

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

O.A. 396/90 with C.A.55/89 & R.A.32/92 in T.A.7/86

DATE OF DECISION : 30/11/99

Mr. Ali Ahmedkhan M & ors. : Petitioner [s]

Mr. K.K.Shah : Advocate for the petitioner [s]

Versus

Union of India & ors : Respondent [s]

Mr. N.S.Shevde & Mr. A.L.Sharma Advocate for the Respondent [s]

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THE HON'BLE MR. V. RADHAKRISHNAN : MEMBER [A]

THE HON'BLE MR P.C.KANNAN : MEMBER [J]

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Ph

O.A.396/90

1. Shri Ali Ahmedkhan M.
working in Baroda Divn.,
Western Railway, Baroda,
 2. Ambalal R.
Working in Baroda Divn,
Western Railway, Baroda.
 3. Similarly situated employees as per list Ann. "A"
- Applicants**

Advocate Mr.K.K.Shah

versus

1. Union of India, Through :
The General Manager [E],
HQ office, western Railway,
Bombay.
 2. Divisional Railway Manager,
Divisional office, Pratapnagar,
Western Railway, Baroda.
 3. The Sr. Divisional Mechanical Engineer,
Western Railway, Divisional office,
Pratapnagar, Baroda.
- Respondents**

Advocate Mr.N.S.Shevde

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C.A.55/89 IN T.A.8/86

1. Mr.Harish Chimanlal
2. Mr.Govind Balu
3. Mr.Navnit P.
4. Mr.Govind J.
5. Mr.Shravan Sadhu,
6. Mr.Rafik Rehman A
7. Mr.Wison M
8. Tukaram G
9. Mr.Mohmad A Patel
10. Mr.Bhanuprasad,
11. Mr.Rajendra K,
12. Mr.Akbarhussain M,
13. Mr.Abdulrashid M.

all c/o, Govind Balu,
Saubhgya Park Society,
Bungalow No.12, B/h New Methodist Church,
Khokhra Mahemdabad,
Ahmedabad.

Applicants

Advocate Mr.K.K.Shah

Versus

1. Union of India, Through :
The General Manager,
Western Railway, Churchgate,
Bombay.
2. Mr.Bharatkumar B
3. Mr.Sher Mohmad M
4. Mr.Rajendra Govind
5. Mr.Shankarbhai P
6. Mr.Rameshbhai M

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7. Mr.Kantibhai S
8. Mr.Ahmed M Patel
9. Mr.George Peter
10. Mr.Kantilal V
11. Mr.Vasudev G
12. Mr.Mahendra C

No.2 and 3 Fitters Incharge, Loco, Nadiad.

No.4,5, & 6 C/o, Loco Foreman, Baroda.

No. 7,8, & 9 C/o, Loco Foreman, Dabhoi,

No.10,11, & 12 C/o, Loco Foreman, Kankaria, Ahmedabad.

Respondents

Advocate Mr.N.S.Shevde & Mr. A.L. Sharma

R.A.32/92 IN T.A.7/86

1. Ambalal Patel
2. Ali Ahmad Khan,
working as A.C. Assistants in Baroda Division
of western railway, notice to be served through
Shri K.K.Shah, Advocate,
3, Achalyatan Society II,
Navrangpura, Ahmedabad.

Applicants

Advocate Mr.K.K.Shah

Versus

1. Union of India, Through :
The General Manager,
Western Railway, Churchgate,
Bombay.
2. The Divisional Railway Manager,
Western Railway, Divisional office,
Pratapnagar, Baroda.

Dr

3. Senior Divisional Mechanical Engineer,
Western Railway, Baroda Division,
Pratapnagar, Baroda.
4. Bharatkumar B
5. Sher Mohmad M
6. Rajendra Govind
7. Shankerbhai P
8. Rameshbhai M
9. Kantibhai S,
10. Ahmed M Patel
11. George Peter
12. Vasudev G
13. Kantilal V
14. Mahendra C.
15. Harish Chimanlal
16. Govind Balu,
17. Navnit P.
18. Govind G
19. Shravan Sadhu
20. Rafik Rehman A
21. Wison M
22. Tukaram G
23. Mohmad A Patel
24. Bhanuprasad
25. Rajendra K
26. Akbarhussain M
27. Abdulrashid M

all to be served through the respondent no.3

advocate Mr.N.S.Shevde & Mr.A.L.Sharma

JUDGMENT

IN

O.A.396/90 WITH C.A.55/89 in T.A.7/86 and
R.A.32/92 in T.A/7/86

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Dt. 30/11/99

Per Hon'ble Mr.P.C.Kannan Member [J]

As the O.A.No.396/90, C.A.55/89 & R.A.32/92 in T.A.7/86 raises the same issues, it is proposed to dispose of the same by a common order.

2. We have heard Shri K.K.Shah, counsel for the applicants and Shri N.S.Shevde, counsel for the respondents.

3. The applicants who are initially engaged as Substitute Cleaner after due screening and empanelment are seeking the benefit of the judgment of this Tribunal in T.A.7/86 decided on 5.10.88. The applicants also prayed for certain other reliefs in the O.A., C.A., and R.A., but at the time of hearing, the counsel for the applicants, restricted his prayer to the claim for the benefit of judgment in T.A.7/86.

4. In the year 1975, the respondents directly appointed certain wards of loyal railway employees and they were given seniority over the Substitutes.

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Some of the employees who were aggrieved to the action of the respondents, filed SCA No.2568/78 before the Gujarat High Court which was subsequently transferred as TA No.7/86 to this Tribunal. After hearing both the sides, the Tribunal allowed the TA and issued the following directions.

"For the reasons stated above, we have no hesitation in holding that the action of the respondents- railway administration in conferring the employment or giving appointment to the persons i.e. a son or a daughter of the railway staff, who were loyal during railway strike, in the form of award or otherwise, is discriminatory on the ground of descent only and is in violative of the fundamental right under article 16 [2] of the Constitution and is void. Consequently, the persons recruited in terms of such award including respondents no. 4 to 14 cannot claim any seniority over the petitioners. Accordingly their promotion to officiate as Fireman "C" vide order dated 30.9.78 cannot be sustained. The order of promotion of the respondents no. 4 to 14 under office order no. 366/1970, Annexure "A" qua the petitioners, is hereby quashed and set aside. The respondents- railway administration are directed to treat the petitioners' as seniors to the respondents no. 4 to 14 on that basis consider them for promotion if found eligible under rules.

Accordingly, the application has merit and is allowed to the extent stated above. there will be however, no order as to costs."

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5. The respondents accordingly, revised the seniority and placed the wards of the loyal employees below the applicants in the said T.A. The applicants in the present O.A. who are seniors to the applicants in the said T.A. , being aggrieved over the reevised seniority list dated 25.2.91 [Annexure R I to C.A.55/89] , filed the present O.A. The applicants submit that the action of the respondents in placing the wards of the loyal employees above the applicants in this O.A. is in violation of articles 14 and 16 of the Constitution and is arbitrary and discriminatory. They also submitted that the judgment of this Tribunal in TA. 7/86 is a judgment in rem and all the persons similarly situated should be given the benefit of the said judgment. As the respondents failed to revise the seniority in pursuance of their representations, they filed the present O.A. The respondents in the reply, have submitted that the judgment of this Tribunal in T.A.7/86 is not a judgment in rem and therefore is not applicable to the applicants in the present O.A. They also submitted that this judgment was confined to purely individual problem of certain employees who are the applicants in the said T.A. They also submitted that the present O.A. is barred by limitation and this Hon'ble Tribunal has no jurisdiction to entertain the present O.A.

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6. Mr. Shah referred to the following Judgments ; (i) the Judgment of Principal Bench of CAT in the case of Shri Totaram Sharma Vs. Union of India & ors. reported in 1990 [3] SLJ page- 181 ; (ii) Judgment of the Jaipur Bench of CAT in the case of Smt. Kamalesh Jain and Others Vs. U.O.I. (26 ATC 888) ; (iii) Judgment of the Patna Bench of CAT in the case of D.K. Jha & another Vs. U.O.I. 1991 (1) CAT 151 and (iv) the Judgment of the Madras Bench of CAT in the case of K.C. Subramaniam and Others Vs, Chief General Manager, Telecom (1991) 16 ATC 28.

Shri. K.K. Shah submitted that in service matters, any judgment rendered, will affect some one or the other member of the service. The interpretation of rules governing a service by the Tribunal, while it may benefit one class of employees, may adversely affect another class. The judgments of the Tribunal may not, in that sense be strictly judgments in personam affecting only the parties to that petition and such judgments should be judgments in rem. He further submitted that in the present case, after the judgment in T.A.7/86, the respondents revised the seniority of all the wards of the loyal workers qua the applicants in T.A.7/86 and this has given a fresh cause of action. He submitted that after the judgment of this Tribunal in TA/7/86, the applicants had

filed the Review Application No.32/92 and sought an identical relief granted to the applicants in TA/7/86. The applicants had also filed the Contempt Petition No.55/89 on the ground that the respondents ought to have treated the judgment in T.A /7/86 as judgment in rem and revised the seniority of all the persons similarly situated to the applicants in TA/7/86.

He therefore, submitted that the action of the respondents in not giving the seniority to the applicants also over the wards of loyal employees is contrary to the judgment in TA/7/86.

7. Mr.Shevde, for the respondents submitted that the O.A. is barred by limitation as the applicants are now challenging the seniority of 1975. He also submitted that the relief granted in T.A./7/86 pertains only to the applicants in the said T.A. and not to the applicants in the present O.A. He also submitted that the Contempt Application and Review Application also not maintainable as the applicants are not the parties to the said T.A. No.7/86 and the respondents have not committed any contempt against the judgment of this Tribunal in T.A. No.7/86.

8. We have carefully considered the submissions of both the sides and examined the pleadings. In T.A.7/86, this Tribunal considered the seniority of the

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wards of loyal employees who were directly appointed as Cleaner [class IV posts] and granted seniority over the applicants in the said T.A. and also of the present O.A. When the applicants are already working as Substitutes, they will have prior claim over the others. In any case, this Tribunal in T.A.7/86 held that the appointment of the wards of loyal employees is in the nature of award and therefore, is discriminatory and is violative of articles 14 and 16 of the Constitution. Consequently the persons recruited in terms of such award including the respondents No. 4 to 14 in the said T.A. cannot claim any seniority over the petitioners in the said T.A. Accordingly, the directions were given to the respondents to revise the seniority qua the applicants in the said T.A.

9. The judgment of this Tribunal was delivered on 5.10.88 and the respondents implemented the same by revising the seniority by the order dated 25.2.91, Annexure A/2 of the R.A. The applicants immediately after the pronouncement of the judgment filed Contempt Application and also filed Review of T.A. for obtaining same relief. They also filed the present O.A.

10. The respondents' main objection to the present O.A. is that the same is not maintainable on

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the ground that it is barred by limitation. On merits, they have contended that the judgment of this Tribunal in T.A.7/86 is not a judgment in rem. Somewhat an identical matter before the Principal Bench in the case of Totaram Sharma [supra] made the following observations in para 11 and 12 which read as follows:-

11. We have heard the learned counsel of both parties and have gone through the records of the case carefully. We are not impressed by the contention of the respondents that the judgment of the Delhi High Court is only a judgment in personam and not a judgment in rem. A full Bench of this Tribunal in John Lucus and Another Vs. Additional Chief Mechanical Engineer, S.C. Railway and others, 1987 [3] ATC 328 at 355 has observed as follows:-

" In 'service matters' any judgment rendered, except perhaps in disciplinary proceedings, will affect some one or the other member of the service. The interpretation of rules governing a service by the Tribunal, while it may benefit one class of employees, may adversely affect another class. So also upholding the claim of seniority or promotion of one may infringe or affect the right of another. The judgments of the Tribunal may not, in that sense be strictly judgments in personam affecting only the parties to that petition, they would be judgments in rem. Most judgments of the tribunal would be judgments in rem and the same authorities impleaded as respondents both in the earlier and the later applications would have to implement the judgments'.

12. We are of the opinion that the applicant before us is similarly situated like

that of the petitioner before the Delhi High Court in Kulwant Singh's case and, therefore, the applicant is also entitled to the same relief."

The other Judgments referred to by Mr. Shah also support the case of the applicants.

11. In our considered view, the applicants in the present O.A. are similarly situated like that of the petitioners in T.A.7/86 before this Tribunal and, the Judgment of this Tribunal in the said T.A cannot be regarded as Judgment in personam. The principle of law laid down in the Judgment would be applicable to the applicants in the present O.A and are entitled to the same relief as granted to the petitioners in T.A.7/86.

12. As regards the plea of limitation, we are of the opinion that the same is not tenable in the facts and circumstance of the case. It may be stated that the judgment of this Tribunal was delivered on 5.10.88 and immediately thereafter the applicants initiated proceedings for redressal of their grievance for revision of their seniority. It has been held in Gopal Anant Musalgaonkr Vs. Union of India, reported in 1987[2] ATC 444 that in the case of infringement of a fundamental right, there is a continuing wrong so long as the applicant's grievance has not been redressed. We feel that the respondents should not have raised the plea of limitation to defeat the just claims of the

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applicants who were clearly discriminated in the matter granting seniority and promotion which was given to their juniors in the light of the Judgment in T.A 7 of 1986. We therefore, reject the plea of limitation.

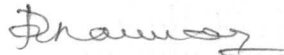
Shri. Shevde, counsel for the respondents submitted that the applicants have not impleaded the wards of loyal employees (Annexure 'C' to O.A) as private respondents in the O.A and therefore the O.A is not maintainable. We however find that they have been impleaded as private respondents in C.A 55 of 89 and also in the R.A. 32 of 1992 have been heard. As the applicants seeks restoration of their seniority and the private respondents are also represented, we reject this contention.

In the facts and circumstances of this case, we hold that the applicants in the present O.A. are entitled to the same relief as granted to the petitioners in T.A.7/86. Accordingly, the O.A. is allowed and the respondents - railway administration are directed to treat the applicants' as senior to the persons mentioned at Annexure 'C' to the O.A who have been appointed during May to August '75 on the ground that they are the wards of the loyal employees and on that basis revise the seniority list and consider them for promotion, as per the rules. The O.A. is allowed to the extent stated above. There will be however, no order

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as to costs.

13. With the disposal of the O.A., the C.A.55/89 in T.A.7/86 and R.A.32/92 in T.A.7/86 have become infructuous and accordingly disposed of.



[P.C.KANNAN]
MEMBER [J]



[V.RADHAKRISHNAN]
MEMBER [A]

S. Solanki **