
(2013) 12 GUJ CK 0183
In the Gujarat High Court

Case No : Special Civil Application No. 3635 of 2011

Union of India and Another	Vs	APPELLANT
Gulam Mohamed		RESPONDENT

Date of Decision : 05-12-2013

Acts Referred:

Citation : (2013) 12 GUJ CK 0183

Hon'ble Judges : Ravi R. Tripathi, J;R.D. Kothari, J

Bench : Division Bench

Advocate : Hina Desai, for the Petitioners No. 1 - 2, for the Appellant; C.P. Jadhav and Mr. Nikhil C. Jadhav, Advocates for the Respondent No. 1, for the Respondent

Final Decision : Dismissed

Judgement

Ravi R. Tripathi, J.—Union of India through General Manager, Western Railway with Chief Workshop Manager is before this Court being aggrieved by the judgment and order dated 23rd November, 2010 in Original Application (O.A.) No. 17/2009 with M.A. No. 34 of 2009. The Hon'ble Tribunal was pleased to hold as under:

On examination of the matter and upon hearing both sides, we find substance in the contention raised by the applicant that once his junior had been promoted from earlier date, he was entitle to similar treatment. We may also note that the respondents have also undertaken certain exercise to grant necessary proforma promotion to him. Merely because he attained the age of superannuation would not stand in his way to be treated similarly.

Thus, OA is allowed. The respondents are directed to act upon list drawn up of employee due for proforma promotion, as pointed out in their reply, with all consequential benefits including arrear etc. but without any interest, as prayed for. The aforesaid exercise shall be carried out within three months including revising his pension. No order as to costs.

(Emphasis supplied)

Learned advocate for the petitioners, Ms. Hina Desai, for the Railways vehemently submitted that the respondent herein, the applicant before the Tribunal, is not entitled to any relief in light of the contents of a communication dated 17.3.1986 which is issued under the signature of General Manager (E). The learned advocate heavily relied upon the Clause-XII of the said communication which says

xii) Since the benefit of proforma fixation of pay from 1.1.84 and arrears from 1.1.86 is payable to an employee after passing the suitability test the employees who have retired after 1.1.86 are not eligible for being called for suitability test. Employees who are due to retire and are likely to get the benefit should be tested for their fitness to hold the post after assessing the number of posts that would be created in a particular category. This exercise should be done quickly, immediately on receipt of this letter.....

2. Learned advocate for the Railways is not able to dislodge a fact that a list of employees who are due for proforma promotion from the date shown against their names is issued by the Railway Authorities. In this list, the name of the respondent - original applicant before the Tribunal is at Serial Number-1 and along with him, there are two other employees who are Sunilkant N. and Tikamchand D. Now, these persons are shown senior to two persons, namely, Dinesh S. and Ramlal G. in this tabular statement. Not only that, this statement further shows that juniors were given promotion from 1.11.2003 and therefore these 3 persons are entitled to get promotion with effect from 1.11.2003. Not only that, remarks column shows that the date which is mentioned against the name of the concerned employee will be the date from which the proforma promotion will be given and the actual benefits will be paid from the date he takes charge.

3. The learned advocate for the petitioners invited the attention of the Court to two dates that is Trade Test was held on 16.4.2008; whereas, present respondent - original applicant has retired on 31.1.2008 and before that he had not passed the suitability test and therefore according to her, the respondent is not entitled to get the benefit of 'proforma promotion'. There seems to be some confusion about proforma promotion. Proforma Promotion is one which is given on account of promotion given to the junior and once that is so, there is no question of the respondent having passed or not passed the suitability test.

4. At this juncture, Mr. Jadav, learned advocate appearing for the respondent-original applicant submitted that though the respondent retired from service on 31.1.2008, he was never sent for suitability test and if that is so, it is all the more reason for holding that the respondent is rightly given proforma pension. Now only direction which is required to be given and which is already given by the Hon'ble Tribunal is that this exercise which is undertaken by the Railways must be effected and implemented.

5. It is settled law that when an employee is not allowed to participate in any selection, for no fault of his, if he remains out of the selection procedure, he cannot be deprived of the benefits which otherwise supposed to flow in his favour. In the present case, it is not the case of the Railways that respondent did participate in selection and he failed.

6. It is submitted by the learned advocate for the respondent that in fact between 2003 and 2008, Railway Authorities did not hold any suitability test. The suitability test was held in the year 2008 only which his juniors cleared. That is why the respondent became entitled to get proforma pension on the basis of the promotion to his juniors. On careful consideration of the judgment and order passed by the Hon^{ble} Tribunal, this Court finds that same is not required to be interfered. The same is approved. Petition is dismissed with no order as to costs. Rule is discharged. At this juncture, learned advocate for the respondent requested that the petitioners - Railway Authorities may be directed to implement the judgment and order of the Tribunal as early as possible preferably within a specified time frame. Request is found reasonable. The authorities shall implement the judgment and order of the Tribunal as early as possible but not later than 31.1.2014.