

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH

O.A. No. 591 OF 1987  
~~TA No.~~

DATE OF DECISION 29.7.1991

Paschim Railway Karmachari Petitioner<sub>s</sub>  
Parishad & Anr.

Mr. R.K. Mishra, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent<sub>s</sub>

Mr. N.S. Shevde, Advocate for the Respondent(s)

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

1. Paschim Railway Karmachari  
Parishad, A Registered Trade  
Union No. K-25/1965,  
through its Divisional  
Secretary, Shri Gangasingh  
M. Thakur, Wadi, Kokan Falia,  
Baroda.

2. Shri Harishanker J. Gupta,  
Sant Kabirnagar, Akota-5,  
Near Railway Line, Baroda-5.

..... Applicants.

(Advocate: Mr. R.K. Mishra)

Versus.

1. Union of India,  
(Notice to be served through,  
Secretary, Railway Ministry,  
Rail Bhavan, New Delhi).

2. The Chief Engineer,  
Western Railway,  
Churchgate, Bombay.

3. Divisional Railway Manager,  
Western Railways,  
Pratapnagar, Baroda.

4. Works Manager,  
Pratapnagar,  
Baroda.

..... Respondents.

(Advocate: Mr. N.S. Shevde)

J U D G M E N T

O.A.No. 591 OF 1987

Date: 29.7.1991

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

In this original application jointly filed by  
Paschim Railway Karmachari Parishad and Harishanker  
J. Gupta under section 19 of the Administrative  
Tribunals Act, 1985, exist some striking infirmities  
which a mere perusal of the application and its  
annexures reveals.

2. The first infirmity is that the application  
is filed by a trade union jointly with Harishanker J.  
Gupta without any averment in the application that

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Harishanker J. Gupta is one of the affected persons. Such an application therefore suffers from the vice of noncompliance with provisions of Rule 4(5)(b) of the Central Administrative Tribunals (Procedure) Rules, 1987. At Annexure-A has been filed a statement of the bio-data of the applicants. Names of 190 applicants figured in it. Neither has it been shown to us that Harishanker J. Gupta figures in the list nor as a result of our efforts to go through this annexure we find such a name in it. Thus on the one hand the title of the application shows that it is filed by Paschim Railway Karmachari Parishad jointly with Harishanker J. Gupta, the annexure above purports to show that the applicants are the 190 whose names figure in the annexure in which does not figure the name of Harishanker J. Gupta. However, only for the sake of facility of reference <sup>we</sup> would continue to refer to Annexure as bio data of applicants though they are not applicants.

3. This list of applicants was, in the submissions<sup>of</sup> learned counsel for the applicants Mr. R.K. Mishra at the tune of final hearing, though described as a seniority list of the applicants it was compiled privately from their service record with them and it is not of any official seniority list. Mr. Mishra also submitted that the names in it figure in order of their seniority. While scanning the annexure-A, we found that after Sr.No.10 Ibrahim Ishmil with 1.9.1975 as the date of his appointment, figures at Sr.No.11 the name of Mansukh Kalu with 27.7.1978 as the date of his appointment. This implies that between 1.9.1975 and 27.7.1978 nobody was appointed by the respondents railway which is unlikely. We also notice that Sr.No. 67, Dheera Magan with his

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date of appointment as 25.9.1975 figures after Amarsingh Uijal at Sr.No.66 with his date of appointment as 25.5.1979. Thus a person with his date of appointment as 25.9.1975 figures next to and as junior to a person whose date of appointment is 25.5.1979. Between Sr.No. 70 Sagelu Anoop with his date of appointment 25.12.1980 and Sr.No. 71 Hari Shanker Jangi with his date of appointment 12.8.1983, no name figures. This again implies that the respondent railway appointed nobody between 25.12.1980 and 12.8.1983 which is unlikely. Sr.No.73 Samaji Galu with his date of appointment 9.8.1983 figures after Sr.No. 72 Vinod Babashingh <sup>whose</sup> / date of appointment is 12.8.1983. Sr.No.76 Jitra Situ with his date of appointment 1.8.1983 figures after several names with their date of appointment after him. We have here pointed out only some of the apparent inconsistencies in Annexure A to which Mr. Mishra gave the status of seniority list. In view of such inconsistencies, it cannot qualify or be relied upon for that status. Thus the application contains no reliable seniority list despite which the allegation made is that the applicants are senior to a number of others who have been regularised and absorbed. This is the second striking weakness in the record of the application.

4. A statement of particulars of junior persons has also been filed at Annexure A-1. These persons are stated to be junior to the 190 persons in Ann. A. The first name in this list is of Heralal Nanji with his date of appointment 29.1.1986. The second name is of Bachchar Deera with his date of appointment 29.9.1984. The third name is Fatehsingh Soma <sup>with</sup> / his date of appointment 21.11.1983. There is a remark that the three are appointed directly and Mr. Mishra

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clarified that though their appointment is late their position is shown senior than others in the list because of direct appointment as directly appointed ones are given seniority over others. But this explanation much falls short of explaining how even amongst the three direct ones, the one recruited on 29.1.1986 is shown as senior to two others recruited before him on 29.9.1984 and 21.11.1983 respectively. There are other anomalies in this list at Annexure A-1. However, we do not propose to dialate on them. But it is clear that Annexure A-1 is no reliable list of persons alleged to be junior to those figuring in Annexure A. When such is the state of the record, we should <sup>hold</sup> that the rights of regularisation and absorption of those in Annexure A are not substantiated to have been violated by the names figuring in Annexure A-1.

5. With regard to Annexure A-2 the only other annexure to the application, it is on the subject of posting of substitutes in Yard Gang as a Khalasi and the same is issued by the office of Works Manager, Pratapnagar and is dated 27.5.1987. Mr. Mishra argued that this annexure shows that persons appointed on 9.1.1987 were regularised and absorbed which by itself proves that persons appointed much earlier figuring in Annexure A were not regularised and absorbed. When we pointed out to Mr. Mishra that the annexure says "the following substitutes who are granted temporary status and subsequently screened by a committee on 9.1.1987 found suitable for the post of Khalasi and have passed requisite medical examination are posted in Yard Gang" and therefore shows that 9.1.1987 was not the date of appointment but the date of their screening by a committee and therefore his submission that these

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persons figuring in Annexure A-2 were appointed on 9.1.1987 is not correct, Mr. Mishra had no answer.

6. It is argued in para 6(ii) of the application that the list at Annexure A of applicants would go to show that they are recruits of 1974, 1978, 1979, 1983, 1984 and some of them recruits of 1985 and perusal of Annexure A-1 would show that they are recruits of 1982, 1983, 1984, 1986 and have been made permanent in 1985, 1986 and 1987 which action is totally violative of Articles 16(1) and 14 of the Constitution. We notice that for those in Ann. A Rajkot has been mentioned as their division of recruitment, Baroda is mentioned as permanent working division of those in Annexure A-1. Thus it is self-evident from these two annexures that while Annexure A refers to those recruited in Rajkot division, Annexure A-1 refers to those recruited in Baroda division. As seniority of casual labourers is maintained recruitment divisionwise, the exercise of comparison between Annexure A and Annexure A-1 is of comparison between those who should figure in the seniority of Rajkot division with those who figure in Baroda division. As two belong to different classes, allegation of unequal treatment cannot be validly made. Allegation of unequal treatment can be made only when the allegation pertains to treatment to persons in the same class which here should mean <sup>same</sup> seniority list. Thus relief 7(II) seeking declaration that applicants at Annexure A are entitled for absorption and regularisation of their services cannot be made as no material has been furnished to show that juniors to those in Ann. A from Rajkot division seniority list have been absorbed and regularised. Similarly relief at 7(IV)

for direction to respondents to accord the applicants listed at Annexure A the benefits accorded to their junior persons can not be ordered. Relief at 7(III) cannot be ordered unless it is shown that any juniors of those figuring in Annexure A have been absorbed and regularised. So far as relief at para 7(I) to direct the respondents to prepare seniority list of the casual labourers is concerned, such direction apparently as seen from the pleadings, was given by the Supreme Court in Inderpal Yadav Vs. Union of India, (1985) 2 SCC 648, as mentioned in para 6(v) of the application. Incidentally learned counsel for the respondents Mr.N.S. Shevde informed us that seniority lists have already been prepared and published for Rajkot and Baroda divisions

7. With the above state of the applicants shown from the applicants' own record, averments and pleadings, it should be unnecessary for us to refer to the contents of respondents' reply. The application is therefore liable to be dismissed.

8. While saying the above, we would make it clear that it shall be the duty of the D.R.M. Rajkot in which division the applicants are seen to have originated their services to duly consider their seniority when the question of regularisation and absorption of persons of the applicant's seniority arises for consideration. Those whose names figure in Annexure A shall have the liberty to apply to DRM Rajkot division furnishing required particulars of their respective service to know their respective serial number in the seniority list of Rajkot

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list considered for regularisation and absorption.

7 The DRM will be required to furnish this ~~information~~ instruction to the applicants who are presently working in another railway division.

9. The application is hereby dismissed but subject to our above observation. There are no orders as to costs.

  
(S. Santhana Krishnan)  
Judicial Member

M M Singh  
29/7/91  
(M.M. Singh)  
Admn. Member