

4

(7)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 250 of 1986
T.A. No.

DATE OF DECISION 14.10.'86

Shri Saiyyed Mohammad Hussain Petitioner

Shri N. J. Mehta Advocate for the Petitioner(s)

Versus

Gen. Manager, W.Rly & Ors. Respondent

Shri K. K. Shah 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.

O.A. No. 250/86

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

JUDGMENT

The applicant, Shri Saiyyed Mohammed Hussain, was promoted as Machinist on 14.1.'53 till he retired on 30.11.'78. He was not allowed to cross the efficiency bar as his suitability to do so was to be tested by prescribed trade tests which he failed. He was placed under suspension and during the period of suspension and subsequent compulsory retirement from 31.8.'66, he was not offered trade tests. After failing in these tests three times i.e. on 4.10.'63, 5.6.'64 & 6.1.'66, when he was eventually taken in service, he was again offered a trade test on 17th & 19th of October 1977, at Ajmer. In this test also the applicant failed, but he has challenged that the trade testing officer was not competent to hold the test and had stated that Deputy C.M.E. would give a decision regarding the test although he had not held it. He contends that the test was, therefore, not validly taken as the Testing Officer, Deputy C.M.E., had not held the test and the person who held the test was not competent to do so. The applicant has taken us through a long and chequered history of his period of suspension, retirement, successful challenge of the retirement due to his birth date being incorrectly taken and subsequent test held after a long absence of several years.

The crucial question to be decided in this case is whether crossing of the efficiency bar is dependent upon the successful passing of the trade test. The applicant has cited The State of Punjab and another vs. Shamlal Murari and another, (1976) 1 Supreme Court Cases 719, in which it was held that the denial of increments and certain other benefits for failure to pass departmental tests for which exemptions had been granted should not be a bar to the drawal of such benefits after a long period of service was put in. The applicant has also contended that such tests ought to be taken at the interval of six months which was not done regularly, and therefore, he was denied the opportunity of earning increments if he had passed them.

The learned advocate for the respondents, Mr. Shah, has adequately made out that the crossing of the efficiency bar was dependent upon suitability and this was sought to be established objectively by success in the passing in the trade tests, which were required ordinarily to be held every six months. For the long period for which the applicant was under suspension and thereafter, compulsorily retired and therefore out of service until he was again taken in the Government service, obviously the respondent cannot be faulted for not offering any trade tests. The plea of the applicant that he would have passed the tests which he has not taken is only a surmise which does not gain any credibility,

7
18

owing to his several failures, before his suspension, when he actually took three such tests. Whether the Testing Officer was competent to hold the final tests in 1977 or not is a matter which he has taken up with higher authorities, but, whatever the result thereof, it cannot be said that he has passed any test, until it is so declared by a competent authority. The position, therefore, stands that up-to-date he has not passed the relevant trade test without which he cannot cross the efficiency bar. The judgment of the Supreme Court cited is not on all fours with the facts of this case. In that case, exemption had been granted to the Government servant, to whom benefits were denied for failure to pass the departmental test. In this case, it is not a simple case of earning increments but of crossing efficiency bar, for which there is a definite arrangement for objective test, without which further increments after efficiency bar is crossed are not allowed. There would hardly be any significance in providing an efficiency bar if failure to pass such tests were not taken into account. In this case, it is not that the applicant was not offered tests due to reasons of administrative exigencies, or did not take tests for other reasons, but that the tests were gone through and there was clear failure to pass them not once but three times before suspension. No presumption or surmise regarding skills gained by experience can therefore be raised because, that experience notwithstanding,

failure ensued. The passage of time in which the applicant has been under suspension and then compulsorily retired also has not added to his skill. His dispute regarding the test in 1977 shows that he has not passed that test even then. Having considered all the circumstances of the case and after taking into account the pleas of both the parties we are unable to persuade ourselves that the trade tests for crossing the efficiency bar are superfluous, and can be ignored. The appeal fails. No order as to costs.

P. H. Trivedi
(P. H. TRIVEDI)
Vice-Chairman

P. M. Joshi
(P. M. JOSHI)
Judicial Member