

B

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

ND
Promotion

O.A. No. 172/93 & 173/93.
T.A. No. ~~xx~~

DATE OF DECISION 13-4-1993.

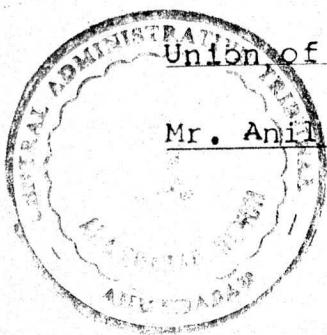
Raja Bhutta & Kanjibhai J. Solanki, Petitioners

Mr. M. M. Xavier & Mr. K. K. Shah, Advocate for the Petitioner(s)

Versus

Respondent(s)

Mr. Anil Kothari Advocate for the Respondent(s)



CORAM :

The Hon'ble Mr. R.C. Bhatt, Judicial Member.

The Hon'ble Mr. M.R. Kolhatkar, Admn. Member.

O.A.No. 172/1993.

Raja Butta,
Chargeman Grade 'B'
Junagadh Workshop,
residing at:
Sardar Para, Street No. 3
House of Vithal Thunder,
Junagadh.

..... Applicant.

(Advocate: Mr. M.M. Xavier
& Mr. K.K. Shah)

Versus.

1. The Union of India, owning &
representing Western Railway
Through its General Manager,
Western Railway, Churchgate,
Bombay - 20 (Notice to be served
to Chief Mechanical Engineer,
Western Railway, Churchgate,
Bombay - 20).

2. Chief Works Manager,
Workshops, Western Railway,
Ahmer.

3. The Works Manager,
Western Railway,
Bhavnagar Para Workshop,
Bhavnagar Para 364 003.

4. Shri Mohanlal B.
under SS(w) Bhavnagar Para
Workshop, Bhavnagar.

5. Shri Bhima Amba
under Shop Superintendent
Junagadh Workshop,
Junagadh.

..... Respondents.

(Advocate: Mr. Anil Kothari)

O.A.No. 173/1993.

Kanjibhai Jinabhai Solanki,
Chargeman Grade 'B'
Fariyadka Village,
Post Office, Vertej,
Dist: Bhavnagar.

..... Applicant.

(Advocate: Mr. M.M. Xavier &
Mr. K.K. Shah)

Versus

1. The Union of India, Owning &
Representing Western Railway,
Through its General Manager,
Western Railway, Churchgate,
Bombay-20 (Notice to be served
to Chief Mechanical Engineer,
Western Railway, Churchgate,
Bombay - 20).

2. Chief Works Manager,
Workshops Western Railway,
Ajmer.
3. The
Chief Works Manager,
Workshops, Western Railway
Bhavnagar Para Workshops,
Bhavnagar Para.
4. Shri Mohanlal B
under SS(W), Bhavnagar
Para Workshop,
Bhavnagar.
5. Shri Dolatsinh N
under SS(W)
Bhavnagar Para Workshop,
Bhavnagar Para. Respondents.

(Advocate: Mr. Anil Kothari)

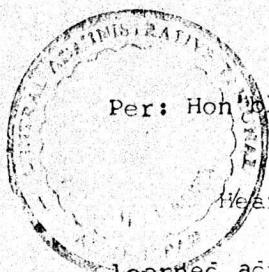
ORAL ORDER

O.A.No. 172/1993

AND

O.A.No. 173/1993

Date: 13.4.1993.



Per: Hon'ble Mr. R.C.Bhatt, Judicial Member.

Heard Mr. M.M.Xavier and Mr. K.K. Shah,
learned advocates for the applicant and Mr. Anil
Kothari, learned advocate for the respondents.

2. By consent of the learned advocates of the
parties both the applications are being heard
together and are being disposed of by a common
judgment. The applicant in O.A. 172/93 is one
Raja Bhutta while the applicant in O.A. 173/93 is
one Kanjibhai Jinabhai Solanki. It is the case of
the applicant in each case that he was appointed as
Khalasi and then gradually promoted as HSK/I JND.
It is further alleged by each applicant that he
belongs to ST & SC community respectively and is
entitled for all the benefits available to the

reserved community. It is further alleged by the applicant in each case that each applicant was promoted to the post of HSK/I and then ultimately by order dated 6th February, 1992 vide Annexure A-3 which is filed in O.A. 172/93, the applicants were provisionally promoted as Chargeman 'B' Machine and both of them were posted with immediate effect as per that order.

3. It is alleged by the applicants in their application that thereafter the respondents initiated actions and conducted another selection for filling up the vacancies of Chargeman Grade 'B' Machine and


the persons named in para 4.5 in O.A. 172/93 were considered eligible and were called for selection vide letter dated 15th September, 1992. It is alleged by the applicants that the respondent No.3

i.e., the Works Manager, Western Railway, Bhavnagar issued a letter dated 31st March, 1993 advising that the competent authority in terms of GM(E) CCG's Confidential letter dated 4th March, 1993 had decided to cancel the selection of Chargeman Gr.'B' Machine. The respondent No.3 also issued another order, Annexure A-3, dated 31st March, 1993 and sought to revert the applicants as HSK/I in scale Rs. 1320-2040(RP) promoting the persons who were disqualified and considered unsuitable at the selection. The main grievance of the applicants in

both these application is that no reasons

whatsoever were shown nor any opportunity had been granted to the applicants before reverting them. It is alleged by the applicants that the action of the respondents is in violation of the policy decision circulated by the Railway Board vide their letter dated 16th June, 1992 vide Annexure A-8. It is alleged that the candidates of the reserved community have been denied promotions on the ground of base grade seniority and the action of the respondents is therefore, in violation of rules 213, 214, 215, 216 etc. of I.R.E.M. Vol.I (1989 Edition) and it is in violation of principles of natural justice and is arbitrary. The applicants have set out the grounds for relief with legal provisions in their respective applications and they have sought the relief to quash and set aside the impugned order dated 31st March, 1993, Annexure A-1 followed by the letter of even dated vide Ann. A-2 qua the applicants.

4. The respondents had filed Caveat Application No. 3/93 in O.A. 172/93 and Caveat Application No. 4/93 in O.A. 173/93 on 6th April, 1993 and had prayed that no ex-parte ad interim injunction or any order maintaining status quo be passed against the Railway Administration without hearing them.

5. This matter came up for admission on 8th April, 1993 and at that time the Caveat was not

traced out by the Registry and not placed before us.

The learned advocate Mr. Kothari for the respondents had appeared on that day and he submitted on that day that the matter be taken on 13th April, 1993 and the respondents would not enforce the impugned order against the applicants and hence the matter was adjourned to 13th April, 1993 i.e., today.

6. The respondents have in their Caveat Application contended that after the selection of the applicants were made and after they were posted, the persons aggrieved made application dated 15th February, 1992 and made representation and keeping in view the representation the whole case was referred to General Manager/E/CCG vide office letter dated 6th May, 1992 and office letter dated 30th November, 1992 vide Annexure A-7 and after considering the facts, the competent authority decided to cancel the selection and promotion of the employees involved was treated as erroneous. It is contended in the Caveat Application that in view of the General Manager, Churchgate's decision conveyed, necessary orders were issued by the respondents which are the same as Annexure A-1 and Ann.A-2 produced by the applicant in O.A. 172/93. We admit both the applications and we dispose of them with suitable directions.

7. We have heard the learned advocates and we hold that the action of the respondents in passing the orders Annexure A-1 and A-2 dated 31st March, 1993 qua the applicants deserve to be quashed on the

ground that principle of natural justice is violated inasmuch as the applicants were not given any opportunity to be heard before reverting them and giving promotion to others. It is important to note that the selection board which was convened on 21st December, 1991 to draw a panel of the employees suitable for promotion to the post of **Chargeman 'B'** (Machine/Wheel/Tool room) scale Rs. 1400-2300(RP) vide office order No. 1/92 dated 2nd January, 1992 placed the present two applicants of these two O.As on the provisional panel. The applicant, Raja Bhutta belongs to S.T community while Kanjibhai Solanki belongs to S.C community. Then on 6th February, 1992 by office order No. 20/92 vide Annexure A-5 in O.A.172/93 the applicant Raja Bhutta was provisionally promoted as **Chargeman 'B' Machine**, While applicant Kanjibhai Solanki was regularised as **Chargeman 'B' Machine**.

Having perused these two documents Annexure A-4 & A-5, we hold that the respondents without giving any opportunity to the applicant to be heard could not have passed the orders Annexure A-1 & A-2. In case the respondents found that the selections by which the applicants were promoted were erroneous and if they wanted to cancel the same and wanted to revert the applicants, they ought to have given an opportunity to the applicants for hearing on that point. But the respondents have ignored principles of natural justice in both these cases and not only they have passed the

order treating the promotion of these applicants cancelled but have appointed another persons in their place and we are told today that though this Caveat Application in both the cases was filed by the respondents on 6th April, 1993, the respondents had sent even letters to the new promotees prior to 6th April, 1993 to take charge in place of the applicants. In our opinion, this conduct on the part of the respondents is objectionable. On 6th April, 1993 when the Caveat Application was presented to this Tribunal, the respondents have in it except the last event of the issuance of the order dated 31st March, 1993 have not made any mention about any such letter *I went to the new promotees prior to having been affect 31st March, 1993 and 6th April, 1993. 6th April 1993 to take charge in place of applicant. It was due to the Caveat Application of the* respondents that, when the applicants circulated these matters for urgent ex-parte orders and when the office put these matters before us on 8th April, 1993, we did not go into merits, because the learned advocate Mr. Kothari was not feeling well on that date, the Caveats were also not placed before us by the Registry, and it was submitted by the learned advocate Mr. Kothari to take these matters on 13th April, 1993 and had *in further* stated that the respondents would not enforce the impugned order against the applicants. If this was the factual position it is too much for the respondents to have written the letters to the new promotees to take charge of the

applicants who have been reverted by the orders

Annexure A-2. However, reading the Ann.A-2, we find that

the promotions are given to the persons named therein

^{in regard} on purely temporary basis on adhoc basis meaning thereby

that the posts are still vacant and are to be filled

according to rules. This order Ann.A-2 also mentions

that it will not confer any claim on the acting

incumbent, nor will it mean that they are on panel

of the post to which they have been promoted to

officiate. We do not want to go into details about

this order except that this order should not to have been

passed without giving an opportunity to the applicants

^{INTERESTATE} to be heard and the respondents ought not to have made

any further communication to the xpromotees to take

charge in pursuance of such order. As observed above,

we do not find any averments in the Caveat Application

filed on 6th April, 1993 before us that there was any

communication made to the new promotees by respondents

subsequent to 31st March, 1993.

8. Having heard the learned advocates and having

perused the documents on record we hold that the

respondents' action in passing impugned orders is

against the principles of natural justice and is

arbitrary and hence the impugned orders of reversion

Ann.A-1 & A-2 both dated 31st March, 1993 shall have to

be quashed and set aside. However, this will not prevent

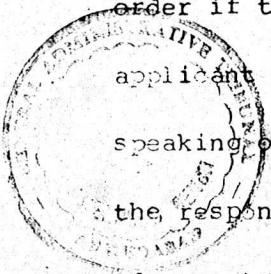
the respondents from giving an opportunity to the applicat

to be heard and to pass fresh order according to law. Hence we pass the following order.

ORDER

O.A. 172/1993.

The application is allowed. The impugned order Annexure A-1 & A-2 dated 31st March, 1993 reverting the applicant is quashed. This order allowing the application and quashing the order of the respondents is only qua the applicant. The respondents are directed to continue the applicant as Chargemen Grade 'B'. However, this order will not come in the way of the respondents making fresh order if they so desire after issuing notice to the applicant of being heard and then after passing a speaking order according to the rules. In case the respondents ultimately pass any speaking order adverse to the applicant, then the same may not be executed for 10 days after receiving the same by the applicant. The application is allowed to the above extent. There will be no order as to costs. The application is disposed of.



O.A.No. 173/1993.

The application is allowed. The impugned order Annexure A-1 & A-2 dated 31st March, 1993 reverting the applicants is quashed. This order allowing the application and quashing the order of the respondents is only qua the applicant. The respondents are directed to continue the applicant

as Chargeman Grade 'B'. However, this order will not come in the way of the respondents making fresh order if they so desire after issuing notice to the applicant of being heard and then after passing a speaking order according to the rules. In case the respondents ultimately pass/speaking order adverse to the applicant then the same may not be executed for any 10 days after receiving the same by the applicant. The application is allowed to the above extent only. There will be no order as to costs. The application is disposed of.

3d/-
(M.R.Kolhatkar)
Member (A).

Ex/—
(R.C.Bhatt)
Member (J)

Prepared by 1 07/05/93
v.t.c. Compared by 1
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Arshad
Section Officer (J)
Central Administrative Tribunal
Ahmedabad Bench

IN THE CENTRAL ADMINISTRATIVE TRIAUNAL
AHMEDABAD BENCH

N.D.
promotion

B

O.A. No. 172/93 & 173/93.
T.A.Nox

DATE OF DECISION 13-4-1993.

Raja Bhutta & Kanjibhai J. Solanki, Petitioners

Mr. M. M. Xavier & Mr. K. K. Shah, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

Mr. Anil Kothari Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C. Bhatt, Judicial Member.

The Hon'ble Mr. M.R. Kolhatkar, Admn. Member.

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?

O.A.No. 172/1993.

Raja Butta,
Chargeman Grade 'B'
Junagadh Workshop,
residing at:
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House of Vithal Thunder,
Junagadh.

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& Mr. K. K. Shah)

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Junagadh.

..... Respondents.

(Advocate: Mr. Anil Kothari)

O.A.No. 173/1993.

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Bhavnagar Para.
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under SS(W), Bhavnagar
Para Workshop,
Bhavnagar.
5. Shri Dolatsinh N
under SS(W)
Bhavnagar Para Workshop,
Bhavnagar Para. Respondents.

(Advocate: Mr. Anil Kothari)

ORAL ORDER

O.A.No. 172/1993
AND
O.A.No. 173/1993

Date: 13.4.1993.

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3. It is alleged by the applicants in their application that, thereafter, the respondents initiated actions and conducted another selection for filling up the vacancies of Chargeman Grade 'B' Machine and the persons named in para 4.5 in O.A. 172/93 were considered eligible and were called for selection vide letter dated 15th September, 1992. It is alleged by the applicants that the respondent No.3 i.e., the Works Manager, Western Railway, Bhavnagar issued a letter dated 31st March, 1993 advising that the competent authority in terms of GM(E) CCG's Confidential letter dated 4th March, 1993 had decided to cancel the selection of Chargeman Gr.'B' Machine. The respondent No.3 also issued another order, Annexure A-3, dated 31st March, 1993 and sought to revert the applicants as HSK/I in scale Rs. 1320-2040(RP) promoting the persons who were disqualified and considered unsuitable at the selection. The main grievance of the applicants in both these application is that no reasons

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whatsoever were shown nor any opportunity had been granted to the applicants before reverting them. It is alleged by the applicants that the action of the respondents is in violation of the policy decision circulated by the Railway Board vide their letter dated 16th June, 1992 vide Annexure A-8. It is alleged that the candidates of the reserved community have been denied promotions on the ground of base grade seniority and the action of the respondents is therefore, in violation of rules 213, 214, 215, 216 etc. of I.R.E.M. Vol.I (1989 Edition) and it is in violation of principles of natural justice and is arbitrary. The applicants have set out the grounds for relief with legal provisions in their respective applications and they have sought the relief to quash and set aside the impugned order dated 31st March, 1993, Annexure A-1 followed by the letter of even dated vide Ann. A-2 qua the applicants.

4. The respondents had filed Caveat Application No. 3/93 in O.A. 172/93 and Caveat Application No. 4/93 in O.A. 173/93 on 6th April, 1993 and had prayed that no ex-parte ad interim injunction or any order maintaining status quo be passed against the Railway Administration without hearing them.

5. This matter came up for admission on 8th April, 1993 and at that time the Caveat was not

traced out by the Registry and not placed before us.

The learned advocate Mr. Kothari for the respondents had appeared on that day and he submitted on that day that the matter be taken on 13th April, 1993 and the respondents would not enforce the impugned order against the applicants and hence the matter was adjourned to 13th April, 1993 i.e., today.

6. The respondents have in their Caveat Application contended that after the selection of the applicants were made and after they were posted, the persons aggrieved made application dated 15th February, 1992 and made representation and keeping in view the representation, the whole case was referred to General Manager/E/CCG vide office letter dated 6th May, 1992 and office letter dated 30th November, 1992 vide Annexure A-7 and after considering the facts, the competent authority decided to cancel the selection and promotion of the employees involved was treated as erroneous. It is contended in the Caveat Application that in view of the General Manager, Churchgate's decision conveyed, necessary orders were issued by the respondents which are the same as Annexure A-1 and Ann.A-2 produced by the applicant in O.A. 172/93. We admit both the applications and we dispose of them with suitable directions.

7. We have heard the learned advocates and we hold that the action of the respondents in passing the orders Annexure A-1 and A-2 dated 31st March, 1993 qua the applicants deserve to be quashed on the

ground that principle of natural justice is violated inasmuch as the applicants were not given any opportunity to be heard before reverting them and giving promotion to others. It is important to note that the selection board which was convened on 21st December, 1991 to draw a panel of the employees suitable for promotion to the post of Chargeman 'B' (Machine/Wheel/Tool room) scale Rs. 1400-2300(RP) vide office order No. 1/92 dated 2nd January, 1992 placed the present two applicants of these two O.As on the provisional panel. The applicant, Raja Bhutta belongs to S.T community while Kanjibhai Solanki belongs to S.C community. Then on 6th February, 1992 by office order No. 20/92 vide Annexure A-5 in O.A.172/93 the applicant Raja Bhutta was provisionally promoted as Chargeman 'B' Machine, While applicant Kanjibhai Solanki was regularised as Chargeman 'B' Machine.

Having perused these two documents Annexure A-4 & A-5, we hold that the respondents without giving any opportunity to the applicant to be heard could not have passed the orders Annexure A-1 & A-2. In case the respondents found that the selections by which the applicants were promoted were erroneous and if they wanted to cancel the same and wanted to revert the applicants, they ought to have given an opportunity to the applicants for hearing on that point. But the respondents have ignored principles of natural justice in both these cases and not only they have passed the

per

order treating the promotion of these applicants cancelled but have appointed another persons in their place and we are told today that though this Caveat Application in both the cases was filed by the respondents on 6th April, 1993, the respondents had sent even letters to the new promotees prior to 6th April, 1993 to take charge in place of the applicants.

In our opinion, this conduct on the part of the respondents is objectionable. On 6th April, 1993 when the Caveat Application was presented to this Tribunal, the respondents have in it except the last event of the issuance of the order dated 31st March,

1993 have not made any mention about any such letter

sent to the new promotees prior to having been affect 31st March, 1993 and 6th April, 1993. 6th April 1993 to take charge in place of applicants. It was due to the Caveat Application of the

respondents that, when the applicants circulated these matters for urgent ex-parte orders and when the office put these matters before us on 8th April,

1993, we did not go into merits, because the learned advocate Mr. Kothari was not feeling well on that date, the Caveats were also not placed before us by the Registry, and it was submitted by the learned advocate Mr. Kothari to take these matters on 13th

April, 1993 and had stated that the respondents

would not enforce the impugned order against the applicants. If this was the factual position it is too much for the respondents to have written the letters to the new promotees to take charge of the

applicants who have been reverted by the orders Annexure A-2. However, reading the Ann.A-2, we find that the promotions are given to the persons named therein ~~revert~~ on purely temporary ~~revert~~ on adhoc basis meaning thereby that the posts are still vacant and are to be filled according to rules. This order Ann.A-2 also mentions that it will not confer any claim on the acting incumbent nor will it mean that they are on panel of the post to which they have been promoted to officiate. We do not want to go into details about this order except that this order should not to have been passed without giving an opportunity to the applicants to be heard and the respondents ought not to have made any further communication to the xpromotees to take charge in pursuance of such order. As observed above, we do not find any averments in the Caveat Application filed on 6th April, 1993 before us that there was any communication made to the new promotees by respondents subsequent to 31st March, 1993.

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8. Having heard the learned advocates and having perused the documents on record we hold that the respondents' action in passing impugned orders is against the principles of natural justice and is arbitrary and hence the impugned orders of reversion Ann.A-1 & A-2 both dated 31st March, 1993 shall have to be quashed and set aside. However, this will not prevent the respondents from giving an opportunity to the applicant

to be heard and to pass fresh order according to law. Hence we pass the following order.

ORDER

O.A. 172/1993.

The application is allowed. The impugned order Annexure A-1 & A-2 dated 31st March, 1993 reverting the applicant is quashed. This order allowing the application and quashing the order of the respondents is only qua the applicant. The respondents are directed to continue the applicant as Chargemen Grade 'B'. However, this order will not come in the way of the respondents making fresh order if they so desire after issuing notice to the applicant of being heard and then after passing a speaking order according to the rules. In case the respondents ultimately pass ^{any} speaking order adverse to the applicant, then the same may not be executed for 10 days after receiving the same by the applicant. The application is allowed to the above extent. There will be no order as to costs. The application is disposed of. //

O.A.No. 173/1993.

The application is allowed. The impugned order Annexure A-1 & A-2 dated 31st March, 1993 reverting the applicants is quashed. This order allowing the application and quashing the order of the respondents is only qua the applicant. The respondents are directed to continue the applicant

as Chargeman Grade 'B'. However, this order will not come in the way of the respondents making fresh order if they so desire after issuing notice to the applicant of being heard and then after passing a speaking order according to the rules. In case the respondents any ultimately pass speaking order adverse to the applicant then the same may not be executed for 10 days after receiving the same by the applicant. The application is allowed to the above extent only. There will be no order as to costs. The application is disposed of.

M.R.Kolhatkar
(M.R.Kolhatkar)
Member (A)

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

vtc.