

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH
~~Not to be used for filing~~

O.A. No. 312 1987
~~TA No.~~

DATE OF DECISION 23.10.89

Shri M.R.Lakhani & Ors. Petitioner

Mr. K. K. Shah Advocate for the Petitioner(s)

Versus

Union of India and Ors. Respondent

Mr. B.R. Kyada 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?

1. Shri M. Lakhani
 2. Shri Damodar Prasad Gupta
 3. Shri Sevaram I. Advani
 4. Shri Kanubhai Atta
 5. Shri R.L. Parmar
 6. Shri M.H. Kalotia
 7. Shri Ambalal S. Bhend
- All are working as Ticket Collectors
in Rajkot Division in the Grade
Rs 260-400 since the year 1980
C/o. K.K.Shah, Advocate
3, Achala Yatan Society-II
Navrangpura, Ahmedabad-380 009.

(Advocate : Mr. K.K.Shah)

.... Petitioners

Versus

1. Union of India
Notice to be served through
General Manager, Western Railway,
Churchgate, Bombay.
2. Divisional Railway Manager (E)
Kothi Compound, Western Railway,
Rajkot.
3. Harcharan Singh
Ticket Collector, Dwarka
4. D.M. Joshi
Ticket Collector
Kalol
5. Shri P.D. Pancholi
6. Bharat Vadia and others
all are working under D.R.M. (E), Rajkot

(Advocate : Mr. B.R. Kyada)

.... Respondents.

J U D G M E N T

O.A. /312/ 1987

Date :- 23.10.1989

Per : Hon'ble Mr. P. H. Trivedi : Vice Chairman

The admitted or undisputed facts in this case OA/312/87 filed under section 19 of the Administrative Tribunals Act are that the petitioner/who were appointed in 1963-64 in Cl.IV and were subsequently promoted as CL.III as Ticket Collectors on adhoc basis by letter at Annexure-A dtd.16-6-80, were looking forward to their promotion as Ticket Collector Grade-III on regular promotion to that grade from the rankers quota which is 66-2/3%. In response to the letter dtd. 14-6-82

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at Annexure-B they applied but their selection was not held without any reasons being assigned. On 1-7-83 another letter was issued for recruitment for class-III. The terms in which the letter was issued annexed-at 'C' rendered the petitioners not eligible to apply as matriculation qualification and age bar at 35 years were prescribed therein. A panel was declared on 21-1-84 in which the persons junior to the petitioners were empaneled but it was not operated and subsequently another panel on 4-6-87 was declared by which the respondents 112 persons in number were placed on it. The main grievance of the petitioners arises from their promotion from the rankers quota not having been allowed and while that quota was not filled up the promotion against the vacancies of direct recruits was filled by their juniors on the plea that as they had no educational qualification and were barred by age they were not called upon to apply. The petitioners have also alleged malafide regarding the selection of certain persons but we will not detain ourselves about considering it because no worth-while proof of malafide has been offered. The petitioners, therefore, seek relief in terms of protection against their reversion and the directions that the panel dtd. 4-6-87 should not be implimented and to regularise the petitioners' services and also to declare them to be regular in case their juniors have been promoted on a regular basis.

2. The respondents railway administration and certain other persons who have filed their caveat in their reply and written submissions have taken ^{the} stand that the petitioners were appointed as Ticket Collector Grade-III in terms on adhoc and provisional basis and their promotions were described as temporary and that they were liable to be reverted when RSC ticket collector candidates or regular rankers are made available. Accordingly when selection was to be made the call letter was issued and educational

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qualification and age bar were prescribed and the petitioners who were not qualified in the terms of these stipulations were not called and their juniors who were eligible were called and on their eventual placement on the panel dtd. 4-6-87 impugned were given regular promotions. This panel is not against the direct quota and the call letter dtd. 1-7-83 which has allowed the vacancies to be filled up as a one time measure out of the regular in service C1-IV employees is not confined to the direct quota only.

3. Much of the confusion which has arisen in this case is due to the mixing up of the issue of the selection in response to the call letter dtd. 1-7-83 being against the vacancies of the direct recruitment quota. We are not persuaded that the call letter dtd. 1-7-83 and the resultant panel dtd. 4-6-87 are for vacancies against the rankers quota. This will be clear from the opening paragraph :

" At present following vacancies exist on this division in scale 260-430 (R) /260-400(R) against the Direct Recruitment quota.

Since direct recruits are not expected from Railway service Commission Bombay in the near future it has been decided in terms of HQ office CCG's letter cited above that the above mentioned vacancies may be filled in by screening as a one time measure, out of the regular in service Class-IV employees having a minimum qualification of S.S. C. or its equivalent who apply for the post.

Approximate vacancies in the following categories are indicated against each:

SN.	Categories	No. of vacancies			
		General	SC	ST	Total
1.	Assistant Commercial Clerks	30	12	18	60
2.	Ticket Collectors	12	7	3	22
3.	Train Clerks	9	5	3	17
4.	Telegraph Signallers	17	3	3	23
5.	Office clerks	16	3	13	32

No doubt these vacancies were thrown open to the class-IV employees as a one time measure and as a result it may be said that those vacancies were converted, in a manner of speaking, into a category called promotion by selection distinguishing it

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from the normal promotion available to class-IV incumbents against 66-2/3%. It is not clear whether any age bar or minimum educational qualification was stipulated for rankers quota of 66-2-/3% but it is reasonable to hold in the absence of any rules produced by either side that against 66-2/3% while experience in terms of period of service might have been prescribed there would be no further educational qualification or age limit to be satisfied. The competence of the respondents, therefore, to fill up the direct quota from a specified category of class-IV incumbents and of prescribing educational qualifications and age limit with an eye to similar or corresponding stipulations for direct recruits has not been and cannot be disputed. If the respondents limit their case to upholding the panel of 4-6-87 on such a basis as being valid and legal it is extremely doubtful whether the applicants would press for the relief of panel being declared as illegal and would affect the rights of those placed upon it. The quarrel of the petitioners is that while the quota of 66-2-/3% of regular promotion for class-IV persons has been not made available to them, their entry against vacancies of direct quota converted as a one time measure has been closed by the plea of educational qualifications and age bar rendering them ineligible even to be called for selection. The petitioners have served in the grade-III posts for a continuous period of several years and have relied upon the instructions that adhoc promotions should be only for limited period of 3 years and should be regularised by holding tests at periodical intervals which admittedly has not been done in this case for whatever reasons. To the extent that the petitioners have not been regularised for no apparent fault on their part and in the face of the instructions that their continuous officiation as adhoc promotees gives them right of some protection against reversion and of being offered according to

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prevailing rules and instructions, a chance of entry to the regular promotion of the prescribed 66-2/3% they have a good case. Further to the extent that the respondents have not satisfactorily shown why such regular promotions to the category of 66-2/3% were not made available by offering them selection at periodical intervals and in the meantime by holding selections for which special eligibility conditions were laid down that the rights of the petitioners have been unreasonably and unjustly affected, the respondents have not given any satisfactory reply. If exigency of service had demanded that the vacancies of direct quota had to be filled in the manner in which the respondents proceeded to fill it atleast the inter-se seniority of persons placed on such a panel vis-a-vis those who had to be promoted eventually against 66-2/3% category by a separte decision would have been a fair procedure to be adopted. In that eventuality the petitioners would have had the consolation that their hope about entry to the promotion quota and their grievance about seniority vis-a-vis the promotees placed on the panel impugned would not have been closed for ever.

4. In the circumstances of this case and strictly qua the petitioners and the respondents it would, therefore, be reasonable with due regard to our reluctance to interfere with a situation which has been settled by the operation of the impugned orders that we arrive at the following conclusions :

- (1) The impugned panel dtd. 04.06.87 be upheld on

the ground of there being no sufficient reason to hold it as illegal or orders relating thereto being incompetent or unjust or unfair.


- (2) The respondents should be directed to give ~~x~~ speaking orders about a decision to regularise the service of the petitioners against 66-2/3% of the quota as on an appropriate date keeping in mind the relevant instructions of effecting such regularisation by holding tests at periodical intervals. The said speaking orders should also include the manner in which the vacancies are computed and to the extent to which adjustment is carried out against vacancies indicated in the letter dtd. 01.07.83 i.e. the vacancies relating to the 66-2/3% quota and the direct recruitment quota. The said speaking orders should also fix inter-se seniority of those who are selected against 66-2/3% quota against those placed on the panel of 04.06.87. The said speaking orders should also indicate when it is proposed to hold selection tests which should be done within a reasonable time to be mentioned in the speaking orders. The said speaking orders be passed on these directions by the respondent, Divisional Railway Manager, Western Railway, Rajkot, within 6 months of the date of this order. In doing so, the said Officer may allow representations from all parties likely to be affected and also to the the petitioners in this case within a stipulated period not exceeding 2 months of the date of this order.

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5. In the background of the aforesaid discussion we find the petition has merit and allow relief to the extent stated in our conclusions and directions in the preceding paragraph. In the circumstances of this case there shall be no order as to costs.


(P H TRIVEDI)
VICE CHAIRMAN


(P M JOSHI)
JUDICIAL MEMBER