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CAT/J/12

Certainly yes
But
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 434 OF 1987.
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DATE OF DECISION 9-8-1991.

D.G. Parmar & Ors.

Petitioners

Mr. V.M. Dhotre,

Advocate for the Petitioners)

Versus

Union of India & Ors.

Respondents

Mr. N.S. Shevde,

Advocate for the Respondents)

CORAM :

The Hon'ble Mr. M.M. Singh, Administrative Member.

The Hon'ble Mr. S. Santhana Krishnan, Judicial 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? *No*

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1. D.G.Parmar,
2. Kanjibhai M
3. K.A. Gohil,
Residing at: C/o. Station
Superintendent, Godhra,
Dist: Panchmahals.
4. T.C. Prajapati,
Residing at: C/o. Station
Superintendent, Baroda Yard,
District: Baroda.

.... Applicants.

(Advocate: Mr. V.M. Dhotre)

Versus.

1. Union of India,
(Notice to be served on
General Manager, Western Railways,
Churchgate, Bombay-400 020)
2. Divisional Railway Manager,
Pratapnagar, Baroda-4.
3. Senior Divisional Operation
Superintendent, Pratapnagar,
Baroda - 4.
4. Dawood H. & Ors.
C/o. S.S. Baroda.

.... Respondents.

(Advocate: Mr. N.S. Shevde)

J U D G M E N T

O.A.No. 434 OF 1987

Date: 9-8-1991.

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

Members of services of all grades and ranks crave for promotions and quicker promotions to feed which craving personnel branches of administrations as if remain constantly busy to find out ways and means and some ways like for example upgrading of posts and increase in the number of inservice channels feeding a higher cadre by promotion and matching reduction of intake by direct recruitment have since become commonplace. The latter way may give rise to unending disputes about seniority in H. t. 2 the promotion cadre between direct recruits and

promotees on the one side and between the promotees coming from different cadres on the other. These disputes may be relentlessly pursued in judicial Courts and tribunals. The case before us for decision furnishes an example of such litigation.

2. Division Office, Western Railway, Baroda, issued an offer dated 10.11.76 on the subject of "Filling up of posts of Guard Gr.C scale Rs. 290-530(R) Non-gazetted staff, Traffic Department, Baroda Division" and invited applications from the following five categories for forming a panel for 54 vacancies. The following extracted from the reference gives the feeder channels:

Sr.No.	Category	Scale (R)	Percentage fixed
1.	Ticket Collectors	260-400	13-1-/3%
2.	Goods Clerks	260-430	10%
3.	Coaching/Luggage clerks.	260-430	13-1/3%
4.	Train Clerks	260-400	31%
5.	Brakesman	225-308	10% "

The quota of each of the inservice feeding channel and of direct recruits is as follows in it :

	UR.	SC	ST	Total
1. Direct Recruitment	7	5	-	12
2. Ticket Collectors	5	1	2	8
3. Coaching/Luggage Clerks.	5	-	1	6
4. Trains Clerks	9	6	-	15
5. Goods Clerks	4	-	-	4
6. Brakesman	9	-	-	9
Total	39	12	3	54

The following notes figuring in the reference have significance :

"Note-NB (1) officiating Sr.TNCs/Dy.Ms. Scale Rs.330-560(R) are now no longer eligible for promotion as Guard Gr.'C' as their scale of pay has been raised to Rs.330/- - 560(R) as per Board orders."

(7) "An employees who has opted for Guards Branch will not be eligible for promotion in his present branch. However ad-hoc promotions made in the existcies of service will not affect eligibility for promotion as Guard."

The contents of the above note 2 reasonably give rise to the inference that officiating Senior Train Clerks and Dy. Yard Masters who were earlier eligible are made no more eligible for the post of Guard Grade C. These earlier provisions have not been shown to us. But it will not be wrong to believe that the cadre of Guards Grade C was constituted from departmental promotees of specified cadres and direct recruits from a date prior to reference dated 10.11.76. This finds corroboration in the part of the para 6.3 of the application where it has been averred that senior train clerks K.D. Suthar and others had filed S.C.A.No.379/75 in Gujarat High Court because they were not made eligible for Guard Grade 'C' post. In 1975 when this S.C.A. was filed, the reference of 10.11.76 had not seen the light of the day. The applicants have averred that judgment in this SCA was delivered on 27.7.78. The applicants however neither produced the copy of the judgment nor stated its details and any action taken by the respondents herein to implement the terms of the judgment leaving to the respondents to aver in para 6 of their reply that memorandum Annexure A-3 was issued by Divisional Office Baroda after the High Court judgment on 27.7.78 permitting senior train clerks to go for Guards Grade C training without any claim to either seniority or posting on

account of having received the training. Note 7 above makes ineligible those who opt for guards branch promotion, promotion in their parent branch except ad hoc promotion. This provision could become yet another potent source of service disputes in the cadre and claimants to the cadre.

3. The first two applicants herein are Guards B and the last two are Guards C. They had started their service as junior train clerks in different years, the earliest one had started as such in 1958 and the last in 1966. Their normal promotions could be to the ranks of senior trains clerks and Deputy Yard Masters. But they exercised the option permitted by above reference dated 10.11.1976 to come over to the Guards Branch for Guards C Branch for which post they also sat for the prescribed tests successfully and their names appeared in the panel dated 10.5.1977 of the Division Office Baroda at serial numbers 8,14,15 and 7 respectively. The applicants say/that this circular dated 17.11.86 was questioned in a SCA No. 379/75 filed in the High Court of Gujarat by some senior trains clerks and others, in the judgment dated 27.7.78 the petitioners were permitted to go for Guard Grade C training on their giving undertaking that on the completion of their training they will neither claim seniority nor posting by virtue of the training received. The respondents' reply clarifies that this was done by an interim order of the HighCourt in this SCA. After the declaration of the panel dated 10.5.1977, the applicants herein successfully completed the prescribed training for Guard C post. Then they were appointed as adhoc Guards C each on a different date, namely 9.1.1979, 4.1.1979, 8.12.1978 and 28.12.1978 respectively. Their principal contention

in this original application filed under section 19 of the Administrative Tribunals Act, 1985 is that they have the right, as per provisions of the seniority rules figuring in Chapter 16 of Railway Establishment Manual by M.L. Jand, to figure in the seniority list of Guards C dated 25.2.1985 before those selected for such appointment later irrespective of the date of their posting. But they having not so figured and their names figuring after several who were allegedly selected later than them, the applicants therefore claim placement after serial number 37 in the seniority list of Guard Grade C dated 25.2.1985. The applicants also allege that this seniority list includes names of some who had failed in the examination as also names of some who had not exercised their option for Guards panel and therefore could not enter the panel. The applicants also challenge the seniority list of Guard B dated 10 -10-1986 on the ground that the same is based on the erroneous seniority list of Guard Grade C. Any delay in filing this original application is sought to be explained by alleged nondisplay of the two impugned seniority lists on the notice boards of the offices of the Station Superintendents Godhra and Baroda and the applicants otherwise also not intimated about the impugned two seniority lists. The applicants aver that they came to know about the two impugned seniority lists through their personal inquiry. On fixation of their seniority in Guard Grade C as per their claim, promotion of applicants No. 3 and 4 to Guard B and of 1 and 2 to Guard A is also sought by way of relief in para 10A of the application which para thus contains more than one relief prayers.

4. We, at this stage, consider it necessary to refer to some contents of the application which seem

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to give rise to confusion and anomalous situations even amongst the applicants inter se. For this we bring at one place in the table below information on the applicants which appears scattered in the pleadings and the record annexed with the application :

"Sr.No. Name of Sr.No. Date of Sr.No. Date of
of applicant in the ad hoc and appointment
appli- panel of appoint- community as shown
cant in Guard ment to on senior- in Annex.
applica- Gr. C Guard Gr. rity of A-4.
tion. and C as shown Gd. Gr. C
community in applica- (Ann. A-4)
tion.

1. D.S. Parmar	8 (S.T)	9.1.79	109 (S.T)	19.1.79
2. Kanjibhai M	14 (S.C)	4.1.79	140 (S.C)	4.1.78
3. K.A. Gohil	15 (S.C)	8.12.78	141 (S.C)	8.12.78
4. T.C. Prajapati.	7	28.12.78	129 (H)	28.12.78

(year is
clear. Date
and month
appear to be
28.12 respec-
tively)"

The inter se order of seniority of the applicants according to their respective panel positions is 4, 1, 2 and 3 meaning that applicant No. 4 is the highest and applicant No. 3 the lowest amongst them in their panel positions. Nevertheless relief of promotion of applicant at Sr.Nos. 1 and 2 is sought to Guard A though both figure after applicant at Sr.No. 4 in the panel for whom only promotion of Guard Grade B is sought by way of relief. For such distinct anomaly in relief, the averments and the oral submissions furnish no explanation. Thus, even by the averments in and material annexed to the application, the part of the relief in para 10 A seeking direction to further promote applicants may be found vexatious by applicant No.1 himself. The application goes off at half cock in this regard. We should therefore no more detain ourselves to consider the admissibility of this part of the relief and therefore hold that this part of the relief is liable to be rejected as a result of scrutiny of applicants' pleadings and record annexed.

5. While we do so we recall the provisions of rule 4 of the Central Administrative Tribunal (Procedure) Rules 1987 and the implied position of one-applicant one-application and joining of applicants an exception for which permission of the Tribunal is required and can be given only having regard to the cause of action, the nature of relief and the commonage of interest. We also recall the provision of rule 10 of the above rules which imply one-application one-relief and more than one relief only when consequential. We are of the view that the respondents' objection taken in their reply on this account has basis in the statutory rules. All applicants in this application seek revision of their seniority position in Guard Grade C seniority list. There ends their commonage of interest. It does not persist to relief of promotion to Guard Grade B to some and to Guard Grade A to some others.

6. It is averred in the application that Annexure A-4 is dated 25.2.1985. No such date is seen to figure in this Annexure. The covering letter or memo under which Annexure A-4 must have come to be issued has not been shown to us. The letter/memo should have significance in this adjudication as the original application would not ordinarily be maintainable unless representations against any wrong seniority have been made by those who have grievance. The application throws no light on this aspect.

7. The respondents have averred in their written statement that the General Manager, Western Railway, acting as per the judgment of the Gujarat High Court in SCA No. 4881 of 1983 delivered his speaking order on 15.2.1984 and the seniority list of goods guards was notified vide No. ET/1030/3/34 Part I dated 25.2.85

and the application filed late without even seeking delay condonation is liable to be dismissed on that ground alone. It is difficult for us not to disbelieve the part of the rejoinder of the applicants which denies that the General Manager acting in compliance of the decision of the Gujarat High Court in the SCA issued a speaking order on 15.2.1984 followed by seniority list dated 25.2.1985 and that filing of the late application was due to late intimation to the applicant of the seniority list. We, at this juncture, should also refer to SCAs' filed in the Gujarat High Court, which the rival pleadings refer to. We have earlier referred to SCA 379/75 which figures in the application. The respondents in their written statements refer to this SCA as also to SCAs 378/75, 105/78, 2634/78 and 4881/83. In rejoinder the applicants refer to one more SCA, namely 3121/84. Mentioned by both sides in application, in written statement and the rejoinder the number of SCAs adds up to six between 1975 to 1984 - and the applicants grievance still alive in 1991. With such copious litigation, it is difficult to believe that the applicants remained in the dark about the speaking order dated 15.2.1984 of the General Manager made in compliance with the order of the High Court. The seniority list of 25.2.85 is stated to be on that basis. We are of the view that the period of limitation of one year for filing such application contained in the provisions of section 21 of the Administrative Tribunals Act, 1985 has to be firmly insisted in this case of fierce copious litigation. The applicants have failed to adhere to the same. The objection of the respondents on the ground of limitation thus has reckonable substance.

8. Now about Annexure A-5 which is named as seniority list of Guards Grade B/ ^{by the applicants.} The subject of this annexure dated 10 -10-1986 is "Promotions, Reversions and Transfers of Guard Grade B scale 330-560(R) TFS Department, BRC Divn.

The introductory/explanatory
portion of it is reproduced below:

"Consequent upon Restructuring upgradation
in the category of Goods Guard Gr. 'B' from 'C'
vide above and due to existing vacancies, the
following promotions and Transfer & postings
are ordered to have an immediate effect.

The existing and the revised cadre of Goods
Guards is affended below. SS concerned to
change the cadre at their respective station
accordingly."

There is nothing in the above to show that it is or
is intended to be a seniority list of Guards Grade B.
It does not contain claim of information seniority
lists are normally seen to and should contain. For
example the seniority list at Annexure A-4 contains
information on community, date of birth, date of
appointment, date of confirmation, date of officiating
which do not figure in Annexure A-5. These missing
and its subject and introductory showing that it is
not intended to be a seniority list, and the
respondents' reply also saying that Annexure A-5 is
no seniority list, we held that Annexure A-5 is not
a seniority list. This furnishes one more reason for
our rejecting a part of the relief above.

9. The application refers to some senior train
clerks and others filing SCA No. 379/75 in the High
Court of Gujarat to which we have earlier referred.
The respondents aver that panel dated 2.5.77 of
Guards Grade C was cancelled on 17.6.1981 as per
judgment of Gujarat High Court in SCAs 2634/78 and
105/78. The applicants have averred in their
rejoinder that there was no intimation about the
cancellation of the panel. While saying so, in
rejoinder, the applicants aver that they crave to
rely on the judgment of Gujarat High Court in
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SCA 3121/84 without saying what the contents of this judgment are and what implications if any the judgment had on the earlier judgments in SCAs 2634/78 and 105/78 and on the dispute of seniority. Copy of the judgment has also not been produced but it is averred that the respondents had filed SLP against the judgment which was rejected. Be that as it may, the contention by implication of part of applicants' rejoinder is to the effect that the panel dated 2.5.1977 cannot be taken as cancelled on 17.6.1981 as a result of High Courts' order because the applicants had not been informed about the cancellation. This contention by implication has no legal basis or sanction.

Undoubtedly the cancellation of the panel dated 2.5.77 must have adverse service consequences on the applicants whose names figured in the panel. But for that redressal had to be sought by the applicants by questioning the step in a proper forum at the relevant time. Denying or disputing in rejoinder the existence of the step of cancellation of the panel taken by respondents pursuant to the High Court order does not annul the cancellation of the panel or even make it ineffectual. The respondents have further averred in their reply that the High Court had directed in SCA 2634/78 that the applicants should give option whether they wanted to remain in their parent branch for promotion or otherwise. But the applicants did not exercise the options though they were apprised of the High Court's judgment by letter dated 1.6.79. We notice the rejoinder silent on this part of the respondents' reply. If the High Court directed exercise of options, even if options were given earlier the order was required to be carried out by the applicants and the respondents herein unless upset in appeal.

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There is no averment that it was so upset. The respondents further aver that the appointment of the applicants as Guard Grade C was ad hoc and petitions were filed in the High Court and by order dated 27.7.78 High Court had directed that receiving training as Guard Grade C will create no prescriptive right for the trainees to appointment or seniority and ad hoc postings were subject to outcome of High Court decisions. The respondents have also averred that issues which were decided by High Court judgments could not be raised again before this Tribunal and the principle of res judicata will operate.

10. Thus the applicants have at best shown that the impugned seniority list Annexure A-4 violates the principle of fixation of seniority contained in M.L. Jand's book above which contents are stated to be based on para 306 of the Indian Railway Establishment Manual. The respondents have alluded to a series of SCAs filed in the High Court of Gujarat to dispute the panel and the orders of the High Court, interim or final, in these SCAs which the respondents herein complained with. Neither side has produced copies of the judgments in any of the SCAs but compliance claimed on evasive or wrong reply relying on judgment or order of the High Court alleged. Neither these judgments nor compliance of these judgments, perceived by either party as wrong or right, could be challenged before us on the grounds of the differing respective perceptions - and perspectives - of the parties to the OA before us when we are not even told whether any or more of the applicants herein figured as petitioners/respondents in the large number of SCAs which were filed before the High Court of Gujarat and whether the prayers for relief in the application

A. S. J.

herein will not upset the positions since settled by the orders of the High Court in those many SCAs. We should be utmost cautious and careful not to unsettle what may already have been settled in this old service dispute on the subject of seniority lest we reopen the flood gates of litigation which might have been closed with difficulty and at long last and positions having acquired durability both by court decisions and passage of about 15 years of time since 10.11.76, 14 years since 2.5.77 and over six years since 25.1.1985 being the dates respectively of offer of option, of panel for the offered cadre and the seniority list of the offered cadre and all the three shown to be products either of compliance or having been subjected to compliance of Gujarat High Court judgments in the SCAs the contents of which judgments and the names of the parties to the judgments ^{as pointed out above,} not placed before us despite contentions based on these judgments taken by both sides. The omission is thus mutual and in the facts and circumstances of the case patent.

11. The above analysis leaves no reliable material before us to allow the application which is therefore ^{but} hereby dismissed / with no orders as to costs in the circumstances.


(S. Santhana Krishnan)
Judicial Member

H. H. S. Grewal
9(4)(5)
(M. M. Singh)
Admn. Member

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M.A./33/91
in
O.A./434/87

Coram : Hon'ble Mr.P.H.Trivedi

: Vice Chairman

Hon'ble Mr.S.Santhana Krishnan

: Judicial Member

28/02/1991

Heard Mr.V.M.Dhotre, and Mr.N.S.Shevde, learned advocates for the petitioner and the respondents. Learned advocate for the petitioner prays for the deletion of respondents Nos. 5,7, 21,23,34,37,40,66,73,79,81,83,85, 100,111, and 114, is allowed. Names of respondents be deleted. With this M.A./33/91, stands disposed of.


(S.Santhana Krishnan)
Judicial Member


(P.H.Trivedi)
Vice Chairman

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