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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 213 of 1986
T.A. No.

DATE OF DECISION 7.10.'86

SHRI G. J. TRIVEDI & ORS. Petitioner

SHRI X. M. MASCARENHAS Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS. Respondent

SHRI R. M. VIN Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P. H. TRIVEDI (Vice-Chairman)

The Hon'ble Mr. P. M. JOSHI (Judicial Member)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal.

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O.A. 213/86

Per: Hon'ble Shri P. H. Trivedi, Vice-Chairman

JUDGMENT

The applicants Shri G. J. Trivedi and Shri H. A. Vora were appointed as Clerks in the scale of 260-400, through Railway Service Commission. They were asked by the letter dated 11.6.'82 to take a suitability test for promotion to Senior Clerk scale 330-560. The tests were taken on 26.8.'82 and 11.7.'82, but they were not selected. They continue to hold, however, the posts of Senior Clerks on adhoc basis since 23.5.'80 and 1.11.'80 respy. The relevant orders state that they continue to officiate as Senior Clerks on adhoc basis subject to passing of suitability tests for the posts of Senior Clerks and their appointments adhoc would not confer on them any prescriptive right over their seniors for the posts or scale. According to the instructions, suitability tests are required to be held every six months. Further, these suitability tests were not held until after 5.8.'85. In the meantime, against graduate quota, eight persons were promoted/appointed by orders dated 18.7.'85 & 25.7.'85. Representations were made by the applicants dated 31.12.'85 and also reminders were sent dated 17.4.'86. No reply, however, to these representations, has been received. The case of the applicants is that the promotion to the posts of Senior Clerks is governed on the consideration of seniority cum suitability and no tests are required to be passed for ascertaining suitability. Even if such tests are held at the interval of every six months and because of the delay in holding such tests for a period of about three years, the applicants have been denied the opportunity to be considered for promotion. In the meantime, however, appointments have been made both by pro-

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motion and by direct recruitment and such appointees have been given seniority over the applicants.

2. In reply, the respondents have contended that promotion cannot be made without passing suitability tests and the applicants hitherto have not passed any such tests, having failed in the tests held in June and July, 1982. Their promotions, adhoc, confer no right on them regarding seniority over those, who have been promoted or appointed regularly. While there are instructions to hold tests at the interval of every six months they are for administrative convenience and failure or delay to hold such tests on ground of administrative exigencies cannot be regarded as breach of rules or law for which no right accrues to the applicants and for which no remedy is available.

3. The first question to be dealt with is whether suitability tests are required to be passed for the applicants to be considered for promotion. It is not disputed that such tests have been prescribed and in fact, the offices concerned have been enjoined upon to hold such test at the interval of six months. It is not disputed that the promotion to the posts of Senior Clerk is governed by considerations of seniority cum suitability. In the circumstances if the authorities do not hold suitability tests or prescribe them, it could not be argued that suitability can be determined as and when required by individual competent authorities in respect of individual officers. Suitability tests have, however, been prescribed not in isolated cases, but as a part of the procedure for ascertaining suitability and persons eligible to be subjected to such suitability tests has also been determined. It is therefore, found that promotion is dependent upon passing suitability tests.

4. The second question to be determined is whether failure on the part of the authorities to offer suitability tests to the applicants at the interval of six months after 1982 confers upon the applicants any right to promotion. The respondents have admitted that there are instructions for holding suitability tests at the interval of six months. Instructions dated 25.2.'61 & 22.2.'65, refer to the frequency with which such tests are to be held and for ascertaining the list of suitable candidates related to the number of vacancies. These instructions also refer to the contingency of suitability tests not being held strictly at the interval of six months. We have considerable sympathy for the consequence arising from the delay or failure in holding such suitability tests after prescribing that promotions would depend on the applicants passing them. We do not, however, hold that any right could accrue to the applicants in the matter of promotions without their actually passing such tests for which the applicants cannot presume that had such tests been held, they could necessarily have passed them.

5. The third question to be considered is whether induction of other appointees by direct recruitment or promotion prior to the holding of the tests for which the applicants were eligible prejudices the interest of the applicants regarding their promotion and seniority, and, if so, whether such induction is in order. There is no doubt that such induction adversely affects the applicants in the matter of their future promotion and their seniority vis-a-vis appointees so inducted only on the presumption that had such tests been offered earlier, the applicants would have passed them. Such a presumption cannot be made while recognising the possibility of the successful passing by the applicants of such tests. Further, even if it is argued that the induction of such appointees could have been ^{postponed} until offering the tests to the applicant,


and, even if such appointees are inducted, the question of inter-se seniority between such appointees so inducted and the applicants could be kept pending determination, until it actually becomes possible to offer suitability tests to the applicants, this matter would rightly fall within the domain of administrative judgment.

6. The fourth question, relates to the claim of the applicants for promotion on the ground that they have continued to officiate in the posts of Senior Clerks, although on adhoc basis for about five years. We have considerable sympathy for the view that if the applicants are found good enough to work for five years in the promotion posts they should be regarded as suitable, particularly when they have been denied the suitability tests for no fault of their own. Had the applicants been reverted or any effect caused which makes their emoluments less than what they have enjoyed, we might have intervened in their favour. In this case, however, the question is of improving their status over their status of adhoc promotees coupled with stipulations regarding their holding their promotion posts without any benefit about seniority or regular promotions or their selection for promotions after passing suitability tests. We are not persuaded that the condition of their successfully passing their suitability tests can be circumvented merely by the fact that such tests were not being available to them, for no fault of theirs.

The learned advocate for the respondents, Mr. Vin, has successfully argued regarding the limits of the rights of the applicants in this case. We are unable to compliment the respondents on their management of their services or their orderly compliance of their own instructions. Even though we are unable to offer any remedy to the applicants in the instant case, we do not wish to conclude without holding up the failure of the railway administration in holding the tests regularly, and in effect, denying the

opportunity to the applicants for being duly considered for promotion. It might have been possible for the respondents to hold over the determination of the seniority of the appointees inducted, in the meantime, vis-a-vis the applicants, if and when tests for suitability are offered to them, especially because such tests were not held for no fault of the applicants. The learned advocate for the respondent, Mr. Vin, has pleaded administrative exigencies for not holding the tests. Far too often the plea of administrative exigency is merely an excuse for lazy and inefficient administration. If the railway administration is not in a position to hold tests regularly as required by its own instructions, it might be useful to consider whether suitability can be judged by superior officers under whom applicants are working, in the normal course of official supervision, so that such delay and failure do not take place and necessary declaration or certificates for suitability are obtained by other more effective and expeditious means. The respondents have a moral obligation to offer protection against adverse effects, regarding their seniority in such case.

With these observations we hold that the application fails. No order as to costs.


(P. H. TRIVEDI)
Vice - Chairman


(P. M. JOSHI)
Judicial Member