

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
**AHMEDABAD BENCH**

O.A. No.  
~~XXXXXX~~

506 of 1988

DATE OF DECISION 07/04/1995.

Shri Dahyabhai Babubhai Parmar Petitioner  
and ors.

Shri K.S.Jhaveri Advocate for the Petitioner(s)

Versus

Union of India and ors. Respondent

Shri N.S.Shevde Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr.V.Radhakrishnan : Member (A)

The Hon'ble ~~Mr.~~ Dr.R.K.Saxena : Member (J.)

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 ?
- Vpr

: 2 :

1. Shri Dahyabhai Babubhai Parmar,  
Loco Formn, Diesel Shed,  
Kankaria, Ahmedabad - 380 009.
2. Shri Jairam Gandabhai Makwana,  
Loco Forman, Diesel Shed, Kankaria,  
Ahmedabad - 380 008.
3. Shri Manchar Ganpat Gajjar,  
Electrical Cleaner,  
Under Senior Division Mechanical Engineer,  
(Diesel), Diesel Shed,  
Vatva - 382 443.
4. Shri Ashokkumar Lakhu, bhai Luhana,  
Electrical Cleaner,  
Under Senior Divisional Mechanical  
Engineer, (Diesel) Diesel Shed, Vatva,  
Vatva - 382 443.
5. Shri Mahendra Vithalbhai Chavda,  
Electrical Cleaner,  
Under Senior Division, Mechanical  
Engineer (Diesel), Diesel Shed,  
Vatva - 382 443.
6. Shri Mahmood Hussain Saiyed Hussain Saiyedm  
Under Senior Divisional Mechanical  
Engineer (Diesel) Diesel Shed,  
Vatva - 382 443.
7. Shri Janakrai Narhariprasad Patekh,  
Electrical Cleaner,  
Under Senior Divisional Mechanical  
Engineer (Diesel), Diesel Shed,  
Vatva - 382 443.
8. Shri Habiburaheman Azizurrehman Shaikh,  
Electrical Cleaner,  
Under Loco Forman,  
Kankaria (Diesel Shed),  
Maninagar - 380 008.
9. Shri Narayan Punabhai Makwana,  
Electrical Cleaner,  
Under Senior Divisional Mechanical Engineer,  
(Diesel), Diesel Shed,  
Vatva - 382 443.
10. Shri Jayantilal Somabhai Makwana,  
Electrical Cleaner,  
Under Senior Divisional Mechanical  
Engineer (Diesel) Diesel Shed,  
Vatva - 382 443.

...Applicants

(Advocate : Mr.K.S.Jhaveri)

Versus

1. Union of India,  
service be made through  
General Manager,  
Western Railway,  
Churchgate,  
Bombay - 400 020.
2. Divisional Railway Manager,  
Pratapnagar,  
Vadodara - 390 005.
3. Divisional Mechanical Engineer(Loco),  
Pratapnagar,  
Vadodara - 390 005.
4. Senior Divisional Mechanical Engineer(Diesel),  
Diesel Shed,  
Vatva - 382 443.
5. Loco Forman,  
Kankaria, Maninagar,  
Ahmedabad - 380 008.
6. Shri Shiva Alla Rathod,  
Diesel Shed,  
Vatva - 382 443.
7. Shri Ramjibhai Govindbhai Rathod,  
Diesel Shed,  
Vatva - 382 443.
8. Shri Mayank Chandrakant Joshi,  
Diesel Shed,  
Vatva - 382 443.
9. Shri Mansing Vastabhai Kishori,  
Diesel Shed,  
Vatva - 382 443.
10. Shri Mohmed Ismail Ibrahim Shaikh,  
Diesel Shed,  
Vatva - 382 443.
11. Shri Dhanjibhai Dattabhai Damor,  
Diesel Cleaner,  
Diesel Shed, Under Loco Forman,  
Kankaria, Maninagar,  
Ahmedabad -380 008.
12. Shri Gorchand Kanjibhai Bhadoor,  
Diesel Shed,  
Vatva - 382 443.
13. Shri Rumalbhai Varsingbhai Bhador,  
Diesel Shed,  
Vatva - 382 443.
14. Shri Ramesh Kala Waghela,  
Under Senior Divisional Mechanical Engineer,  
(Diesel), Diesel Shed,  
Vatva - 382 443.

15. Shri Bhavsing Samabhai Dhak,  
(Elect Cleaner),  
Under Senior Divisional Mechanical  
Engineer(Diesel), Diesel Shed,  
Vatva - 382 443.
16. Shri Robin Syman Christian,  
Diesel Shed,  
Vatva - 382 443.
17. Shri Michal Luis Targon,  
Diesel Cleaner,  
Diesel Shed,  
Vatva - 382 443.
18. Shri Raman Khusal Solanki,  
Diesel Cleaner,  
Diesel Shed,  
Vatva - 382 443.
19. Shri Noor Mohmad Gulamhusain Malek,  
Diesel Shed,  
Vatva - 382 443.
20. Shri Bhagwan Singh Ramsingh Gohel,  
Diesel Shed,  
Vatva - 382 443.
21. Shri Bachubhai Shankerbhai Jadav,  
Diesel Cleaner,  
Diesel Shed,  
Vatva - 382 443.
22. Shri Manubhai Jethabhai Rathod,  
Diesel Cleaner,  
Diesel Shed,  
Vatva - 382 443.
23. Shri Manehar Ganesh Rathod,  
Diesel Cleaner,  
Diesel Shed,  
Vatva - 382 443.
24. Shri Dahyabhai Ratanbhai Makwana,  
(Diesel Cleaner),  
Diesel Shed,  
Vatva - 382 443.
25. Shri Mahendra Gopal Kostti,  
Basic Trademan,  
Diesel Shed,  
Vatva - 382 443.
26. Shri Mahendra Chimanlal Parmar,  
Diesel Cleaner,  
Diesel Shed,  
Vatva - 382 443.
27. Shri Ghanshyam Feckusing Rajput,  
Diesel Cleaner,  
Diesel Shed,  
Vatva - 382 443.
28. Shri Kaluji Bhadarji Rajput,  
Diesel Cleaner,  
Diesel Shed,  
Vatva - 382 443.

: 5 :

29. Shri Dariya Khan Subekhan Balocl,  
Diesel Cleaner,  
Diesel Shed,  
Vatva - 382 443.
30. Shri Chandra Shanker Kalyanprasad (Sharma),  
(Diesel Cleaner),  
Diesel Shed,  
Vatva - 382 443.
31. Shri Sabirhusain Rahimmiya Malek,  
(Diesel Cleaner),  
Diesel Shed,  
Vatva - 382 443.
32. Shri Faruqmiya Yusufmiya,  
Thakor,  
(Diesel Cleaner),  
Diesel Shed,  
Vatva - 382 443.

....Respondents.

(Advocate : Mr.N.S.Shevde)

J U D G M E N T

O.A.NO. 506 of 1988.

Date : 07/04/1995.

Per : Hon'ble Mr.V.Radhakrishnan : Member(A)

Heard Mr.K.S.Jhaveri and Mr.N.S.Shevde learned  
counsels for the applicants and the respondents respectively.

2. The applicants were working as Electrical  
Cleaners working under respondents no.4 and 5. Their  
grievance is that respondents no.6 to 32 were originally  
appointed as Diesel Cleaners who were transferred as  
Electrical Cleaners without taking any suitability test  
as per agreement made in the Union. They were also  
subsequently promoted as Electric<sup>al</sup>/Fitter Grade III.

The applicants were not called for trade test for promotion

as Electric Fitter Grade III. According to the applicants, the respondents no.1 to 5 had published seniority list of Electric Cleaners on 27.8.1986 - Annexure-A/1. The applicants no.1 to 7 are shown at Sl.No.23 to 29 whereas none of the private respondents figured in the seniority list. However, the private respondents no.6 to 9 who are allegedly junior to the applicants were promoted as they had passed the trade test. According to the applicants respondents no. 6 to 8, 10 to 14, and 16 to 35, were working as Diesel Cleaners in a different shed i.e. K.K.F. According to them, promotion to higher grade should be shed-wise and accordingly, the applicants should have been promoted inspite of the private respondents who were not in the particular shed. The applicants were included in the list to be called for trade test for the post of ELF Grade III in the letter dated 2.4.1987 (Annexure-A/4). But they were not promoted, as they were not called for trade test. The allegation is that according to the agreement entered into by the Government respondents with the trade unions- 24 employees were transferred as Electrical Cleaners without taking any suitability test along with their original seniority resulting in the applicants getting superseded. On 19.2.1988, 14 persons who were junior to the applicants and who were not from the cadre of Electrical Cleaners were called for trade test, (Annexure-A/6) which was irregular. Three of the applicants were asked to be ready for trade test but they were ultimately not called. They were not permitted to take

trade test. A representation was made (Annexure-A/7) on 21.4.1988. The result of the trade test was declared on 2.5.1988 and 5 persons allegedly junior to the applicant were declared passed. The employees of the Kankaria Shed sent a representation to the D.R.M.(E) on 22.2.1988 and listed their grievances and also asked for publication of seniority list - (Annexure-A/9). The General Manager, Western Railway, discussed the matter during his visit on 23.2.1988. The applicants were originally appointed as Diesel Cleaners and they were absorbed as Electrical Cleaners after long time, (Annexure-A/11). The respondents no.6 to 32 who were originally appointed as Diesel Cleaners and subsequently transferred as Electrical Cleaners after agreement of the Union are said to be juniors to these applicants, (Annexure-A/12).

3. The applicants have challenged the promotion of the respondents no.6, 7, 8, and 9 to the post of Electrical Fitter Grade III, on the grounds that as promotion is made on the basis of seniority and the said respondents are junior to the applicants. Regarding respondent no.9, it is stated that he was promoted as train clerk and on reversion he should have been allotted bottom seniority. Respondents no.10 to 13 who were junior to the applicants were called for trade test. They have also challenged result of the trade test declared on 2.5.88, (Annexure-A/8). They had therefore, prayed for the following reliefs :

: 8 :

- (A) The Honourable Court be pleased to quash and set aside the promotion of respondent No.6,7,8 and 9 and direct the respondents to consider all the applicants for the post of Electrical Fitter Grade III as per the order of D.R.M.(E) BRCDs dated 23rd March,1987, which was published on 2nd April,1987 and be pleased to give the effect from retrospective effect i.e. to say from the date on which the post of Electrical Fitter Grade III fell vacant in Hydraulic unit.

The above interim relief is claimed in view of the facts stated in paragraph 6 of the application.

4. When the case came up for final hearing the applicants' advocate had filed M.A. for amendment of the relief as the respondents no.1 to 5 had produced the chart showing dates of appointment, regularisation and further promotions of applicants as well as respondents. Hence, the relief prayed for was amended as follows :

- (A) The Honourable Tribunal be pleased to direct the respondents to give deemed date of promotion in the cadre on Electrical Cleaner and subsequently E.L.F. Grade III, II, and Grade I respectively in view of the facts stated in the original application.
- (B) The Honourable Tribunal be pleased to pass such other order as may be deemed just and proper in the circumstances of the case.

5. Respondents have filed their reply. It is admitted that the applicants were working as Diesel Khalashi at Kankaria. After the work was transferred to Vatva Diesel Shed, the staff working there was transferred to Vatva. Persons working as Diesel Khalasis were absorbed as Electrical Workers as they were found more suitable on electrical side from 1983 to 1985. Later on as per agreement with the Union senior persons who ~~were~~ <sup>had</sup> not been absorbed, were also absorbed without any suitability test as agreed-to with the Unions. These persons were assigned seniority on the basis of the length of the service i.e. senior employees who were absorbed in September and November, 1987, regained their seniority over their juniors. Senior persons who passed the trade test were promoted as Electrical Fitter Grade III. Respondents no. 6 to 9 are stated to be senior to the applicants and were promoted after passing the trade test. The names of the applicants were shown as stand-by for trade test for ELF Grade III-(Annexure-A/4). According to them as senior persons had passed the test, the applicants were not called. It is admitted that respondents no.6 to 32 were absorbed as Electrical Cleaners from Diesel Cleaners as per agreement <sup>with</sup> ~~in~~ the trade Unions. As per the decision, 24 persons were transferred to Vatva Diesel Shed <sup>with</sup> ~~in~~ their original seniority and accordingly they were to be called for the trade test. It is stated that applicant no.1 stands at sl.no.31 in the combined seniority list. It is contended that Shiva Alla, Ramji G, Mansingh V and Mayank C,

are all senior to the applicant no.1. Respondents had denied receiving any representations dated 22.2.1988. However, representation dated 21.4.1988 from the applicant no.1, was received and was replied to. According to them the applicants were originally working as substitutes at Kankaria and are absorbed as Diesel Cleaners in 1985, subsequently they were absorbed as Electrical Cleaners. Subsequently, the Diesel Khalasis were absorbed as the Electrical Cleaners and were given original seniority as per agreement with the Union. It is stated that the absorption of Diesel Khalasi as Electrical Cleaners was one time exception after consulting trade unions. It is stated that respondents no.6 to 32 were already working in Diesel Shed and they were put in sufficient service in Diesel Shed and were given seniority as per PNM decision held after consulting trade unions. Therefore, the respondents have prayed for the rejection of the O.A.

6. The applicants have filed rejoinder. They have questioned the basis of the agreement filed by the respondents No.1 to 5 with the Union. As they are against statutory rules, they have repeated that they are senior to the private respondents and could not be superseded by them. According to them the respondents are junior to the applicants in the cadre of Electrical Cleaners. The respondents Nos. 6 to 32 had not been given suitability test and given original seniority which is against the Rules. Representation made on 22.2.1988, had not been replied so far and hence the applicants have approached the Hon'ble Tribunal.

7. The learned counsel for the applicant Mr.K.S. Jhaveri, sought to amend the application by moving M.A./ 243/95, subsequent to the production of list showing subsequent promotion of the applicants to higher grades of ELF-Grade III, ELF-Grade,II, and ELF Grade-I, copy of which was given to him also. Consequently, Shri K.S.Jhaveri states that the issue had narrowed down to the question of claiming deemed date of promotion for the applicants with reference to the dates of promotion of the respondents and he therefore, modified to the reliefs clause as follows:

- (1) The Honourable Tribunal be pleased to direct the respondents to give deemed date of promotion in the cadre of Electrical Cleaner and subsequently ELF-Grade-III, II and I respectively in view of the facts stated in the original application.
- (2) The Honourable Tribunal be pleased to pass such other order as may be deemed just and proper in the circumstances of the case.

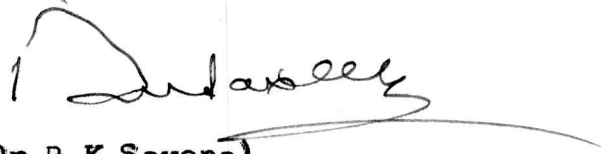
8. We have heard both the learned counsels and gone through the various documents. It is not disputed, the respondents no.6 to 32, who were working as Diesel Khalasi at the Kankariya Yard Diesel Shed, were transferred to Vatva Diesel Shed, as Electrical Cleaners without conducting any suitability test and they were assigned their original seniority as per the decision taken by the Respondents with the concurrence of the trade unions for


:12:

maintaining industrial peace. The applicants who were earlier absorbed had to undergo suitability test when they were absorbed earlier. Consequently, the applicants became junior to the respondents no.6 to 32 and on the subsequent selection which was according to seniority, they were not called. This aggrieved the applicants some of whom were appointed or regularised earlier than the respondents no.6 to 32. Even though it has now been shown that the applicants were later called for selection test and promoted to ELF-Grade III, they had suffered in their prospects by their not being called for selection along with the respondents no.6 to 32 and further promotions were adversely affected. The applicants contend that seniority depends on the date of entry into the shed and as they had entered in the Shed earlier than respondents no.6 to 32, they were senior and they had to be called for selection ~~be~~ before respondents no.6 to 32 who entered the shed much later without undergoing suitability test. The Respondents No.1 to 5 have not been able to counter the assertion made by the applicants that suitability test is mandatory for new entrants as Electrical Cleaners. It appears that the official Respondents by not holding the suitability test for Respondents no.6 to 32, adversely affected their chances of promotion to further grades of Fitter. <sup>Here</sup> However, the respondents are directed to treat this O.A. as application

: 13 :

and consider the claim of the applicants for giving them deemed date of absorption in the cadre of Electrical Cleaners and subsequently for promotion to the grades of ELF-Grade-III, II and I, respectively, taking into account the date of appointments/absorption of the applicants, vis-a-vis, respondents no.6 to 32, and intimate the result to the applicants within a period of three months from the date of receipt of this order. The application stands disposed of accordingly. No order as to costs.

  
(Dr.R.K.Saxena)  
Member(J)

  
(V.Radhakrishnan)  
Member(A)

ait.