

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH
NEWWDXDXDX

(6)

O.A. No. 624 of 1988
~~XXX No.~~

DATE OF DECISION 30.9.1991.

Shri Vaghabhai Sursinh Baria PetitionerPetitioner in Person Advocate for the Petitioner(s)

Versus

Union of India & Ors. RespondentShri N.S. Shevde Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.S. Habeeb Mohammed : Member (A)

The Hon'ble Mr. S. Santhana Krishnan : Member (J)

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

Shri Vaghabhai Sursinh Baria,
C/O. Mr. Jitendra K. Ved,
376/B, Rly Colony,
G.L. Yard,
P.O. Godhra-389 001
DISTRICT : PANCHMAHALS

: APPLICANT

(Petitioner in person)

VS.

1. Union of India, Represented by
The General Manager,
Western Railway,
Churchgate,
BOMBAY -400 001.
2. Divisional Railway Manager,
Western Railway,
Vadodara Division,
Rly Yard Offices,
Pratapnagar,
VADODARA - 390 004.
3. Senior Divisional Electrical Engineer,
(TRD Section), Western Railway,
Vadodara Division,
Railway Yard Offices,
Pratapnagar,
P.O. VADODARA - 390 004.
4. Mr. O.P. Aagrwal,
Chief Traction Foreman,
Western Railway,
TRD Department, Rly. Yard,
Pratapnagar,
P.O. VADODARA - 390 004.

: RESPONDENTS

(Advocate : N.S. Shevde)

J U D G E M E N T

C.A.No. 624 of 1988

Date :

Per : Hon'ble Shri P.S. Habeeb Mohammed : Member (A)

This is an application filed by Shri Vaghabhai Sursinh Baria an employee of Western Railway as Electric Fitter in TRD Organisation of the Western Railway (Electrical Department), under Section 19 of the Administrative Tribunals Act 1985, praying for the issue of directions by the Tribunal that he be declared as duly promoted from a retrospective date

which should be with reference to his two juniors promoted to the higher grade of Rs.330-480/- (Old Scale), and for the payment of difference in pay with arrears from the retrospective date, and for the adjustment of his seniority in the higher grade above his two juniors who were promoted.

2. The facts as stated in the application are that, he has put in fourteen years of continuous service and is a permanent Railway Employee in the scale of Rs.260-400/- as Electrical Fitter. He had become eligible for promotion to the higher grade of Rs.330-480/- after passing the prescribed test. He was called to appear at such a test on 13.10.1986 held at the Railway Yard Office, Vadodara by respondent No.4 (whom he has cited by name Mr.O.P. Agarwal, Chief Traction Foreman, Western Railway.) There was no written paper and no practical test. It is stated in the application that questions were asked orally and no merit marks were assigned and no result had been declared till filing of the application. The test is stated to be a mere drama enacted to facilitate nepotic practices. Two of the applicant's juniors, Munshiram and Bernard Michael, who were educationally and otherwise less qualified than the applicant were selected. Though the applicant has challenged the decision of the authority by sending a representation, he has not been favoured with reply. The allegation of malafides is made by the applicant against respondent No. 4 whom he has cited by name, Shri O.P. Agarwal, Chief Traction Foreman, as he was one of the members of the panel which was conducting the interview. The applicant had filed earlier a case against the Railway and particularly respondent No. 4 in connection with his claim under the Payment of Wages Act. According to the applicant the 4th respondent bore ill-will because of to him this and other grounds, the applicant being aggrieved has filed the application before the Tribunal with the reliefs prayed for as mentioned earlier.

3. In the reply filed by the respondents it is stated that he is working as Line Man Grade III in the revised pay scale of Rs.950-1500/- under Senior Electrical Foreman (TRD), Godhra. The applicant was eligible for promotion in the post of Line Man Grade II in the revised pay scale Rs.1200-1800/- after passing the requisite trade test. He was called to appear for the test vide memorandum No.E/ELT/1130/10/5 dated 1.7.1986. In the reply it is denied that there was no written paper or practicals to be performed. It is also denied that the test was a drama enacted to favour certain individuals. The trade test was conducted by Asstt. Electrical Engineer (TRD) Godhra, who was assisted by CTFO, Godhra. The result of the test was that the applicant was declared to have failed whereas Shri Munshiram and Shri Bernard Michael were declared passed vide the result sheet notified by office letter No.E/ELT/1130/10/5 dated 24.11.1986. It is only those who have passed the trade test ^{who} for promotion, ~~accordingly~~ have been promoted. It is also denied that Shri O.P. Agarwal had any ill-will against the applicant. He was not one of the members of panel of officials conducting the interview or holding the trade test. The disposal of the claim of the applicant under the Payment of Wages Act, disposed of in the court of Civil Judge(S.D.) Godhra, had nothing to do with the issue involved in the present application. The applicant since he had not passed the trade test, has not been considered for the promotion and accordingly he is not entitled to any of the reliefs prayed for in the application.

4. There is a rejoinder filed by the applicant in which it is stated that no trade test was ever held on 13.10.1986 for the promotion of Line Man Grade III to Grade II. There is a reference to Railway Board's Circulars also on the subject of Compulsory Provision of Written as well as Oral Test. There is also a denial that the respondents published the result of the trade test as ^{stated} ~~held~~ by them in their reply, and only the juniors

(10)

to the applicant Shri Munshiram and Shri Michael were declared successful in the test. He reiterates that the 4th respondent Shri O.P. Agarwal, has taken hostile attitude towards him.

5. The applicant argued the case in person and stated that no proper trade test had been conducted and also emphasised that the 4th respondent had taken a hostile attitude towards him. Learned counsel for the respondents placed for our perusal the relevant orders calling for the trade test and the papers relating to the publication of the result of the trade test, and we have accordingly perused the same. No separate reply has been filed by the 4th respondent, Shri O.P. Agarwal, even though he was represented by counsel, but the counsel was not present when the case was taken up for hearing today.

6. After perusal of the application, the reply filed by the respondents, the rejoinder and other papers filed by the parties and after hearing the rival arguments, we find that the intimation had been given to the applicant for the trade test in memorandum No.E/TRD/1130/10/5 dated 1.7.1986. The letter states as follows :-

"A Trade Test will be conducted to fill in the vacancies of HS/Lineman Gr.I Scale Rs.380-560(R) and HS/Lineman Gr.II Scale Rs.330-480(R) arrising due to upgradation vide letter No.E/ELT/261/2/3 TRD dt.17.1.1986 and E/ELT/174/10/1 TRD dt.24.6.86. The list of employees who are eligible for the trade test of HS/Lineman Gr.I scale Rs.380-560(R) and HS/Lineman Gr.II and also the list of stand by candidates are enclosed.

The Trade Test will be conducted after 3 weeks notice period AEE(TRD)GDA and CTF(OHE)/S/VC are nominated to conduct the above Trade Tests."

We find that vide the List of stand by candidates who are to be in readiness for the Trade Test, the applicant's name is shown at Sr. No. 37. The record also indicates vide letter No.E/TRD/1130/10/5 dated 24.11.1986 that the applicant was declared to

have failed and the names of the two juniors to the applicant Shri Munshiram and Michael are mentioned in the result which reads as below :-

"The result of the trade test for the post of Sr.L/man Gr.II scale Rs.330-480 (R) are notified for information of the staff concerned.

| <u>Sr.No.</u> | <u>Name</u> | <u>Design</u> | <u>Scale</u> | <u>Working under</u> | <u>Result</u> |
|---------------|---------------|---------------|--------------|----------------------|---------------|
| 1. | Wagabhai S. | L/man Gr III | 260-400 (R) | OHE/GDA | Failed |
| 2. | Kamalsingh M. | " | " | OHE/BH | Failed |
| 3. | Munshi Ram R. | " | " | " | Passed |
| 4. | DrR.Michael | " | " | OHE/KSB | Passed |

The record clearly shows that the applicant was called for the trade test and there is nothing to show that the interview was irregularly conducted or that any other irregularity vitiated the selection. The respondents have clearly denied that the 4th respondent was member of the Selection Committee, though it had been stated by the applicant during the argument of the case that the fourth respondent had come and sat at the place where formalities relating to the selection were going on. But, in view of the clear denial in the reply, it is difficult to believe that the fourth respondent had anything to do with the selection. We are also not inclined to believe that the claim filed by the applicant for payment under Payment of Wages Act had prejudiced the fourth respondent or that he had something to do with the selection or that he was nursing any signs of hostility against the applicant. The mere allegation of malafides will not be sufficient to come to any kind of conclusion on the malafides. In this connection the guidelines as to allegation of the malafides have been laid down by the Lordships of the Supreme Court in Barium Chemicals Ltd. Vs. Company Law Board, AIR 1967 SC 295 at para 58 wherein it is stated as below :-

"As observed in Pratap Singh Vs. State of Punjab AIR 1964 SC 72 at pg. 81, an allegation as to bad faith or indirect motive or purpose cannot be held

established except on clear proof thereof. In the absence of any materials relating to the mala fides of the Board, and in particular, of materials to show that the order was passed at the dictate of the 2nd respondent, this part of the appellants' case must fail."

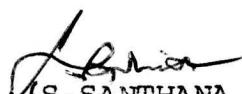
Also these guidelines have been quoted by the Lordships of the Supreme Court in Express Newspapers Pvt. Ltd. Vs. Union of India AIR 1986 SC 872 wherein at para 119 it is stated as follows :-

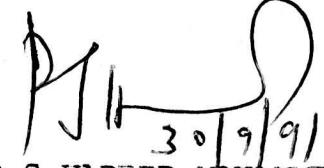
"In Dr. Ram Manohar Lohia Vs. State of Bihar, (1966) 1 SCR 709: (AIR 1966 SC 740), it was laid down that the Courts had always acted to restrain a misuse of statutory power and more readily when improper motives underlie it. Exercise of power for collateral purpose has similarly been held to be a sufficient reason to strike down the action. In State of Punjab Vs. Ramjilal, (1971) 2 SCR 550 : (AIR 1971 SC 1228) it was held that it was not necessary that any named officer was responsible for the act where the validity of action taken by a Government was challenged as mala fide as it may not be known to a private person as to what matters were considered and placed before the final authority and who had acted on behalf of the Government in passing the order. This does not mean that vague allegations of mala fide are enough to dislodge the burden resting on the person who makes the same though what is required in this connection is not a proof to the hilt, as held in Barium Chemicals Ltd. Vs. Company Law Board, (1966) Supp SCR 311 : (AIR 1967 SC 295) the abuse of authority must appear to be reasonably probable."

7. Therefore we find that the allegations of mala fides, have no legs to stand on, on the basis of the averments made in the application and further repetition in the rejoinder filed by the applicant. We find that the trade test had been conducted and the juniors to the applicant had come to the higher grade as they had passed the test. The record also indicates

that the applicant had failed in the test.

8. In the result we do not find that the applicant has been able to establish a case for granting him the reliefs as prayed for, and the application being without merits is accordingly dismissed with no orders as to costs.


(S. SANTHANA KRISHNAN)
Member (J)


30/9/91
(P.S. HABEEB MOHAMMED)
Member (A)