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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 58 of 1989
~~Ex. No.~~

DATE OF DECISION 17-8-1993

Shri Vinodrai Vishwanath Trivedi Petitioner

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

Versus

Union of India & Ors. 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 ?

No

(6)

Shri Vinodrai Vishwanath Trivedi,
Gandhigram Society,
Near the House of Sayyad Saheb,
Rajkot.

..... Applicant

Shri B.B. Gogia

..... Advocate

Versus

1. Union of India through
The General Manager,
Western Railway,
Churchgate, Bombay - 400 020

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

..... Respondents

Shri B.R. Kyada

..... Advocate

ORAL JUDGMENT

IN

O.A. No. 58 of 1989

Date:- 17-8-1993

Per Hon'ble

Shri N.B. Patel

Vice-Chairman

The applicant seeks a direction requiring the respondents to hold the trade test for promotion from the post of Khalasi to Boiler Maker and a further direction requiring the respondents to allow the applicant to appear at such a trade test. It is further prayed for by the applicant that, on his passing the trade test which the respondents may be compelled to hold, the respondents may be further directed to grant promotion to the applicant as Boiler Maker from "due date" with any other relief or reliefs as the Tribunal may deem just and appropriate.

.....3/-

2. There is not much of a dispute about the facts of the case and they may first be set out. The applicant was appointed as Khalasi on 11-2-57 in the Western Railway in the Rajkot Division. The next promotion post from the post of Khalasi is the post of Boiler Maker, but, to be eligible for the promotion to the post of Boiler Maker, a Khalasi has to pass a trade test designed to assess his proficiency in the trade in which he is working such as carpenter, black-smith, cobbler etc. It appears that two persons namely Shri Jillubha and Mahashanker, who were junior to the applicant in the grade of Khalasi, were given ad hoc promotion to the post of Boiler Maker in 1983. These ad hoc promotions were not regular promotions in the sense that no regular trade test was held or was passed by the said Jillubha and Mahashanker. However, since the administration required filling up of the posts of Boiler Maker on an urgent basis and it was not possible to wait for a regular trade test to be held, Jillubha and Mahashanker were subjected to a local test or what may be called an ad hoc test as opposed to a regular trade test. It requires a special mention here that the applicant, being senior to Jillubha and Mahashanker, he was also asked to appear at the local test, but he expressed his unwillingness to do so. As already mentioned, his juniors Jillubha and Mahashanker appeared at the said local test and were promoted to the post of Boiler Maker on an ad hoc basis. This ad hoc promotion of the said two persons continued till 31-7-89 and their promotion was regularised w.e.f. that date on their being exempted from appearing at a regular trade test held in 1989. It may also be noted that ^{at} the test held in 1989, the applicant also appeared and he was successful at the test and he too came to be promoted to the post of Boiler Maker on regular

basis w.e.f. 31-7-89. It appears that the applicant was making representations since 1983 that a regular test should be held so that he might have an opportunity to appear at the said test and on his passing the test he should be promoted to the post of Boiler Maker. It is further on record that, in 1983, the applicant filed Civil Suit No. 900/83 in the Civil Court at Rajkot for a declaration of his deemed promotion and that Suit was transferred to this Tribunal and was numbered as T.A. 1282/86. That Transfer Application was dismissed on 16-11-87 mainly on the ground that Jillubha and Mahashanker had been promoted on ad hoc basis to the post of Boiler Maker since they had passed the local trade test whereas the present applicant had not appeared at the test of his own volition. Thereafter, the applicant filed another Original Application, being O.A. 170/88, for a direction to the Railways that the Railway Board's instructions produced at Annexure - A7 in the said case be compelled to be acted upon and he should be promoted from the date his juniors Shri Jillubha and Shri Mahashanker were promoted. It was contended in that application that Jillubha and Mahashanker, who were promoted on ad hoc basis were continued beyond a period of 3 months in breach of the instructions issued by the Railway Administration in this regard and, therefore, the applicant's right of promotion to the post of Boiler Maker was adversely affected. This O.A. No. 170/88 was disposed of on 10-5-88 with an observation that the applicant had not come-out in the said application with a clear case of claiming any relief against the inaction on the part of the Railway

Administration in holding test under the relevant rules resulting in denial of his right for being considered for promotion and seniority and that, if the applicant had any such grievance i.e. in the matter of inaction on the part of the Railway Administration in holding the test, the applicant will be at liberty to move the Tribunal by filing ^a ~~in~~ fresh application. It is after this order that the applicant has filed the present application in 1989 and has sought a direction requiring the Railway Administration to hold a regular trade test and to allow him to appear thereat and, on his passing the same, to grant him promotion as Boiler Maker from "due date".

3. The respondents have resisted the application filed by the applicant. However, during the pendency of the application, the main relief which the applicant was claiming, namely, a direction to the respondents to hold the trade test has been met inasmuch as a trade test was held in 1989, and on the applicant passing the said test, he has been promoted as Boiler Maker w.e.f. 31-7-89 on regular basis.

4. The only demand which, *Shri* Gogia, on behalf of the applicant, now made before us was that, the applicant should have been given promotion not w.e.f. 31-7-89 but w.e.f. a date between 1983 and 1989 as may be thought just by the Tribunal in the circumstances of the case. We are afraid it is not possible to accept this submission of *Shri* Gogia. It is an uncontroverted position that, for being eligible for promotion to the post of Boiler Maker, a Khalasi has to pass a trade test.

In other words, it is conceded that passing of a regular trade test is sine qua non for a Khalasi for promotion to the post of Boiler Maker on regular basis. Therefore, what Shri Gogia states comes to this that, if the respondents had taken a test any time between 1983 and 1989 earlier than the test held in 1989, the applicant would have passed the said test and would, therefore, have become eligible for promotion to the post of Boiler Maker. It is true that there has been inaction on the part of the Railway Administration in the matter of holding a test and continuing the ad hoc promotions of the juniors of the applicant for a long time, but we see no way to hold that, if the test had been held earlier, the applicant would have passed the same. There is a lot of substance in the grievance of the applicant inasmuch as the Railway Administration did not hold a trade test for a long time. However, since the applicant felt that this inaction on the part of the Railway Administration was resulting in prejudice to him, he should have approached the Tribunal much earlier for the same relief which he has asked for in the present application. In none of the earlier proceedings, the applicant had asked for a direction compelling the Railway Administration to hold regular trade test within a reasonable time. The difficulty of the applicant has thus arisen partly because of his own inaction and in pursuing a mis-conceived remedy earlier. It also requires to be noted that if the applicant had shown willingness to appear at the test and had actually appeared at the test at which his juniors had appeared, he might have been promoted on

an ad hoc basis and subsequently he might also have been exempted from appearing at regular test. We fail to understand as to how the applicant can be declared or deemed to have been promoted from any date earlier than the date of his passing the trade test when the passing of such a test is a condition precedent for getting a promotion to the post of Boiler Maker.

5. The reliance on ^{the} judgment of this Tribunal in T.A. 37/88 dated 28-4-89 by Shri Gogia in support of his contention that back-date effect can be given to the promotion subsequently granted to the applicant, appears to us to be un-founded. There, the question was of promotion from the post of Head Craftsman to Assistant Engineer. There is nothing in the judgment to show that this promotion depended upon the passing of an examination or test as a condition precedent. Furthermore, in that case the selection process for preparing panel for promotion from the post of Head Craftsman to Assistant Engineer was undertaken and the applicant was not called by the Committee, through administrative error, even though the applicant had demanded consideration of his case even while the selection process was in progress. In our case, no regular test was held at all. Ours is not a case where a regular test was held and the applicant was not allowed to appear at such a test consequent upon some default or error committed by the Administration. We, therefore, find no likeness between the aforesaid case cited by Shri Gogia and the facts of the present case.

6. We may mention that while rejecting the contention of Shri Gogia, we have proceeded on the assumption that Rule 117(b) of the IREM mandates the Railway Administration to hold a regular test periodically at an interval of six months or a little more than six months. We do not pronounce any firm opinion on the question whether Rule 117(b) of the IREM contains any such mandate to the Railway Administration. Its effect appears to be only that if a person fails at a test, he will not be permanently debarred from appearing again at the test, but he will not be allowed at the test for a period of six months after his failure at the examination at which he appeared. We may, however, note in this connection that we are in agreement with the contention of Shri Gogia, ^{that} even apart from Rule 117(b) of IREM, ~~that~~ the Railway Administration is bound to hold trade test from time to time so as to avoid continuing ad hoc promotions for indefinite periods. The only ground on which we reject the application is that the applicant did not seek appropriate relief, as done by him now, at appropriate time.

In the result, therefore, the application is dismissed.

No order as to costs.



(V. Radhakrishnan)
Member (A)



(N.B. Patel)
Vice-Chairman.