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CAT/3/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~XXXXXXXXXXXX~~
NEW DELHI

O.A. No. 364 OF 1986.
~~XXXXXX~~

DATE OF DECISION 18-10-1989.

SHRI. R.M. DESAI Petitioner

MR. G.A. PANDIT Advocate for the Petitioner(s)

Versus

THE UNION OF INDIA & ORS. Respondent s.

MR. N.S. SHEVDE 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? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *Yes*

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Shri R.M. Desai,
Commercial Inspector,
Western Railway,
Pratapnagar,
Vadodara.

..... Petitioner.

(Advocate: Mr. G.A.Pandit)

Versus.

1. Union of India,
(Notice to be served through the
General Manager, Western
Railway, Churchgate, Bombay.)
2. The Divisional Railway Manager,
Western Railway,
Pratapnagar, Vadodara.
3. The Chief Commercial Supdt.,
Western Railway,
Churchgate, Bombay.

..... Respondents.

(Advocate: Mr. N.S. Shevde)

J U D G M E N T

O.A.NO. 364 OF 1986

Date : 18-10-1989.

Per: Hon'ble Mr. P.M. Joshi, Judicial Member.

The petitioner, Shri R.M. Desai, working as Commercial Inspector (scale Rs. 455-700), in the Office of the Senior Divisional Commercial Superintendent at Baroda, has filed this application on 8.10.1986, under section 19 of the Administrative Tribunals Act, 1985. According to the case set up by the petitioner, the post of "Assistant Rate Inspector", was created by the General Manager vide his letter dated 9.2.1976 and in the year 1976, he was promoted on 10.2.1976 to the post of "Assistant Rates Inspector", which was given a new nomenclature to the post of "Assistant Commercial Inspector" on 2.12.1983 and since then he is continuously working as Assistant Commercial Inspector and on upgradation from the said post he was promoted to the post of Commercial Inspector (scale Rs. 455-700) with

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effect from 1.1.1984 vide order dated 24.12.85, (item No.30) Annexure 'E'. It is alleged that when he was working as Assistant Commercial Inspector for a period over more than three years on 31.3.1979, he ought to have been regularised in the grade of Rs. 425-640 as Assistant Commercial Inspector (A.C.M.I.), on regular basis in terms of the Railway Board's circular dated 27.4.83 (Annexure 'B'). The petitioner therefore prayed that the action of the Respondents- Railway Administration in directing the petitioner to appear at the selection for the post in the grade of Rs. 425-640 is illegal and he should be treated as regular Assistant Commercial Inspector since 10.2.76 and his seniority be fixed alongwith those who were regularised in the post of Assistant Commercial Inspector. He further prayed that the respondents be directed to treat the petitioner as promoted to the post of Commercial Inspector grade Rs. 455-700 on regular basis, as he had cleared the test for selection to the post of Chief Goods Clerk in the scale Rs. 455-700 on regular basis, which is in the equal scale of Rs. 455-700 and on the basis of the option given in response to the Chief Commercial Superintendent's letter Annexure 'E' dated 9.6.1986.

2. The Respondents-Railway Administration contested the petitioner's application and denied the assertions and the allegations made against them. According to them, the post of Claims Tracer and Commercial Clerk scale Rs. 330-560(R) fall within two different and distinct category having their avenues of promotion in their own category. It was further submitted that another category namely the post of "Assistant Rates Inspector", (for brevity ARI) scale Rs. 425 - 640 (R)

which is filled up from Commercial Clerk and Office Clerk in scale Rs. 330-560(R) in the ratio of 50 : 50 through written test, and the said category of Assistant Commercial Inspector are separate and distinct one and one can not go from one to the other. While denying the petitioners' claim it is stated that the petitioner was promoted to the post of Assistant Rates Inspector scale Rs. 425-640(R), purely on ad hoc basis as stop-gap arrangement against a temporary post of Assistant Rates Inspector and he having not passed the written test to the post of Assistant Rates Inspector he was promoted as Head Goods Clerk in the scale Rs. 425-640(R) in his own avenue of promotion on regular basis in December 1983. However, when the post of Assistant Rates Inspector was converted to Assistant Commercial Inspector in DRM's office Baroda, the petitioner was posted to work as Assistant Commercial Inspector purely on ad hoc basis and in the meantime, he was called for the selection to the post of the Chief Goods Clerk scale Rs.455-700(R), in his own avenue of promotion in the parent line against the upgraded post and he having passed the selection, he was promoted to the post of Chief Goods Clerk in scale Rs. 455-700(R) with effect from 1.1.1984 against the upgraded post vide office order dated 24.12.1985 on regular basis and accordingly the petitioner is not entitled to the reliefs as prayed for as Railway Board's letter dated 11.4.1979 relied upon by him does not apply in his case.

3. The petitioner had filed M.A.No. 138/87 seeking certain amendment in the Original petition and also had claimed additional relief to direct the respondents to place him between Sr.No. 56 & 57 in the seniority list at Annexure 'H' with consequential benefits. The application was allowed and order dated 3.8.1987 with a direction that the petitioner should carry out the

amendment within 10 days. However the said amendment does not seem to have been carried out so far.

4. When the matter came up for final hearing we have heard Mr. G.A. Pandit and Mr. N.S. Shevde, the learned counsel for the petitioner and the respondents respectively. The materials including rejoinder of the petitioner and the additional written statement are also perused and considered. The respondents were directed to supply all the orders of promotion ^{with a copy to} the other side which has been done ^{vide} application dated 24.7.89.

5. During the course of his arguments, it was strenuously urged by Mr. Pandit that the petitioner having worked as "Assistant Rates Inspector", on 10.2.76 and thereafter ^{when} he is continuously working in the Commercial Branch as an Inspector, it is not correct to say that he was working on Goods Branch. According to him, even though the petitioner had applied for the selection to the post of Commercial Inspector scale Rs. 455-700, but 35 persons including the petitioner who had applied for the same were not considered eligible vide Headquarter's letter dated 16.9.83 (Annexure 'G') and persons junior to him including Mr. S.D. Chandorikar has been regularised and are now working in the scale Rs. 700-900 as Senior Commercial Inspector. In his submission the petitioner has not been given the benefit of the instructions contained in the Railway Board's letter dated 11.4.79 and consequently, he is entitled to claim to be treated as regular Assistant Commercial Inspector and also to the post of Commercial Assistant Inspector scale Rs.455-700 on regular basis. In this regard he has mainly relied on the instructions which are reproduced in the Chief Commercial Superintendent's letter No.EC.834/4/13 dated

27.4.83 alongwith the Explanatory Note (Annexure 'B-1') (P.B. 21 to 26). The relevant and material portions thereof which are pressed in service are reproduced as under :-

Explanatory Notes:

Note: 1. xxxxxx xxxxxxxx xxxxxxxx

2. The existing Claims Tracers working on regular basis i.e. those who are born on the pannels of claims Tracers notified in 1974 and 1976 and those who have completed 3 years continuous service as on 31-3-1979 as ad hoc Claims Tracers (Short breaks of upto 3 months to be ignored) would be considered as regular Claims Tracers/ACMIs in terms of Board's letter No.E(NG)I-77/PMI-205 dated 11-4-1979 and would be eligible to seek promotions to the next higher grade of ACMIs sc. 425-540(R) and above alongwith Commercial Clerks as explained in Note (3) below.

3.(a) Posts of ACMIs scale Rs.425-640(R) have since been classified as Non-selection, as per Board's letter No.E(NG) 1/82/PMI/41(CA) dated 28-8-82.

(b) These posts will be filled by inviting applications from eligible staff through a process of written test.

(c) The number of employees to be permitted to appear for the written test would be 3 times the number of assessed vacancies with the exception that all the existing regular claims Tracers referred to in Note 2 above, would be eligible to appear for the Written test, even if they do not come within the prescribed field of consideration even by relaxing the field of consideration to the extent as may become necessary.

(d) This concession would be available to the regular Claims Tracers mentioned in Note 2 above, till they are available.

4. (a) 25% of the vacancies in the cadre of CMIs, in scale Rs.455-700(R) will be reserved for commercial Apprentices, 15% to be recruited directly through Railway service commission and 10% from serving employees (Graduates).

(b) 75% of the vacancies of CMIs will be filled through a process of selection, as these posts have been classified as "Selection posts" vide Board's letter No.E(NG)I/82/PMI/41(CA) dt.28-8-1982. The normal procedure for selection will be followed, except that applications would be called from willing and eligible staff viz. ACMIs, working in scale Rs.425-640(R) and Commercial Clerks in scale Rs.425-640(R).

(c) The existing ACMIs in scale Rs.425-640(R) who had a service of over three years as CTs/ACMIs on 31.3.1979 (Short breaks of

upto 3 months to be ignored) would be considered as regular ACMIs in terms of Bd.'s letters No.E(NG)I-77/PMI-205 dt. 11.4.1979 and 4.3.1980 and would be allowed alongwith the applications from the category of commercial clerks scale Rs.425-640(R) to appear for selection to the posts of CMIs scale Rs.455-700(R) even if they (i.e. existing regular ACMIs) do not come within the stipulated field of eligibility), there by relaxing the condition of 3 times the number of vacancies to be called for selection.

- (d) This concession would continue till the regular ACMIs mentioned in (c) above are available.

5.	xxxxxx	xxxxxxxx	xxxxxxxxxxx
6.	xxxxxx	xxxxxxxx	xxxxxxxxxxx

7. All ACMIs/CTs who were borne on the panels of CIs notified in 1974 and 1976 and the ad hoc ACMIs/CTs who had a service of over 3 years as CTs/ACMIs on 31.3.1979 (Short breaks of upto 3 months to be ignored) would be considered as regular CTs/ACMIs in terms of Bd.'s letter No. E(NG)I-77 PMI/205 dt. 11.4.1979 and would be given option to go back to their parent cadre, if they so desire, retaining their original seniority in their parent cadre.

6. Mr. N.S. Shevde, the learned counsel for the respondents however contended that the petitioner having lien, seniority and avenue of promotion in his parent Branch, namely "Goods Branch" he was called for all the selections to which he was eligible and when he was called for the selection of the Chief Goods Clerk scale Rs.425-700(R) in his parent branch, he appeared for the said selection and was also placed on the panel and he was also given necessary posting as Chief Goods Clerk on regular basis vide item No.30 of Annexure 'D' dated 24.12.85 annexed with the application. In his submission the petitioner was not called for the selection of Commercial Inspectors scale Rs. 425-640(R) and Rs. 455-700(R) as he was holding the post carrying identical scale in his parent branch as Head Goods Clerk and Chief Goods Clerk respectively and as such, he was not entitled to be considered for the said post in terms of the instructions contained in Head quarter letter No. EP/1025/13 dated 15.1.74 (Annexure E-1 appended to the written statement). In support of his submissions he also relied on the

judgment dated 6.4.1989 rendered by this Bench in T.A.No. 503/86 wherein relying on the instructions dated 15.1.74 it is held as under :-

"Once an employee accepts promotion to one of the posts, he will be deemed to have obtained for that category and he will have no claim to other post/posts."

7. Before adverting to the rival contention canvassed by the learned counsel for the parties it will be useful to relate to the service particulars of the petitioner, which is as under :

The petitioner was initially appointed as Assistant Goods Clerk in the scale Rs. 110-200(A). Later on, he was promoted to the post of Senior Goods Clerk (SGC) in scale Rs. 150-240(A) vide office order No.EC/839/4/9 Pt.III dated Nil-1-69 in his own parent line by virtue of his seniority, and he was confirmed on the said post vide office order dated 19/31-10-1970. He was, thereafter, promoted to the post of "Assistant Rate Inspector"(Debit) scale Rs.425-640(R) purely on ad hoc basis as a stop gap arrangement against a temporary post of "Assistant Rate Inspector (ARI)" created for six months vide office order No. EC/839/4/7 dated 1.3.76 (see Annexure 'B' of the list dated 24.7.1989). Subsequently, he was promoted to the post of Commercial Inspectors scale Rs. 455-700(R), purely on ad hoc basis for a period of 7 months from 2.4.77 to 4.11.77 and then reverted to the post of "Assistant Rate Inspector" vide office order dated 26.7.77(Annexure 'D'). As the applicant had not passed the written test for the post of "Assistant Rate Inspector" he was continued on ad hoc basis as the said post was temporary and its' currency was extended from time to time for short period. Later on, the petitioner was promoted as "Head Goods Clerk" in scale Rs. 425-640(R) in his own avenue of promotion by virtue of his seniority being a non-selection post

on regular basis.

8. During the year 1977 when the petitioner was officiating as ARI scale Rs. 425-640(R), he was ordered to officiate as CMI (HQ) scale Rs.455-700 purely on ad hoc basis with a clear stipulation that this arrangement will not confer on him any prescriptive right (Memo No.142 dated 1.4.77, Ann.'C'). On his reversion vide order dated 26.7.77 and when he was working as Assistant Rate Inspector in DRM's office, Baroda, the said post was converted to "Assistant Commercial Inspector", scale Rs. 425-640(R) in the year 1983 and he was posted to work as Assistant Commercial Inspector purely on ad hoc basis. In the meantime, the petitioner was called for selection on Chief Goods Clerk scale Rs. 455-700(R) in his own avenue of promotion in the parent line against the upgraded post. He passed the selection and promoted to the post of Goods Clerk in scale Rs. 455-700(R) with effect from 1.1.84 against the upgraded post vide office order dated 24.12.85 (Annexure 'E' appended to respondents' written statement). Thus, when he gained promotion in his own parent line he was posted to work as Commercial Inspector scale Rs.455-700(R), purely on ad hoc basis against an existing vacancy.

9. Now according to the stand of the respondents, the petitioner is not eligible for selection of Commercial Inspector scale Rs. 455-700(R) for the reason that he was already promoted to the scale Rs. 455-700(R) in his own avenue of promotion on regular basis. Further, the defence of the respondents is that on the same principle and rule the petitioner was not eligible for appearing for the written test of Assistant Commercial Inspector scale Rs. 425-640(R) as he was already promoted to the post of Head Goods Clerk scale Rs.425-640(R), in his parent line on regular basis with effect from 1.1.1984

vide order No. EC/839/4/8 Pt.II dated 12.7.84 (see Annexure 'F' appended to W.S.).

10. It is pertinent to note that in the branch of Commercial Clerk the followings are the various line of avenue of promotion.

1. Assistant Goods Clerk in scale Rs. 110-200(A)
2. Senior Goods Clerk in scale Rs.150-240(A)/
330-560(R)
3. Head Goods Clerk in scale Rs. 205-280(A)/
425-640(R)
(Gr.Rs. 455-700(R))
4. Chief Goods Clerk - Gr. 455-700(R) & 555-750(R)
5. Chief Goods Supervisor in scale Rs.700-900(R)

11. It is conceded that the post of Claim Tracer scale Rs. 150-240(A)/330-560(R) is a separate and a distinct category from Commercial Clerk. The post higher to Claim Tracer is Assistant Commercial Inspector, etc. However an employee holding a post of Assistant Goods Clerk was permitted to go as Assistant Commercial Inspector scale Rs.205-280(A)/425-640(R) after entering into the cadre of "Claim Tracer" scale Rs. 150-240(A)/330-560(R), as per the avenue of promotion notified under Headquarters letter No.E.834/4/13 dated 12th September, 1969 (Exh.A including a chart, P.B.69 & 70). The material portion whereof is reproduced as under :

"The question of eligibility of Traffic Line staff in scales Rs. 150-240(A) & Rs. 205-280(A) with Law/Degree and Office Clerks in scale Rs. 130-300(A) of the commercial and transportation branches of H.Q. office and divisions with law degree has been under consideration of the railway Board for selection to the post of Commercial Inspector, scale Rs. 250-280(A). The Board have decided that such staff should not be made eligible for selection to the posts of Commercial Inspectors, scale Rs. 250-380(A).

The revised channel of promotion for the post of claims Tracers, Asstt. Commercial Inspectors, and Commercial Inspectors, is sent herewith which should be notified for information of all staff concerned. 10 spare copies of the chart are also enclosed. "

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12. Now as per the chart referred to in the said letter dated 12.9.69, the Assistant Goods Clerk, Assistant Coaching Clerk, Luggage Clerk, Parcel Clerk, who are known as Commercial Clerk in scale Rs. 110-200(A)/260-430(R) are eligible for the post of Claim Tracer scale Rs. 150-240(A)/330-560(R) provided they have put in a minimum of 5 years service in scale Rs. 110-200(A)/260-530(R). It is undisputed that the post of Claim Tracer scale Rs. 150-240(A)/330-560(R) is a selection post. After joining the post of Claim Tracer on regular basis, an employee can progress further as Assistant Commercial Inspector in scale Rs. 205-280(A)/425-640(R). Thus, in order to become eligible for the post of Assistant Commercial Inspector it is imperative for the employee to become first, a "Claim Tracer". It is borne out that later on, the above avenue of promotion notified on 12.9.1969 was revised in the year 1978 and fresh avenue of promotion was notified for the post of Commercial Inspector under No. EC.834/4/13 dated 29.3.78 (Exh. 'B'). Now as per the revised avenue of promotion as referred to in the said Annexure 'B' - both - i.e., Claim Tracer and Commercial Clerk in scale Rs. 330-560(R) - were eligible for the post of Assistant Commercial Inspector scale Rs. 425-640(R). Admittedly, the post of Assistant Commercial Inspector was a selection post in the revised avenue of promotion whereas it was a non-selection post (seniority-cum-suitability without written test) in the avenue of promotion notified on 12.9.1969. Thereafter, the avenue of promotion notified on 29.3.78 was again revised and fresh avenue of promotion for the post of Commercial Inspector was notified under No. EC 834/4/13 dated 27.4.83 (Exh. 'C'). As per the said revised avenue of promotion only Senior Assistant Booking Clerks (SABC's), Senior Assistant Luggage Clerks and Senior Assistant Goods Clerks, (known as Commercial Clerk) in scale Rs. 330-460(R) were eligible for the post of Assistant Commercial

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Inspector scale Rs. 425-640(A). Accordingly, the post of Assistant Commercial Inspector (ACMI) became a non-selection post and the same was required to be filled up on the basis of seniority-cum-suitability with written test and the next higher post of ACMI is a Commercial Inspector (CMI) scale Rs. 455-700(R). Now the said post CMI has become a selection post which is conducted by inviting applications from the eligible candidate belonging to the category of ACMI and Commercial Clerks in scale Rs. 425-640.

13. Now, at the relevant time a Senior Goods Clerk in scale Rs. 330-560(R) was permitted to go as Assistant Rate Inspector (ARI) scale Rs. 425-640(R) which was filled up from Commercial Clerks and Office Clerks in scale Rs. 330-560(R) in the ratio of 50 : 50 through a written test which was held by inviting applications from eligible candidates belonging to the above two categories. The instructions governing the avenue of promotion is laid down in the letter No. EC.834/4/13 dated 27.2.78 (Exh.'D'). It is significant to note that the post of Assistant Commercial Clerk, Assistant Commercial Inspector scale Rs. 425-640(R) are two distinct and separate categories having no interchangeability and thus, one can not go from one to the other. It is obvious from the service particulars of the petitioner referred to above, his lien was all along was maintained in his parent branch of Goods Clerk and he was given promotion in his parent branch as Senior Goods Clerk, Head Goods Clerk and Chief Goods Clerk by virtue of seniority and passing the requisite selection for the post as and when due in his own parent branch.

14. The fact that the petitioner was promoted to the post of "Assistant Rate Inspector" scale Rs. 425-640(R) purely on ad hoc basis against a temporary post is not in

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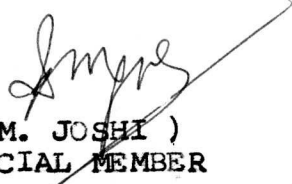
dispute. More over the fact that he was not selected for the post of Assistant Rate Inspector as he had not passed the written test required for the purpose, is not controverted. Similarly he was promoted to the post of Assistant Commercial Inspector scale Rs.425-640(R) purely on ad hoc basis vide order No. ET.261/3/4 dated 25.2.84. When the petitioner never worked as Assistant Commercial Inspector prior to the said order, he can not claim any benefit of the instructions quoted and relied upon by him.

15. Evidently, when the petitioner was not eligible to be regularised in the post of Assistant Commercial Inspector scale Rs. 425-640, his name was included in the list of ineligible persons (Annexure 'H' annexed to the Affidavit in rejoinder) as he was not working as Assistant Commercial Inspector scale Rs. 425-640(R) on regular basis (emphasis supplied) the other persons shown in the list of ineligible persons were working in lower scale Rs. 330-560(R). Out of these 35 persons except the petitioner and one or two other persons, were working as Claim Tracer in scale Rs. 330-560(R) on regular basis (emphasis supplied).

16. It is borne out that there were 88 persons in all (as shown in the list, Annexure 'H' of the Respondents) working as Assistant Commercial Inspector scale Rs. 425-640(R)/Claim Tracer scale Rs. 330-560(R) on regular basis on 31.3.79. Now out of 88 persons the senior-most 61 persons were regularised in the post of Assistant Commercial Inspector as the cadre of Assistant Commercial Inspector was 61 at that time. The remaining 27 persons were regularised as Claim Tracer in which the name of the applicant is not there, as he had never worked as Claim Tracer. Some of his juniors including Shri Chandonikar were included in the list of 27 persons

as they were working as Claims Tracer on regular basis on 31.3.79 and these 27 persons were subsequently, promoted to the post of Assistant Commercial Inspector scale Rs. 425-640(R) on regular basis with effect from 11.4.79 as per the "speaking order" passed by the Railway Board in terms of the directions issued by the High Court of Gujarat. It is, therefore, not understood how the petitioner can make a grievance on the ground of any discrimination.

17. In light of the discussions made above, we are clearly of the view that the petitioner has failed to establish his claim. The application, being devoid of merits, is liable to fail. Accordingly, we dismiss the application and make no order as to costs.


(P.M. JOSHI)
JUDICIAL MEMBER


(P.H. TRIVEDI)
VICE CHAIRMAN