

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Transfer Application No. 1845 of 1987

Jagdish Kumar	Applicant
Versus		
Union of India and Others	Respondents

Hon. Mr. Justice U.C. Srivastava, VC
Hon. Mr. K. Chayya, Member (A)

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

The applicant was working as Telephone Operator in Central Railway, Bombay. He gave his option for being transferred after forgoing his seniority. Vacancies arose in the year 1981 in Transportation Branch, Northern Railway Allahabad for the post of senior clerks in the grade of Rs. 330-560(R.S) and consequently it was decided by the respondents to fill up those posts in accordance with the provisions of the Railway Establishment Manual. The result of the aforesaid examination was declared on 17.10.81 and 17 persons were declared as successful which included 5 persons who were promoted on the basis of restructuring done in the cadre though they did not participate in the examination. Out of 26 candidates called for examination only 12 candidates were declared successful which included the applicant also. Thereafter the applicant was appointed along with 15 other candidates as senior clerks in the grade of 330-560(RS) against the existing vacancies. After 3 and half years after this appointment, on 16.5.85 the applicants received an order to the effect

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that the suitability test held on 3.10.81 and 28.6.82 have been cancelled and fresh suitability test would be held on 2.6.85. The applicants made representation to this effect/^{that} no order could be passed cancelling the suitability test for the reasons that the applicants have worked on the post of senior clerk for a substantial period more than three years.

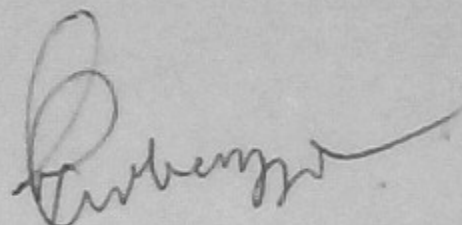
2. In the year 1981 when the suitability test was held only 26 persons were eligible to participate in the suitability test and now out of 26 persons who participated, only 15 were selected -12 selected in the suitability test and 3 in the test held on 28.6.82 and rest of the 11 failed inspite of the opportunity being given to them to reappear in the examination held on 28.6.82. By means of the order dated 16.5.85 the failed candidates also who are much junior to the applicants and who have failed in the earlier suitability tests have been asked to appear in the examination alongwith the applicants to be held on 8.6.85. It is pertinent to state that when the respondents had cancelled the suitability tests held on 3.10.81 and 28.6.82 due to certain irregularities vide their letter dated 16.5.85 and ordered to conduct a fresh suitability test of those who had already appeared at those tests there was no justification to call fresh and junior persons upto 1985. By including junior persons in the cancelled tests, they have committed grave illegality and irregularity which is violative of Article 14 and 16 of the Constitution.

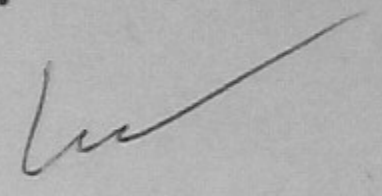
of India because if per chance the persons who were being resubjected to a fresh suitability test due to cancellation of their previous tests, failed then they would become junior to the much junior persons apart from being deprived of a chance to appear at a subsequent suitability test in case of their failure. The applicant had already worked for about more than 3 $\frac{1}{2}$ years and have received promotions also along with others as senior clerk. In this case a reference is made to the case of ' Km. Anamica Misra and another Vs Union Public Service Commission Allahabad AIR 1990 SC pg 461. In that case some candidates having better performance in written examination not called for interview due to improper feeding into computer reholding of written examination on that ~~xxx~~ ground-not proper.

When no defect was pointed out in regard to the written examination and the objection was confined ^{not} to ~~the~~ the written examination but the interview there was no justification for cancelling the written part of the recruitment examination. On the other hand, the situation could have been properly met by setting aside the recruitment and asking for a fresh interview to all eligible candidates on the basis of written examination and selecting those who on the basis of the written and the freshly held interview became eligible for selection. Admittedly the applicants have worked as senior clerks for more than three years and there is a policy of the Government that the persons who have worked continuously on a particular post for a period of three years, services of such

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persons be regularised on that post. Accordingly this application is allowed. The respondents are directed to consider the applicants to be deemed in continuous service, and the consequential benefits entitled may be given to them within a period of 2 months from the date of communication of this order. No order as to the costs.


AM


VC

Dated: 8.7.1992:

(Uv)