

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD.

T.A.No.1240/87

Shri P.D.Deshpande & : : : : Applicants  
another.  
Vs.

Union of India & : : : : Respondents.  
Others.

Hon.Mr. Justice U.C.Srivastava, V.C.  
Hon.Mr. K. Obayya, A.M.

(By Hon.Mr. Justice U.C.Srivastava, V.C.)

No.1

The applicant <sup>No.1</sup> was appointed as a Mechanic in the year 1961 and became Chargeman Grade 'C' w.e.f. 22-4-68. He was selected as Chargeman Grade 'B' w.e.f. 19-10-70. He was further promoted as Assistant Mechanical Foreman in the grade of 700-900 w.e.f. 4-4-75 and since then he has been working in the said post. The applicant No.2 joined as an Apprentice Mechanic in the year 1962 and was similarly promoted as fitter chargeman in the year 1970. He was also similarly selected as Assistant ~~Foreman~~ <sup>Foreman</sup>, which according to them was non-fortuitous having the grade of Rs.700-900/-. The applicant has officiated even as Mechanical <sup>e</sup>Foreman in the grade of Rs.840-1040/- for a short while. According to the applicants they have worked for 9 years and as such it should be deemed to be a substantiative post. The respondents are not recognizing this post as a substantiative post, to which post the applicants have been promoted, even though they have been given training as required. There is no difference in the grade, scale, qualification and channel of promotion, between

the posts of Assistant Shop Supdt. and Assistant mechanical <sup>e</sup>Forman, but the applicants are deprived of the benefits, even though they have undergone the training of dieselisation. As such they should have been regularised long ago as the post is a non-selection post as has been done in the case of Shop Superintendent. The applicants were also required to appear in a test on 22-2-83 and that is why they have filed a Writ Petition before the High Court praying that the same may be quashed and a mandamus be issued directing the respondents to declare them as substantive Assistant <sup>e</sup>Forman and they may not be directed to appear in the test.

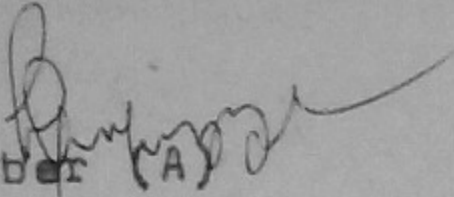
2. The contention of the applicants is that they have been appointed to permanent and substantive post of Assistant Forman in the year 1979 and they cannot be compelled to appear in the written examination as they have worked for several years continuously. Even otherwise also they cannot be asked to appear in the examination. It is alleged that discrimination is being done inasmuch as in the similar circumstances, the persons holding the post of Assistant Mechanical <sup>e</sup>Forman, Assistant Shop Supdt., etc. have not been subjected to any test for the process of selection and they have been regularised whereas in the case of the applicant, the said process has been reversed.


3. The respondents, in their counteraffidavit, have admitted that the applicants were appointed as Chargemen on an adhoc <sup>earlier</sup> basis, but they have also admitted that they were chargemen, but according to them the promotion of the applicant to the post of Assistant Forman was only on adhoc basis and that is why these posts were shown as vacant and the examination was conducted. The applicant did not pass the relevant suitability test for the post of Assistant Shop Superndt. As such there is no question of regularising them. The claim of the applicant that after working for a particular period

they have been sent for training. This claim has been denied by the respondents in an evasive manner. The documents which have been filed by the respondents along with the rejoinder affidavit states that, as a matter of fact the applicants were called for, for the post of Shop Supdnt. which is evident from the letter dated 11-8-76 placed on records by the respondents. Thus it is clear that the applicant has, in fact, not only received training but they have also been qualified themselves for the post of Shop Superintendent and the post has been declared as a non-selection post.

4. Accordingly there appears to be no reason as to why the case of the applicant cannot be considered for regularisation. It is only after considering their post for regularisation the question of requiring them to appear in the examination after 9 years of long service would arise. It was within the powers of the respondents to consider whether the post is selection post ~~and~~ or non-selection post and to grant them relaxation from appearing in the examination. Without considering these questions the applicants should not have been asked to appear in the examination. Even if they have to appear in the examination they should get one more opportunity as they have worked for years together in the said post. Accordingly the respondents are directed to consider the case of the applicants for regularisation within a period of 3 months from the date of communication of this order. If their case is considered for regularisation they will not have to appear for any test. Even otherwise so far as the question of suitability is concerned, the matter can be decided on humanitarian ground and their long years of

experience in the said post may also be considered.  
With these observations the application stands disposed  
of. No order as to the costs.

  
Member (A)

  
Vice-Chairman.

Dated: 22nd March, 1993, Allahabad.

(tgk)