

(7) 4

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 118 of 1986
T.A. No.

DATE OF DECISION 21.10.86

SHRI M. N. PARMAR Petitioner

SHRI J. M. PATEL 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.

OS

JUDGMENT

O.A. No. 118 OF 1986

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

The applicant, Shri M.N. Parmar, was appointed on 11.2.1951 as a Cook, in Railway Loco department at Baroda Yard, and was promoted as Janitor on 30.8.1985, but on 10.1.1986, the respondent Shri Hirabhai Becharbhai, was posted as Janitor. The applicant contends that he had earned a certificate of merit dated 9.6.1985. The respondent's case is that the applicant was promoted to officiate as a Janitor purely on adhoc basis and as a stop-gap arrangement and his promotion, confers no right on him regarding promotion on regular basis. He further contends that this post of Janitor is normally filled by medically decategorised staff who is found suitable for a lower category. When medical tests do not find such staff fit for higher category such staff has to be decategorised and has to be absorbed in posts as in the case of Janitor's posts and accordingly, respondent Shri Hirabhai was decategorised medically by a Screening Committee, which found him suitable for the post of Janitor, and therefore this post has been offered to him. The respondent has relied on the judgement of the Gujarat High Court in R.Y. Vaidya & Ors. Vs. Union of India for supporting his position that adhoc promotees have no right to the post and they have to vacate the post when a regular candidate is posted. Further the respondent has relied on Railway Board's letter dated 15.1.1966 that adhoc promotees can be reverted to their

substantive posts. It is not disputed by the applicant that he was promoted adhoc, but he does not accept that his reversion is justified because the respondent Shri Hirabhai was medically decategorised and offered the post of Janitor. He cannot accept that he was ~~selected~~ reverted for any deficiency in his work because he has earned a merit certificate. Regarding the Railway Board's circular on which the respondent relies, the applicant has contended that while the respondent, Shri Hirabhai, could be accommodated in a vacant post, there was no reason for reverting the applicant for causing a vacancy for the respondent to be appointed.

After hearing the learned advocates and perusing the application and written statement and other documents, we find that it is admitted by both the parties that appointment of the applicant confers no right upon him for regular appointment and he could be reverted by the respondent. In this case, however, the reversion has not been caused due to unsuitability or any other deficiency or due to contraction of posts or due to filling up the post on a regular basis but only because respondent Shri Hirabhai having been found not medically fit was decategorised and had to be absorbed in a lower category post for which the Screening Committee had found ~~him~~ fit. The question, therefore, is whether comparative equity is involved in causing reversion of the applicant against the requirements of absorption of respondent Shri Hirabhai. While there is no doubt that the respondent Shri Hirabhai needs to be absorbed against the lower category post for which he is medically found fit by the Screening Committee, such posts needs to be available i.e., it should be vacant. To cause such vacancy by reverting a person who is

otherwise suitable and who has been given a merit certificate for his suitability, whatever weight may be attached to such certificate, is not in order. The instructions regarding absorption or offering alternative employment to an employee who is medically declassified is itself to ensure that such a person is offered none employment instead of being thrown out. This can still be done when any vacancy arises. The respondent has not taken the stand that there was no other post of lower category in which the respondent Shri Hirabhai could be fit in. We, therefore, direct that an effort should be made by respondent to find a suitable lower category post for which he is fit, either now or in future, but, there is no justification for reverting the applicant only for causing vacancy so that respondent Shri Hirabhai is fitted into it. The applicant may be restored to the post of the Janitor immediately from the date on which he was reverted. The application is allowed and the impugned reversion of the applicant is quashed and set aside. Nor order as to costs.

P. H. Trivedi
(P. H. TRIVEDI)
VICE CHAIRMAN

J. M. Joshi
(P. M. JOSHI)
JUDICIAL MEMBER