

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 114 OF 1989.

~~F.A. No.~~

DATE OF DECISION 27-8-1993.

Shri Chimanlal V. Rajpara, Petitioner

Mr. R.J. Bhatt, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent s

Mr. B.R. Kyada, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C. Bhatt, Judicial Member.

The Hon'ble Mr. M.R. Kolhatkar, Admn. Member.

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 Chimanlal V. Rajpara
Hindu, Adult, service,
Address: Rellnagar,
Rajkot.

.... Applicant.

(Advocate: Mr. R.J. Bhatt)
Versus.

1. Union of India
Owning and representing
Western Railway, through
The General Manager,
Churchgate, Bombay.
2. The General Manager,
Western Railway,
Churchgate, Bombay.
3. The Divisional Manager,
Rajkot Divisional Manager,
Kothi Compound,
Rajkot.

..... Respondents.

(Advocate: Mr. B.R. Kyada)

J U D G M E N T

O.A.No. 114 OF 1989

Date: 27-8-1993.

Per: Hon'ble Mr.R.C.Bhatt, Judicial Member.

Mr. R.J. Bhatt, learned advocate for the
applicant and Mr.B.R.Kyada, learned advocate for the
respondents.

2. The applicant, serving in the office of the
respondent No.3, Divisional Manager, Western Railway,
Rajkot Division, on the post of ELC at the time of this
application, has filed this application under section
19 of the Administrative Tribunals Act, 1985, seeking
the following reliefs:

"A. It may be declared that the order of
respondents referred para 1(1) without including
the name of the applicant about the conducting
written test which was held on 14th March, 1989 ~~ab~~
about selection for promotion of N.G.staff-

Class III, staff Elect-deptt. is illegal, ineffective, null and void and injurious to the right of applicant and it may be set aside and

(B) It may be declared that the applicant is entitled and eligible for appearing the written test about selection for promotion of N.G.Staff Class III, Staff Elct.Deptt and

(C) It may be declared that the applicant is entitled to recover Rs.700/- in words Rs.Seven Hundred from the Respondents as a amount of special pay of Rs.35/- and the Respondents may be ordered to pay Rs. 700/- in words Rs.Seven hundred to the applicant and

(D) It may be declared that the applicant is entitled to get deference of pay scale with the pay scale of Mr.A.A.Patel and the amount of the said deference may be counted from the records which are in possession of the Respondents and the Respondents may be ordered to pay the said amount of deference with 18% of interest to the applicant and

(E) Any other better relief or reliefs which the Hon'ble Tribunal may deem just and proper may also be granted along with the cost of this application."

Our order sheet dated 19th April,1989 shows that the applicant's learned advocate on 19th April,1989 at the time of admission did not press the relief sought in para 8(C) and 8(D) of the application . Therefore, the question to be considered in this case is only with regard to the reliefs para 8(A), (B) & (E) of the application.

3. The case of the applicant as pleaded in the application is that he joined the service of the Railway on 23rd October,1954 that as per the seniority list of respondents dated 20th March,1980 he was on post of

ELM and that he was senior to M/s. A.A.Patel, K.C.Paneri and R.K.Tandon as per the said list. It is alleged by the applicant that considering the seniority list, he and other 9 persons were promoted for the post of ELC as per order issued by Respondent No.3 dated 19th December, 1980 vide Annexure A-5, that after few months thereafter, respondent No.3 passed an order of reversion dated 18th August, 1981 vide Annexure A-6 by which the applicant and others who were promoted as ELC were reverted to their original post of ELM. The applicant accepted the order of reversion but one Mr.R.K. Tandon & Ors. challenged the said order by filing Civil Suit and they obtained interim stay against the reversion order. It is alleged by the applicant that the Civil Court, on merits thereafter, dismissed the said suit and the order of reversion was confirmed. It is alleged by the applicant that the respondents have materially erred in considering continuous service of Mr. R.K.Tandon and other~~x~~ person on the post of ELC on the basis of the promotional order Annexure A-5 dated 19th December, 1980 and the respondents erred in not considering the applicant's eligibility for written test which was held on 14th March, 1989. It is alleged by the applicant that during the pendency of the litigation, Mr. R.K.Tandon and other persons including the applicant were promoted to the post of ELC by the order dated 22nd October, 1989 by Respondent No.3 vide Annexure A-3 and Mr. R.K.Tandon was also spared on

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deputation to Zimbabwe by promoting him on the post of ELC. It is alleged by the applicant that the respondents have erred in considering the services of Mr.R.K.Tandon and others being for 5 years on the post of ELC and considering them eligible for the post and have erred in denying the applicant's eligibility for appearing in the test. There are other averments made in the application but in view of the fact that the applicant has not pressed ^{the} / relief except the reliefs para 8(A), (B) and (E), it is not necessary to reproduce those averments. The applicant has challenged the order Annexure A-1 dated 15th February, 1989 on the ground mentioned in para 5 of the application. The applicant during the ^{amended O.A} pendency of the application/by adding para 9(A).

4. The respondents have filed reply contending that the applicant was promoted as ELM (Electrical) Mistry (Train lighting) with effect from 28th February, 1973 whereas K.C. Paneri and R.K. Tandon were promoted as ELM (G) on 20th May, 1971 and 20th November, 1972 respectively, while A.A.Patel ELF (TL/HL) was promoted as ELF (TL/HL) on 17th March, 1973. It is contended by the respondents that the applicant is senior to A.A.Patel only and not senior to other two persons namely K.C. Paneri and R.K.Tandon as per the ^{list} seniority/notified on 19th August, 1981. It is contended that the applicant was appointed as Electrical Chargeman purely on adhoc basis vide office letter dated 6th January, 1981 and was subsequently reverted to his substantive post of

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ELM (HL) at Rajkot vide memo dated 18th August, 1981 due to absorption of direct recruit as per the quota. It is contended that as per the seniority, other persons except Shri A.A. Patel and CTS Madhawan were juniors in lower grade, but the applicant along with A.A. Patel were promoted as ELC on adhoc basis in the year 1982, but the applicant had refused the promotion vide his application dated 11th November, 1982 and if the applicant had accepted the promotion, he would have completed five years of service as ELC in the year 1987 and he would have also been considered eligible to appear for the selection. The respondents have contended that the applicant is serving as ELC scale Rs. 1400-2300(RP) at Rajkot purely on adhoc basis under Shop Superintendent (Electrical) Construction Rajkot against workcharge post since 19th December, 1987. It is contended by the respondents that as the applicant refused to accept the promotion vide his application dated 11th November, 1982, now it does not lie in the mouth of the applicant that he was not called and considered for further promotion or in the selection. It is contended by the respondents that considering the refusal period the applicant was not eligible to be considered for the selection test and, therefore, he was not called for as the applicant had not completed five years service as ELC. It is contended that it was open for the applicant in the year 1982 to accept the promotion which he did not while Shri A.A. Patel joined

as ELC in the year 1982 and therefore, A.A. Patel got benefit of increment in higher grade of ELC whereas the applicant has refused the promotion^{and hence}, he was not eligible for increments in higher grade in ELC and therefore, now at the fag end after six to seven years, it does not lie in the mouth of the applicant that the Department has discriminated him or the department has violated the provisions of rules or direction. The respondents have denied that there was any discrimination made against the applicant and others and prayed that the application be dismissed. The applicant has filed rejoinder controverting the contentions^{of} the respondents that he was senior only to A.A. Patel. He contended that merely because R.K. Tandon and others obtained stay order from the Civil Court, it can not be ^{held} / that they had worked as ELC for five years considering period during stay order.

5. The learned advocate for the applicant has sent written arguments and has waived oral hearing. Mr. Kyada has argued learned advocate/for the respondents.

6. It is mentioned in the written arguments of the applicant's learned advocate that this application is filed for declaration that the applicant is entitled and eligible for appearing in the written test about selection for promotion of NG staff Class III ELCT Department. The applicant has prayed to set aside the test which was held on 14th March, 1989 by considering the averments mentioned in para 4(a) to 4(f). The applicant

is aggrieved by the order Annexure A-1 dated 15th February, 1989 by which a selection ^{for} / promotion to the post of ELC for five employees, who were working as ELC on adhoc basis since last five years against the quota of direct recruits was to be held. The applicant's name is not included in those names of five employees. It is mentioned in the written arguments that the applicant was entitled and eligible for appearing in written test which was held on 14th March, 1989. The applicant in his application has mentioned that he along with other nine persons were promoted for the post of ELC as per order Annexure A-5 by respondent No. 3 dated 19th December, 1980 and thereafter the applicant was continued on that post of ELC. Annexure A-5 shows that the promotion was on adhoc basis. The applicant in his application has ^{further} / mentioned that subsequently by order dated 18th August, 1981 issued by Respondent No. 3 vide Annexure A-6, the applicant and others who were promoted were reverted to their original post of ELM. The applicant accepted the said order of reversion Annexure A-6 and did not challenge ^{it} / in the Court of Law but Mr. R.K.Tandon and others affected by the said order had filed Civil Suit challenging the said order and had obtained interim stay but thereafter, their suit was dismissed. The grievance of the applicant is that the said five persons have been called for selection vide order Annexure A-1 dated 15th February, 1989 after appearing in the test, but the applicant is not called.

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He has mentioned in his application that those five persons were considered eligible for written test held on 14th March, 1989 considering their continuous service for five years on the basis of the original order of adhoc promotion dated 19th December, 1980 vide Annexure A-5. the applicant, who did not challenge the order of reversion is not given this benefit. He has further mentioned in his application that those five persons including the applicant were subsequently promoted to the post of ELC by the order of respondent No.3 dated 22nd October, 1982 vide Annexure A-3 but the respondents considered five years service of Mr.R.K.Tandon and others on the post of ELC and considered them eligible for test but they did not consider the applicant eligible for appearing in the test which was not legal. The respondents have contended in the reply that applicant along with A.A. Patel were promoted as ELC on adhoc basis in the year 1982 but the applicant had refused the promotion vide his application dated 11th November, 1982. It is contended by the respondents that if the applicant had accepted the promotion he would have completed five years service as ELC in the year 1987 and he would have also been eligible for appearing in the selection. The learned respondents advocate for the / submitted that the applicant application dated has himself refused to accept the promotion given by / and therefore, now it does not lie in the mouth of the applicant that he was not called and considered for further promotion in the

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selection. It is very clear that five persons whose names are found in Annexure A-1 dated 15th February 1989 were eligible for the written test for selection as ELC on regular basis not on the basis of their original order of adhoc promotion Annexure A-5 dated 19th December, 1980 but they were found eligible as they had accepted the promotion on adhoc basis subsequent to the ~~xxx~~ reversion vide Annexure A-3 dated 22nd October, 1982. Thus, there is fallacy in the averments made by the applicant in his application that five persons who are held eligible for the written test were given the benefit of five years service because they continued on adhoc basis due to interim stay order obtained from the Civil Court and the applicant was not considered because he did not challenge the reversion order. The true fact is that these persons and the applicant admittedly had been promoted on adhoc basis as ELC vide Annexure A-3 dated 22nd October, 1982 after their reversion on 18th August, 1981 vide Annexure A-6, but the applicant did not accept this promotion on adhoc basis by his application dated 11th November, 1982 while others accepted the said promotion and as they had completed five years service on that post of ELC in the year 1987, they were held eligible for the written test. The respondents have contended in para-1 of the reply that the applicant is serving as ELC at Rajkot purely on adhoc basis under Shop Superintendent (Electrical) Construction Rajkot against the workcharge post since 19th December, 1987. The applicant in his

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rejoinder has also not catagorically denied that he has not refused his promotion by his application dated 11th November, 1982. In the instant case, the respondents have not produced this application dated 11th November, 1982 made by the applicant, but the applicant has not specifically denied of having not made such application while filing rejoinder. More over, the applicant though had filed M.A. 164/90 calling the respondents to produce several documents, he did not ask the respondents to produce this application dated 11th November, 1982. In our view therefore, the applicant was not called for written test because he had not completed five years on the post of ELC in 1987 while the other five persons whose names are at Annexure A-1 had accepted that promotional order dated 22nd October, 1982 vide Ann.A-3. More over, these five persons are not even joined as respondents by the applicant in this matter. We hold that the applicant was not entitled and eligible for appearing in the selection test.

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7. The applicant's learned advocate in his written arguments has mentioned that the persons who have appeared in the test were promoted in higher post and they have drawn a salary and allowances of the promoted post for which the applicant is also entitled and eligible. It is important to note that unless and until the applicant appears in the written test and he is selected, he can not be promoted to a higher post nor can be draw the higher salary on that promotional post.

The other persons who accepted the promotion on adhoc basis in the year 1982 ^{would} / naturally get the usual increments and if they have passed the selection test, they are entitled for ^{regular} / promotion also. The applicant without appearing in the selection test can not get the benefit of the higher post on regular basis and can not draw salary and allowance of the ^{said} / promoted post.

8. We would have taken even a liberal view directing the respondents to reconsider the case of the applicant by allowing him to appear in the ^{next} / written test and if the applicant succeeded in the test and is selected then he should be given the benefit which the respondents have given to the candidates who successfully passed in the written test held on 14th March, 1989., but it is mentioned in the written ^{arguments that} / the applicant has retired from service during the pendency of the application and therefore, it is not possible to direct the respondents to ~~take~~ take the written test of the applicant and to give him the benefit as observed above. The applicant in his written arguments has mentioned that he should be given the reliefs as prayed in para 8(e) of the application. The applicant in para 8(e) has sought other better reliefs or reliefs with the Tribunal may deem just and proper and the cost of the application. In the instant case we have held that the applicant was not eligible to appear in the written test and

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therefore, we see no reason to quash or set aside the written test taken by the respondents on 14th March, as prayed in para 8(a) 1989/and we do not therefore, quash the order Ann.A-1 dated 15th February, 1989. We also do not see any ground for the applicant for getting ^{any other} relief prayed in para 8(e) since he ^{has} retired.

9. The applicant's learned advocate has ~~am~~ mentioned in his written arguments that according to the knowledge of the applicant, Shri R.K. Tandon and Shri A.A. Patel have drawn a higher salary than the applicant though the applicant is senior to them as mentioned in ^{However in our opinion} the written submissions, / that does not entitle the applicant also to get that salary because he had refused the order of promotion on adhoc basis on 11th November, 1982 and having then not been found eligible for selection test, he cannot claim the same salary as that of the other persons.

10. The applicant's learned advocate in his written submission has mentioned that as the applicant has retired from service now and any further order of promotion is ^{not} justified, he should be awarded Rs.25000/- a lumpsum amount of compensation with cost of this application. As observed above, when the applicant ^{not} was eligible to appear in the written test as he had not completed five years on the post of ELC having already refused the promotion by his application dated 11th November, 1982, hence he is not entitled to

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the same salary or promotion which the other ^{successful} persons are getting. There is no case established for giving any compensation to him.

11. We have considered ^{all} the grounds mentioned by the applicant and have considered the documents on record. We have also considered the written arguments of the applicant's advocate in details and we find absolutely no substance for giving any relief to the applicant as he has failed to establish his case.

12. The result is that the application shall have to be dismissed.

ORDER

Application is dismissed. No order as to costs.

M.R. Kolhatkar
(M.R. Kolhatkar)
Member (A)

R.C. Bhatt
(R.C. Bhatt)
Member (J)

vtc.