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(a)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCHO.A. No. 286/88
XXXXXXDATE OF DECISION 7.8.1991

Shri Henry Arthur

Petitioner

Mr. S.V. Raju

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Mr. B.R. Kyada

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

Henry Arthur,
Clerk,
Western Railway,
Rajkot.
(Advocate: Mr. S.V. Raju)

....Applicant.

Versus

1. Union of India,
Through
Secretary,
Railway Deptt.
Rail Bhavan,
New Delhi.
2. General Manager,
Western Railway,
Churchgate,
Bombay.
3. Divisional Mechanical,
Engineer,
Western Railway,
Rajkot.
4. Divisional Personnel
Officer,
Western Railway,
Rajkot.

(Advocate: Mr. B.R. Kyada)

... Respondents.

O R A L - J U D G M E N T

O.A. No. 286 of 88

Date : 7.8.1991.

Per: Hon'ble Mr. M.M. Singh

: Administrative Member

The short question in this original application filed under Section 19 of the Administrative Tribunals Act, 1985, is whether a government servant promoted on adhoc basis to a post in a cadre which is fed by two channels viz., Direct and departmental, ^{can} _{over him} claim to continue in the adhoc promotion post without any regard to the seniority of those who are above him in the list of seniority and eligible for promotion against the departmental promotion quota.

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2. The above question has arisen in the following manner :-

The applicant had joined the service of Western Railway as Cleaner in Class IV service. Thereafter he came to be promoted as Junior Clerk in the pay scale Rs. 825-1200/- in the year 1977. He was then promoted, on his own showing, on adhoc basis to the post of Clerk in the pay scale of Rs. 950-1500/- by order dated 15.11.1979 with effect from 3.10.1979, and remained in this adhoc position in the higher pay scale till he was ordered to be reverted to his substantive grade of Junior Clerk in the pay scale Rs. 825-1200/-, by office letter dated 30.3.1988.

It is averred in the application that though this order of reversion has been communicated to the applicant orally, the applicant has not yet been reverted, but there is likelihood of reversion in the near future.

It is the further claim of the applicant that in the post of Clerk grade Rs. 950-1500/-, he was allowed to cross Efficiency Bar also which made him completely suitable in all respects for the post to which he was appointed on adhoc basis.

3. The major facts in respondents' reply are to the effect that the cadre to which the applicant was promoted on adhoc basis has two feeding channels viz, Direct Recruitment whose quota is 66.2/3 % and Rankers Quota (to which the applicant herein belongs) 33.1/3 %. It is also averred in the reply that the applicant has right to go up on regular basis only against Rankers Quota, the feeding channel of the applicant. According to the respondents further averment, only 9 posts are available in the Rankers Quota and the applicant is at Sr. No. 22 in his seniority for promotion

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against Rankers Quota. The applicant therefore has no right to continue on regular basis in the promoted post over the right of persons who are senior to the applicant for appointment in the promotion post against Rankers Quota.

4. The applicant filed no rejoinder.

5. We heard Ms. Pragna Pandya for Mr. S.V. Raju learned counsel for the applicant and Mr. B.R. Kyada, learned counsel for the respondents.

6. From the above facts, it is clear that the applicant was given out of turn promotion on adhoc basis in the Rankers Quota against post which has two feeding channels viz, Direct Recruitment and Rankers in their given proportion 66.2/3% and 33.1/3% respectively. As others senior to the applicant will have prior claim to appointment against promotion quota, continuing the applicant in the promotion post would result in injustice to those who are senior to him in the Rankers Quota. This injustice cannot be ~~Caused~~ ^{allowing the} M ^{the} of the applicant & allowed by way of relief. By his reversion to his entitled rank as Junior Clerk in the pay scale Rs. 825-1200/-, a ^{senior to the applicant and therefore} person from the Rankers Quota entitled to promotion may get his right of promotion ~~satisfied~~.

7. In view of the above, the application is liable to be dismissed. We hereby do so. The rule is vacated with immediate effect. In case in the meantime the applicant has become senior and eligible for appointment to the post, the respondents will be at liberty to continue him in the post.


S. Santhana Krishnan)
Judicial Member

H. M. Singh
(M.M. Singh)
Administrative Member

M.A./876/88

in

C.A./286/88

(P)

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

12/12/1988

Heard learned advocates Mr. S.V. Raju and Mr. B.R. Kyada for the petitioner and respondents respectively. Mr. Kyada stated that the interim relief given by our orders dated 5.5.1988 does not automatically get restored with the restoration of C.A./286/88 which was dismissed for default on 29.9.1988. Subsequent to the dismissal for default, the respondents have passed a fresh orders dt. 8.11.1988 on which date on account of the dismissal, the petitioner was not protected, accordingly, there is merit in the contention of the learned advocate for the respondents that the interim relief earlier granted does not automatically restored. However, the petitioner has filed a fresh petition i.e. M.A./876/88 with copy to the learned advocate for the respondents on which on 28.11.1988, he had sought for time for filing reply which has not been done even on the date i.e. 12.12.1988 and learned advocate for the respondents seeks more time for filing reply. Learned advocate for the petitioner states that in that case, the petitioner has to be protected in terms of maintenance of status quo because no substitute has been appointed in his place. This has merit. Ad interim relief therefore is allowed in terms of the respondents not disturbing the status quo as of 12.12.1988 in terms of appointment of a substitute and to reply on interim relief within 10 days, The case be adjourned to 11th January, 1989 for orders.

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(P H Trivedi)
Vice Chairman

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

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

29/03/1989

Learned advocate Mr. S.V. Raju for the applicant wants one week's time for amending the main application. Mr. B.R. Kyada learned advocate for the respondents has no objection. Allowed. The case be posted on 13th April, 1989 for orders.

Pravin
(P H Trivedi)

Vice Chairman

SM
(P M Joshi)

Judicial Member

*Mogera