

Reserved.

Central Administrative Tribunal, Allahabad.

Registration T.A.No.285 of 1987 (Civil Misc.Writ Petition No.5782
of 1978)

Nathilal Sharma ...
and another

Applicants

Vs.

Divisional Superintendent
Central Railway Jhansi
and another ...

Respondents.

Hon.Ajay Johri, AM
Hon.G.S.Sharma, JM

(By Hon.G.S.Sharma, JM)

This writ petition under Art.226 of the Constitution of India has been received from the High Court of Judicature at Allahabad under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The applicant no.1 Nathi Lal Sharma was appointed as Pointsman in the Central Railway on 2.4.1962 and the applicant no.2 was appointed as such on 24.3.1962. It is alleged that the applicant no.1 officiated as Shunting Master in the years 1965-1970 and as Trains Clerk (for short ^NTC) in the year 1971-72. The Divisional Personnel Officer (for short DPO) Jhansi by his letter dated 17.3.1973 directed the applicants and others to appear in the written test for promotion to the post of ^NTC to be held on 25.3.1973 in the office of the respondent no.1. The DPO Jhansi by his letter dated 28.5.1973 called for a working report with regard to the applicants in order to assess their suitability for the post of ^NTC. The applicants had appeared in the written test held on 25.3.1973 and were never informed about its result and on the basis of the working report called for about their working subsequently, they should be presumed to have passed the said test. On 9.7.1973, the applicants were appointed as ^NTC in substantive vacancies on adhoc basis and they were allowed to earn annual increments and other benefits thereafter. After the

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promotion of the applicants as TC^N, a number of other Pointsmen were promoted as TC^N including a number of juniors. By letter dated 15.1.1977, the applications were invited for promotion to the post of TC^N. The copy of this letter was received at Agra where the applicants were posted but their names were not mentioned in the said letter and the applicants were never directed to submit applications for appearing in the written test scheduled to be held in accordance with that letter. As the applicants had already appeared in the written test held on 25.3.1973 and their suitability was also judged, they did not send any application. Another letter dated 4.4.1977 was issued in continuation of letter dated 15.1.1977 for holding supplementary test but again as the names of the applicants were not mentioned therein, the applicants did not appear in the written test. By letter dated 22.12.1977, the applicants were informed that the written test held in 1971 was cancelled and not published and they were entitled to the seniority in the grades of Pointsmen and not as TC^Ns. On the basis of the subsequent test held under letter dated 15.1.1977 and 4.4.1977, 52 persons were promoted as TC^N by letter dated 4.4.1978. The grievance of the applicants is that they were entitled to be intimated about the written test held subsequently and to the opportunity to appear in the said test, which was not done and as such, there has been a violation of Art.16 of the Constitution by the respondents. Juniors to the applicants have been promoted as TC on permanent basis in violation of provisions of Art.14 of the Constitution. By order dated 29.5.1978 issued on behalf of the respondent no.1 by the DPO Jhansi-respondent no.2, the applicants were ordered to be reverted as Pointsmen. The said order is illegal, mala-fide and amounts to misuse of powers. The applicants accordingly filed this petition for quashing the order of their reversion dated 29.5.1978 and for a writ of mandamus to command the respondents not to revert the applicants from the post of TC and for a further direction that the applicants should be considered for promotion to the post of Guards.

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3. The petition has been contested on behalf of the respondents and in the counter affidavit filed on their behalf by ^{the} Head Clerk of the Central Railway Jhansi, it has been stated that the applicants were initially appointed as Pointsmen on 2.4.1962. The applicant no.1 after passing Switchman course worked as Switchman but he never worked as Shunting Master. The applicant no.1 was put to officiate as TC purely on adhoc basis from 29.7.73 with the clear instructions that this would not exempt him from appearing in the selection of TC when ordered. The DPO Jhansi had called for the working report regarding the applicant no.1 alone in order to assess his suitability for promotion to the post of TC purely on adhoc basis and no such report was called for regarding applicant no.2. As in the written test held on 25.3.1973, the procedure prescribed by letter no.E (NG) 61 CFP/8 dated 29.11.1962 was not observed, the written test became null and void and by mistake it was wrongly mentioned to be the test of 1971 in annexure 6 to the writ petition. It is incorrect to say that the applicants had ever passed the written test held for the post of TC. The applicants were not to be informed individually about the written test to be held under letter dated 15.1.1977 and as the supplementary test under letter dated 4.4.1977 was held for the absentees and ^{as} the applicants had not applied for appearing in the written test, they could not appear in the supplementary test. It was also wrongly mentioned in the order dated 29.5.1978 that the applicants had failed in the written test of 1973 but in fact, the said test was cancelled as mentioned above. The applicants having been appointed purely on adhoc basis, cannot claim parity with the persons regularly appointed as TC on the basis of prescribed selection. They have already been reverted and are not entitled to the reliefs claimed.

4. In the rejoinder filed by the applicants they reiterated the pleas taken by them in their petition. They also moved an application for amendment of the petition to take the additional grounds that the order of reversion is punitive and amounts to reduction in rank and as no opportunity was given to them before reversion, the same is void. They also claimed protection on the basis of their continuous officiation for 18 months on the post of TC. Certain additional documents were also filed by them in support of their claim.

5. The undisputed case of the applicants is that they had appeared in the written test for the post of TC only once on 25.3.1973. In annexure 6 to the petition, it was informed by DRM(P) Jhansi to the Secretary of National Railway Mazdoor Union Agra in respect of seniority matter of the applicants that from the record it appeared that the written test of 1971 was cancelled and its result was not declared and the applicants were selected only for class IV and they could get their seniority in the grade of TC only on their regular selection. The respondents have now taken the stand that the mention of cancellation of the written test of 1971 in this letter was a clerical mistake and, in fact, written test of 1973 was cancelled. In the impugned order of reversion, copy annexure 3, it has been mentioned that the applicants along with 15 other persons are being reverted on their having failed in written test. The contention of the respondents is that the cause of reversion of the applicants mentioned in this order is also incorrect and they had, in fact, not failed but their selection test was cancelled as mentioned above. Annexure 8 relates to 17 persons and there may be some confusion in this matter and in view of what has been clarified by the respondents it has now to be taken that the applicants had not appeared in selection test in 1971 and they had not failed in the selection test held in 1973 but the selection test was cancelled as it was not held in accordance with the procedure prescribed for the same.

6. It further appears from the pleadings of the parties that after the written test of 25.3.1973 in which the applicants had appeared, the next test was held only in 1977 under letter dated 15.1.1977, annexure 4 to the petition. This letter was issued from the office of the DRM (P) Jhansi and it was clearly stated therein that even those class IV employees who were working as TC on adhoc basis, also must appear in the written test. It was sufficient indication to the applicants for appearing in the written test going to be held under this letter but it appears from the bottom of this letter that the names of two officials, namely, Onkar Sharma and Ghanshyam Das were mentioned in it and the contention of the applicants is ~~this~~ that this information was meant for these two employees. It further appears from the letter dated 4.4.1977, copy annexure 5, for supplementary test to be held on 17.4.1977 that the names of three employees, namely, Ghansyam, Onkar and Kishore Sharma, were mentioned in the end and the applicants, therefore, want us to infer that whatever might be the intention of the respondents, they were misled by not seeing their names with the names of the aforesaid persons and on account of the further fact that they were never informed before this written test that the test of 1973, in which the applicants had appeared, was cancelled or they had ever failed therein. Our attention has also been invited to annexure 2 to the petition which is a letter from the Divisional Superintendent to the immediate superior officer of the applicant no.1 calling for his working report about him for considering his promotion on adhoc basis. Though similar letter is stated to have been written in respect of the applicant no.2, which was denied by the respondent, no copy of such letter has been produced on record. The contention of the applicants is that they were further misled by this letter and they thought that as the result of

the written test was not communicated to them and the working report was called for, ~~they were under the belief that~~ they need not appear in any examination and the examination scheduled to be held in 1977 was not meant for them. It is really a pity that the applicants were kept in dark about the fate of the written test in which they had appeared in 1973 and in the letter dated 24.12.1977, copy annexure 6, the DRM(P) Jhansi informed that the written test of 1971 has been cancelled and in the reversion order dated 29.5.1978, copy annexure 8, it has been mentioned that the applicants and others mentioned in the letter had failed. When this is the position of the office of the DRM (P), it does not appear difficult for us to appreciate that the applicants could never know about the real position so far as the result of their written test was concerned till they received the orders of their reversion.

7. The applicants have challenged this order of reversion mainly on two grounds. Their first contention is that they started officiating as TC^N in 1973 and had worked for more than 4 years on these posts by the time the reversion order was issued and in view of the letter dated 21.5.1956, copy annexure R-1 of the Railway Board, the applicants after working as TC^N for more than 18 months on adhoc basis, could not be reverted. In our opinion, the benefit of this letter is not available to the applicants as the advantage of officiation for more than 18 months on adhoc basis was meant for only duly empanelled staff as clarified by the Railway Board in its subsequent letter dated 15.1.1966. As the applicants were not on the panel during this period of their officiation, the benefit of the letter dated 21.5.1956 cannot be extended to them.

8. It was next contended on behalf of the applicants that as disclosed in para 7 of the counter affidavit, the applicants were reverted by way of punishment and as this was done without affording them any opportunity of hearing, the reversion is illegal and against the principles of natural justice. In our opinion, even this contention is far-fetched. In para 6 of the petition, it was stated that the petitioners had been working as TC to the entire satisfaction of their superiors and they were never conveyed any adverse character roll entries. In reply to this allegation, it was mentioned in para 7 of the counter affidavit that the facts stated are not correct and the applicant no.1 was once awarded the punishment of withholding one set of P.T.O. on 1.9.1976 for careless working and the applicant no.2 was awarded the punishment of withholding increment for 6 months on 31.8.1976 and censured on 23.4.1978 for gross negligence and careless working. These facts were asserted by the respondents simply to belie the allegations of the applicants and not by way of a defence in support of the reversion. It has nowhere alleged in the counter affidavit that the applicants were reverted on account of their unsatisfactory work or bad conduct. On the other hand, the order of reversion, annexure 8, shows that they were reverted for not having passed the written test. It is, therefore, wrong to say that the applicants were reverted by way of punishment, and they were not entitled to any opportunity of hearing before such reversion.

9. The other point raised on behalf of the applicants, however, seems to have some force and it appears that they were misled by the faulty working of the office of the DRM(P) Jhansi and had they known about the cancellation of their written test held on 25.3.1973, they would have certainly appeared in 1977 to avoid their reversion. One thing seems apparent that for the written test held on 25.3.1973, the applicants were informed

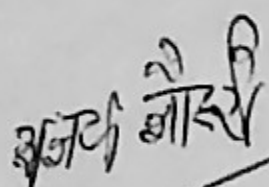
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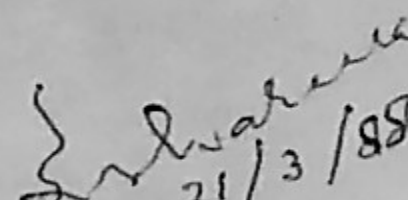
by name as appears from the copy of letter annexure 1 to the petition. As similar intimation was not given to the applicants for the written test held in 1977, we feel that the applicants should not suffer on account of the mistake committed by the office of the DRM(P). We would have directed the respondents to hold a special written test for the applicants but it appears from the supplementary annexures 1,2 and 3 filed by the applicants with the amendment application that the applicant no.1 vide letter dated 24.6.1987 issued from the DRM's office was ordered to be relieved for joining Pro-Guard Course commencing from 24.6.1987 and it appears from the annexure 3 that the applicant. no.2 was promoted as Guard sometime before 21.11.1986. In the supplementary affidavits filed by the applicants, they have alleged that during the pendency of this litigation they passed the examination for the promotional post of Guards. This being the position, there seems ^{to be now} no need of holding any special written test for the promotion of the applicants. From the fact that in the subsequent examinations held by the respondents the applicants were found suitable for promotion as Guards, we are inclined to infer that on having an opportunity in 1977 to appear in the promotion test, the applicants would have been declared successful with other persons who were declared selected and were appointed as TC on regular basis vide annexure 7 dated 4.4.1978. The applicants, therefore, should not suffer the loss of their seniority. It, however, does not appear to be equitable that their reversion order should be quashed and they should also be allowed to get the arrears of pay of the post of TC.

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10. Having thus carefully considered the entire case of the applicants, we order that on the passing of the selection test for Guards by the applicants, they will have the benefit of their original seniority and notionally they shall be deemed to have been regularly promoted from the date their juniors were promoted but they shall not be entitled to the salary of the promotional post for the period they actually did not work on such posts. The applicants are not entitled to any other relief. The parties are directed to bear their own costs.


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MEMBER (A)


21/3/88
MEMBER (J)

Dated: March 21, 1988
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