

NO

IN THE CENTRAL ADMINISTRATIVE TRIAUNAL

AHMEDABAD BENCH

Seniority

B

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O.A. No. 449/90

~~LA No.~~

DATE OF DECISION 28.1.1993

Bhalchandra Pandalik Wani Petitioner

Mr. J.V. Desai Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mr. N.S. Shevde, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C. Bhatt : Member (J)

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? ✗

Bhalchandra Pandalik Wani,

... Applicant.

Vs.

1. Sr. Divisional Signal
Telecommunication Engineer,
(Establishment) B.R.C.,
Divisional Office,
Baroda.
2. Divisional Railway Manager,
DRM Office,
Western Railway,
Vadodara Division,
Pratapnagar,
Vadodara- 390 004.
3. The Union of India,
Through: General Manager,
Western Railway,
Churchgate,
Bombay- 400 001.

... Respondents

O R A L J U D G M E N T

O.A. 449 of 1990

Date: 28.1.1993.

Per: Hon'ble Mr. R.C. Bhatt, Member (J)

1. Mr. J.V. Desai, learned advocate for the applicant and Mr. N.S. Shevde, learned advocate for the respondents are present.
2. This application under Section 19 of the Administrative Tribunals Act, 1985, is filed by the applicant serving as Telecommunication Maintainer Gr. II, seeking the reliefs against the respondents as prayed in para 7 (A) and (B) of the application which read as under:

"(A) The applicant prays that this Hon'ble Tribunal may be pleased to quash and/or set aside the order No. E/SIG/1510 dated 26.2.1990 i.e. Annexure A/6 passed by the respondent no. 1 interpolating the petitioner's name in the seniority list of TCM Gr. II at Sr. No. 14.

(B) The petitioner further prays that the respondents be directed to treat the applicant as having been promoted from TCM Gr. III to TCM Gr. II on 2.11.1979, and to give him all benefits of seniority, pay and allowances and promotion and implement the direction of this Hon'ble Tribunal given vide its judgement dated 22.8.1988 passed in T.A. No. 226 of 1986.

The case of the applicant is that, the trade test examination for Telecommunication Maintainer Grade-III was held on 2nd June, 1979, and the applicant passed that examination and the applicant was promoted to the post of Telecommunication Maintainer Gr. II vide letter dated 1st August, 1979, and the applicant resumed his duty in that capacity on 4th August, 1979. The regular promotion order was given on 2nd November, 1979.

3. According to the applicant, thereafter, the respondents,took decision on 19th May, 1980, to treat the trade-test examination dated 2nd June, 1979, as null and void and in pursuance of that order, the applicant was reverted by the respondents to the post of T.C.M. Gr. III dated 13th March, 1981.

4. The applicant, on receiving this order of the respondents dated 13th March, 1981, reverting him to the

post of T.C.M. Gr. III, filed Civil Suit No. 135 of 1981 in the Court of Civil Judge (S.D.) Bharuch, Challenging the said order. A decree was passed in that suit on 8th May, 1984, by which the said order of reversion dated 13th March, 1981, was declared as null and void, and the respondents were restrained from implementing the same. The respondents filed an appeal being appeal no. R.C.A. No. 10 of 1985, in the court of District Judge, Bharuch, against the judgment and decree passed by the learned Civil Judge (S.D.) Bharuch, in Civil Suit No. 135/81. The said appeal was transferred to this Tribunal under Section 29 of the Administrative Tribunals Act, 1985, which was numbered at T.A. No. 226/86. This Tribunal, after hearing of the parties, dismissed the T.A./226/86 on 22nd August, 1988, the copy of which is Annexure A/2.

5. The respondents No. 1 thereafter, issued show cause notice, Annexure A/3 dated 7th December, 1988, informing the applicant that his reversion from TCM Gr. II to TCM Gr. III was caused on administrative grounds. Moreover, this notice further shows that the trade test taken earlier was declared as null and void and fresh trade test was proposed and conducted but the applicant was not called in the fresh trade test being the junior. The applicant was given an opportunity to make a representation against this show cause notice at Annexure

A/3. The applicant, thereafter, in response to the show cause notice Annexure A/3 submitted his representation dated 6th Jan. 1989, by the Annexure A/4 and reminder also was sent by letter dated 24th November, 1989, vide Annexure A/5. The respondent no. 1 gave reply to it by letter at Annexure A/6, dated 26th Feb. 1990 which is an impugned order, it reads as under:

"Your above representation has been considered by the Sr. DSTE and following speaking orders are passed.

To honour the judgment given by Civil Court/HH and C.A.T. ADI. Your name is interpolated in the panel of TCH Gr. II scale Rs. 1200- 1800 at Sr. No. 14 i.e. below sanjirbhai N. Patel issued under this office memorandum No. E/Sig/1130716 dated 7.3.1984. You will be further considered to appear in the trade test for promotion as TCM Gr. I scale Rs. 1320- 2040 (RP) with the consequential benefits arranging out of interpolation. Your name in the panel of TCH Gr. II.

You should send your acceptance for above to enable this office to take further action early.

For Sr. DSTE (E) BRC"

6. The applicant filing aggrieved by said order has filed this application, contending that the promotion given to the applicant to the post of TCM Gr. II was not ad-hoc one but it was on a regular basis on passing trade test examination held on 2nd June, 1979, and the respondents ought to have given all the benefits to him on that basis.

7. The respondents have filed reply contending that the order passed by the respondent no. 1 was legal and valid. It is contended by the respondents that after considering the explanation of the applicant, a speaking

order Annexure A/6 dated 25th Feb. 1990, was passed to honour the judgment given by the C.A.T. Ahmedabad, Bench Ahmedabad. It is contended that the name of the applicant is interpolated in the panel of TCM Gr. II as per the decision/ order of this Tribunal, as per the applicants' seniority in the lower grade as TCM Gr. III vide order Annexure A/6. We have heard the learned advocates for the parties, and in our opinion, the notice Annexure A/3 dated 7th December, 1988, issued by the respondents in pursuance of the decision of this Tribunal in T.A. 226/86, and also the impugned order Annexure A/6 dated 26th Feb. 1990, suffer from the serious vice of not implementing the directions of the Tribunal properly.

The Tribunal had in para 12 of the Judgment held as under:

"In this view of the matter, the appeal fails. The Judgment and Decree passed in R.C.S. No. 135/81 are hereby confirmed. However, it is made amply clear that our judgment in this appeal will not restrain the respondent- railway administration from correcting their orders. But, before taking such action, they will be required to serve the plaintiff with a show- cause notice and afford him an opportunity to explain his point of view. The plaintiff will be at liberty to make his representation regarding his claim for promotion."

The Tribunal had observed in para 11 of the Judgment that the power of the Government to correct their mistake and revise their orders passed due to some mistake was not disputed. But, in such a situation, it is incumbent on the part of the said authority to apprise the employee

so adversely affected, about the circumstances in which the earlier order was found to be wrong. Reading para 11 and 12 of the Judgment it is clear that the respondents were given liberty to correct the said order after issuing the show cause notice to the applicant and after affording him and opportunity to explain his point of view. At this stage, it is necessary to refer to the wordings of the impugned order of reversion dated 13.3.1981, which was under challenge before the court and Tribunal and which is re-produced in para 4 of the Judgment of this Tribunal as under:

"B.P. Wani, TCM Gr. II BH Scale Rs. 330-480 (R) working under TCI Gr. II (Cable) PRTN on declaration of original T/test as null and void vide this office letter No. E/Sig/1130/Vol. III dated 19.5.1980 is reverted as TCM, Gr. III scale Rs. 260- 400 (R) on pay Rs. 278/- and transferred and posted at PRTN under TCI Gr. I (Cable) PRTN against existing vacancy.

This was the original order of reversion under challenge dated 13th March, 1981. Reading this reversion order, it is clear that the applicant was reverted as T.C.M. Gr. III because of the declaration of original trade test as null and void. This order was held illegal by the court and also by this Tribunal and the respondents were given liberty for correcting their orders after serving show cause notice to the applicant and affording the opportunity to explain his point of view. The respondents have issued fresh notice Annexure A/3 dated 7th December, 1988, in pursuance to the judgment of the Tribunal but instead of

issuing such notice as per direction mentioned in para 11 and 12 of the Judgment of C.A.T. Judgment namely appraising the applicant the circumstances in which the earlier order was found to be wrong which justified cancellation it is mentioned in the notice that applicant was not called in fresh trade test, he being junior. It is mentioned in this notice that the trade test for promotion as TCM Grade II was declared as null and void in view of notification referred therein. The applicant gave two representations at Annexure A/4 and A/5 contending that he should be given the promotion and benefits from 2nd November, 1979, having passed the trade test and also all benefits of seniority as TCM Gr. II. The respondents in reply to the representation passed an impugned order at Annexure A/6 dated 26th Feb. 1990. But, instead of considering and deciding the representation of the applicant on the point as to why the order of treating the trade test as null and void was passed and why the promotion given to the applicant to the post of TCM Gr. II, should be cancelled, the order reads as under:

"Your above representation has been considered by the Sr. DSTE and following speaking orders are passed. To honour the judgement given by Civil Court/HH and CAT ADI. Your name is interplotted in the panel of TCH Gr. II scale Rs. 1200- 1800 at Sr. No. 14 i.e. below Sanjirbhai N. Patel issued under this office memorandum No. E/Sig/1180716 dated 7.3.84. You will be further considered to appear in the trade test for promotion as TCH Gr. I scale Rs. 1320- 2040 (RP) with the consequential benefits arranging out of interpolation. Your name in the panel of TCM Gr. II. You should send your acceptance for above to enable this office to take further action early.

For Sr. DSTE (E) BRC

This order shows non-application of mind by the respondents as to whether on considering the representation of the applicant they wanted to cancel the promotion of the applicant and to revert him to TCM Gr. III on the basis of the declaration of the trade test as null and void. ~~xx~~

~~xx~~ In short, the respondents were at liberty to give fresh show cause notice to the applicant as per directions given in para 11 and 12 of the Judgment of C.A.T. and after considering the representation filed by the applicant they had to decide the point at issue but instead they have failed to decide point at issue and gave other finding.

In this view of the matter that the notice at Annexure A/3 was also not legal and finding by the respondents dated 26th Feb. 1990 by Annexure A/6 is also not legal in as much as it doesnot decide the point as to whether the promotion of the applicant to TCM Gr. II was legal, we shall have to quash and set aside, not only the impugned order Annexure A/6 dated 26th Feb. 1990 but the notice Annexure A/3 dated 7th December, 1988, on the basis of which the impugned order at Annexure A/6 was passed. We therefore, pass the following order:

8.

O R D E R

The application is partly allowed. The notice Annexure A/3 dated 7th December, 1988, issued to the applicant and the impugned order Annexure

A/6 dated 26th Feb. 1990, passed by the respondent no. 1 is quashed and set aside and the respondents are directed to issue the fresh show cause notice to the applicant in terms of direction in para 11 and 12 of the C.A.T. Judgment as to why the applicant was reverted from T.C.M. Gr. II to T.C.M. Gr. III etc. and affording an opportunity to the applicant to make the representation regarding his claim of promotion and then to decide the same. No order as to costs. The application is disposed of.

V.R.
(V. Radhakrishnan)
Member (A)

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

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