

11

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH
~~RECEIVED~~ ~~RECORDED~~O.A. No. ~~XXXXX~~ 359 of 1987.13-10-1989
DATE OF DECISION ~~26.09.1989~~

Sursingh G. Jadeja & Ors. Petitioner

Mr. R.A. Vyas Advocate for the Petitioner

Versus

Union of India & Ors. Respondent

Mr. R.M. Vin Advocate for the Respondent

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?
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. Sursingh G. Jadeja,
C/o. Loco Foreman,
W.Rly., Junagadh.
2. Shamji Ruda, Dabhi,
C/o. Loco Foreman,
W.Rly., Jetalsar Jn.,
3. Haridas Parshottam,
C/o. Loco Foreman,
W.Rly., Junagadh.
4. Purushothaman Kochukunju,
C/o. Loco Foreman,
W.Rly., Jetalsar.
5. Vallabhdas Champaklal Maniar,
C/o. Loco Foreman,
W.Rly., Bhavnagarpara. Petitioners
(Advocate - Mr. R.A. Vyas)

Versus

1. Union of India,
Through,
General Manager, W.Rly.,
Churchgate, Bombay.
2. Divisional Railway Manager,
W.Rly., Bhavnagarpara.
3. Kana Ghugha,
C/o. Loco Foreman,
Botad.
4. Ranchhod K.
C/o. Loco Foreman,
Porbandar.
5. Bachu Natha,
C/o. Loco Foreman,
Jetalsar Jn.
6. Popat Nanji,
C/o. Loco Foreman,
Bhavnagarpara.
7. Pravinsingh D.,
C/o. Loco Foreman,
Junagadh.
8. Khetumal C.,
C/o. Loco Foreman,
Junagadh.
9. Nicolas D'sa
10. Mansingh B.
11. Natwarlal L
12. Mulji H.
C/o. Loco Foreman,
Bhavnagarpara.
13. Mussa Ganda
C/o. Fitter I/C,
Dhola Jn.
14. Durlabhji K.
15. Rahim Khan M
16. Arvind H.
17. Chimanlal R
18. Chandrani K.K.
C/o. Loco Foreman
Bhavnagarpara

19. Himatlal T.
C/o. Fitter Incharge,
Dhola Jn.,
20. Bhagwanji R.
C/o. Loco Foreman
Jetalsar.
21. Dhirubha J
C/o. Fitter Incharge
Veraval
22. Bhagwan R
C/o Loco Foreman
Bhavnagarpara
23. Ramji Bawa
C/o Loco Foreman
Junagadh
24. Pola B.
C/o Loco Foreman
Botad
25. Almond John
C/o Loco Foreman
Bhavnagarpara
26. Husenbhai U
C/o Loco Foreman
Jetalsar
27. Parshottam R
28. Girdhar V
29. Bhikhu M
C/o. Loco Foreman
Bhavnagarpara
30. Parshottam D
C/o. Fitter Incharge
Dhola Jn.
31. Chhelshanket J.
C/o. Fitter Incharge
Bhavnagarpara
32. Dayalal N
C/o. Fitter Incharge
Botad
33. Kalidas J
C/o. Fitter Incharge
Bhavnagarpara
34. Manjumiya R
C/o. Fitter Incharge
Veraval
35. Bachu D
C/o. Fitter Incharge
Dhola Jn.
36. Dansingh S.
C/o. Loco Foreman
Junagadh
37. Gunvantrai H
C/o. Loco Foreman
Bhavnagarpara
38. Devji Ramji
C/o. Loco Foreman
Botad
39. Maganlal D
C/o. Loco Foreman
Junagadh
40. Vasantrai J
C/o. Loco Foreman
Junagadh.

41. Arvindrai H
C/o. Loco Foreman
Junagadh
42. Pramodrai R.
C/o. Fitter Incharge,
Dhola Jn.
43. Zaversingh D
C/o. Loco Foreman
Junagadh.
44. Shantilal G.
45. Nanu Chotha
C/o. Loco Foreman
Bhavnagarpara
46. Virji Devji
C/o. Loco Foreman
Junagadh
47. Shamji Poona
C/o. Loco Foreman
Junagadh.
48. Harji Alla
C/o. Fitter Incharge
Dhola Jn.
49. Babulal K
C/o. Fitter Incharge
Mahuva
50. Dadbha T
C/o. Loco Foreman
Jetalsar
51. Jayendrasingh T
52. Bhanji Jetha
C/o. Loco Foreman
Junagadh.
53. Mohamed S
C/o. Loco Foreman
Bhavnagarpara
54. Ismail Abdulla
C/o. Loco Foreman
Junagadh
55. Chhotalal C
C/o. Fitter Incharge
Veraval
56. Babulal D
C/o. Loco Foreman
Bhavnagarpara
57. Bhagu Jivan
C/o. Loco Foreman
Jetalsar
58. Valimiya M
59. Bachu Bijal
60. Shantilal P
C/o. Loco Foreman
Jetalsar
61. Lalji Mulji
C/o. Loco Foreman
Botad.
62. Kantilal N
C/o. Loco Foreman
Bhavnagarpara

15

63. Jadav Rana
C/o. Fitter Incharge
Dhola

64. Savji Lalji
C/o. Loco Foreman
Dhola

65. Gagji Bhagvan
C/o. Loco Foreman
Bhavnagarpara

66. Nasrun Hussain
C/o. Loco Foreman
Jetalsar Jn.

Advocate - Mr. R.M. Vin for
resp. No. 1 & 2
Mr. M.M. Xavier
for resp. No. 49)

CORAM : Hon'ble Mr. P.M. Joshi : Judicial Member

Hon'ble Mr. M.M. Singh : Administrative Member

J U D G M E N T

O.A. No. 359 of 1987.

13-10-1989
Date : 26/09/1989

Per : Hon'ble Mr. M.M. Singh .. Administrative Member

The applicants (5 in all) working as Fireman Grade 'A' and as Diesel Assistants in Junagadh, Jetalsar and Bhavnagarpara on Western Railway, filed this application under section 19 of the Administrative Tribunals Act, 1985, against order No. EM/246/1983 dated 27/29-8-1983 (Annexure A-2) issued by D.M.E. (E) Bhavnagarpara promoting 115 Fireman 'B' as Fireman 'A' with retrospective effect from 1.6.1981 allegedly in violation of the Railway Board's order of 1977 which was in force and was recalled in Head Quarter Office, Churchgate letter No. EM/925/9/20 dated 16.9.1981 (Annexure A-1). According to the applicants, they had vainly represented to the D.R.M., Bhavnagar Para against the impugned order by sending represent-

and through their recognised Trade Union. The D.R.M's. office reply dated 3.4.1987 (Annexure B-5) to these failed to redress their grievance. The applicants, therefore, have the grievance that the impugned order of promotion of 115 candidates as Fireman Grade 'A' issued by the D.R.M. denied them the right to be considered for promotion as per the procedure laid down in Railway Board's order of 1977. In view of that, they have sought declaration that their seniority as Fireman 'A' should be considered as on 1.6.1981, that their names should be interpolated in the seniority list accordingly above the names of all ineligible persons as shown in Annexure A-3 and that all consequential benefits of promotion, pay and other admissible emoluments should be paid to them with effect from 1.6.1981.

2. At the final hearing on 23.8.1989, learned advocates Mr. R.A. Vyas for the applicants and Mr. R.M. Vin for the respondents waived oral hearing. Mr. R.A. Vyas, who had filed written submission (dated 14.1.1989) desired that the same be considered as his arguments. Mr. R.M. Vin desired that respondents' reply (dt. 16.11.1987) to the applicants' application as amended should be considered as his arguments.

3. The technical objections raised by the respondents need to be examined first. The first such objection is that the application is bad on account of nonjoinder of the 115 employees given promotion vide the impugned order (Annexure A-2). This technical objection does not survive as the original application was allowed to be amended to join them as respondents as per the Tribunal's

order dated 25.8.1987. A notice was also published in 'PHULCHHAB' of 14.5.1988, a Gujarati daily published from Rajkot, warning employees likely to be affected by the application of the applicants to come forward to inspect the record before 27.6.1988 and to take part in the proceedings before this Tribunal. As a consequence, only one person, namely Mr. Babulal appeared as party respondent by filing application dated 26.4.1989. He was represented by learned advocate Mr. Xavier. This application was withdrawn by Mr. Xavier on 19.6.1989 for reason of death of Mr. Babulal.

4. The second such objection of the respondents is that the application suffers from bar of limitation. It has been argued that the order of promotion is dated 27/29-8-1983, that the order referred at serial No. 3 of the application dated 12/17/7-1985 is the order of promotion of the applicants and that the so called decision dated 3.4.1987 is only a record of minutes of the PNM meeting held with WRMS on 24/25-2-1987 and not a new decision and therefore, does not create any grievance which grievance was created by order dt. 27/29-8-1983 counted from which date the application is long barred by limitation.

5. Sub section (1) of section 20 of the Central Administrative Tribunals Act, 1985, inter alia says that the Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant has availed of all the remedies available to him under the relevant service rules as to redressal of grievances. There is no doubt now that against an alleged injustice in service matter the proper

and desirable course for an employee is to first make representation to the authority concerned to seek redressal. In this case, applicant Mr. S.G. Jadeja had addressed representation dated 1.8.1985 (Annexure B-1) to D.R.M. (E) Bhavnagar Para. Mr. Shamji Ruda and Mr. Haridas also sent their representation dated 24.4.1984 (Annexure B-2) and 3.8.1985 (Annexure B-3) respectively to the D.R.M. (E). In addition, they represented through the recognised Trade Union which ultimately brought the reply dated 3.4.1987 from the authority. The application before the Tribunal has been filed on 20.7.1987 and is timely. That apart, under the provision of sub section (3) of section 21, the Tribunal has the discretion to entertain late application also provided the applicant satisfies that he had sufficient cause for not making the application within the specified period. The applicants have drawn our attention to the decisions of the Supreme Court of India in G.P. Doval v. Chief Secretary, Govt. of U.P., A.I.R. 1984, SC 1528 and to Municipality Faridkot v. Chaderbhan & others 1982 (1) SCC 479, on the subject of limitation. These two decisions lay down the principle that an application should not be rejected merely on the ground of bar of limitation if representations have been made, if the petitioner's status is such that he may find it extremely difficult to rush to Court or injustice is writ large on the face of a case. Seen in the light of the principles decided in these two cases also, the respondents' objections on the ground of bar of limitation deserve to be rejected.

6. The D.R.M.'s office BVP. had issued notice dated 11.10.1983 (Annexure A-4) for the post of Fireman 'A' to be filled in by selection. The relevant portion from this notice is lifted below:

" Sub: Selection Cl. III staff Mech. Deptt.
Fireman 'A' scale Rs. 290-350 (R)

In accordance with directive received under GM(E)-CCG's No. EM/925/9/20 dt. 16/18-9-81 and 22/27-5-82, the posts of fireman 'A' scale Rs. 290-350 (R) are to be filled in by selection.

It is therefore proposed to hold the selection for a list of selected candidates for promotion to the post of fireman 'A' scale Rs. 290-350 (R) for the vacancies existing as on 1.9.1983.

(a) Existing 43+28 anticipated X (A) to be filled out of which
 in by 50%
 amongst FM 'B'
 studied upto VIII
 std. & 45 years of age.
 (b) Vacancies reserved for X (B) 50% from
 SC - 19 amongst FM 'B' &
 ST - 11 second FM Matriculate.

Applications are, therefore, invited from the staff for the above posts."

Besides holding a departmental promotion examination in view of above, under DRM(E) BVP No. EM/839/5/2 dated 23.12.1984, apparently observing condition (a) in the above were promoted 32 persons as Fireman 'A' and, as a result of the departmental promotion examination, were promoted 9 candidates (including the five applicants) under order of 12/17-7-1985 (Annexure A-6).

7. The contents of Railway Board's letter No. E/(G) III-75/PCI/69 dated 24.6.1977 with regard to the method of filling up vacancies of Fireman 'A', have also appeared in Head Quarter Office, Bombay

the relevant parts of which require reproduction here :

" Further to this office letters quoted above, a copy of Board's letter No. E(NG)II-80/RC1/144 dt. 30.4.1982 is sent herewith for information and necessary action.

It is requested that immediate action may be taken to fill up the available vacancies of Fireman 'A' scale Rs. 290-350 (R) in terms of instruction contained in Board's letter of 24.6.77 and a compliance report sent to this office at an early date.

Sd/-
For CME (E)

Encl:1 (typed below)

Copy of Bd's letter :-

Sub : As typed above.

The Board in their letter No. E(NG)III-79 /RC1/69 dt. 24.6.1977 had issued orders for filling up vacancies of Fireman 'A' in the following manner :

- a) 50% by the usual selection procedure from Fireman 'B' who have studied upto 8th class and are below 45 years of age;
- b) 50% by a departmental examination from all Firemen B & C who are matriculates and have 3 years Railway service;
- c) If the departmental examination fails to provide enough matriculates for the 50% quota, direct recruitment to be made through the Railway service Commission.

These orders were kept in abeyance vide Board's letter No. E(NG)I/PM1/153 dt. 5.6.78.

The Board have decided that action should now be taken to fill vacancies of Firemen 'A' in terms of their instructions of 24.6.87 referred to above immediately."

The method of filling up vacancies of Fireman 'A' laid down by the Railway Board for filling up vacancies of Fireman 'A' is thus both categorical and clear and even implemented by the respondents as shown in para 6 (supra).

8. According to the applicants, the 1977 order of the Railway Board was disregarded in several ways in giving promotion to 115 Fireman 'B' to the rank of Fireman 'A' on the sole consideration

of seniority as Fireman 'B' just because the representatives of recognised Unions and the DRM so decided. Firstly, no departmental examination was held amongst Fireman 'B' and 'C' (II Fireman ^{Dn.} in Bhavnagar) who were matriculates and had completed three years of Railway service to fill up 50% of the posts available for promotion. According to the applicants, they were eligible and available as on 1.6.1981 also. Secondly, several who came to be promoted were overage. Thirdly, some had not studied upto 8th standard. Thus, even those Fireman 'B' who were not qualified being overage and/or insufficiently educated came to be promoted against the 115 vacancies found by upgrading equal number of posts of Fireman 'B' as a result of agreement with the recognised Unions.

9. The applicants also relied upon a number of decisions to question the impugned order. They can be briefly referred to here since they reiterate well some of the recognised and perfectly accepted principles in important service matters like recruitment and promotion. Power to relax qualification in favour of persons not qualified is held as improperly exercised as promotion chances of those qualified stand barred by the relaxation of qualifications of qualified persons (Sahib Singh Khepal & Ors. v. Delhi Administration & Ors. SLR 1987(2) 797). Once the procedure of empanelment for promotion has been notified, there is no question of exercising discretion in relaxing the procedure (S. Sathyanathan v. CPO/S Rly. & Ors. SLR 1987(1) 565). In P.K. Ramchandra Iyear v. Union

of India & Ors (SLJ 1984(1) 496 S.C.), selection of candidates falling short of prescribed qualifications in preference to other qualified persons was struck down being contrary to rules, orders and in violation of prescribed norms of qualification. In B.S. Goel & Ors. v. Union of India & Ors. (SLR 1987(2) 827), revision of rules not on merits but to serve vested interest and which deprive a section of employees from promotion is held as bad in law. In B.K. Pal Choudhry v. Union of India & Anr. (ATC 1987(3) 146), it is laid down that an employee can insist upon compliance with (promotion) rules when they are framed. Departmental orders cannot supersede recruitment rules framed statutorily (Venkata Reddy Boolla v. The Director of Education, Andaman & Nicobar-Islands, Port Blair & Others (SLR 1987(%) 165). Even ad hoc promotion cannot be made in violation of recruitment rules and persons not eligible and lacking qualification in accordance with recruitment rules, cannot be promoted (Shrikant Laxman Lowlekar v. Union of India & Ors. (SLR 1987(3) 644).

10. The respondents have advanced a number of arguments against the contentions and arguments of the applicants and to justify the impugned order of promotions. Their first argument is that the 115 posts of Fireman 'A' found by upgrading the posts of Fireman 'B' were required to be filled up in the manner decided in the joint meeting between the DRM and the recognised Trade Union leaders held on 8.6.1983 and not through the normal selection. This argument is altogether untenable. The number of posts available in a rank at a particular time have to be filled up in the manner prescribed by

the competent authority, in this case, the Railway Board, and not in the manner decided between the DRM and the representatives of the recognised Unions. The respondents' further argument is that the Railway Board's order of 24.6.1977 with regard to the method of selection of Fireman 'A' was kept in abeyance by a subsequent letter of 5.6.1978 and was revived only by letter dt. 30.4.1982 (Annexure R-4) and that the 115 upgraded posts were filled up with effect from 1.6.1981 on which date the Railway Board's order of 24.6.1977 was under suspension. Admittedly, the 115 promotions were given under order dt. 27/29-8-1983. These posts came into existence as a result of decisions on the joint discussion dt. 8.6.1983 (Annexure R-2). On that date as also on 27/29-8-1983 when the order of promotion was issued, the Railway Board's order of 1977 regarding the method of filling up the vacancies of Fireman 'A' was much alive. Hence, the vacancies ought to have been filled up in accordance with the method laid down in the Railway Board's order. Argument that the promotion orders issued were effective from 1.6.1981 cannot justify non-compliance with the orders of Railway Board which were in existence when the decision to give the promotions was taken and the orders were issued. The respondents' further argument that the DRM's decision to give promotion to 115 persons was approved by Bombay Office vide order dt. 22.8.1983 (Annexure R-5) also does not stand scrutiny. This letter of Head Quarters Office, referring to the method of filling up by selection, the posts of

Fireman 'A' prescribed by the Railway Board which was under suspension for a while, says :

"2. It has been represented that on some divisions, eligible staff were promoted on regular basis as Fireman 'A' Diesel Asstt. AC Asstt. between the period of issue of Board's letters of 19.8.1981 and 30.4.1982 on their receipt on the divisions, and as such employees regularly promoted need not be subjected to a selection. It has been decided to give one time exception to such staff from being subjected to selection.

3. All other future promotions will, however, be made by selection as prescribed in Board's letters No. E(NG) III-75RC1/69 dated 19.8.1981 and E(NG) II-80RC1/144 dt. 30.4.1982."

It is obvious from the above that the Head Quarter gave one time exemption to the promotion orders issued between the period 19.8.1981 and 30.4.1982.

The impugned orders of promotion issued on 27/29-8-1983 even though made effective from 1.6.1981 have not been regularised by the above letter of Head Quarter Office. The impugned order is not covered by the Head Quarter Office letter of 22.2.1983 either when the date of its issue is taken into consideration or when the date from which the promotion orders became effective is taken into consideration.

11. The respondents have further argued that the applicants were, on 1.6.1981, working as II Fireman in scale Rs. 210-270 whereas the disputed promotion to Fireman 'A' (scale Rs. 290-350) was given from those working as Fireman 'B' (scale Rs. 260-350). In this argument of the respondents, the applicants who were, on 1.6.1981, working as II Fireman were not eligible to be considered

for selection even by way of departmental promotion examination for the post of Fireman 'A'. However, according to the applicants, there were no posts of Fireman 'C' in Bhavnagar division till 25.2.1986 and II Fireman were equated with Fireman 'C' as a consequence. This contention of the applicants is supported by the respondents' record. While seeking to fill up vacancies of Fireman 'A' in accordance with the orders of Railway Board, the respondents had issued letter dt. 11.10.1983 (Annexure A-4) which, while mentioning that 50% posts are to be filled up from Fireman 'B' studied upto 8th std. and 45 years of age, mentioned that the remaining 50% will be filled up from amongst Fireman 'B' and II Fireman matriculates.

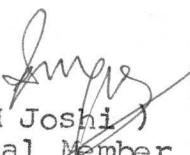
12. In view of the above discussion, the impugned order of promotion of 115 persons suffers from multiple infirmities and the contentions of the respondents disputing the claim of the respondents to promotion retrospectively with effect from 1.6.1981 by way of implementation of the Railway Board's order of 1977 with regard to the method of filling up the vacancies of Fireman 'A' are unacceptable. The applicants' right to be considered for promotion against 50% of these 115 posts by holding the departmental promotion examination amongst eligible Fireman 'B' and Fireman 'C' (II Fireman in Bhavnagar Div.) as laid down by the Railway Board in the order of the year 1977 was wrongly denied though overaged and insufficiently educated persons also figured in the impugned order of promotions in violation

of the said order of the Railway Board.

13. As the impugned order dt. 27/29-8-1983 operated retrospectively from 1.6.1981, the applicants have just claim to similar treatment as they passed the required promotion examination and came to be promoted under order of 12/17-7-85.

14. The application is allowed.

15. The respondents are hereby directed to implement the order of the year 1977 of the Railway Board with regard to the method of filling up the vacancies by considering the applicants for promotion with effect from 1.6.1981 and also seniority and arrears of pay and emoluments on that basis within a period of six months from the date of this order. There will be no order as to costs.


(P M Joshi)
Judicial Member


(M M Singh)
Administrative Member