

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

O.A. No. 200 of 1992

Date of decision : 16.10.2000

Mr. Dipak G. Sheth : Petitioner [s]

Mr. M. S. Trivedi : Advocate for the petitioner [s]

Versus

Union of India & Ors. : Respondent [s]

Mr. N.S. Shevde for R-2 : Advocate for the Respondent [s]

CORAM :

THE HON'BLE MR. A. S. SANGHAVI : MEMBER (J)

THE HON'BLE MR. G. C. SRIVASTAVA : 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?

Dipak G. Sheth,
11, Asmita Society,
Maninagar (East),
Ahmedabad - 380 008.

= Applicant =

Advocate : Mr. M. S. Trivedi

Versus

1. Union of India (through)
The General Manager,
W.Rly., Church gate,
Bombay.
2. Senior Divisional Engineer,
Office of Sr. Divisional Engineer,
Pratapnagar, Baroda.
3. Assistant Electrical Engineer,
W. Rly., Ahmedabad.

= Respondents =

Advocate : Mr. N. S. Shevde for R-2.

JUDGMENT
O.A 200 of 1992

Date : 16/10/2000

Per Hon'ble Shri. A. S. Sanghavi : Member (J).

The applicant who is serving as a Fitter in the Railways has moved this O.A for a direction against the respondents to assign him correct seniority and consider him for promotion from the date his juniors were promoted. According to the applicant he was appointed on the post of Fitter in the pay scale of Rs.260-400/- on dated 5.6.78 and since then he is working as a Fitter. He was granted temporary status from 6.1.82 and has even passed trade test in 1989. However, in 1984, he was reverted by the respondents from the post of Fitter to

the post of Helper and being aggrieved by this order he had moved the Hon'ble High Court by filing Special C.A. No. 2802/84 and the same was transferred to this Tribunal under Section-29 of the Administrative Tribunals Act, 1985 and was registered as T.A No. 345 of 1986. The same was allowed by the Tribunal and order of the reversion of the applicant was quashed with a direction to the respondents not to revert him from the original post of Fitter. He has since then been reinstated as Fitter by the respondents but has not been given any promotions. According to the applicant he had submitted more than one representation to the concerned authorities to consider him for promotion, but he has not been considered and he had been transferred from one place to another. He was not called for trade test in the year 1991 though his juniors were called and some of his juniors are promoted to Grade-II and Grade-I. He has made a grievance that vide a memorandum dated 24.3.92 the respondents have called some employees for trade test for HS (RAC) Grade-II which is proposed to be held on 20.04.92 but his name is not included in the said list. According to him some of his juniors vizly Vijayanath Sarang, Khodabhai, Thomas Robinson etc are already promoted and other juniors are called for further test. According to him the action of the respondents not to call him for trade test and not to consider him for further promotion is illegal, arbitrary and bad in law and therefore the respondents are required to be directed to consider him for further promotion.

2. The respondents in their reply have admitted that the applicant has been engaged as a Casual Fitter from 5.6.78 and that he has been given temporary status from 6.1.82. They have also admitted

that he has passed trade test in 1989 and from 1989 he has been given regular posting as a regular employee. They have however contended that he is entitled to the seniority only after regularisation. He has been given all the benefits of a temporary status employee except seniority and he will be entitled to seniority only from the date of his regular posting. They have also admitted that the applicant had passed the trade test in the year 1989 and has since been considered as a regular employee. They have however contended that he is not senior in the cadre of Fitter Grade-III as he has become regular employee only from 13.7.88. They have denied that he had been transferred time and again to harass him and have contended that due to the introduction of different trains necessary transfers had to be made. They have also denied that the applicant was deliberately not called for the trade test held in Jan'97 and have contended that he was not eligible to be called for the said trade test and he would be considered for the same as and when his turn comes. They have also denied that the juniors to the applicant are promoted and that they were also called for the trade test. They have even contended that employees senior to the applicant are still awaiting promotion to the post of ELF Grade-II. They have also conceded that the applicant is not called for the trade test to be held on 20.04.92 but according to them he is not eligible to be called. They have also contended that no names of juniors who are called for the trade test is given by the applicant and it is shown that the allegation made by the applicant is baseless. They have prayed for rejection of this O.A.

3. We have heard the learned advocates of both the parties and carefully gone through the pleadings and documents on record.
4. Before advertiring to the submissions of the applicant we may point out that the applicant has not filed any rejoinder and therefore has not rebutted the contentions of the respondents. The main grievance of the applicant is that he has not been considered for promotion to Grade-II post and he has not been called for trade test to be held on 20.04.92. It is alleged by the applicant that his juniors are called for said trade test and his juniors are also promoted to the Grade-II post. The respondents have however, given the dates of the regularisation of the applicants in service and have contended that the applicant being not eligible to be called for the trade test for the Grade-II post, he has not been called. It is contended by the respondents that applicant has been granted temporary status w.e.f. 6.1.82 and he has been considered to be a regular employee w.e.f. 13.7.88 i.e. date on which the trade test was finalised and since he has been absorbed as a Fitter w.e.f. 13.7.88, he is entitled to the seniority from that date. This contention of the respondents is not rebutted by the applicant by filing rejoinder or adducing any evidence. The applicant though maintaining that his juniors were promoted has not given the names of any juniors to substantiate his allegation that he had been by-passed and his juniors were promoted earlier than him. It appears that applicant having become regular employee only w.e.f. 13.7.88 has not realised the fact that his name in the seniority list would be at bottom. It appears that he has been considering his length of service from 1978 without realising that he

had not been a regular employee till 13.7.88. Under the circumstance, there is no reason not to believe the say of the respondents that he had not been eligible for trade test and consequently not eligible to be promoted to Grade-II. He has not been called for the trade test to be held on 20.04.92 as he is not eligible for the same. The applicant has not shown how he is eligible to be called for the said trade test by adducing evidence of his seniority in the Fitter Grade-III category. Under the circumstances, we do not see any merit in this O.A. We do not find that the case of the applicant requires consideration and that the respondents are required to be directed to consider his case for promotion. The applicant has miserably failed to make out the case of victimisation or bias towards him and therefore, we hold that O.A is devoid of any merit and deserves to be rejected. In the conclusion therefore the O.A is rejected with no order as to costs.

G.C. Srivastava
(G.C. Srivastava)
Member (A)

A. S. Sanghavi
(A.S. Sanghavi)
Member (J)

Mb

रोप DATE	कार्यालय टिप्पणी OFFICE REPORT	आदेश ORDER
28.8.2000		<p>Division Bench matter. Adjourned to 20.9.2000.</p> <p>(A.S.Sanghavi) Member (J)</p>
20.9.2000		<p>nkk</p> <p>Division Bench matter. Adjourned to 26.9.2000.</p>
26.9.2000		<p>(P.C.Kannan) Member (J)</p> <p>nkk</p> <p>Mr.Trivedi for the applicant seeks time to go through the papers. Adjourned as a alst chance to 28.9.2000.</p>
28/09/00		<p>(G.C.Srivastava) Member (A)</p> <p>(A.S.Sanghavi) Member (J)</p> <p>nkk</p> <p>Mr. Trivedi as well as Mr. Shende seeks time. Since it is a matter of '92, kept tomorrow. Adjourned to 29-9-2000.</p> <p>(G.C.Srivastava) Member (A)</p> <p>(A.S.Sanghavi) Member (J)</p>

तारीख DATE	कार्यालय टिप्पणी OFFICE REPORT	आदेश ORDER
29/9/00		<p>Mr. Trivedi is not present. On the basis of material on JUDGMENT RESERVED</p> <p>(G. C. Srivastava) (A. S. Soni), Member (A) Member (J)</p>

OA/200/92

रीत
DATE

कार्यालय टिप्पणी
OFFICE REPORT

आदेश
ORDER

28.8.2000

Division Bench matter. Adjourned
to 20.9.2000.

Ar
(A.S.Sanghavi)
Member (J)

20.9.2000

nkk

Division Bench matter. Adjourned to
26.9.2000.

PW
(P.C.Kannan)
Member (J)

26.9.2000

nkk

Mr.Trivedi for the applicant seeks
time to go through the papers. Adjourned
as a alst chance to 28.9.2000.

cc
(G.C.Srivastava)
Member (A)

Ar
(A.S.Sanghavi)
Member (J)

28/09/00

nkk

Mr. Trivedi as well as Mishra
seeks time. Since it is a matter
of '92, kept tomorrow. Adjourned
to 29.9.2000.

cc
(G.C.Srivastava)
Member (A)

Ar
(A.S.Sanghavi)
Member (J)

तारीख DATE	कार्यालय टिप्पणी OFFICE REPORT	आदेश ORDER
29/9/00		<p>Mr. Trivedi is not present. On the basis ^{of} year material on, JUDGMENT RESERVED</p> <p><i>(G.C.)</i> <i>AS</i> (G.C. Srivastava) (A. S. Sanghvi) Member (AG) Member (JJ)</p>