

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

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O.A. NO. 80/91

T.A. NO.

DATE OF DECISION 15.07.1995

Chandulal S. Solanki

Petitioner

Mr. K.K. Shah

Advocate for the Petitioner (s)

Versus

Union of India and Ors.

Respondent

Mr. N.S. Shevde

Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. N.B. Patel, Vice Chairman

The Hon'ble Mr. K. Ramamoorthy, Member (A)

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 ?

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Chandulal S. Solanki,
 Aged about 50 years,
 T/256-A New Railway Colony,
 Sabarmati,
 Ahmedabad

.. Applicant

(Advocate : Mr. K.K. Shah)

Vs.

1. Union of India, notice to be served through the General Manager, Headquarter Office, Western Railway, Churchgate, Bombay - 400 020
2. Assistant Operating Supdt.(E), representing the Divisional Railway Manager, Divisional Office, Western Railway, Pratapnagar, Baroda.
3. Shri Kuden D. Rana TNC, Western Railway, Sabarmati, Ahmedabad.

(Advocate : Mr. N.S. Shevde)

.. Respondents

Date : 15.07.1995

OA/80/91ORAL JUDGMENT

Per : Hon'ble Mr.N.B. Patel, Vice Chairman

The applicant challenges that part of the order Annexure-A dated 5.2.1991 by which he is reverted from the post of Train Clerk to the post of Pointsman. It appears that the applicant joined ~~ad~~ service as Pointsman in 1960 and he was promoted to the post of Train Clerk in 1971. Thereafter, by the impugned order dated 5.2.1991, he was reverted to the post of Pointsman. It appears that, despite this reversion order the applicant was not actually reverted as Pointsman pursuant to the interim relief granted in the

pursuant to the interim relief granted by the Tribunal on 5.3.1991.

2. The main ground on which the order reverting the applicant to the post of Pointsman was issued is that the applicant was promoted as Train Clerk in 1971, only on ad-hoc basis and further that for promotion to the post of Train Clerk a Pointsman is required to appear at a test and, if he is successful at the test, he has to satisfactorily complete training for one year. It is said that the applicant had the opportunity to appear at the required test on 1.9.1976, 21.1.1979 and 9.1.1989 but the applicant did not avail of that opportunity and, therefore, there was no alternative but to revert the applicant to his substantive post of Pointsman and that is what was done by the impugned order Annexure-A dated 5.2.1991. On behalf of the respondents, it is contended that, in these circumstances, there is no illegality in the reversion order which is passed.

3. The case of the applicant is that, since he had completed as many as about 21 years of service as Train Clerk, his services in that post should have been regularised without subjecting him to the departmental test. It appears that the applicant had successfully

passed some test before he was promoted as Train Clerk, but that test was taken only to decide the suitability of the applicant for promotion on ad-hoc basis and it was not a test where the applicant was tested to decide his suitability for promotion on regular basis. In his application, the applicant has averred that there are other cases in which regularisation of ad-hoc employees is made taking into consideration their long service without subjecting them to the departmental test. The applicant has also averred that he had, in fact, approached the authorities for regularising him and he relies upon Annexure-A3 dated 11/14.12.1984 whereby the DRM (E), Baroda had recommended his case to the GM(E), Western Railways, for regularisation.

4. It may be stated at the cost of repetition that the applicant was continued, though of course on ad-hoc basis, as Train Clerk right from 1971 till the impugned reversion order Annexure-A was passed on 5.2.1991 despite the fact that, in between, several tests were held for selecting candidates for promotion to the post of Train Clerk and the applicant had not appeared at such tests. It may also be stated that, even after the impugned order dated 5.2.91, the applicant has continued on the post of Train Clerk by virtue of the interim order passed by this Tribunal on

5.3.1991. In the application, the applicant has averred that, at the time of the filing of the application in February 1991, he was on the verge of retirement. In the written statement filed by the respondent No.2, it is averred in para 6, "the averments of the applicant that the applicant having put in 31 years of service and 2 years are now left for his retirement and physically he is not fit to perform the duties of Pointsman in Class-IV category are not relevant". It may be noted that this averment in para 6 of the written statement is not contested by the applicant by filing any rejoinder. Thus, it appears that the applicant had somewhere, may be in his representation, stated that he had completed 31 years of service and had only two years left before his retirement. Even if it is taken that such a statement was made by the applicant in March 1993 when the respondent No.2 had filed written statement containing the above averment, it would mean that the applicant must have retired somewhere in March 1995. This raises the question whether the present OA is not rendered infructuous if the applicant had actually retired in March 1995. We had asked Mr. K.K. Shah, the learned advocate for the applicant, to ascertain from the applicant whether this was the correct position and Mr. Shah tells us that he had written a letter to the applicant but the applicant has not responded to that letter. He is, therefore, not in a position to state categorically whether the applicant has not retired in March 1995 or whether the

applicant is in service even at present. However, since the aforesaid statement made in para 6 of the written statement ~~is~~ is not contested and since it is mentioned even in the OA that the applicant was on the verge of retirement in February, 1991, we proceed on the basis that the applicant has retired in March 1995.

5. As already mentioned, the applicant was continued on the post of Train Clerk for 21 long years before ~~his~~ ^{the} impugned termination order was passed and he has continued to be on the said post till his retirement by virtue of the interim order passed by this Tribunal on 5.3.1991. Thus, the applicant has remained on the post of Train Clerk right till his retirement which must have taken effect in March 1995. In these circumstances, we find that this OA is now rendered infructuous. However, while holding so, we may observe, in passing, that there are strong circumstances indicating that the applicant's request for regularisation should have been accepted. The first thing is that the applicant was allowed to work for 21 long years and that too even after he did not avail of the opportunity ^{to} appear at the test. Coupled with this ^{fact} that DRM(E), Baroda had recommended the case of the applicant to the General Manager for regularisation by his letter Annexure-A3 dated

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11/14.12.1984. Furthermore, it appears from the representation Annexure-A4 addressed by the applicant to the GM, the Divisional Railway Manager and the Station Superintendent in 1987 that his version was that, another employee, namely, Shri Shardaprasad. B, who was similarly situated as the applicant, had preferred a Special Civil Application before the High Court of Gujarat (SCA 6078/85) and, in that Special Civil Application, the High Court had directed Shri Shardaprasad to file a representation to the General Manager and, according to the applicant, Shri Shardaprasad had submitted such representation and the applicant states that, as per his information, necessary orders regularising the services of Shardaprasad have been passed. If this is so, there is no reason why the applicant's request for regularisation should not have been dealt with in the same way in which Shri Shardaprasad's request was dealt with. It also bears ^a mention here that, in his representation Annexure-A4 submitted in 1987, the applicant had stated that in 1986 he was apprehending reversion and, therefore, he had filed OA/13/86 in this Tribunal and, in the affidavit-in-repy filed on behalf of the respondents, it was stated, inter alia, that no reversion order was ~~actually passed~~ against the applicant and, on that basis, the said OA filed by the applicant was dismissed as being premature. This is, therefore, a case in which the applicant was agitating for being given regularisation since long. We believe that all these factors

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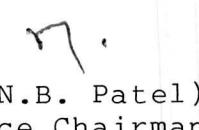
~~not to~~ have not been considered by the respondents before passing the impugned reversion order. We, however, make it clear that we are making ~~these~~ observations only in passing and do not pronounce any firm opinion on the question whether the applicant should have been regularised relaxing the condition of having to pass departmental examination and to undergo training.

6. So far as the final order to be passed in this OA is concerned, as stated by us above, the OA is now rendered infructuous and stands disposed of accordingly. However, in case of any difficulty, i.e. if it transpires that the applicant ^{is} still in service and he is interested in agitating the question of regularisation as Train Clerk, he will be at liberty to ask for revival of the OA and for revival of the stay order granted in this OA.

No order as to costs.



(K. Ramamoorthy)
Member (A)



(N.B. Patel)
Vice Chairman

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