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CAT/3/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW DELHI~~

AHMEDABAD.

O.A. No.

251

1988

~~T.A. No.~~

DATE OF DECISION 17-7-1990

Hiralal Manabhai and others ~~Petitioner~~ Applicants

Mr. R.V. Deshmukh Advocate for the Petitioner(s)

Versus

The Divisional Railway Manager and others Respondent s

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

CORAM

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

The Hon'ble Mr. N.R. Chandran, 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? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal? *Yes*

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1. Hiralal Manabhai
2. Bhanwarsingh Pratapsingh
3. Hussainbhai R.
4. Gandharvsingh Nihalsingh
5. Babulal P. Makwana
6. Narayan Malaram
7. Allaudin Mohammedkhan
8. Bhankerlal Kashiram
9. Uttam Rajaram Patel
10. Dhambhai Lemabhai
11. Babaji Sanaji Rathod
12. Amirmiya Yusufbhai Shaikh
13. Gordhanbhai Jaitaram
14. Ramanlal Tulsi
15. Pragbhai T.
16. Nalimchandra B. Mehta
17. Ramamurthy Gayaprasad Sharma
18. Ramkalap Raghumandas Pathak

Applicants

(Advocate: Mr. R. V. Deshmukh)

versus

1. The Divisional Railway Manager,
Western Railway,
Kothi Compound,
Divisional Office,
Rajkot.
2. The Senior Divisional Mechanical
Engineer,
Rajkot Division,
Rajkot.
3. Union of India, through the
General Manager, Western Railway,
Churchgate,
Bombay.

(Advocate: Mrs. B. R. Kyada)

4. Gangadhar, V, Fitter
5. Bharat P -do-
6. Kesaji, M -do-
7. Rajnikant L -do-
8. Madanlal, S -do-
9. Rambharose, R -do-
10. Lalaram, J -do-

Respondents

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JUDGEMENT

O.A.251/1988

Per: Hon'ble Shri N.R. Chandran, Judicial Member.

The facts leading up to the filing of this application are as follows: The applicants joined the services of the Railways in the year 1963 and 1964 as Khalasis. Subsequently, as per the averment in the application, they passed the

**were promoted as Senior Khalasis in the year 1983.

for the post of Senior Khalasis and** Trade Test in the year 1983/ The applicants at the time of filing of this application, were working at Carriage and Wagon Shop (Mechanical) at Ahmedabad Depot, Metre Gauge. Their next promotion is to the post of Fitter, Grade II. Before being promoted to the said post, a railway servant should pass the necessary trade test and if he passes the trade test, then promotion should be given on the basis of seniority. It was contended by the learned counsel for the applicants that the applicants appeared for the trade test on 13-8-1987 and 24-8-1987 prescribed for promotion to the post of Fitter, Gr.II and they were declared

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as passed and were waiting for promotion as Fitter, Gr.II. Suddenly, respondents 4 to 10, who were working in the Sabarmati Depot, were posted as Fitter, Gr.II in Ahmedabad depot in which the applicants were working. According to the applicants, respondents 4 to 10 are junior to them inasmuch as they became Senior Khalasis long after the applicants. The promotion order was passed by the 1st respondent on 25-1-1988. According to the learned counsel for the applicants, their names should have been included in the promotion order. But several juniors belonging to the other Division had been promoted. This, according to the learned counsel for the applicants, would be arbitrary. They made representations to the respondents complaining about their non-promotion on 28-3-1988. Since there was no reply, they have filed this application for the relief that the respondents should be directed to promote the applicants

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as Fitter, Grade II retrospectively from the dates when their juniors were promoted together with back wages. They have also sought for a direction to quash the order dated 25-1-1988 in which their juniors were promoted.

Shri R.V. Deshmukh, the learned counsel for the applicants purforth the contentions urged in the application and specifically drew our attention to the fact that the applicants were promoted in 1983 as Senior Khalasis and that this fact has not been denied by the respondents. He also submitted that the details of promotion of respondents 4 to 10 given in the Reply Affidavit (paragraph 7) would clearly show that the said respondents were promoted as Senior Khalasis only on 19-2-1987 long after the applicants were promoted as Senior Khalasis. In view of this fact, he prayed that the application should be allowed as prayed for. He also drew our attention to the fact that during the pendency of the application, applicants No. 1, 2, 3, 4, 6, 7, 8, 9, 13, 14, 15 and 17 had been promoted as Fitter, Gr.II and therefore

as far as they are concerned, they should be given retrospective promotion with monetary benefits. With regard to applicants No.5, 10, 11, 12 and 16, he prayed for a positive direction for retrospective promotion with attendant benefits.

Shri B.R. Kyada, the learned counsel for respondents 1 to 3 strongly opposed this application. He raised certain preliminary objections. According to the learned counsel, a single application is not maintainable and each applicant should have filed a separate application. He further submitted that the respondents had not approached the authorities in this regard and therefore the application is not maintainable. According to the learned counsel, the applicants did not pass the trade test as contemplated under the rules. They passed only a local/^{trade}test which was conducted in view of the exigencies of circumstances and passing a local trade test would not enable them to get promoted. He also produced a tabular statement containing the pattern of

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promotion. He reiterated the contentions urged in the Reply Statement and submitted that the applicants' claim is not tenable and accordingly prayed for a dismissal of the application. Incidentally, he also submitted that the applicants have not challenged the seniority list and therefore it is not open to them to get any relief in this application.

We have heard the rival contentions. Before dealing with the merits of the case, it is necessary to consider the preliminary objections. The first objection of the learned counsel was that separate applications should have been filed and a joint application would not be maintainable. We find that the applicants had filed an application for permission to file a joint application and the same had been allowed by this Tribunal after notice to parties on 16-12-1988. Hence this objection is not tenable. With regard to the second objection viz., that the applicants have moved this Tribunal without approaching the authorities, we find from the records that the

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applicants had made a representation on 28-3-1988 to the respondents after the impugned order dated 25-1-1988 had been passed. The respondents had not passed any orders on their representation and therefore the learned counsel cannot raise this objection.

Before dealing with the merits of the case, it is necessary to note the promotion pattern to the post of Fitter, Gr.II. Khalasis, Cleaners, Safaiwala, Waterman and Messengers are grouped in unskilled cadre in the scale of 750-940. Their next promotion is to the post of Senior Cleaners, Senior Safaiwala in the scale of 775-1025 and their further promotion to the post of Senior Khalasi/Khalasi Helper (semi skilled) in the scale of 800-1150. The posts of Senior Khalasi and Khalasi Helper are designated as semi-skilled. Up to this level viz., to the level of Senior Khalasi/Khalasi Helper, the seniority is maintained depot-wise. The applicants

belong to Ahmedabad Depot whereas respondents 4 to 10 belong to Sabarmati Depot. Both these depots are within the jurisdiction of Rajkot Division. The next promotion from the semi-skilled post is to the various skilled category. In this case the relevant post would be Fitter, Gr.II in the scale of 950-1500. The seniority for all the skilled category is division-wise and not depot-wise. The case of the applicants is that they were promoted to the semi-skilled post of Senior Khalasi in the year 1983 after going through the relevant trade test whereas respondents 4 to 10 were promoted to the semi-skilled category only on 19-2-1987. The learned counsel for the applicants further developed this argument by saying that the seniority in the next cadre viz., Fitter, Gr.II (a skilled category) is division-wise. The seniority for promotion to that cadre should be determined by taking into account the date of appointment in the lower category viz., Senior Khalasi. On this basis the learned counsel for the applicants pressed their claim that the

applicants are senior to respondents 4 to 10. The learned counsel for the applicants also drew our attention to the fact that their allegation in the application that on passing the trade test in 1983, they were promoted as Senior Khalasis, has not been denied in the Reply Statement. He also submitted that even at the earliest point of time viz., in their representation dated 28-3-1988 the applicants contended that they were promoted as Senior Khalasis in the year 1983. We are of the view that the learned counsel for the applicants is right in his submissions. Since the seniority in the cadre of Fitter, Gr.II is determined division-wise, the department should have prepared a seniority list for promotion to that category also divisionwise i.e. by arranging all the senior khalasis from all depots from the date of their appointment so that they could be promoted to the post of Fitter, Gr.II according to such seniority. The respondents have not produced any seniority list and the fact that the applicants became Senior Khalasis in 1983

stands un rebutted. In view of this, we are of the view that the applicants are senior to respondents 4 to 10 and therefore the applicants should have been promoted earlier than respondents 4 to 10 since they had passed the necessary trade test. As observed earlier, promotion to the post of Fitter, Gr.II is dependent upon passing the trade test and it is the contention of the applicants that they had passed the trade test earlier and that they are also senior to respondents 4 to 10. The next question to be decided is whether the applicants had in fact passed the trade test. The learned counsel for the respondents strongly urged that the applicants did not pass the trade test and what they passed was only a local trade test. However, the learned counsel did not bring to our notice any rule which permitted the respondents to conduct a local trade test. As a matter of fact, the learned counsel for the applicants submitted that the applicants had passed the trade test on 13-8-1987 and 24-11-87.

According to the learned counsel, it was a regular trade test and there was nothing like a local trade test. During the pendency of this application, applicants No.1, 2, 3, 4, 6, 7, 8, 9, 13, 14, 15 and 17 had been promoted to the post of Fitter, Gr.II. The learned counsel for the applicants produced a copy of the promotion order, promoting the above applicants as Fitter, Gr.II. This order is dated 8-11-1988. The preamble to the promotion order states as follows:

"The following Helper Khalasis scale 800-1150 (RP) who have passed the requisite Trade test for the post of Fitter/Pipe Fitter scale Rs.950-1500(RP) are hereby promoted to officiate as Fitter scale Rs.950-1500(RP)."

This order clearly states that the applicants mentioned therein had been promoted after having passed the necessary Trade test. It is the definite case of the applicants that they did not undergo any trade test except the one that was held on 13-8-1987 and 24-11-1987 and that had been considered to be the requisite trade test for promoting

most of the applicants during the pendency of this application. In view of this, the respondents themselves have treated the Trade Test held on 13-8-1987 and 24-11-1987 as the requisite trade test. Hence the contention of the learned counsel for the respondents that the applicants had passed only a local trade test cannot be sustained. Therefore, we hold that the applicants had passed the requisite Trade Test to enable them to be promoted. As mentioned earlier, the pattern of promotion to the post of Fitter, Gr.II is on passing of the Trade Test and on the basis of seniority in the grade of Senior Khalasi prepared divisionwise. At this stage, it is necessary to refer to another objection raised by the learned counsel for the respondents that the applicants had not challenged the seniority list. However, the learned counsel has not produced any seniority list of senior Khalasis prepared ^{di}visionwise for being promoted to the post of Fitter, Gr.II. In any

event, the applicants are only wanting promotion on the basis of their entry into the grade of Senior Khalasis after having passed the requisite Trade Test. Hence it is not necessary for the applicants to challenge the seniority list.

In the result, we allow the application and direct the respondents to promote the applicants, including those who were promoted as per order dated 8-11-1988, retrospectively with effect from 25-1-1988 when respondents 4 to 10 who are junior to the applicants, had been promoted, with all attendant benefits. With regard to applicants 1, 2, 3, 4, 6, 7, 8, 9, 13, 14, 15 and 17, revised orders promoting them retrospectively should be issued within a period of two months from the date of receipt of a copy of this order. With regard to the other applicants, viz., applicants No.5, 10, 11, 12, 16 and 18, the respondents are directed to promote them as Fitter, Gr.II retrospectively as directed above with effect from 25-1-1988 and give actual postings to them within a period of three months.

The application is allowed as above.

N.R. Chandran
(N.R.CHANDRAN)
JUDICIAL MEMBER

M.M. Singh
(M.M. SINGH)
ADMINISTRATIVE MEMBER.

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O.A./251/88


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

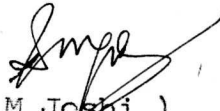
Hon'ble Mr. P.M. Joshi .. Judicial Member

16/12/1988

Heard learned advocates Mr. R.V. Deshmukh and Mr. B.R. Kyada for the petitioners and respondents respectively. The Misc. Application No. 953/88 for common application allowed. Applicant to carry out amendment within a week. Registry to do the needful. With this order M.A./953/88 stands disposed of.

In M.A./952/88, the applicants have not challenged the promotion but challenged the transfer of other persons who have been similarly promoted and asked for relief in terms of their being restrained. This is a separate cause and not a cause in the original application. The impugned orders are also dated 25.1.1988 relating to sub para A of para 6, accordingly, interim relief not merited and the same is rejected. Accordingly, the Misc. Application No. 952/88 stands rejected.


(P H Trivedi)
Vice Chairman


(P M Joshi)
Judicial Member

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