

(1982) 09 GUJ CK 0012
In the Gujarat High Court

R.P. Jani

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 27-09-1982

Acts Referred:

Constitution of India, 1950 — Article 226, 226

Citation : (1982) GLH 1102 : (1983) 1 GLR 85

Hon'ble Judges : S.B. Majmudar, J

Bench : Single Bench

Judgement

S.B. Majmudar, J.—The petitioner who is a railway employee has filed this petition under Article 226 of the Constitution of India, being aggrieved by the decision of the respondents to remove the petitioner's name from the selection penal of the Class IV staff for promotion to posts in Class III service. In order to appreciate the grievance of the petitioner, it is necessary to note a few relevant facts.

2. The petitioner, on the date of the petition, was working as a Junior Clerk in Western Railway, at Bhavnagar Para : that originally he was a Class IV employee. He was recruited in the railway service on 27-7-1954 in the Rajkot Division as a Gangman. Thereafter, he was transferred on the same post in Bhavnagar Para Division with effect from 30-9-1966. He was promoted to the post of a Tally Clerk which was Class III post by an order dated 19-10-1973. From the date of his promotion to the post of Tally Clerk i.e. from 21-10-1973, he went on working on the post althroughout save and except a break of about a month. After a short break he was repromoted in December 1976 to the post of a Junior Clerk and which post is held thereafter althroughout by him. It is true that formerly the petitioner was promoted to Class III post on an ad hoc basis. The petitioner's case is that by a Circular dated 29-11-1973, the second respondent, namely, the Divisional Superintendent, Western Railway, Bhavnagar Para initiated proceedings for forming a selection penal for promotion to Class III service in the ministerial category. The said Circular contained invitation to all the Class IV staff

of all the Departments in the Bhavnagar Para Division to make applications for being called for written test which was to be followed by viva voce provided they fulfilled the minimum required qualifications, viz. three year's continuous service on 1-12-1973 and provided the concerned candidate was able to read and write in English. As the petitioner fulfilled both the requirements, he applied for being called in the written test. About 400 employees from Class IV staff appeared in the written test, the petitioner being one of them. 109 candidates were declared successful and thereafter they were called for viva voce test. According to the petitioner, out of the 109 candidates who appeared for the viva voce test, the petitioner was one of them. Thereafter, the Railway Selection Board, vide their order dated 16-12-1976 declared a panel of persons who had succeeded in the written test as well as viva voce test and by this order, 36 employees out of 109 employees who appeared for the viva voce test were placed on the panel by virtue of their having successfully passed both the aforesaid tests for promotion to the Class III service. The petitioner's name was placed at serial No. 20 in the said panel. The order at Annexure "B" clearly brings out this position. The said panel was made effective from 9-12-1976. It is, therefore, obvious that once the petitioner was selected for being appointed as Class III employee on the basis of selection and when he was placed at serial No. 20 in order of seniority from amongst the selected candidates, he acquired a right to be considered for promotion to a Class III post on a regular basis as and when such opportunity arose. However, by the impugned order at Annexure "E", dated 20-7-1977, information was conveyed to respondent No. 2 by the Railway Head Quarters at Churchgate that the C.P.O. had accorded sanction to remove the name of the petitioner from the panel of Junior Clerk, scale Rs. 225-508. The petitioner's contention is that the impugned order at Annexure "E", directing the removal of the petitioner's name from the select list is ex facie without jurisdiction and contrary to the principles of natural justice and fair-play as the petitioner was not given any notice to show cause or to give an explanation as to why his name should not be deleted from the selection panel and that the impugned order was likely to result in reversion of the petitioner as he was already officiating as Junior Clerk since years and the moment his name was deleted from the selected list, he in all probabilities, would be reverted to the lower post of Class IV category. The petitioner, therefore, filed the present petition in this Court in August 1977. This petition was admitted to final hearing and interim relief was granted to the petitioner. It has reached final hearing before me.

3. In the affidavit-in-reply, the respondents have admitted that the petitioner was selected as Junior Clerk in the scale of Rs. 225-308 by the Selection Board and was placed on panel at serial No. 20. It is also admitted that the petitioner was posted as Tally Clerk/Junior Clerk scale Rs. 105-135 (A)/225-308 (R) from 21-10-1978 on ad hoc basis. It has been further stated that the Chief Personnel Officer, Churchgate, Bombay, who is the competent authority to remove the name of an employee from panel has taken the decision to delete the name of the petitioner from the panel of Junior Clerk, scale Rs. 225-308 (R), vide his

order dated 20-7-1977. It is further stated in the affidavit-in-reply that the petitioner has not been given any opportunity against the proposed deletion of his name from the panel as the same is not required to be given as per Rules when the decision is taken by the competent authority having power to do so. It is further stated that the said order has not been implemented so far because of the ad-interim relief granted by the High Court. In para 6 of the affidavit-in-reply, it is stated that it is not disputed that the petitioner was continuously officiating as Tally Clerk/Junior Clerk from 21-10-1973 to 19-8-1976. It is further stated that the petitioner was repromoted as Junior Clerk from 1-12-1976 and has continued in that post till today. It is thereafter stated in para 8 of the affidavit-in-reply that the petition is premature. Since no orders were issued for deleting the name of the petitioner, the question of giving any opportunity to him did not arise. The Chief Personnel Officer has only accorded sanction to delete the name of the petitioner and further action is to be taken. In paragraph 11 of the affidavit-in-reply, it has been pointed out that the competent authority i.e. the Chief Personnel Officer in this case is empowered to delete the name of the employee from the panel without assigning any reason to the employee. In this case, the petitioner came on transfer to Bhavnagar Division from Rajkot Division at his own request and according to the extent rules, the employees when transferred from other Division will take the position of seniority below all permanent and temporary employees of the unit where he is transferred and as such the petitioner is considered junior to other employees of the unit who appeared for the selection and he is not getting the place on panel due to revision in seniority. This, in short, is the defence put forward on behalf of the respondents.

4. Two contentions were raised before me in support of the petition, viz.

(1) That the petitioner has continuously officiated as Class III employee from 21-10-1973 to 19-8-1976 and from 1-12-1976 onwards althroughout and consequently, once he had put in 18 months" continuous officiation in Class III post, he could never have been reverted thereafter without following the procedure laid down in the Discipline and Appeal Rules Reliance is placed in support of the aforesaid contention on the Circular of the Railway Board, dated 22-11-1976.

(2) The impugned order at Annexure "E" ordering the deletion of the petitioner"s name from the select list is totally arbitrary and is violative of elementary principles of natural justice and hence void and that the explanation given in the affidavit-in-reply, para 11, clearly shows non-application of mind on the part of the concerned authorities to the relevant facts.

5. Shri R.M. Vin, learned advocate for the respondent-railway administration, on the other hand, supported the impugned order of the respondents on the grounds submitted in the affidavit-in-reply.

6. So far as the first contention raised in support of the petition is concerned, it

cannot be countenanced for three reasons. Firstly, no order of reversion is passed against the petitioner and hence it would be too premature for the petitioner to urge that his future reversion, if any, would certainly be violative of the guidelines issued by the Circular of the Railway Board dated 22-11-1976. Secondly, the Service record of the petitioner shows that he was promoted as Junior Clerk in Class III service on ad hoc basis from 21-10-1973 and he continued on the post upto 19-8-1976 and thereafter he was reverted for a short time and was re-promoted as Junior Clerk in Class III post from 1-12-1976 onwards. Consequently, there was a break in the continuous officiation of the petitioner as Class III servant in November 1976. It is pertinent to note that the order of reversion of the petitioner to Class IV post in November 1976, is not challenged in the present petition. Therefore, the break in the petitioner's service as Class III employee in November 1976 has got to be accepted as a stark reality. It is obvious that he was repromoted to Class III post from 1-12-1976 and by the time he filed the present petition in August 1977, 18 months' period of continuous officiation in Class HI post was not over. In addition to the aforesaid reasons, there is a third reason for repelling the first contention. Under the Railway Board's Circular dated 22-11-1976, when the reversion of the concerned employed is to be effected on the ground of unsuitability, 18 months' period of continuous officiation becomes relevant. In the present case, it is not the case of the respondents that the petitioner is likely to be reverted on the ground of unsuitability. The only ground put forward is that the petitioner was not eligible to be placed on the select list as he was junior to others. Under these circumstances, the first contention cannot be accepted and shall stand rejected.

But so far as the second contention is concerned, it stands on a stronger footing. It is true that merely because a person's name is placed in the selection panel, he does not automatically get a vested right of promotion to the higher post. Being empanelled for promotion confers upon the person concerned limited right of being considered for promotion, which is another way of saying that person who is put on the panel framed for promotion to a higher post is at the given moment considered eligible for promotion, vide *N.M. Siddique v. Union of India* 1978(1) S.L.R. 279 (S.C). The fact remains that the petitioner having passed the written test and viva voce test was placed on the selection panel for being regularly appointed to Class III service and he was placed at serial No. 20. He, therefore, got the limited right of being considered for regular promotion to Class III service on the basis of this empanelment. In fact, he was already promoted since years on ad hoc basis as Class III servant and after empanelment not only he continued as such but his juniors also were promoted later on as their names appeared below the petitioner's name in the selection panel. Under these circumstances, if the name of the petitioner was to be deleted from the selection panel, in fairness to him a hearing ought to have been given to the petitioner or atleast an opportunity to point out his version of the matter should have been afforded to the petitioner. Nothing of the sort was done and in arbitrary fashion,

his name was ordered to be deleted from the selection panel without giving him any opportunity of having his say in the matter. The affidavit-in-reply, in terms, makes it clear that it is not necessary to hear the petitioner in such cases. When the deletion of the petitioner's name from the selection panel is likely to have serious adverse evil consequences as the petitioner would be likely to be reverted from Class HI post to Class IV post and he would also suffer serious monetary set back, the elementary principles of natural justice and fairness require the respondents to hear the petitioner or afford him an opportunity to have his say before passing such a drastic order against him as per Ex. "E". Para 11 of the affidavit-in-reply highlights this position still further. The defence of the respondents to the imputed section is that they had wrongly considered the petitioner to be senior to others and accordingly he was placed at serial No. 20 in the seniority list which was reflected in the selection panel. If that was so, there was a stronger ground for hearing the petitioner before taking an adverse decision in connection with his inter se seniority vis-a-vis the other employees in Class III Service. But unilaterally and almost automatically, a one way decision was taken against the petitioner which had serious effects on his inter se seniority as well as on his right to continue in Class III post. Consequently, the impugned order must be held to be ultra vires and entirely contrary to the elementary principles of natural justice and fair play.

8. It will be profitable at this stage to have a look at the decisions of two High Courts on the point. The Himachal Pradesh High Court in a decision in the case of *Gurdev Singh v. Union of India* 1974 (2) S.L.R. 211 had to consider the applicability of the principles of natural justice in the case of a Government employee who was placed in the provisional intergrated seniority list and whose name was sought to be deleted from the seniority list on the basis that there was some error in the preparation of the said list. While rectifying the said error, the concerned employee was not heard. Under these circumstances, the rectification order was held to be void by the Himachal Pradesh High Court. It was observed in this connection that if the Governor wanted to rectify any mistake which had crept in the order of the Central Government on the representations made by the respondents, then for that the petitioners were required to be given an opportunity. In the absence of such opportunity, the action of the respondents in rectifying the seniority was in utter violation of the principles of natural justice.

9. The Kerala High Court in the case of *Makundan v. State of Kerala* reported in 1975(2) S.L.R. 616 has taken the similar view. Balakrishna Eredi, J. speaking for the Kerala High Court, held that before deleting the concerned employee's name from the select list which was duly drawn up and published in the Official Gazette, notice was required to be given to the concerned employee who was likely to be adversely affected and when no such notice was given to the concerned employee nor was he afforded any opportunity to state his case before the State Government or the Departmental Promotion Committee, there would be violation of the principles of natural justice and the action against the concerned employee would be null and void. Eredi, J. in this connection, has

made the following pertinent observations:

Ordinarily no person can claim a right to be heard before a departmental promotion committee takes a decision as to whether or not his name should be included in the list or officers selected for promotion to a higher category on the basis of merit and ability. But, when once such a list has been duly drawn up and published in the Gazette any action for the removal of the name of any person from such a list, particularly when it is taken on the basis of a representation made by a rival candidate, who puts forward a preferential claim for inclusion in the list on the basis of alleged seniority over the person whose name was originally included, would undoubtedly attract the applicability of the principles of natural justice since as a result of the proposed action the person, whose name is sought to be deleted from the list wherein it was originally included, will undoubtedly be visited with serious adverse civil consequences. Further, when any adjudication regarding the inter se seniority as between two Government servants is conducted pursuant to the representation made by one of them complaining that he was being regarded as the junior amongst the two, the principles of elementary justice and fair-play require that a final decision should be taken in the matter only after affording a hearing to the party whose seniority is being challenged.

10. I fully endorse the reasoning of the learned Judges of the Himachal Pradesh and Kerala High Courts as reflected in the aforesaid two decisions. In the present case also the defence of the respondents is that the petitioner's name appeared to have been wrongly inserted in the select list at serial No. 20 because his seniority vis-a-vis others appeared to have been wrongly fixed and that in reality and in fact, he was junior to others. If that was so, it was much more incumbent upon the respondents to give the petitioner an opportunity of having his say on the question as to whether he was senior to others who were placed below him originally in the select list or whether they were senior to him. Even apart from that, if the only objection pertained to the ranking of the petitioner's name seniority-wise in the select list, his name could not have been totally removed from the select list on that count. Thus, the impugned order clearly smacks of arbitrariness and non-application of mind and is also violative of the basic principles of natural justice and fair play. It must, therefore, be quashed and set aside.

11. Rule issued in the petition is, therefore, made absolute in terms of prayer 19(a). The respondents are permanently restrained from reverting the petitioner only on the ground that his name was removed from the original select list by placing reliance on the impugned order at Annexure "E" which is held to be non-est. In the facts and circumstances of the case, there would be no order as to costs.