

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

NO
Seniority
Promotion
Ex. No.

O.A. No. /50/89

DATE OF DECISION 12th February, 1993

M.D. Parikh

Petitioner

Shri P.S. Handa

Advocate for the Petitioner(s)

Versus

Union of India & others

Respondent

Shri N.S. Shevde

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 ?

(S)

M.D.Parikh,

444-F, Railway Colony,
Opp: Sardar Nagar,
Vadodara Yard,
Vadodara-390 002

....APPLICANT

(Advocate : Mr.P.S.Handa)

versus

1. Union of India,
Secretary,

Ministry of Railways, ~~X~~ Rail Bhavan,
New Delhi

2. General Manager,

Western Railway,
Churchgate, Bombay.

3. Chief Rolling Stock Engineer,

Western Railway,
Churchgate,
Bombay.

4. Divisional Railway Manager,

Western Railway,
Pratapnagar,
Vadodara-390 004.

5. Senior Divisional Mechanical Engineer (C & W)

Western Railway,
Pratapnagar,
Vadodara-390 004.

...RESPONDENTS

(Advocate : Mr.N.S.Shevde)

JUDGMENT

O.A.50/ 89

Date : 12.2.1993

Per : Hon'ble Mr.N.V.Krishnan

Vice Chairman

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(9)

The applicant was promoted as Head Train Examiner (Rs.700-900/-) by the order dated 07.9.83, after regular selection. His name was placed at sr.no.11 in a panel of 15 persons. His contention is that he should have been regularly promoted on this post from 1.9.81 when there was a clear vacancy of such a post.

2. The applicant has made out a case for such promotion on the following submissions :-

2.1. There were 9 normal vacancies of Head Train Examiner (HTE for short) in 1981. If the selection had been made on time, the 9 senior most persons could have been regularised. However, the preparation of the panel was delayed and ultimately the panel was prepared only on 31.8.83. (Annexure A/4)

2.2. There was a restructuring of the cadre, as a result of which 10 more vacancies of HTE arose by upgrading in 1981, — ungraded vacancies, for short. Admittedly, these ten posts were to be filled up from 1.9.91, even if it ~~is~~ meant retrospective promotion.

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2.3. Thus, there were 19 vacancies. In the Annexure A/4 panel only 15 persons are included, of whom the applicant is sr.no.11.

2.4. Appointment orders were issued to these 15 persons by the impugned Annexure A/8 order dated 07.9.83 of the 4th respondent, Divisional Railway Manager, Baroda/para-2 of the order, the first 10 persons from the Annexure A/4 panel (C.K.Chauhan to S.C.Dave) were promoted to the 10 upgraded vacancies from 1.9.81. Out of the remaining 5 persons in the Ann.4 panel, four persons, including the applicant, were promoted from 7.9.83 (i.e. the date of the Ann.A/8 order) against the existing vacancies.

2.5. The main argument of the applicant's case is that the senior most 9 persons in the Ann.4 panel (i.e. Shri C.K.Chauhan at sr.no.1 to Shri J.K.Dave at sr.no.9) should have been promoted with retrospective effect to the 9 normal vacancies are of 1981, which / alleged to have existed prior to 1.9.81. If this had been done, the 10 upgraded vacancies from 1.9.81 could have been utilized for the

for the promotion of the remaining 6 persons on the Annexure A/4 panel which will include the applicant also. In that event the applicant could have got the benefit of regularisation from 1.9.81.

2.6. The applicant made a representation on that 5.3.85 (Annexure A/6) / his date of promotion be regularised from 1.9.81 in the manner indicated above. This and his / reminders, the last of which is Annexure A/13 dated 10.10.88, have not been disposed of. In the circumstances, the applicant has filed this application for a direction to the respondents ~~to~~ to rectify the anomaly in the office order issued by the Divisional Railway Manager, (Establishment) Vadodara shown in Ex.A to regularise Shri C.K.Chauhan against the first nine vacancies so that the applicant can get its seniority and further promotions accordingly the fixation should be done with arrears."(sic)

3. The respondents have filed a reply denying any relief to the applicant. Their main contention is that proceedings were initiated in 1981 for filling up 54 vacancies in the Western

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Railway
/as stated in the letter dated 10.6.81 (Ann.A/2)

However, these proceedings were cancelled by letter 5.10.81 (Ann.A/1) of the Head Quarters Office, Western Railway, because it was stated that the percentage of higher grade posts in scale Rs.700-900/- have been increased and therefore, the number of vacancies will have to be reassessted because more employees will be eligible for selection. It is because of this unexpected change that the selection could not be finalised in 1981. The Divisional Office, Baroda, subsequently received intimation from Head Quarters Office by a letter dated 27.11.82 stating that selection to and HTL/allied posts in the scale of 700-900/- which was earlier conducted by the Head Office, has now been decentralised. Each division was to make its own selections. Therefore, the Division assessed the vacancies and the eligible employees were alerted by letter dated 12.1.83. The panel was then finalised subsequently and the names of 15 employees were notified in Ann.A/4 panel dated 2.9.83. The respondents deny that they were obliged to first fill up the 9 normal vacancies alleged to exist prior to 1.9.91. It is contended that there has been no irregularity in ordering the promotion in the manner, it has been done in the impugned Ann.A order 7.9.83.

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4. In addition, the respondents have also contended in para-7 of the reply that the application is barred by limitation as the cause of action had arisen long back.

5. When this point was mentioned, the course of arguments, the learned counsel for the applicant sought permission to file a M.A. for condonation of delay, which was permitted. He therefore filed M.A. 428/92 for condonation of delay.

6. We have perused the records and heard Shri P.S.Handa for the applicant and Shri N.S.Shevde for the respondents.

7. Admittedly, the cause of action arose when Annexure A office order dated 7.9.83 was issued. The applicant had filed a representation on 5.3.85 Annexure A/6. In such a case, where the cause of action arose three years prior to the commencement of the Administrative Tribunals Act, 1985, the application should have been filed within 1 year from the date of commencement of the Act, i.e. before 1.11.86. Therefore, this O.A. is obviously time barred because subsequent representations will not extend the period of limitation. Therefore, the liable application is liable to be rejected.

8. That apart, we do not find any merit in this application. During the course of arguments,

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Shri P.S.Handa, the learned counsel for the applicant, submitted that there was a material difference between the normal vacancies and the upgraded vacancies. In respect of the former, the order ~~x~~ of promotion will take effect only from the date on which the employee assumes charge. As against this, in prospect of upgraded vacancies, which arose on 1.9.91, there was a decision that they should be given effect to from 1.9.81, even if it meant retrospective promotion. His other submission was that persons senior to the applicant in the panel were actually holding the normal vacancies of 1981 of HTE on an ad-hoc basis, prior to 1.9.91. Therefore, when they were included in the panel (Annexure A/4) and promoted, they could have been regularised from their dates of adhoc promotion from 1981. Our attention was drawn to the following contention raised in para-4(v) of the application.

" If the administration was not in a position to absorb all the nine senior most employee in the vacancies prior to 1981, but atleast those employees who were already officiating in this grade, prior to declaration of the panel, even prior to the selection was conducted, atleast those empanelled senior employees should have been regularised in the existing nine vacancies and not in the upgraded posts

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Forexample, Shri C.K.Chauhan, who is sr.no.1 in the panel of 15 ~~employees~~ employees, was already officiating prior to the selection was conducted, a copy of his promotion order issued by Divisional Railway Manager(Establishment) Vadodara vide letter No.E/C&W/839/5/4/Vol.IV dated 9.6.1982 attached in Ann. at Ex.A.5. if Shri C.K.Chauhan would have been regularised against the vacancies existing prior to upgradation, then the applicant would have been absorbed in the upgraded posts and the loss of seniority which the applicant has suffered on account of arbitrary office order issued by Divisional Railway Manager(Establishment) Vadodara, would have been avoided."(emphasis supplied)

8. We are not impressed by the arguments. It is seen from the Annexure A/5 order dated 9-6-82 that C.K.Chauhan was first promoted as HTE on ad-hoc basis only from 9.6.82 against the vacancy arising due to the retirement of P.V.Karkare . Therefore, it is not correct to state that Chauhan was promoted on ad-hoc basis on a vacancy prior to 1.9.91. The very foundation of the applicants case collapses on this simple fact . He has not proved either that vacancies

existed prior to 1.9.91 or that his seniors were holding them from dates earlier to 1.9.91 on an ad-hoc basis. That apart, he admits that, even if such vacancies existed, they could be filled up only from the date of assumption of charge after orders of promotion are issued after inclusion of ones' name in the panel. On the basis of this admission, it has to be concluded that the 1981 vacancies or whichever normal vacancies existed when the Annexure A/4 panel was declared on 31.8.83 could be filled only from the date on which the selected persons took charge i.e. after 31.8.83. On the contrary, the 10 upgraded vacancies were available from 1.9.91. Therefore, the respondents, naturally, promoted the panelists from Sr.no.1 to 10 to the upgraded posts from 1.9.91 by the impugned Annexure A/8 order and the remaining persons, including the applicant, were promoted from 7.9.83.

This action of the respondents was entirely justified.

Further, if ~~some~~^{nine} vacancies had existed prior to 1.9.91 and one or more persons from Sr.no.1 to 9 of the Annexure 4 panel could ~~x~~ have been regularised from any date prior to 1.9.91, either because the vacancies existed or also that they had held the posts an ad-hoc basis- they ~~x~~ would have made a representation or agitated the matter. The fact that no such representation has been filed shows that there was no ground for making such a claim- on which alone depends the success of the present application.

9. We are satisfied that the premises on which this application is built have no foundation

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in facts and we see no merit in this application.
Therefore, it is dismissed.

Renu
(R.C.Bhatt)

Member (J)

Chin
12/1/83
(N.V.Krishnan)

Vice Chairman

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