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CAT/J/13

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. / 490 of 1988

T.A. NO.

DATE OF DECISION 01-03-1996.

M.D.Gajjar

Petitioner

Mr.P.H.Pathak

Advocate for the Petitioner (s)

Versus

Union of India & ors.

Respondent

Mr.R.M.Vin

Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. N.B.Patel

Vice Chairman

The Hon'ble Mr. K.Ramamoorthy

Member (A)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

NO

Shri Manjibhai Dhanjibhai Gajjar,
Chargeman 'A' Carpenter (PGO),
W.R.Workshop,
Bhavnagar Para.

...Applicant.

(Advocate : Mr.P.H.Pathak)

Versus.

1. Union of India, Through :
The General Manager (W.R.),
Churchgate,
Bombay.
2. The Works Manager (W.R.),
Bhavnagar Para,
Bhavnagar.
3. The Chief Works Manager,
W.R.Loco Central Shop,
Ajmer (Rajasthan).
4. Shri N.N.Shah.
5. Shri Bhikabhai Ravubha,
C/o.W.R.Workshop,
Bhavnagar Para,
Bhavnagar.
6. Pratap Reddy.
7. Mason A.

...Respondents.

(Advocate : Mr.R.M.Vin)

J U D G M E N T

O.A.NO. 490 OF 1988.

Date : 1/03/1996.

Per : Hon'ble Mr.K.Ramamoorthy : Member (A)

The application is against the non-consideration of the applicant for the post of Junior Shop Superintendent.

2. The applicant, now a retired Railway employee, having retired on 30-4-1990, had initially joined the services of the Railway administration in the year 1948 as Khalasi and after passing through the ranks of unskilled,

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semi-skilled, skilled, highly skilled-II grades, had attained the Highly-skilled Grade-I by 8-9-1969. He was posted as Chargeman 'B' on 3-5-1972, and had even passed the selection examination in Carpenter Trade in 1977 his name getting included in the panel for the post of Chargeman 'B' Rate Fixer (Carpenter) vide order dated 5-8-1977 (Annexure-A/2). Thereafter, he was also promoted as Chargeman 'A' vide order dated 18-4-1989 on 'ad hoc basis' (Annexure-A/3). He has since continued in the scale (Rs. 550-750) since then. Meanwhile, though he was once ordered to be reverted to Chargeman 'B' vide order dated 8-4-1989 (Annexure-A/4), on review he was restored to the post of Chargeman 'A' "with immediate effect" on purely ad hoc basis, vide office order dated 13-4-1988 (Annexure-A/5). The reversion period was also condoned for the purpose of pay fixation vide order No. E.839/1 dated 9.6.1989, though no arrears were paid (Annexure-A/9, Page-66).

3. However, at the time of selection for the further post of Junior Shop Superintendent for which employees had been called up on 30.6.1988 for appearing in a test to be held on 14-7-1988, his name had not been included, and he has challenged his non-inclusion in the list of those called up for selection, even though, according to him he is the senior most Chargeman Grade 'A'.

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4. In their reply, the respondents have denied the charge of arbitrariness or discrimination and have averred that the applicant had never become regular chargeman 'A'. His promotion to Chargeman 'A' was purely on an ad hoc basis and therefore, he cannot claim to be senior on the ground of his ad hoc promotion. The promotion as Junior Shop Superintendent was confined to regular Chargeman 'A' and every one called for selection was senior to the applicant.

5. After going through the pleadings and the records, it is clear that the promotion of the applicant as Chargeman 'A' has been made on an ad hoc basis only as per the orders passed by the respondents. Appointments to post of Chargeman 'A' is made from the post of Chargeman 'B', which cadre is divided into different trades and according to the vacancies in the individual trade, the promotion is given according to seniority in that trade/skill. It is the claim of the applicant that at the time of restructuring, a post in Carpenter's trade could have been created in which case as per seniority the applicant could have got promoted. In para 6 (7) of the main application, the applicant has stated one of the ways to get a post created in Carpenter's trade also, as Chargeman 'A', specially since in the other trades, persons who had become Chargeman Grade 'B' later, have been regularly promoted. In the rejoinder, the applicant had explained the position as under :-

" That as per the restructuring order w.e.f. 1.1.94 in all the shops the higher grade posts were increased and available vacant i.e. in the Paint Shop, C & W Shop and Carpenter

and Carpenter Shop. That except the Carpenter Shop where the applicant was seniormost and required to be promoted as regular Chargeman 'A' and thereafter JSS, the respondents have not filled up the post. At that time, Shri Govind Manga was working as JSS and as per rule he was entitled for PCO posting. But if Shri Govind Manga is placed in PCO posting then the posting of JSS will be vacant and the applicant will get promotion. That as per the restructuring circular w.e.f. 1.1.1984, three posts of Chargeman 'A' on regular basis were available in the Carpenter Trade. But the Works Manager has under the pressure of Western Railway Mazdoor Sangh, not filled up the post of Carpenter Trade. That in other trades i.e. Paint and C & W, the posts were filled up and pursuant to that Shri N.N.Shah was given the benefits of restructuring. That Shri N.N.Shah was given promotion of Chargeman 'B' on 16.4.1986 and within 1 year he was given further promotion of Chargeman 'A' on regular basis i.e. from 15-1-1987 and thereafter he was called for selection to the post of JSS. It is pertinent to note that so far the seniority for the post of JSS is concerned, it is a combined seniority of all the trades i.e. Carpenter, Paint & C & W. As the regular promotions were granted in other trades, the junior most employees to the applicant those who have joined the services long back after the applicant, have received the promotion of Chargeman 'A' and JSS within short time. While with intention to deprive the applicant of the promotional benefits, the same practice is not followed in the Carpenter Trade."

6. The respondent's arguments centre round the plea that the applicant was never a regular promotee

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to the post of Chargeman 'A' and "those who hold the regular post are senior to those who held the post on ad hoc basis".

7. The fact that the applicant has been holding the post on ad hoc basis only had been notified in each one of the seniority lists. One such seniority published vide Shop Superintendent's Workshop, Bhavnagar letter No.E. 1030 dated 25.11.1985, has been produced as Annexure-R/12. His name had never appeared in the seniority list of Chargeman 'A'. He was only a confirmed High skilled Grade-I and even as late as 19-4-1988 (Annexure-R/2) he was still being considered for selection as Chargeman 'B'.

8. After going through the averments and pleadings it is clear that the basic grievance of the applicant arises from the fact that he was not considered for promotion on a regular basis even earlier.

9. As seen from the averments of the applicant himself both from the application and in the rejoinder filed, his grievance for being posted as Chargeman 'A' only on ad hoc basis arose in 1984 itself when according to him, a post could have been found from his trade when the restructuring was ordered.

In a matter like seniority where a number of other employees interests are involved including pleadings on matters of fact, limitation becomes a very important factor. Having failed to challenge the grievance which had admittedly arisen in 1984 itself

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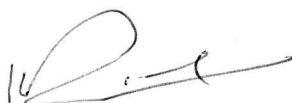
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it is now too late in the day to challenge it in 1988, for promotion denied in 1984. We find considerable merit in the arguments of the respondents that seniority lists having been published from time to time, showing clearly the status of the applicant, the applicant cannot ~~now~~ be allowed to challenge the present action of the respondents to fill in the posts of JSS which is to be drawn from the cadre of regular Chargeman Grade 'A' only.

The application therefore, fails on the ground of limitation, delay and laches as above.

No order as to costs.



(K. Ramamoorthy)
Member(A)



(N. B. Patel)
Vice Chairman

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