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CENTRAL ADMINISTRATIVE TRIBUNAL

(D)
CAT/J/13

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AHMEDABAD BENCH. AHMEDABAD.

O.A No. 87 OF 1988
~~XXXXXXXX~~

DATE OF DECISION 02-07-1991

Shri Jamnadas M. and Others. Petitioner

Shri A.M.Saiyad. Advocate for the Petitioner (s)

Versus

Union of India and Others. Respondent

Shri R.M.Vin. Advocate for the Respondent(s)

CORAM .

The Hon'ble Mr. P.H.Trivedi : Vice Chairman

The Hon'ble Mr. S.Santhana Krishnan : Judicial Member

JUDGMENT

8

1. Jamnadas M.
2. Yusuf Ali,
3. Navalkishor D.
4. R.G.Pande,
5. Bijal Hari,
6. Ravindrasinh Yadav,
7. Kalika R. Mishra,
8. Amarshi B.
9. Ramsing B.

...Applicants

Diesel Assistants,
Loco Shed,
Bhavnagar Para,
C/o.Loco Foreman,
Bhavnagar Para.

Versus

1. Union of India,
Owning Western Railway,
Through the General Manager,
Head Quarters Office,
Churchgate,
Bombay.
2. The Divisional Railway Manager,
Western Railway,
Bhavnagar Division,
Bhavnagar Para.
3. The Divisional Mechanical Engineer (Loco),
Western Railway,
Bhavnagar Division,
Bhavnagar Para.

JUDGMENT

O.A. No. 87 OF 1988

Date : 02-07-1991

Per : Hon'ble Mr.S.Santhana Krishnan : Judicial Member

In this application under Section 19 of the Central Administrative Tribunal Act, 1985, the applicants pray for a declaration that they are entitled to promotion as Diesel Assistants in the scale of Rs.290-350 (R), From 1.6.1981, and also seniority and proforma fixation of pay from 1.6.1981.



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2. The applicants claim that they were working under the respondents as Diesel Assistants and a procedure for selection as laid down by the respondents is : -

(a) 50% by the usual selection procedure from amongst Fireman-B, who had studied upto VIIIth class and were below 45 years of age.

(b) 50% by the departmental examination held amongst Fireman 'B' and 'C' who were matriculates and had three years of railway service.

(c) If the departmental examination referred to in (b) fails to provide enough matriculates for the 50% quota, by direct recruitment through the Railway Service Commissions.

3. On Bhavnagar Division, the upgraded post of Diesel Assistants, were worked out separately totalling to 41 numbers as per the letter dated 9.2.1982. Applications from the willing and eligible fireman were called for and the railway board re-iterated their procedure under their letter dated 30.4.1982. The local authorities of Bhavanagar Division again called for the applications from willing and eligible Firemen Vide letter No.EM/925/3, Vol. IV, dated 26/28-5-1983, Inspite of the clear and express instructions contained in the Railway Board's letter dated 19.8.1981, and 30.4.1982, the IIInd respondent filled up 115 upgraded posts of Firemen-A, from among Firemen-B, as per seniority without conducting the selection thereby arbitrarily denying to the applicants the opportunities for promotion. The list of 115 promotees was notified vide order dated 27/29-8-1983, granting promotion with effect from 1.6.1981. Many of them did not possess eligibility as was laid down by the Railway Board. The promotion was based upon the

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joint agreement with the recognized Trade Unions and the Railway Boards directions were not implemented. The applicants got their regular promotion only as per the order dated 9.10.1984. In this order promotion was not granted to them from 1.6.1981, from which date restructuring of the cadre/upgradation come into effect. The applicants have been made to suffer doubly, in the first place, compulsion to pass the selection of the grade Rs. 200-350 (R); and secondly denial of difference of pay by proforma fixation. This is discriminatory treatment. However, the applicants do not press to unsettle the promotions of 115 persons. They claim that their promotion ought to have been given effect from 1.6.1981 and hence this application.

4. The respondents in their reply point out that the joint application by the 9 applicants is not maintainable. The applicants ought to have impleaded 115 employees who were given promotions as parties to this application. The order regularising 115 employees against upgraded posts is dated 27/29-8-1983. The order referred in the application is dated 9.10.1984. The present application filed in January, 1988, is barred by limitation. In respect of 115 posts referred in the application they were all upgraded posts and they are filled as per the decision taken in a joint meeting with both recognised Trade Unions. As per the decision, 115 upgraded posts were to be filled in from amongst working Firemen-B. Since these were upgraded posts as per the restructuring of running staff, there was no need to go through the normal selection procedure. As these posts were filled in as per seniority, there is no question of complying with any age limit. The Railway Board's order dated 24.6.1977, prescribing the procedure for selection was kept in abeyance as per the order dated 5.6.1978.

As the 115 upgraded posts were to be filled in with effect from 1.6.1981, when the normal procedure was kept under abeyance by Railway Board, it was just and proper to fill in these 115 upgraded posts applying the criterian of seniority. The case of the upgraded posts cannot be equated with those to be filled in by regular selection post. Further there is no upgradation for the post of Diesel Assistants category. Further as the applicants appeared in the selection unconditionally, they are restrained to object the selection under the principles of estoppel and waiver. Though the applicants were working as Firemen-Grade-B, they were not senior enough to be promoted. The last Firemen-Grade-B, promoted against upgraded post of Firemen-Grade-A, is at Sr.No. 264, of seniority. The applicant's seniority is only thereafter as shown in the reply. Hence the applicants are not entitled to claim any relief in this application. The applicants have filed a rejoinder.

5. Heard counsels appearing for both sides.

Records were perused.

6. The respondents even when the application was taken for admission contended that the application is barred by limitation. As per the order dated 30.3.1988, the application is admitted subject to the question of limitation. In para 3 of the application the applicants have stated that they are questioning the orders dated 27/29-8-1983. Originally they questioned the promotion of 115 Firemen-B, and they require this Tribunal to declare that the applicants are also entitled to promotion from 1.6.1981. At the time of admission when objection was raised (viz.), whether the present petition without joining them is valid, the applicants amended their application and claimed the relief as stated above.

10

7. It is the case of the applicants that the selection of 115 Firemen-Grade-B, w.e.f. 1.6.1981, is not valid. Further the applicants were called for selection as per Annexure-A/3, A/4, dated 9.2.1982, and 26/28-5-1983. If the applicants have got any grievance, they ought to have filed the application against these orders. On the other hand as per the allegations in the application they appeared for selection and they have got selection and promotion from 9.10.1984, as per Annexure-A-6. After appearing for the selection as per the order and submitting themselves for promotion they are now estopped from claiming that the respondents ought to have granted them promotion from 1.6.1981. Even otherwise if the applicants have got any grievance about Annexure-A/6, they ought to have filed an application within a year from this order. Hence the present application is barred by limitation.

8. The applicant's contention on this aspect is that the Union made some representation and an order was passed on 3.4.1987. Annexure-A/7, is said to be this order. The copy of the representation given by the Union is not filed. Annexure-A/7, do not mention any date. Further this is not an order passed on any representation. It only deals with irregularities in filling up upgraded posts. Hence this will not give any fresh starting period of limitation to the applicants.

9. On this aspect the learned counsel appearing for the respondents rightly placed reliance on Section-21- of the Administrative Tribunals Act. A Tribunal shall not admit an application (a) In a case where a final order has been made, the application is made within one year from that date. It is not the case of the applicant that the application is filed within one year from the date of the order. Section-21-(b) makes it very clear that in a



case where an appeal or representation such as is mentioned in clause (b) of Sub-Section (2) of Section-20 has been made and a period of six months had expired, etc., Section-20 (2), (b), states that where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired. Annexure-A-7, no where states who passed this order. The application is also silent (Viz.) to whom the Union made the representation, and whether that person is competent to receive the representation. Further any appeal or representation should be made to the competent person within a specific period provided under the rules. The applicant failed to state under what rule the representation was made. If the applicant's contention is accepted then, after 5 years or 10 years after passing of an order, they can write a letter to some authority of the Railways and thereafter can claim, that they can file an application within six months from the date of the representation. This is not the intention of the legislature as is evident from Section-21-(b) and Section-20-(b), of the Administrative Tribunals Act, 1985. Other representations relied by the applicants in the application Annexures-A/8, A/9, A/10, and A/11, were all made only by the 6th applicant and not by other applicants. Even this representations are not made on behalf of the

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other applicants. Further, this is addressed to Divisional Railway Manager, and there is no allegation in the application that he is a competent person to receive the representation. Hence the present application questioning the promotion of the applicants on 9.10.1984, is clearly barred by limitation.

10. Even otherwise the applicants failed to file any application under Section 21-(3) of the Administrative Tribunals Act, alleging sufficient cause for not making an application within time.

11. Further in this application there are eight applicants and they have not filed any petition under Rule-4, Sub-Rule-5, ^{of the C.A (Procedure) Rules 1987} requiring permission from the Tribunal to join them in one application. Even on this ground the application is liable to be dismissed.

12. In view of the fact the application is barred by limitation, there is no necessity to consider the case of the applicants on merits whether they are entitled to claim promotion from 1.6.1981. Hence we are not considering the contentions of the applicants on merits.

13. In view of the above discussion the application is liable to be dismissed and accordingly the same is dismissed. We however make no order as to costs.


(S. Santhana Krishnan)
Judicial Member


(P.M. Trivedi)
Vice Chairman