

(2014) 08 GUJ CK 0080

In the Gujarat High Court

Case No : Special Civil Application No. 18882 of 2011

Hashmukh T. Parmar (ELF-TL)

APPELLANT

Vs

Dalpatbhai Khodabhai Padya

RESPONDENT

Date of Decision : 04-08-2014

Acts Referred:

Citation : (2014) LabIC 3911

Hon'ble Judges : Mohinder Pal, J; Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Shevade and R.M. Vin, Advocate for the Appellant; P.H. Pathak and Ramnandan Singh, Advocate for the Respondent

Judgement

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Akil Abdul Hamid Kureshi, J.

1. Petitioner, original respondent No. 3, has challenged a judgment dated 27.07.2011 in O.A. No. 171 of 2010 with M.A. No. 344 of 2010 passed by the Central Administrative Tribunal, Ahmedabad. Brief facts are as under : Petitioner was appointed in the railway administration in 1976. On 11.10.1980, he was absorbed in Electrical Department as Instrument Mechanic Gr.III. On 09.07.1983, he was promoted as Instrument Mechanic Gr.II in the same department. In the year 2002 when the petitioner was working in Speedometer Section of Bhavnagar Electrical Workshop as Instrument Mechanic Gr.I, that section was closed down by the railway administration with effect from 14.05.2002 due to transfer of activity to Diesel Shed. Three employees, including the petitioner, thus became surplus and had to be absorbed elsewhere as per policy of the railways. From the reply filed by the railway administration to the O.A. filed by respondent No. 1 herein, it appears that, while other two employees were so absorbed, due to oversight, since the petitioner was discharging his duties elsewhere temporarily, in his case transfer was not effected at the relevant time. Later on this error came to the notice of railway administration and the

petitioner was absorbed as Electrical Fitter Gr.I in May 2005 with effect from 14.05.2002 with his past seniority being intact. The petitioner was also promoted to the next higher post of Master Craftsman on 10.11.2005 on the strength of such past seniority after passing suitability test prescribed for such promotion.

2. Respondent No. 1 herein, who was all along in the Electrical Department and whose seniority was disturbed in the cadre of Electrical Fitter Gr.I by virtue of absorption of the petitioner, as mentioned above, challenged the decision of the railways to absorb the petitioner with past seniority preserved as also promotion to the next higher post of Master Craftsman. He filed O.A.171 of 2010. Since there was delay in filing the O.A., he also preferred a Miscellaneous Application for condonation of delay. The Tribunal disposed of both the proceedings by a common judgment. The Tribunal allowed the application for condonation of delay and simultaneously proceeded to dispose of the O.A. The Tribunal was of the opinion that absorption of the present petitioner in a different cadre with past seniority was not permissible. The Tribunal, therefore, passed the following order :

"11. For the reasons stated above, the impugned order dated A/0 and A/2 namely office order dated 10.11.2005 and communication dated 13.10.2005 are quashed and set aside. The OA is disposed of with a direction to the respondents to re-determine the seniority of the applicant vis-?-vis respondent No. 3 on the basis of the principle contained in the circular dated 25.5.2004 and the law laid down by the Hon'ble Supreme Court, and extend consequential benefits arising therefrom within a period of three months of date of receipt of this order. No order as to costs."

3. Learned counsel Mr. Shevade for the petitioner raised the following contentions :

"(i) Original Application was hopelessly barred by limitation. The Tribunal ought not to have condoned the delay in absence of proper explanation. The petitioner was not only absorbed in the new cadre on the basis of his past seniority but was promoted on the next post where he worked from 2005 till 2010 when the O.A. was filed.

(ii) The Tribunal erred in relying upon the decision of the Supreme Court in V.K. Dubey and Others Vs. Union of India (UOI) and Others, , since three-Judge Bench of the Supreme Court in case of Paresh Chandra Nandi Vs. Controller of Stores, N.F. Railway, Pandu and Others, had held that railway administration has power to transfer an employee from one post to another while protecting his lean and past service. Learned counsel also drew our attention to a decision of a Division Bench of Rajasthan High Court dated 02.02.2007 passed in case of G.K. Gandhi & Ors. v. Union of India & Ors. in DB Civil Writ Petition No. 3246/2000 and connected proceedings for this purpose.

(iii) Learned counsel alternatively contended that in any view of the matter, as was done in case of V.K. Dubey (supra), the promotion already granted to the

petitioner should not be disturbed.

4. The railway administration, though did not file its separate petition challenging the judgment, supported the petitioner.

5. Learned counsel Mr. Pathak contended that the Tribunal has correctly applied the principles laid down by the Supreme Court in V.K. Dubey (supra).

6. Before deciding the rival contentions, we are informed that, by virtue of the judgment of the Tribunal, the petitioner was already reverted to lower post on 06.03.2012 from where he retired on superannuation with effect from 30.9.2013.

7. We are of the opinion that the Tribunal committed error in ignoring considerable delay in preferring the O.A. before the Tribunal by respondent No. 1 herein. All that the Tribunal recorded for ignoring delay of five years was as follows:

"5. We have considered the MA 344 of 2010 for condonation of delay. The applicant has submitted that he was pursuing with the Department for redressal of his grievances through representations dated 18.10.2005 and 23.3.2006. He also took up the matter through the trade union. He got a reply through the Union on 16.2.2010. Therefore, he has sought condonation of delay in filing this O.A.. On consideration of the aforesaid submissions, we are satisfied that the grounds appear to be genuine and therefore MA is allowed and delay is condoned."

8. It is now well-settled that seniority position in a cadre should be allowed to rest after a reasonable period of time and ordinarily the Court would not reopen an old issue of seniority in a cadre. In the present case, not only was the petitioner granted seniority of his past service in his new cadre, on the basis of such seniority he was also considered for next promotion to the post of Master Craftsman and, finding him fit, was granted such promotion way back in 2005 itself. Original applicant/respondent No. 1 herein, under the guise of pursuing his representations with the railway authorities, waited for nearly five years, for filing the O.A. Such O.A. ought not to have been entertained on the premise that railway authorities rejected the representation after considerable delay.

9. This apart, even if the ratio of the Supreme Court in case of V.K. Dubey (supra) is to be applied, as was done by the Tribunal, the same should have been applied on all counts. In such decision, the Supreme Court confirmed the view of the Tribunal which had protected the rights of employees who had already been promoted. The Tribunal provided that on re-determination of seniority, the persons who were already promoted to higher grades shall not be reverted but their subsequent advancement to further promotion shall be dependent on such redetermined seniority. This was noted by the Supreme Court and also upheld in the judgment in case of V.K. Dubey (supra). Under the circumstances, the Tribunal committed yet another error in quashing the order of promotion of the petitioner which, in any case, even if the original applicant succeeds on all points

by adopting the logic of the decision of the Supreme Court in case of V.K. Dubey (supra), ought to have been protected. Few developments, as noted, have taken place in the interregnum. The petitioner was actually reverted and on the lower post he retired on superannuation. Under the circumstance, entire controversy can be put to rest by giving the following directions :

"The impugned judgment of the Tribunal is reversed. Resultantly, reversion of the petitioner to the lower post with effect from 06.03.2012 would stand nullified. The petitioner shall, however, not be entitled to actual salary of the higher post from 06.03.2012 till superannuation on the principle of "no work, no pay". His pay shall, however, be fixed notionally for all other purposes, including increments and post retiral benefits."

With the above directions, the petition is disposed of. Rule is made absolute.