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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 698 of 1988
T.A. No.

DATE OF DECISION 3rd November 1992

Shri J.M. Patel Petitioner

Shri B. B. Gogia Advocate for the Petitioner(s)

Versus

Union of India and Ors. Respondent

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

CORAM :

The Hon'ble Mr. N. V. Krishnan

Vice Chairman

The Hon'ble Mr. R.C. Bhatt

Member (J)

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 ? ✓

Shri Jasbhai Manibhai Patel,
Railway Quarter No. M/49,
Railway Station,
Morvi

Applicant.

Advocate Shri B.B. Gogia

Versus

1. Union of India
Owing and Representing
Western Railway
Through General Manager
Western Railway,
Chruch gate, Bombay 400.020

2. Divisional Railway Manager,
Western Railway,
Kothi Compound,
Rajkot.

Respondents.

J U D G E M E N T

In

O.A. 698 of 1988

Date : 3rd Nov. 1992.

Per : Hon'ble Shri N.V. Krishnan Vice Chairman.

Shri B.B. Gogia for the applicant

Shri B.R. Kyada for the respondents.

1. The applicant is aggrieved by the order
dated 13-10-1988 of the second respondent (Annexure A-11)
by which he was reverted as SOSR Mistry -

from the post of IOW Grade III, on which he was officiating on purely adhoc basis. He has filed this application for a direction to quash this order and to declare that he should be treated as having held the post of IOW Grade III continuously with all consequential benefits.

2. His grievance has arisen in the following circumstances.

2.1 The applicant joined railway services as a works Mistry after proper selection and training. He was appointed on 3-10-1958 in the Rajkot Division which for all purposes is his seniority unit.

2.2 He was promoted on ad-hoc basis as Inspector Works Grade III for short spells on earlier occasions with which we are not concerned.

2.3 By the Annexure A-9 order dated 30-6-1976 the applicant who was temporarily working in the Baroda Division, was declared surplus and sent back on transfer to his parent Rajkot Division as a Mistry. Since then he has been working in the open line in Rajkot Division.

2.4 The applicant was promoted by the order dated 14-12-1979 (Annexure A-10) of Divisional Superintendent, Rajkot, on adhoc basis, to officiate as additional IOW Grade III vice Shri H.L. Verma, who was transferred to Kalol. The applicant was working in this capacity when the impugned order dated 13-10-1988 (Annexure A-11) was

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passed by the DRM (E) Rajkot reverting him to the original post of SOSR Mistry in the Rajkot Division

2.5 He states in his application that his juniors in service K.G. Sharma, MR Randave, R.S. Bhatnagar B.B. Marwa and L.R. Chandra are still functioning as IOW Grade III while he alone has been reverted. The applicant has produced ~~at~~ Annexure A-13 which is a seniority list of SOSR Mistry of the Rajkot Division, as on 1-7-1987 to establish his higher seniority over these persons. The first three persons who were sent on deputation to the Survey and Construction Department were promoted as IOW Grade III and are still continuing. The other two persons were sent on deputation to Baroda Division as Mistry and were promoted there on adhoc basis as IOW Grade III and still are continuing. The applicant contends that his reversion, if necessary, should have been effected as a last resort after reverting his juniors.

2.6 I In support of his contention he has raised the plea that for the purpose of the promotion, the Railway Board has ordered that a combined Seniority list of all the open line as well as Survey and Construction Department should be prepared, so that there is no disparity in the prospectus of promotion of open line staff and the Construction Staff. A circular dated 13-3-1972 of the Railway Board has been filed by the applicant along with his rejoinder and marked as Annexure A-1. We are referring to this as Annexure A-17 as

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documents upto Annexure A-16 have already been filed with the original application.

3. The applicant has therefore prayed that the impugned Annexure A-11 order should be quashed and he should be declared as working continuously as IOW Grade III.

4. The respondents have filed a reply and contended that the applicant is not entitled to any relief. They state that the applicant was reverted because five regularly appointed IOW Grade III apprentices have to be given posting in the Rajkot Division after the completion of their training. Hence, the applicant who was the junior most ~~ad~~hoc promotee, was reverted to his original post of Mistry. It is categorically stated that none of the applicant's junior is working as IOW Grade III in the Rajkot Division. The junior persons about whom the applicant has made reference are working in other establishments, which are not under the control of the DRM Rajkot Division.

5. We have perused the records and carefully considered the submission of the parties. The learned Counsel for the applicant has relied on the Annexure A-17 of the Board to the General Managers. That OM dated 13-3-1972 reads as follows :

U "Reference correspondence res~~is~~ting with your replies to Board's letter of even number dated 15-4-71

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The Board have considered the matter and decided that there should be a combined cadre comprising the Staff in the Open line as well as in the Survey and Construction to ensure that there is no disparity in the prospects of promotion between the open line and the construction staff. There is, however, no objection to allow to the staff in the Survey and Construction Department, promotions to one grade higher than on the open line, in the exigencies of work. This benefit of one grade higher shall not be taken into consideration for any purpose, including eligibility for selection to Class II posts.

2. The Board desire that the railways who follow a different practice may revise their procedure in terms of the decisions contained in paragraph I above in two phases so as to ensure complete implementation of these orders within a period of two years. In merging the cadre the staff in the Survey and Construction shall be assigned seniority which they would have got on the Open line but for working in Survey and Construction".

We are of the view that this OM will have application only in respect of regular promotions and for that purpose, there should be a combined seniority list of the persons working in the open line division and Survey and Construction Wing. This OM does not apply to ad hoc promotions.

6. There were vacancies of IOW Grade III in the Rajkot Division and the applicant was given an adhoc promotion by the local authorities i.e. DRM Rajkot Division. Some of the juniors of the applicant were sent as Mistry to the Survey and Construction Division and some to the Baroda Division. When vacancies of IOW Grade III arose in these Divisions, these persons were promoted on an adhoc basis according to their turn by the administrative authority in charge of these Divisions. In making such

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ad hoc promotions the administrative authorities of such Divisions are independent of each other. They are not required either to inform their counter parts in other Division about these vacancies or to offer to persons in the other Divisions who may be more senior to the Mist^{er}ies working in their own Division, ^{or unit} the ad hoc promotion is a purely local arrangement. This is clear from the circular dated 23-7-1984 at Annexure A-16 which refers to local arrangements being made to fill up ~~xx~~ selection posts on ad hoc basis. The senior most person available in the Seniority unit should be given ad hoc promotion, unless found unsuitable.

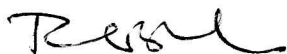
7. When it was found that the applicant had to be ~~xx~~ reverted in Rajkot Division, it was not certainly open to the Divisional Railway Manager, Rajkot to send him on transfer to either the Survey and Construction Division or to the Baroda Division where, admittedly, the applicant's juniors were holding posts of IOW grade III on ad hoc basis. The second respondent has no such right over other divisions. Therefore, the reasons why the applicant had to be reverted are unexceptionable.

8. The learned Counsel for the applicant strongly relied on the judgements of the Gujarat High Court in L.R.A. No.s 182 to 186 and 197 of 1985. He produced a copy of the judgement for our perusal. We have seen that judgements. In that case, only one unit was involved viz., the Survey and Construction Department. There were promotees, who

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had been given adhoc promotion as IOW Grade III earlier than other recruits. Direct recruits joined later. The Railways tried to revert the promotees on the ground of surplusage. It was held that the promotees were appointed no doubt, on adhoc basis but after a selection and having been appointed earlier than the direct recruits, it is not their turn to be declared surplus. The direct recruits being later entrants, had to go earlier. In the present case, the applicant is comparing himself with persons in other divisions who were no doubt his juniors as Misteries, in Rajkot Division. Therefore, this judgement has no application. Likewise he has relied on the judgement dated 28-8-1977 of the Tribunal (Annexure A-15). This is also of no avail because that was a case where the respondents had not filed any reply at all.

10. In these circumstance, we find that this application has no merit and accordingly it is dismissed.



(R.C. Bhatt)

Member (J)

3-11-1992.


3-11-92

(N.V. Krishnan)

Vice Chairman

3-11-1992.

*AS.