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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH

O.A. No. 90 OF 1986.  
~~EX-NR.~~

DATE OF DECISION 20-10-1986

PARSHOTTAM DAYALAL PADALIA Petitioner

B.B. GOGIA Advocate for the Petitioner(s)

Versus

UNION OF INDIA (W. RLY.) Respondents

M.N. UDANI 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.

JUDGMENT

6 (S)

O.A. No. 90 OF 1986.

Date: 20-10-1986

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

The petitioner, Shri Parsottam Dayalal Padalia of Mithapur, in the present application, seeks directions against the respondents to restrain them from reverting him from the post of Trains Clerk. He has further prayed that the respondents be directed to treat him as having been regularly selected as Trains Clerk and promoted to the said post and also to declare the panel of successful candidate in the selection in question. He has assailed the impugned order of reversion dated 28.11.1984 on the grounds, inter-alia that he was considered for higher post and promoted as Trains Clerk in the scale of Rs.260-400(R) and was imparted training and he has been working continuously on the said post. According to him, when the deficiency in the ratio of the post of trains clerk was to be filled in promotion from the Rankers vide notification dated 20.7.1983, he was called for selection on 30.1.1984 and he has passed the written test and he was also called for viva-voce test on 1.9.84 but the panel is not being notified by the respondents and the petitioner is being treated yet on ad-hoc basis. The interim relief of status quo as of 16-4-1986 has been allowed to continue.

The respondents have opposed the application contending that the petitioner was posted to officiate as a Trains Clerk purely on ad-hoc basis as a local

arrangement in the year 1978 on account of shortage of regular trains clerks, with clear instruction, that he will have no prescriptive right for such promotion or place on panel over his seniors and he was also liable to be reverted no sooner the regular candidates for the post of TNC become available or earlier in exigencies of services as per memo dated 25.5.1978. It is further contended that the post of TNC is a selection post and is filled in by direct recruit, at the rate of 66.2/3% through Railway Service Commission and 33.1/3% through Rankers from Class IV staff or Traffic Department by positive act of selection. According to the respondents the petitioner being well aware of his position had applied for the selection for promotion to the post of TNC and he having passed the written test on 30.1.1984 he was called for viva-voce test on 1.9.1984 but had failed in the said test and as a result of contraction of cadre, the petitioner alongwith other seven employees who were working as a TNC purely on ad-hoc basis, are reverted to their post in Class IV category.

While relying on the unreported judgment of the Bombay High Court in Writ Petition No.610/84 (Valliayathu Yolaman Thomas & Ors. Vs. Union of India), it is contended by Mr. B.B. Gogia, the learned counsel for the petitioner that the impugned order of reversion dated 28.11.1984 (Annexure 'A') deserves to be quashed. Firstly on the ground that the petitioner was already promoted as a trains clerk after successful training and since then he has been working continuously and satisfactorily on the said post. Secondly, on the ground that he has already passed the written and viva-voce test held in the year 1984 for the purpose of selection in pursuance

of the Notification dated 20.7.1983.

Before adverting to the contentions raised by the learned counsel for the petitioner, it may be stated here that the petitioner, apprehending the order of reversion had filed the Regular Civil Suit No. 1380/84 in the Court of Civil Judge (S.D.) Rajkot and had obtained interim injunction against the respondents. During the pendency of the said Regular Civil Suit, Miscellaneous Application No. 14/85 was filed before this Tribunal wherein the following order was passed on 21.1.1986.

"Heard advocates. Rajkot Civil Judge, Senior Division Rajkot has granted status quo order in Suit No. 1380/84. However I do not think that there is any ground for such order. Mr. Udani says that reversion order dated 28.11.84 is passed. He should give a copy thereof to Mr. Gogia.

Accordingly the copy is supplied to Mr. Gogia. The applicant wants to challenge the order by filing separate application before this Tribunal. Mr. Gogia states that said order may not be implemented till 3.2.1986. This prayer is reasonable. The application if filed should be placed for order on 3.2.1986. With these directions, this application is disposed of. R&P of the suit if received sent back for present.

Sd/-  
21-1-86  
B.C.GADGIL."

This application has been filed by the petitioner after the aforesaid order was passed by the Tribunal. In view of this it is conceded by Mr. Gogia, the learned counsel for the petitioner that when he had filed this application, no orders are required to be passed in Regular Civil Suit No. 1380/84 and he withdraws the same and requests that the same be treated as withdrawn on transfer to this Tribunal. This position is recorded with abundant caution to avoid any ambiguity.

Now turning to the merit of the contentions, at the outset it may be stated that the petitioner has not produced or relied upon any material to show that he had applied for the post of Trains Clerk and that he had passed the requisite test for the same, before he was promoted vide order dated 20.5.1978. It is true, he is working on the said post for more than six years. In absence of such material it can not be said that the petitioner was regularly selected as Trains Clerk and promoted to the said post in the scale of Rs.260-400, as alleged.

It is urged by Mr. M.N. Udani, the learned counsel for the respondents, that when the petitioner had applied in response to the Notification dated 20.7.1983, inviting the application for the purpose of selection, he had passed the written test but had failed in viva-voce test. Hence, he can not lay any claim on the post. According to him as a sequence to the test of the selection conducted as stated earlier, a panel for the required number of Rankers has been notified under memo No. ET/1025/45/VOL.III. We find great substance in the submission made by Mr. Udani in this regard. The petitioner having failed in viva-voce test and not selected suitable for the post he cannot assail the impugned action. Thus there are no valid grounds to quash the impugned order of reversion. The unreported judgment cited by Mr. Gogia is not at all applicable to the facts of the present case. The petitioners in the said case had sufficiently proved that while they were working as Class IV servants as Khallasis, they had applied for the post of clerks in Class III cadre in the scale of Rs. 260-400(R) in response to the office note dated 3rd August, 1979. They had passed the

written test and after holding a viva-voce test, they were promoted to the rank of clerks. However, the respondents (Railway Administration) called upon them to apply and get themselves empanelled. The petitioners protested against this order for being compelled to appear for the second round of selection, as according to them, they had already qualified themselves in such a test in 1979. The decision arrived at in the said case is not at all applicable, as no such similar situation has been established by the present petitioner in this case. In view of the circumstances stated in para 6 of the written statement, the petitioners' claim for <sup>a</sup> place on the panel on the ground of vacancies reserved for S.C. & S.T. candidates, can not be entertained.

When the petitioner was promoted to the post of Trains clerk purely on ad-hoc basis and with a clear instruction that he was likely to be reverted, he can have hardly any grievance when he is reverted by virtue of the impugned order. The petitioner does not visit with any evil consequence, by the order of reversion, as nothing has been alleged against him regarding his conduct and career.

In the light of the aforesaid discussion, we do not find any valid ground to quash the impugned order of reversion passed qua the petitioner and others. The application, therefore, stands dismissed with no order as to cost.

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(P.H. TRIVEDI)  
VICE CHAIRMAN

*Jay*  
(P.M. JOSHI)  
JUDICIAL MEMBER.