suitable for promotions are not available and often it is found that adhoc promotions are made from among those whose suitability is not established. This unsatisfactory position is further aggravated when such adhoc promotees subsequently fail to pass the tests and even thereafter they continue to hold such posts because promotees who have passed such tests are not available. This creates an ironical situation in which persons who were initially recruited adhoc without establishing their suitability continue to enjoy promotion posts after proving their not being suitable by failing the tests and yet are not removed because often their appointments carry a stipulation that such adhoc promotions can be terminated only when the posts can be filled up by regularly selected candidates. We cannot refrain from observing that this entire area of administration of adhoc provisional promotions is in a most unsatisfactory state.

7. After considering the facts in this case and the pleas of both the parties we hold that the application has merit and direct that the impugned orders of reversion be quashed and set aside. Such reversions, we direct, be brought about after giving an opportunity to the applicants to pass such tests which may have been prescribed, for filling up the posts on a regular basis after following the prescribed procedures for selection, and if thereafter, due to contraction of cadre or other reasons, reversions are necessary, such reversions have to follow strictly the order of seniority in which the position of the applicants may be decided, before taking any action for reversion against them. We make no order as to costs.

Dhewar
(P. H. TRIVEDI)
Vice-Chairman

Joshi
(P. M. JOSHI)
Judicial Member