

(18)

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
**AHMEDABAD BENCH**

O.A. No. 631/88  
T.A. No.

DATE OF DECISION 1/12/1993

Shri Govind Galabhai Chauhan Petitioner

Shri P.H. Pathak Advocate for the Petitioner(s)

Versus

Union of India and others Respondent

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

CORAM :

The Hon'ble Mr. N.B. Patel

Vice Chairman.

The Hon'ble Mr. V. Radhakrishnan

Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
  2. To be referred to the Reporter or not ?
  3. Whether their Lordships wish to see the fair copy of the Judgement ?
  4. Whether it needs to be circulated to other Benches of the Tribunal ?
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Govindbhai Galabhai Chauhan  
ELF (P) HSK II, Morbi Workshop  
Morbi

Applicant

Advocate Shri P.H. Pathak

Versus

1. Union of India and Others  
(Notice to be served through  
Chief Electrical Engineer  
Western Railway, Old Building  
Churchgate Bombay.

2. The Works Manager  
(Western Railway)  
Bhavnagar Para, Bhavnagar.

Respondents

Advocate Shri B.R. Kyada

J U D G E M E N T

In

O.A. 631 of 1988

Date: 1/12/1993

Per Hon'ble Shri V. Radhakrishnan

Member (A)

The applicant, who was working as Highly Skilled Khalasi (H.S.K.-II) under the Control of respondent no.2 at Morbi at the time of filing application, challenges the non-granting of promotion to him to the post of HSK I (ELF) (P) Grade I, though he was declared as passed in the trade test. It is alleged that authorities have harrassed him as he is a Scheduled Caste candidate. He has alleged that the respondents have ignored the right of the applicant for promotion to the post of HSK ELF (P) Grade I.

2. The applicant joined the Railway Service as Khalasi in 1976. He was promoted as Fitter in the year 1982. He was then transferred to Morbi. He was called for trade test for H.S.K. Grade II and on passing the same, he was posted as H.S.K. II with effect from 1-1-1984, Annexure A. The applicant was called for trade test for H.S.K. Grade I and he was declared passed in the same vide AEE (W) office letter dated 16-12-1987, Annex.R-1. The contention of the applicant is that he should have been given promotion to the post of H.S.K. ELF (P) Grade I on the date of passing the test i.e. 16-12-1987. The applicant represented that he belonged to Schedule Caste and was a native of Morbi and he should be promoted and posted to Grade I at Morbi and as the authorities did not promote him at Morbi, he has filed this present application. The applicant has pointed out that as per the policy of the Government and the Railway Board Schedule Caste employees should be granted promotion at their native places. The applicant's representation for his posting at Morbi on the promotional post was not replied to by the administration. Advocate's notice was then served on them on 15-4-1988. The applicant's case is that, prior to his passing the trade test for H.S.K. Grade I one such post was available at Morbi Workshop which was occupied by a General Category candidate and one more post of Grade I was created in the Workshop <sup>later</sup>. The applicant states that this vacancy should have been given to him as a Schedule Caste candidate as per Roster Point. Instead of giving promotion to the applicant, one Shri Sashikant, was transferred with effect from 29-1-1987 Annexure A-3. The applicant alleges that this was done

to accomodate Shri Sashikant who is a General Category candidate, by ignoring the claim of the applicant who is Scheduled Caste candidate.

3. The contention of the applicant is that vacant posts of ELF Grade I were available at Jamnagar and Hapa and the applicant could have been accomodated by transferring one post to Morbi Workshop. The applicant has quoted the examples whereby posts were transferred to Morbi Workshop from outside to accomodate certain persons. He has quoted specifically the case of Manharlal Panchal who was adjusted in Morbi itself even though he was originally transferred to Bhavnagar on promotion to ELF Grade I. Similiarly two persons, Chagganlal and Ramesh who accepted promotion outside Morbi Workshop, were granted promotion at Morbi itself.

Annex. A 5. A 6

(Annex. A-7). In view of this, the applicant represented to authorities to promote him at Morbi Workshop itself in the Grade of ELF Grade I, by transferring one post from Junagadh or Hapa. This was not acceded to by the authorities. On this count the applicant claims that he was discriminated against by not giving him any concession as a Schedule Caste candidate. The applicant challenges the promotion of General candidate Shri Sashikant on the ground that he was promoted in the vacancy to be filled in by Schedule Caste candidate depriving the applicant of the promotion. The applicant has claimed the following reliefs:-

- (a) That the Hon'ble Tribunal be pleased to direct the respondents to grant promotion to the applicant as H.S.K. ELF (P) Grade I i.e. ELF (P) at Morbi Workshop.

- (b) The respondents should be directed to grant the benefits of promotion as ELF (P) Grade I with effect from 1-1-1984 as it was granted to the other similiarly situated employees in light of the policy of the Railway Board.
- (c) Be pleased to declared the inaction on the part of the respondents of not granting the promotion to the applicant after his passing trade test for Grade I and granting promotion to the other employees at Morbi Workshop by transferring the post as discriminatory and violative of Article 14 & 16 of the Constitution of India.
- (d) Any other relief to which this Hon'ble Tribunal deems fit and proper in the interest of justice together with costs.

4. The respondents have contested the claim of the applicant. They have, of course, admitted that he had passed the trade test in December 1987, but contended that he was not promoted as vacancy was not available and the applicant was also not the senior-most amongst the Reserved Community candidates and two persons were senior to him namely, Shri Lalji, and Nanji D. . They have also stated that minimum service of two years is required as a qualification for getting promotion. They have stated that the applicant was promoted as ELF Grade- II at Morbi Workshop vide office letter dated 18-11-1986, and, as such, he would become eligible to be considered for promotion from 18th November 1988 and not earlier. They have contended that the mere fact of passing trade test is not enough and it cannot be a matter of right to get promotion to Grade I on passing of trade test. In so far as the question of providing a Schedule Caste employee promotion in his own

(Annex. A.)

station is concerned, it is stated by them that it is subject to a post being available at the station. Insofar as transfer of post in order to accommodate the applicant is concerned, they have stated that there was a ban on filling of vacancy in Bhavnagar Group of Workshops and hence no transfer of post was possible. Vacancies were only at Junagadh and at Hapa Workshops and not at Morbi. The Chief Engineer had also ordered vide his letter dated 13th October 1987, that no vacancy should be filled in at both the Workshops. Further, three persons senior to the applicant were awaiting postings and the applicant had to await his turn. Insofar as the promotion of Chagganlal Ramesh and Lalitray N. and Chaniyara are concerned, it is stated that they were promoted to Grade I post at Morbi Workshop against upgraded/reclassified posts with effect from 1-1-1984 and it was not a question of regular promotion. Accordingly, the respondents ~~have~~ deny that any injustice had been done to the applicant.

5. The applicant has filed rejoinder. The applicant has contested the claim of the respondents that he was not promoted due to non-availability of vacancy. According to him, the trade test is conducted only when vacancies are available and promotions are required to be given. He claims that vacancies were available at Hapa or Junagadh and applicant also denies that any senior employee to the applicant in the Roster System was awaiting promotion. Regarding Shri Lalji Vela it is

stated by him that he was called for trade test twice and after he passed the test on 3-6-1987, he refused promotion and thereafter the applicant was called for trade test. Shri Lalji Vela was again given chance for promotion within six months and posted at Bhavnagar. Sofar as Nanji D and Govind J. are concerned, the former had refused the promotion and the latter was already promoted in 1986. The applicant also claims that the respondents had not followed Roster Points for promotion to Grade I. The applicant has also contested the respondents' claim that two years service is necessary for promotion to higher Grade. He has quoted the case of Govind Jasa who was promoted to Grade II in 1986 and again promoted to Grade I on 28-1-1987. Similiarily, Shri Panchal was given promotion in Grade II in November 1986 and was promoted to Grade I within a few months in January 1987. The applicant was promoted to Grade II on 18-11-1986 but with retrospective effect from 1-1-1984. The applicant has quoted Annexure R-3 where in three posts were said to be vacant and one was reserved for Schedule Caste candidate. The applicant in his representation has alleged that other persons ~~who~~ were promoted at Morbi itself by transferring the posts from outside while he himself was not promoted even after he made several requests to the authorities. Regarding the ban on promotions, the applicant has quoted the instances whereby Shri Manharlal Panchal Shri Jadeja and Shri Lalubhai R. were promoted to the higher Grade during this period. The claim of the applicant was not at all considered for promotion.



The applicant was promoted by the order dated 10-12-1989 and transferred to Hapa. The applicant reiterated his request for adjusment at Morbi itself if possible. The respondents then cancelled the order of promotion and posted him to Hapa in the same grade of Grade II. This was inspite of the fact tht the applicant was willing to join at Hapa in the promotional post if it was not possible to adjust him at Morbi. A case of victimisation and discrimination is alleged by him and is pleading that while other persons, who had refused promotions, were given next chance within six months, he was not considered at all for promotion even after one year and even his promotion order which was issued was cancelled without any show cause notice.

7. We have heard Mr. Pathak for the applicant. He vehemently argued that the applicant was discriminated against and not promoted even after he had passed the trade test. Persons are called for trade test after assessing the number of vacancies and all persons who pass the trade test are immediately promoted and posted to the Higher Grade. Even when the applicant was declared as passed in the trade test and the result was declared on 16-12-1987 the applicant was not promoted inspite of several representations made to the authorities. In this connection he also produced the copy of the Divisional Chief Mechanical Engineer (W) letter No. EW/1130/0/4 dated 2-9-1986 wherein it is clearly stated that the number of candidates to be called for trade test should be equal to the number of vacancies assessed. It has also been



mentioned that the result of each batch, for which the trade test is held, should be published within a week of the completion of trade test without waiting for approval of the Chairman of Trade Test Panel and also without waiting for the series of the tests to be completed. The eligible candidates should also be promoted provisionally on the basis of having passed the trade test subject to the approval of test by the competent authority. Therefore, Mr Pathak argued that, immediately after the result of the trade test was announced, the applicant should have been promoted, especially in view of the fact that in the letter of the .A.E. Bhavnagar, dated (Annex.R-3) 2-11-1987, it is clearly mentioned that one SC vacancy was available and applicant was the only candidate for the same. He also mentioned that while there were three vacancies, as informed by the authorities, only two persons including the applicant, had passed the trade test and both including the applicant, should have been normally promoted. While the other person Shri K. Laxman was promoted the applicant was not promoted. Shri Pathak also argued that once the promotion order of the applicant was issued it should not have been cancelled without giving show cause notice to the applicant and hence the cancellation of the promotion order was illegal and void.

8. Shri Kyada did not put forward any oral arguments

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stating that the Tribunal may decide the case keeping in view the reply filed by the respondents.

9. It is seen from the record that the applicant was called for trade test for ELF Grade I as per letter dated 2/7-11-1987 (Annexure R-II) and in that the only candidate in the SC Category is the applicant. The result of the trade test was announced on 16-12-1987, Annexure R-1, and the applicant was placed at second rank amongst the passing candidates. It is the contention of the applicant that number one candidate Kanu Laxman was promoted on 16-9-1988 and in the other clear vacancy he could have been promoted even according to the General Seniority. The applicant was actually promoted on 10/12-1-1989. The respondents contend that orders banning promotions in Gondal and Morbi Workshops were issued on 13th October 1987, Annexure R-5. If any ban order was effective against promotion, it is not clear as to how Kanu Laxman was promoted on 16-9-1988. After the applicant was issued promotion order in January 1989, he gave a representation Annexure A-9, that the post of ELF Grade I should be transferred to Morbi and he should be given promotion there itself. When the Morbi Workshop was closed the applicant gave an application dated 24-5-1990 that he was prepared to go to Hapa on promotion to Grade I, Annexure A-3. But after the establishment at Morbi was closed in June 1990, the applicant was transferred and posted at Hapa in his original Grade of ELF Grade II and on the same date promotion order issued

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earlier to Grade I was cancelled. In spite of his willingness his promotion order was cancelled and he was posted on the same grade of Grade II to Hapa. On perusal of the above narration, it is noted that two vacancies were available at the time when the result of the trade test for ELF Grade I was declared in December 1987 and the other person who had passed the test along with the applicant was promoted on one of the vacancies on 16-9-1988. In the normal course, the applicant who was second in the list could have been promoted with effect from the same date. But this was not done in spite of repeated representations. The respondents have stated in their reply that as the applicant had not completed two years service in the lower Grade, he was not promoted to Grade I. Even taking into consideration the date of promotion order 18-11-1986 (even though he had been given promotion with effect from 1-1-1984) he completed two years of service in November 1988 in the grade of HSK II. Even as per respondents contention the applicant should have been promoted on 18th November 1988. In actual fact his promotion order were issued in January 1989 only which was later cancelled on 9-7-1990. No opportunity nor show cause notice was given to the applicant before cancelling the order of promotion. In fact the applicant had filed Miscellaneous Application No. 275/90 asking for direction from the Tribunal to allow the applicant to resume his duty on the promotional post of ELF Grade I and also declare the transfer of the applicant at Hapa in the Grade II as arbitrary and illegal and the same was not granted by the Tribunal as the applicant had already


joined the lower post at Hapa after the promotion order was cancelled. In the above facts and circumstances, we are clearly of the opinion that order promoting the applicant should not have been cancelled. The question is then on which date the applicant should be given the benefit of promotion. We are not inclined to give such benefit to the applicant with effect from any date earlier than the date on which he completed two years service on the post of HSK II even assuming that some others were promoted to H.S.K. I post before completing two years on H.S.K. II post. There is no material before us to know as to in what circumstances such persons were promoted to HSK I post before they became eligible for promotion, even assuming that there were such cases. Since two years service as H.S.K. II is required for being eligible for promotion as H.S.K. I, we are not prepared to grant benefit of promotion to the applicant with effect from any date prior to 18-11-1988 and we see no reason why he should not be given the said benefit <sup>from</sup> on 18-11-1988.

10. Accordingly, we allow this application to the extent of holding that the applicant is entitled for promotion to H.S.K. I with effect from 18-11-1988 and direct the respondents to promote the applicant to H.S.K. ~~ECF~~ (P) Grade I post with effect from 18-11-1988 with all consequential benefits including the arrears consequent upon re-fixation of his pay

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on the promotion post with effect from 18-11-1988. The respondents are directed to comply with the above directions within a period of three months from the date of the receipt of a copy of this order. No order as to costs.

  
(V. Radhakrishnan)  
Member (A)

  
(M.B. Patel)  
Vice Chairman.

\*AS.



Date	Office Report	ORDER
16.6.94.		<p data-bbox="621 287 1611 539">On a copy of M.A.being furnished to Mr.P.H.Pathak, he waives service. With his consent, <sup>the</sup> time to comply with the direction in judgment is extended till 18.7.1994. No further extension of time will be given. M.A./307/94, stands disposed of.</p> <div data-bbox="610 553 889 699"> (K.Ramamoorthy) Member (A)</div> <div data-bbox="1255 579 1511 739"> (N.B.Patel) Vice Chairman</div> <p data-bbox="610 805 683 845">ait.</p>