

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 406/
~~Exx~~No.

1986

DATE OF DECISION 29/8/1989

SHRI JHON CHACKO PADICAL Petitioner

SHRI B.B.GOGIA Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS. Respondent

SHRI B.R.KYADA Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.M. JOSHI

: JUDICIAL MEMBER

The Hon'ble Mr. M.M. SINGH

: ADMINISTRATIVE 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? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *Yes*

Shri John Chacko Padical,
9/A, Mochinagar Society,
Jamnagar Road, Rajkot.

: Petitioner

Versus

1. The Union of India,
Through: General Manager,
Western Railway, Churchgate,
Bombay.
2. The Divisional Railway Manager,
Western Railway,
Kothi Compound,
Rajkot.
3. Shri V.B.Solanki,
Senior Electrical Chargeman
(Loco), Western Railway,
Rajkot.

: Respondents

Coram: Hon'ble Mr. P.M. Joshi

: Judicial Member

Hon'ble Mr. M.M. Singh

: Administrative Member

O.A./406/86

J U D G M E N T

Date: 29/8/1989

Per : Hon'ble Mr. P.M. Joshi

: Judicial Member

The petitioner Shri J.C.Padical, ~~is~~ working as Electrical Chargeman (ELC) in scale Rs.425-700 (in Western Railway) at Rajkot, has filed this application under Section 19 of the Administrative Tribunals Act, 1985. He has challenged the validity of the order dated 21.8.1986 (Annexure 'E') whereby he has been ~~deined~~ promoted to the post of Electrical Chargeman Grade II scale Rs.550-750. The relevant and material portion of the impugned order reads as under:

XXX

XXX

XXX

XXX

"Shri J.A.Vagadia, ELC SUNR in scale Rs.425-700(R) is promoted to officiate as SELC in scale Rs.550-750(R) and posted at SUNR against the upgradation of the existing post of ELC scale Rs.425-700(R).

Shri V.B.Solanki, ELC RJT in scale Rs.425-700(R) is promoted to officiate as SELC in scale Rs.550-750(R) and posted at WKR against the upgraded post of existing ELC scale Rs.425-700.

Shri K.A.Vyas ELC WKR in scale Rs.425-700(R) is transferred in the same scale and pay and posted at RJT vice Shri V.B.Solanki, ELC (Loco) RJT.

N.B. Shri J.C.Padical, ELC(LR) RJT in scale Rs.425-700(R) is not suitable for promotion due to adverse CR of 1984-85 and 1985-86.

S/Shri V.B.Solanki and K.A.Vyas are eligible for transfer benefits viz. ten days joining time TA/DA, passes transfer allowance etc. They should vacate the Railway quarters while carrying out the transfer orders if occupied by them.

8

The above promotions are provisional and subject to the condition that there is no major DAR, B & C case pending against any of them nor penalty of withholding of increment is operative and subject to the Civil Suit filed in the court is finally decided."

xxx

xxx

xxx

xxx

It is alleged that Mr.V.B.Solanki happens to be his junior and even though he (the petitioner) is senior to him, he has been superseded and accordingly the petitioner has impleaded Mr.V.B.Solanki as party-Respondent No.3. According to the case set up by the petitioner, he was entitled to be promoted to the higher grade i.e. ELC Grade II in scale Rs.550-750, on the basis of the scheme of upgradation. But he has been denied promotion in violation of the provisions contained under Rule 212 of Indian Railway Establishment Manual. The petitioner has therefore prayed the relief of declaration to the effect that he is entitled to be upgraded and promoted to the post of Senior Electrical Charge-man in scale Rs.550-750(R) from the date, the post is upgraded and ~~that he continues to be in the said upgraded~~ and that he continues to be in the said upgraded post from the date his junior Shri Solanki i.e. the Respondent No.3 is upgraded. He also prayed that the adverse remarks for the year 1984-85 and 1985-86 be expunged.

2. The Respondent - Railway Administration in their counter have denied the assertions and allegations made by the petitioner against them. According to them, the petitioner is guilty of suppressing the material facts and it has been contended inter-alia that promotion to the post of Senior Charge-man in scale of Rs.550-750 is not automatic and the promotion is on the basis of "seniority-cum-suitability" and as such, when he has been found unsuitable, he has not been promoted to the post in question. The particulars regarding unsuitability have been stated in para 3.2 of the counter which includes the reference of the petitioner's

9

request dated 7.10.85 for his reversion to the lower post. It was therefore submitted that the petitioner is not entitled to the relief as prayed for.

3. When the matter came up for hearing, we have heard Mr.B.B.Gogia and Mr.B.R.Kyada, the learned counsel for the petitioner and the respondents respectively. Mr.Gogia, the learned counsel for the petitioner requested that he may be permitted to produce the documents shown in the list dated 29.8.1989. Mr.B.R.Kyada has endorsed no objection on the application filed by Mr.Gogia. The registry is directed to register the same and give the number of the application. As there is no objection against the production, it is allowed and the documents shown in the list are placed on record. We have also perused and considered the materials placed on record.

4. At the outset, Mr.Gogia declared that he does not press for the relief as prayed in para 7 (b) and restricts the same in terms of para 7(a) only. During the course of his submission, he invited our attention to Memorandum dated 15.8.1985, whereby the petitioner was regularly promoted in terms of restructuring the benefits of upgradation and posting to officiate in the scale of Rs.550-750 at Rajkot. In his submission when the petitioner was reverted at his request in terms of his application dated 7.10.85 (Annexure 'K') and when a question of promotion came up for consideration he was denied promotion without first declaring him for being passed over in terms of Rule 212 of IREM. According to him, the question of adverse remarks for the year 1984-85 and 1985-86 would not be a ground for denying him promotion. In support of his submission he has relied on the un-reported Judgment of the Gujarat High Court in Second Appeal No.179/73 (Union of India vs.Tejumal Kishanchand Bilanchand Billandani & Another)

decided on 18.8.1975 and other two reported decisions viz. (i) K.L.Gadhvi vs. Chief Conservator of Forest and others (26 II) GLR page (16) and (ii) Ajit Sinh Raisinh Rathod vs. The Chief Conservator of Forest and Others (1986 GLT page 225) wherein it has been held that adverse remarks for one or two years should not come in the way of promotion of a candidate and unless and until the candidate concerned is positively found to be unfit he should not be discarded from consideration. Mr.B.R.Kyada, however, contended that the petitioner was provisionally promoted to officiate in the grade Rs.550-750 (R) and he was not regularly promoted. According to him, when the question of promotion was considered, he was found unsuitable on the basis of the adverse remarks earned by him.

5. The short question for our determination is whether the adverse remarks for the year 1984-85 and 1985-86 would come in the way of promotion for the post in question, when he was already considered for promotion and promoted to officiateⁱⁿ the higher grade Rs.550-750 vide order dated 15.8.1985 on regular basis. In this regard we have also to take into consideration the provisions contained under Rule 212 of I.R.E.M., which are pressed in service by the petitioner in support of his contention. The Rule 212 reads as under:-

"212.Non-Selection Posts:-

- (a) Non-selection posts will be filled by promotion of the seniormost suitable railway servant, suitability, whether of an individual or a group of railway servants, being determined by the authority competent to fill the posts on the basis of the record of service and/or departmental tests, if necessary. A senior employee may be passed over only if he/she has been declared unfit for holding the post in question. A declaration of unfitness should ordinarily have been made sometime previous to the time when the promotion of the Railway servant is being considered.

12

- (b) When, in filling a non-selection post, a senior railway servant is passed over, the authority making the promotion shall record briefly the reason for such suppression.

According to sub-rule (b) of Rule 212 whenever a senior railway servant is passed over in filling the non-selection post by promotion it is necessary for the authority making promotion that he should record briefly the reasons for such supersession. On perusal of the aforesaid provision it is amply clear that the same are mandatory. It is also borne out from the aforesaid provisions that a senior employee may be passed over only if he/she has been declared unfit for holding the post in question and a declaration of unfitness should ordinarily have been made in advance i.e. sometime previous to the time when promotion of the servant concerned is being considered.

6. Admittedly, in the present case, the petitioner has been informed regarding the reasons for his supersession in respect of the promotion to the post in question only vide order dated 21.8.1986 whereby persons juniors to him were promoted including Shri V.B.Solanki. The action of the Respondent - Railway Administration in superseding him for promotion to the post in question is clearly in violation of the rule as discussed above and therefore the action cannot be upheld.

7. It is significant to note that the adverse remarks for the year 1984-85 were communicated to the petitioner vide Confidential letter dated 24.5.1985 i.e. much prior to the order dated 15.8.1985, whereby the petitioner was promoted to officiate in grade Rs.550-750(R). In light of these circumstances, when the petitioner has been denied promotion firstly on the basis of the adverse remarks contained in Confidential letter dated 24.5.1985, it was rather unusual and unjust even otherwise

12

as the respondents had already considered this "adverse remarks" for the year 1984-85, ^{as he was -} when promoted vide order dated 15.8.1985. Thus, they are estopped from considering the same as a ground of unsuitability. It is true the adverse remarks for the year 1985-86 communicated to the petitioner under Confidential letter dated 29.7.1986, was subsequent to the order dated 15.8.1985. However, the single instance of adverse remarks could not be a ground for denying promotion to the petitioner. Even apart from this, it is now considered that the petitioner has been promoted to Grade II in scale Rs.550-750 vide order dated 29.9.1988. We are of the clear opinion that the action of the Respondent-Railway Administration in denying promotion to the petitioner for the post in question vide order dated 21.8.1986 (Annexure 'E') is illegal and void and violative of mandatory principles laid down in Rule 212 of I.R.E.M.

8. In view of the forgoing discussion, we hold that the petitioner is entitled to a declaration that the action of the Respondents in superseding him for the post of promotion to the post of Electrical Chargeman Grade II of scale Rs.550-750, is illegal, null and void and he should be deemed to have been promoted to that post from the date when his junior Shri Solanki was promoted vide order dated 21.8.1986. The respondents are directed to award all the benefits of service on that basis within a period of four months from the date of this judgment.

With the aforesaid observations and directions, the application, ^{is} allowed to the extent stated above and stands disposed of with no order as to costs.

M. M. Singh
(M.M. Singh)
Administrative Member

Singh
(P.M. Joshi)
Judicial M