

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH  
~~NEW DELHI~~

O.A. No. 223 OF 1988

~~XXXXXX~~  
~~XXXXXX~~

DATE OF DECISION 02-07-1991

Shri Behrual Kalicharan, Petitioner

Shri D.R.Chaudhary Advocate for the Petitioner(s)

Versus

Union of India &amp; Ors. Respondent

Shri B.R.Kyada. Advocate for the Respondent(s)

## CORAM :

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

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? *No*
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*

Shri Bherulal Kalicharan,  
Quarter No. 50 B,  
Railway Loco Colony,  
Jamnagar Road,  
RAJKOT.

...Applicant

Versus

1. The Union of India,  
Owning and representing  
Western Railway,  
through its General Manager,  
Western Railway,  
Churchgate,  
BOMBAY.
2. The Divisional Railway Manager,  
Western Railway,  
Kothi Compound,  
RAJKOT.

...Respondents.

J U D G M E N T

O.A. No. 223 OF 1988

Date: 02-07-1991

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

The applicant in this application impugned the order dated 8.12.1987, reverting him from the post of Driver-A Special to the post of Driver Grade A. According to him, he originally joined, the respondents as Fireman Grade-A with effect from 2.1.1966. He belongs to Scheduled Caste Community. Subsequently he was promoted to the post of Driver Grade-B on clear vacancy against SC Roster. His seniority in the cadre of driver Grade-B scale Rs.425-640 was required to be fixed and confirmed with effect from 30.5.1981, but it was not fixed so. The employee of the general category who were placed on panel with the applicant were fixed above than him in the seniority list by passenger Driver Grade-B which resulted that his further promotion on the post of Driver Grade-A Special was delayed. Subsequently he was promoted to the post of Driver Grade-A against reserve vacancy from 20.11.1982, and he was promoted

...3...

(6)

to the post of Driver Grade-A Special on the reserve vacancy of 40 point roster seniority. By the impugned order dated 8.12.1987, he was reverted to the post of Grade-A Passenger without any just and legal reason. There are 15 posts of driver grade-A special under Rajkot Division and on the basis of 40 point roster, 3 SC employees and 1 ST employee are required to be promoted. Shri Rama.B., was promoted on the basis of seniority. Hence counting of this vacancy as reserve vacancy is erroneous. The respondents failed to produce any order from the High Court for not following 40 point Roster system. As per Railway Board instructions, the employee who had completed continuous 18 months working on the clear vacancy in one cadre is not to be reverted from the said post. Hence this application for declaring that the order dated 8.12.1987 is illegal and void and the applicant be continued to be on the post of Driver-A Special.

2. The respondents claim in their reply that originally the applicant was placed on the panel of Driver-B notified on 22.1.1982. He was placed at Sl.No.45 of the panel consisting of 48 names. He cannot claim any seniority over any of the 44 drivers placed above him on the panel whether they are SC/ST or general candidates. In the upgraded Driver-A (O), he was at Sl.No.53 of the list. Some of the B.G.Train Drivers who have worked on M.G.Section had not undergone B.G.Conversion course on Diesel Traction and hence not readily available for being posted to man B.G.Diesel services. Hence it was found necessary to work the B.G.D.Services by utilising the junior passed hands till seniors become available. This was not a regular promotion order, but only an order for utilising some junior passed hands in exigency of the

*[Signature]*

services. The order dated 6.2.1986 clearly indicate that this is purely a stop-gap arrangement and it will not confer any prior right on the promotees to claim any permanent posting. The Supreme Court as well as the Allahabad High Court delivered orders pointing out reservation on promotion is to be based on percentage basis and not on the basis of 40 point Roster. In the cadre of 15 Driver-A(Special), there are 2 SC's and this is required more than the percentage. As far as the seniority is concerned in the last seniority list of Driver A (O) notified on 6.1.1986 the applicant appears at Sl.No.103 and Shri Rama.B., promoted as SC appears at Sl.No.24. The applicant has not <sup>ed</sup>claim for continued promotion as Driver-A Sepecial overlooking these 55 seniors.

3. The applicant filed rejoinder denying the allegation made by the respondents.

4. When the case is taken up for final hearing neither the petitioner nor his advocate present. Heard Mr.B.R.Kyada, learned advocate for the respondents.

5. The applicant questions in this application the order of reversion dated 8.12.1987. It is admitted that the applicant was promoted to the post of Driver Grade-A Special with effect from 6.2.1986. Annexure-A/I is this order. A perusal of Annexure-A/I, clearly show that as the applicant passed the B.G.Conversion Course, his services and the other drivers who were so eligible were promoted provisionally and purely on temporary basis. It further states that this does not confer any prior right or claim for the post over than seniors.





6. Annexure-A-I clearly show that in view of the non availability of the candidates, the applicant was promoted in the existing vacancy due to the exigency of the service till further order are issued. Hence as per Annexure-A-I, the applicant cannot claim promotion as Driver-A Special grade as a matter of right.

7. Though the applicant claims that even at the time when he was placed in the Cadre of Passenger Driver Grade-B, there were some irregularity, he has not chosen to question the same at that time. Hence the applicant cannot raise his objection now. The applicant failed to produce the seniority list regarding Driver Grade-A. It is shown that Rama.B who was promoted on Driver-A Special, is a SC candidate. The applicant failed to produce any record to show that he was given promotion on his normal seniority. Admittedly, there were only 15 posts of Driver Grade-A. The respondents point out in their reply that out of this 15 posts, there are more than 2 SC candidates already promoted, namely, more than the required percentage and no more SC can be promoted. According to them, they cannot enforce 40 point Roster system in view of the judgments of the Allahabad High Court and Supreme Court. Unless the applicant establishes that the order dated 6.2.1986, promoting him to Driver Grade-A, Special, is on a permanent basis he cannot claim any right on his order. The impugned order shown in Annexure-A show the seniority of the applicant. According to the respondents at that time, as senior candidates were made available, the applicant was reverted as Driver-A passenger.

*AB*

8. The reply of the respondents clearly point out that promotion given to the applicant on 6.2.1986, was only a stop-gap arrangement as his seniors failed to pass at that time the required B.G. Conversion course. Though the applicant claims that as per some Railway Boards instructions, person who has completed 18 months working on the clear vacancy in one cadre cannot be reverted from the said post, he failed to produce any such instruction. As the applicant failed to establish, he is entitled to promotion to the post of Driver Grade-A Special as of right and that any of his juniors were given their posting, he cannot have any grievance over the order dated 8.12.1987. As the applicant failed to establish that the order of 8.12.1987, is either illegal or invalid, the applicant cannot question the same before this Tribunal. Therefore, we find that the applicant failed to establish that the order dated 8.12.1987, is illegal or invalid and such he cannot claim that he should be posted as Driver Grade-A Special or that he is entitled to other benefits claimed. In view of the above discussion we find no merit in this application, and the same is liable to dismiss<sup>ed</sup> and accordingly it is dismissed. No order as to costs.

  
( S. Santhana Krishnan )  
Judicial Member

  
( P.H. Trivedi )  
Vice Chairman