

IN THE CENTRAL ADMINISTRATIVE TRIAUNAL
AHMEDABAD BENCH

O.A. No. 657/88
T.A. No.

DATE OF DECISION 1/12/1993

Shri Lakubha M. Jadeja 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 ?



Lakhubha M. Jadeja
Railway Workshop (W.R.)
Morbi

Applicant

Advocate Shri P.H. Pathak

Versus

1. Union of India
notice to be served through
the General Manager, Western
Railway, Churchgate, Bombay.

2. Works Manager, Railway Workshop,
W.R. Bhavnagar para, Bhavnagar

Respondents

Advocate Shri B.R. Kyada

JUDGEMENT

In

O.A. 657 of 1988

Date: 1/12/1993

Per Hon'ble Shri V. Radhakrishnan Member (A)

The applicant joined the Railways a Kahalasi on 14-10-1960. He was promoted as Skilled Trimmer in 1975. He was called for trade test for the post of H.S.K. II and H.S.K. I vide Annexure A. The applicant appeared for the test and the test was held only for H.S.K. II. The result was declared in January 1986, Annexure A-1. The applicant was fourth among those declared as passed. Four persons qualified in the test. The grievance of the applicant is that while three other persons

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who qualified along with him in the test for HSK II were called for trade test for promotion to HSK I, the applicant was not called for and hence he alleges discrimination. The allegation is that as he took active part in union activities, he was victimised and was, therefore, not called for the trade test for H.S.K. I. He was also not promoted as H.S.K. II even though he had passed H.S.K. II test. All his colleagues who had passed were promoted in February 1986, Annexure A-3. All the three persons were called for trade test for H.S.K. I and promoted as such vide order dated 18-9-1986 Annexure A-4. It is the contention of the applicant that even though vacancies were available, the applicant was not called for trade test for H.S.K. I ~~and~~ as such the action of the respondents is alleged to be arbitrary and violative of Article 14 of the Constitution of India. It is the contention of the applicant that 12 posts of HSK I and 12 posts of H.S.K. II were available in the Paint Shops of Morbi Workshop. Even when the applicant was working in Trimming Shop, he could be considered for vacancy in Paint Shop also. One post of HSK I in Trimmer Shop in the category of Cobbler was also vacant. Inspite of this, the applicant was not promoted to H.S.K. II and was not called for trade test for H.S.K. I even after the matter was represented by him. The applicant was given promotion of H.S.K. II Trimmer from 15-4-1987, Annexure A-5. The grievance of the applicant is that he was not given promotion from the date his colleagues were given the same.

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Another allegation of the applicant is that he was not given benefits of Railway Board letter dated 16-11-1984. According to the applicant, this circular of the Railway Board enables employees to be promoted to higher post on regular basis without regular selection test on the basis of scrutiny of service record. The applicant was working as ~~Skilled~~ Trimmer since 1975 and he was due for promotion to the post of H.S.K. II, ~~as~~ selection post. Vacancies were available in H.S.K. II and I. Benefits of restructuring should have been given to the applicant from 1-1-1984. In other words, the applicant should have been promoted as H.S.K. II with effect from 1-1-1984. The contention of the applicant is that the post of Mistry equivalent to H.S.K. I was available since 1984 and the applicant should have been given pay scale of H.S.K. I Mistry but the respondents down-graded the post to that of H.S.K. II at a latter date. The applicant performed duties of Mistry as there was no supervisor in the section and was paid ~~of~~ ~~under~~ lower rate of pay of H.S.K. II. The applicant has also quoted examples of some other employees who were given the benefits of restructuring from 1-1-1984. His allegation is that by pick and choose policy the respondents had denied the benefit of promotion to the applicant. The case of the applicant is that he should be regularised to the post of Mistry in the higher scale and respondents' action in down grading the post to H.S.K. II and posting the applicant to that post was arbitrary and illegal and hence the applicant has prayed for the following reliefs :-

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1. To direct the respondents to consider the applicant as promoted to H.S.K. I and H.S.K. II posts from the respective dates on which his co-workers were promoted to the said posts.
2. To direct the respondents to grant to him benefits of restructuring on the basis of the circular issued by the Railway Board with retrospective effect i.e., with effect from 1-1-1984.
3. To direct the respondents to grant time scale pay and all other allowances to the applicant as per post of Mistry since he was performing the duties of Mistry.

The respondents have contested the claim of the applicant. They have stated that even though the applicant had passed the trade test for H.S.K. Trimmer Grade II, there was no vacancy. It is the contention of the respondents that the applicant was called for trade test for H.S.K. wrongly. There was no post of H.S.K. Grade II in Trimmer Section and hence the applicant could not be promoted. The other persons who were trade tested were in separate trades and in their avenue of promotion. They have stated that the promotions in the Paint and Trimmer Shops are separate and the seniority is also separate. The employee who is promoted as Cobbler/Skilled Trimmer cannot claim promotion for the post of H.S.K. II & I in Paint shop. As per the avenue of promotion he cannot claim promotion in the Paint Shop. They also denied the existence

of H.S.K. I in Trimmer Shop in the category of Cobbler. There was no post of H.S.K. I available and hence the question of promoting him to that post did not arise. So far the mistry post is concerned it fell vacant on 31-10-1986 and this post was down-graded to H.S.K. II Trimmer and the applicant was promoted on 13-4-1987, Annexure R-8. As regards the applicant's claim for getting benefit of the restructuring scheme the respondents have denied the said claim. They have also denied the applicant's contention that promotion to H.S.K. I could be done without conducting trade test. They have also denied the existence of vacancies in H.S.K. I and II. It is stated that the applicant was not eligible for the post of H.S.K. I as he had not completed two years service required for the higher post. The post of mistry was not available from 1984 but only from 31-10-1986. As the other employees were all senior to him, they were given the benefit of resturcturing in their respective trades. The applicant was not eligible for promotion.

In the rejoinder, the applicant has contested the claim of the respondents that there was no vacancy in H.S.K. I & II. One post of H.S.K. II was available and the applicant was only singled out and not promoted. The applicant has referred to Annexure R VII which reveals that sufficient number of posts in H.S.K. II was available and as per up-gradation formula one post of H.S.K. I was

to be created. He has also pointed out that one post of H.S.K. II was available from 20-5-1980 when one Shanker H.S.K. II died. It is also contended by the applicant that one Adam Jaising who was trade tested for H.S.K. II along with the applicant was further called for trade test for H.S.K. I and promoted as such in the vacancy caused by the promotion of Motibai as chargeman. The applicant was ~~also~~ not called for trade test for H.S.K. I even though his colleagues were called. He has denied the contention of the respondents that he was wrongly called for the trade test for H.S.K. Grade II. The applicant has also contested the contentions of the respondents that there are different promotion avenues for employees. He has quoted the examples of the employees who were promoted and given benefit of restructuring. He has contested the plea that persons working in the Trimming Section cannot claim promotion in Paint Shop. The applicant has questioned the condition of minimum service of two years in H.S.K. II for promotion to H.S.K. I. He has quoted the examples of Pravinsinh K. and Mohammed H. who were given benefit of restructuring. He has also asked the respondents to produce the seniority list.

Heard Mr. Pathak for the applicant. Mr. Kyada for the respondents rested on the written statement.

Mr. Pathak contended that as per Government Order

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issued on 15-3-1983 a Skilled trimmer on passing the prescribed trade test had to be promoted as H.S.K. II. He argued that the selection test should have been immediately held after the issue of the aforesaid letter. In actual fact the test was held on 8-11-1985. The applicant and other four persons had cleared the test. While the applicant's colleagues were promoted to H.S.K. II with effect from 27-2-1986 (Annexure A-3) the applicant was not promoted along with them. There was no reason not to promote the applicant who had also passed the same trade test. Mr. Pathak's contention is that vacancy of H.S.K. II was available and applicant should have been promoted along with others. The contention of the respondents that no vacancy was available to promote the applicant. Mr. Pathak further argued that the other persons were promoted to H.S.K. II and were further called for trade test for H.S.K. I and were promoted to that grade as per order dated 18-9-1986, Annexure A-4. The applicant was not called for the trade test of H.S.K. I hence Mr. Pathak argued that the applicant was victimised for his trade union activities and denied promotion. Mr. Pathak also argued that the Trimmer and Paint Shops are considered as one for the purpose of seniority and promotions, while the respondents contend that the applicant was not promoted as there were no vacancy in Trimmer Shop. **Mr.** Pathak referred to Annexure A-2 ^{R-VII}

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produced by the respondents and stated that clear vacancies were available in the sanctioned cadre in the Trimmer Shop. As per col. 7 of the statement, one post of H.S.K. I and two posts of H.S.K. II were available and one post of H.S.K. II was to be upgraded to H.S.K. I. Therefore, not only the applicant should have been promoted to H.S.K. II he should have been called for the trade test for H.S.K. I and promoted to that post along with his colleagues. Ultimately the applicant was promoted to H.S.K. II on 15-4-1987 by down-grading the post of Mistry Annexure A-5. Mr. Pathak vehemently argued that the applicant should have been promoted to H.S.K. II with effect from 1-1-1984 itself on the basis of restructuring order issued by the Railway Board on 16-11-1984. Not only he was not given the benefit, he was denied the promotion on the date his colleagues were promoted. Mr. Pathak also stated that by working in the post of H.S.K. III which was down graded from the post of Mistry which was in the scale of H.S.K. I the applicant was burdened with full responsibility of the job of Mistry (equivalent to H.S.K. I) while he was actually paid as H.S.K. II. The action of the respondents to pay the lower scale of pay for higher grade could only be termed as arbitrary. Actually the applicant should have been promoted to the post of Mistry in the Grade of H.S.K. I while he performed the duties of Mistry. He also contested the claim of the respondents that the applicant had not completed minimum period of service in lower grade of H.S.K. II for promotion

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to H.S.K. I. In actual fact one person Shri Pragi Gagji was promoted to H.S.K. I even though he had completed about 7 months only in the lower grade. I

It is seen that the applicant was trade tested for H.S.K. II along with his colleagues and the fact that he was called for trade test indicated that vacancy was available in that Grade as pointed out by Mr. Pathak. According to the Railway Circular dated 2-9-1986 regarding trade test, the number of candidates to be called for trade test should be equal to number of vacancies assessed. It is also seen that while all the other colleagues of the applicant were promoted, the applicant was the only person left out. The contention of the respondents is that vacancy for H.S.K. II were not available but it is seen from the Annexure R-VII, enclosed with the written statement of the respondents, that vacancies were available in the Trimming Shop for both H.S.K. I and H.S.K. II. In fact one clear vacancy was available in H.S.K. I and two in H.S.K. II. Hence the respondents' contention that vacancies were not available cannot be accepted. Once the applicant passed the trade test for H.S.K. II he was entitled for promotion to that grade immediately thereafter and atleast from the date when his co-employees got the promotion i.e. from 27-2-1986. So far as the question of not calling the applicant for trade test

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for H.S.K. I is concerned, again the contention of the respondents that there was no vacancy in H.S.K. I and applicant should have completed two years in H.S.K.II to be eligible for being called for the trade test does not hold water as vacancies were available in the higher grade of H.S.K. I and other employees with less experience were called for trade test for H.S.K. I and thereafter promoted to H.S.K. I. In fact, the applicant was promoted to H.S.K. II by down-grading the post of Mistry H.S.K. I from 15-4-87, Annexure A-5. There cannot be any doubt that if before this date (15-4-1987) the applicant had passed Trade test for H.S.K. I and if the post of Mistry was not down-graded to H.S.K. I, the applicant would have earned promotion to H.S.K. I from 15-4-87. The applicant has alleged that down grading of the post of Mistry was done only to deny promotion to him, i.e. for extraneous reasons. The respondents have not disclosed the reasons for down grading nor justified the down grading by showing any Rules in that connection. We cannot, therefore, brush aside the applicant's plea that the down-grading was wrong. The question therefore is whether the applicant can be held to be eligible for promotion to H.S.K. I from 15-4-1987. It is true that he had not passed selection test for H.S.K. I by that date but then also the record shows that if he was promoted to H.S.K. II with effect from 27-2-1986, he ought

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to have been called for H.S.K. I trade test when others who had not completed two years of service on H.S.K. II post were called for the said test. Since the work of Mistry was taken from the applicant right from 15-4-1987 it must be deemed, in the circumstances of the case, that he would have passed the test for H.S.K. I if he had been called for the said test when others similarly situated to him were called for the test. We, therefore, hold that the applicant was entitled to promotion to H.S.K. Grade I with effect from 15-4-1987. Hence we pass the following order.

O R D E R

Application is allowed. The respondents are directed to grant promotion to the applicant to the post of H.S.K. II with effect from 27-2-1986 which is the date on which his colleagues who passed the trade test along with him were promoted and he is entitled to and directed to be given promotion to the post of Mistry i.e. H.S.K. I from 15-4-1987 when the post of Mistry was down graded to H.S.K. II and the applicant was posted thereto. He is also entitled to and hence directed to be given consequential benefits including refixation of pay as H.S.K. II and H.S.K. I and as he has already retired voluntarily on 30-6-1990 he will also be given consequential pensionary benefits based on the refixation of his pay on his promotion. No order as to costs.

Orl
(V. Radhakrishnan)
Member (A)

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(N.B. Patel)
Vice Chairman