

1. Manilal Nathabhai Solanki
2. Nathuji Motiji
3. Ramsing Hira Ravat,
4. Hafizkhan Babukhan Pathan
5. B.K.Balam
6. Govindiri Ratangiri Goswami
7. Arvind M.Ganatar,
8. Ramesh Yadav
9. Mohmad Yasin A.
10. Shyam Gulam Ramlot
11. Mojiram R.
12. Jivanlal Somnath Dave

: Applicants

All are working as Assistant  
Commercial Clerks at Ahmedabad.

## Versus

1. Union of India  
Through:  
The General Manager,  
Western Railways,  
Churchgate, Bombay.
2. Divisional Railway Manager,  
Western Railway, Pratapnagar,  
Baroda.
3. Divisional Commercial Superint-  
endent, Western Railways,  
Baroda.

: Respondents

Coram : Hon'ble Mr. P.H.Trivedi  
Hon'ble Mr. N.Dharmadan

: Vice Chairman

: Judicial Member

ORAL ORDER

Date: 17/4/1990

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

: Vice Chairman

Heard Mr.G.A.Pandit and Mr.N.S.Shevde, learned advocates for the applicants and the respondents respectively. The short point for decision is whether the petitioners should be reverted after a long period of officiation on the ground that a selection test was held in which they did not either appear or failed. The plea of the petitioners is that the promotion post in which they<sup>are</sup> officiating is a non-selection post and only in one division the procedure for selection by means of holding a test was devised which is attracting the taint of discrimination. Learned advocate for the respondents states that this is not so and wants to show that uniform procedure was applicable for all divisions.

Learned advocate for the petitioners states that the petitioner No.3,6,8, 11 and 12 have already retired and

*P* no decision ~~have~~ <sup>can</sup> now <sup>to</sup> be taken about the number <sup>by</sup> to the respondents to revert them can be possibly effected. <sup>them</sup>

This plea is invalid and no prospective order of reversion can be possibly be made in this regard after they are so retired. So far as the petitioners 1,2,4,5,7, 9, 10

*P* are concerned, learned advocate for the petitioners states that some of them do not have very long <sup>time</sup> to go for retirement.

In view of the period of officiation they have put in for which after all the respondents had judged them suitable at the time of ordering that they officiated <sup>in</sup> of the

*P* promotion post and the adequate support in various judgments <sup>they</sup> with regardless of the requirement of selection a person of

*P* <sup>who</sup> long officiation for a long time should not be disturbed especially when he is on the verge of retirement. There is

force in the proposition canvassed by the petitioners that such petitioners who are on the verge of retirement should not be disturbed. During the hearing, learned advocates

*P* stated that they may be no objection to those who have a longer period of service <sup>yet left</sup> to go to face any procedure for being <sup>adjudged</sup> adjusted suitable whether by means of their assessment

*P* of performance ~~on~~ C.Rs., etc. or if so, found necessary and legal, to face a test for judging such suitability. In terms, therefore of the submissions made, the following direction is adequate and appropriate for a fair disposal of the case.

Such of the petitioners as are likely to retire within a period of one year from the date of this orders be allowed <sup>for</sup> to continue in the officiating post. Such of the petitioners who have a period of more than one year of service, the respondents are at liberty to judge their suitability either on the basis of their performance and confidential records or, provided it is legal to do so, by means of an appropriate

selection test. We would like to lay no time limit to such a review regarding the judge<sup>ing</sup> of their suitability by ~~either~~ <sup>of</sup> all these means. The respondents will be at liberty to decide the question of continuing in officiating promotion such ~~of~~ the petitioners who are ~~are~~ not found suitable as a result of such review of suitability and pass appropriate orders in <sup>their</sup> this regard. With this direction, we find that the petition has merit to the extent stated and ordered accordingly. No order as to costs.

*N. Dharmadan*

(N. Dharmadan)  
Judicial Member

*P. H. Trivedi*

(P. H. Trivedi)  
Vice Chairman

a.a.bhatt