

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 241 OF 1987.
TxNo.

DATE OF DECISION 19.8.1993.

L.N. Pipalia & Ors.

Petitioner S

Mr. D.M. Thakkar,

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondents

Mr. N.S. Shewde for Res. No. 1 & 2
Mr. K.K. Shah for Res. 3 to 9.

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C. Bhatt, Judicial Member.

The Hon'ble Mr. M.R. Kolhatkar, Admn. 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 ?

1. L.N. Pipalia
2. Jainarayan S. Sharma
3. Ishwarchandra R. Bhatnagar
4. Indrakumar G. Gupta
5. Mukund N. Trivedi
6. Gandabhai N. Patel
7. Vinodrai M. Pandya
8. Jaglal M. Gupta
New **Railway Colony**,
Sabarmati, Ahmedabad.

..... Applicants.

(Advocate: Mr. D.M. Thakkar)

Versus.

1. Union of India
Notice to be served through
General Manager,
Western Railway,
Churchgate, Bombay.

2. Shri B.H. Joshi,
Or his successor in office,
District Controller of Stores,
Western Railway, Sabarmati,
Ahmedabad.

3. B.J. Prasad
4. G.M. Parmar
5. Maniben Vegda
6. J.R. Solanki
7. Pratapsing Nailwaya
8. H.R. Parmar
9. Gopalsing Parmar

..... Respondents.

(Advocate : Mr.N.S.Shevde for Res.No.1 & 2.
Mr. K.K.Shah for Res.3 to 9.)

O R D E R

O.A.No. 241 OF 1987

Date: 10.8.1993.

Per: Hon'ble Mr. R.C.Bhatt, Judicial Member.

Heard Mr. D.M.Thakkar, learned advocate for
the applicants and Mr.N.S.Shevde, learned advocate for
the respondent No. 1 & 2 and Mr.K.K.Shah, learned
advocate for the private respondent No. 3 to 9.

2. The learned advocate for the applicants submitted before us on 29th July, 1993 that he wants to withdraw this O.A to which the learned advocate for the respondent No. 1 & 2 Mr. N.S. Shevde has no objection. However, Mr. K.K. Shah, learned advocate for the private respondent No. 3 to 9 submitted that this Bench though passed an order on 28th April, 1993 modifying the earlier interim order dated 28th April, 1989 to the extent as per the interim relief granted by the Hon'ble Supreme Court of India in Malik's case, the respondent No. 1 & 2 should comply with that modified order of 28th April, 1993. He submitted that the applicant should be allowed to withdraw this petition on conditions that respondent No. 1 & 2 comply with the order dated 28th April, 1993.

3. The facts of the case are that eight applicants working under the respondents railway as per the service details given at Annexure A to this petition, have filed this petition challenging the arbitrary and illegal action of the respondents in promoting SC/ST candidates over and above the fixed quota of reservation for SC & ST employees as prescribed in the circular dated 20th April, 1978 issued by the Railway Administration. The petitioners also sought to challenge the impugned decision of the respondent No. 1 & 2 on the ground that the same was arbitrary, unjustified and unconstitutional and in

in violation of the principles of natural justice. The applicants had prayed the relief as per para 16 of the application. The respondent No. 1 & 2 had filed reply contending that the petitioners are not entitled to any of the reliefs claimed in the petition. The applicant had filed rejoinder to it. The private respondent No. 3 to 9 had filed reply contending that the applicants' application is vague, misconceived and without any particular data. It is contended in para 10 of the reply that the reservation policy and roster point clearly indicate the ruling as given in Chapter 5 "Roster" and the rules regarding the promotion on selection post are given under Chapter 8 and non-selection post are given in Chapter 9. It is also contended that there is ^{no} violation or disregard of interim relief of direction of the Hon'ble Supreme Court nor any violation of Article 14 & 16 of the Constitution of India as alleged by the applicants.

4. The applicants had along with the application annexed Annexure B the order passed by the Hon'ble Supreme Court of India in Civil Misc. Petition No. 26627(N.CA-2017/78) of 1984 in the case of Union of India V/s. J.C. Naik & Ors. dated 24th February, 1984 which reads as under:

"We clarify our order dated Feb. 24, 1984 by directing that the promotions which may be made hereafter will be strictly in accordance with the judgment of the High Court and such promotions will be subject to the result of

Appeal, If any promotions have been made after February 24, otherwise, than in accordance with the judgement of the High Court, such promotions shall be adjusted against the future vacancies. CMP is disposed off accordingly."

5. This Tribunal had passed an interim order on 28th April, 1989. The respondent No. 1 & 2 represented by the learned advocate Mr. Shevde has filed M.A. 106/93 ~~stating their~~ ^{was passed} that earlier order on 28th April, 1989 after hearing the learned advocates for the parties that there was no ground for deviating from the interim orders that had been passed by the New Bombay Bench on 24th April, 1987 and that the Tribunal was in respectful agreement with the said orders ~~The Tribunal was~~ and therefore pleased to direct that the said interim order be issued accordingly and M.A. 177/88 was disposed of. It is mentioned in M.A. 106/93 by respondent No. 1 and 2 that the Full Bench of this Tribunal has, by ~~Order~~ dated 27th February, 1992 directed all the Benches that pending decision of the Supreme Court in Malik's case the Tribunal is bound to pass interim orders on applications challenging the reservation on the basis of 40 point roster and the promotion of SC/ST candidates consistent with the interim orders already passed by the Supreme Court in Malik's case dated 24th September, 1984 and have approved the interim order passed by the Division Bench in the said case in the Reference Order dated 16th May, 1988 as having been passed in terms of interim order passed by the Supreme Court in Malik's case.

It was therefore, urged that the earlier interim order passed in M.A. 177/88 dated 28th April, 1989 be recalled and fresh order in terms of the order of Hon'ble Supreme Court and as directed by the Full Bench of Tribunal on 27th February, 1992 be passed. This Tribunal therefore, on 28th April, 1993 after hearing the learned advocates recalled the earlier interim order passed in M.A. 177/88 and as per the direction given by the Full Bench of the Tribunal, Hyderabad, On 27.2.92, to all Benches we have modified the interim order according to the interim order of the Hon'ble Supreme Court in Malik's case and we also in that order on 28th April, 1993 observed that all the parties to abide by this modified order which will be in line with the interim order passed by the Hon'ble Supreme Court in Malik's case and the M.A. was disposed of. The learned advocate Mr.K.K.Shah for the respondent No. 3 to 9 submitted that unless this modified order passed by this Bench on 28th April, 1993 is complied with by respondent No. 1 & 2, the applicants should not be allowed to withdraw the application. It is important to note that the modified interim order of 28th April, 1993 was passed on the request of the respondent No. 1 & 2 in M.A. 106/93. Therefore, they have to abide by the said order. However, Mr. K.K.Shah can not take objection that the withdrawal should be allowed on condition that respondent No. 1 & 2 comply with the order dated 28th April, 1993. The respondent No. 3 to 9 can not

have any grievance against the applicants when they withdraw the application because the modification in the interim order was sought by respondent No. 1 & 2 by filing M.A. 106/93 and we have also observed in passing the modified order dated 28th April, 1993 that all the parties should abide by this modified order. We hope that the respondent No. 1 & 2 who invited the modification of interim order will abide by it, but we reject the submission of the learned advocate Mr. K.K. Shah that till this order dated 28th April, 1993 is complied with by respondent No. 1 & 2, the applicants should not be permitted to withdraw this application. The applicants are allowed to withdraw the application. The application is disposed of as withdrawn. No order as to costs.

M.R.Kolhatkar
(M.R.Kolhatkar)
Member (A)

R.C.Bhatt
(R.C.Bhatt)
Member (J)

vtc.