

CASE NO.:
Appeal (civil) 2937 of 2002

PETITIONER:
SAYYED FAKHRUL ISLAM

Vs.

RESPONDENT:
MAHARASHTRA STATE ROAD TRANSPORT CORPN. & ORS.

DATE OF JUDGMENT: 26/04/2002

BENCH:
Syed Shah Mohammed Quadri & S.N. Variava

JUDGMENT:

SYED SHAH MOHAMMED QUADRI, J.

Leave is granted.

The order of the Division Bench of the High Court of Judicature at Bombay, Bench at Nagpur, in Writ Petition No.3216 of 1998 dated April 6, 2000 is brought under challenge by the appellant. By the said order the High Court dismissed the Writ Petition filed by the appellant.

The facts giving rise to the petition may be briefly noted to appreciate the grievance of the appellant. On July 4, 1975, the appellant was initially appointed as Clerk by the first respondent and thereafter as Assistant Works Superintendent from direct sector in the month of June 1979. He passed promotional examination and became eligible for consideration for promotion to the post of Depot Manager 'A'/Assistant Mechanical Engineer in July 1985. On September 5, 1994, he was temporarily promoted as Depot Manager 'A' Junior(M)/Assistant Mechanical Engineer in Class II Junior Grade. On August 28, 1998, he was, however, reverted to his original post of Senior Foreman. He assailed the validity of the said order in the aforementioned writ petition before the High Court. By the impugned order the said writ petition was dismissed.

Mr.A.K.Sanghi, the learned counsel appearing for the appellant, contended that as the post of Depot Manager 'A' was not filled up on regular basis the appellant was entitled to continue temporarily on the said post having regard to the terms of his promotion.

It may be appropriate to refer to the relevant portion of the terms of the order of promotion of the appellant which reads as under :

"General Establishment Order
No.325(SB) of 1994

The following Sr.Foreman/Assistant Works Superintendent are temporarily promoted as Depot Manager(A) Jr.(M)/Assistant Mechanical Engineer in Class II Jr.Grade of Rs.2200-3700 and on promotion posted to the Regions mentioned against their names in

Col.(4) below :-

S.No.	Name and Designation	Present Place of posting	Region to which posted on promotion
1 to 14	***	***	***
15	Shri I.S.Fakhrul Sr.Foreman	Wardha Divn.	Amravati Region
16 to 18	***	***	***

2. The promotion of above AWS/Sr.Foreman is on temporary basis and without prejudice to the seniority of others. This order does not confer on them any right of seniority, continuity or preference over others.

3. Further, the promotion of the above AWS/Foreman is effected against the direct sector vacancies and on availability of candidates from direct sector they will be reverted to their original posts.

4. to 6. ***

Sd/- Illegible
for Vice Chairman & Managing Director
M.S.R.T.Corporation

No.ST/EST/SB/1675

Date : 5th September, 1994."

From a perusal of clause (2) it is evident that the promotion of the appellant was on temporary basis. Clause (3) shows that the promotion was against the direct sector vacancies and on availability of candidates from direct sector he would be reverted to his original post.

The bone of contention is that under Standing Order 32 M.S.R.T.Corporation the appellant is entitled to continue till there is a direct recruitment to the said post. Standing Order 32(a) is in the following terms :

"32(a). When a suitable candidate is not available for direct recruitment to a post reserved for direct recruitment, a suitable departmental candidate may be given a purely temporary promotion lasting up to such time as a suitable direct recruitment is available for appointment. A fresh attempt shall be made to get a suitable direct recruit by re-advertising the post. If after one year from the date of the temporary appointments of the departmental candidate and even after making a fresh attempt no suitable direct recruitment is available, the competent authority may consider the question of making the appointment of the departmental candidate substantive."

A perusal of the Standing Order, extracted above, makes it clear that it deals with a situation when a vacancy reserved for direct recruitment arises and postulates that : (i) a suitable candidate is not available for direct recruitment; (ii) till such time a suitable direct recruitment is available for appointment, a suitable departmental candidate may be promoted temporarily; (iii) such temporary promotion will last till such time as a suitable direct recruitment is available; (iv) the authorities are under an obligation to make fresh attempt to get a suitable direct recruit by re-advertising the post; and

(v) if after one year from the date of the temporary appointments of the departmental candidate and even after making a fresh attempt no suitable direct recruitment is available, the competent authority may consider the question of making the appointment of the departmental candidate substantive.

A perusal of the counter of the respondents discloses that the appellant was considered by the Departmental Promotion Committee in September 1985, December 23, 1986, February 1, 1989 and December 31, 1992 but he was not found fit for promotion. In view of this position, the appellant was reverted to his original post.

The right conferred, under the aforementioned Standing Order, on a candidate appointed temporarily, is that if no direct recruit is available even after making a fresh attempt, he must be considered for substantive promotion. The appellant was in fact considered for regular promotion but he was not found fit; therefore, the reversion cannot be said to be in breach of Standing Order 32(a). However, we make it clear that this order does not preclude the authorities from considering his case for promotion to the said post in future in accordance with law.

In this view of the matter we do not find any illegality in the impugned order of the High Court. The appeal is devoid of merit and it is accordingly dismissed. In the facts and circumstances of the case we make no order as to costs.

.....J.
[Syed Shah Mohammed Quadri]

.....J.

[S.N.Variava]
April 26, 2002.