

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

8

O.A. No. 475 of 1989.
~~E.A. No.~~

DATE OF DECISION 04/10/1993.

Smt. Diloben Merubhai & 13 Ors. Petitioner

Shri R.J.Oza Advocate for the Petitioner(s)

Versus

Union of India and Ors. Respondent

Shri R.M.Vin Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C.Bhatt : Member (J)

The Hon'ble Mr. M.R.Kolhatkar : Member (A)

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 ? ✗

Smt. Diloben Merubhai & 13 Ors.

...Applicants.

All C/o. Shri Maganbhai L. Patel,
Divisional Chairman,
Western Railway Employees' Union,
Medical Colony,
Railway Quarter No.449-A,
Bhavnagar Para,
Bhavnagar.

(Advocate : Shri R.J.Oza)

Versus

1. Union of India
(Notice to be served through :
The General Manager,
Western Railway,
Churchgate, Bombay).
2. The Divisional Rly. Manager,
Western Railway,
Bhavnagar Para,
Bhavnagar.

...Respondents.

(Advocate : Mr.R.M.Vin)

ORAL ORDER

O.A.NO. 475 OF 1989.

Dated : 04/10/1993.

Per : Hon'ble Mr.R.C.Bhatt : Member (J)

None is present for the applicant.

Mr.R.M.Vin, is present for the respondents. Hence, the application is dismissed for default. No order as to costs.

M.R. Kolhatkar

(M.R.Kolhatkar)
Member (A)

R.C. Bhatt

(R.C.Bhatt)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

AHMEDABAD.

Application No. 04/475/89 of 199

Transrer Application No. _____ Old writ Pet. No.

C E R T I F I C A T E

Certified that no further action is required to be taken
and the case is ift for consignment to the Record Room (Decided).

Dated : 18/10/93

Countersigned :

Section Officer/Court Officer

ccalaf
Sign. of the ~~Dealing~~ Assistant.

INDEX SHEET

NAMES OF THE PARTIES MRS. Dioben, M. & all.

U. S. 1. 2 0.5

[illegible]

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD.

Submitted;

C.A.T./Judicial Section.

Original Petition No.: 425 of 89.

Miscellaneous Petition No.: of .

Shri Smt Dileben Membhani & Co Petitioner(s).

Versus.

Union of India & Ors Respondent(s).

This application has been submitted to the Tribunal by
Shri R J Oza under Section 19 of
The Administrative Tribunal Act, 1985. It has been scrutinised
with reference to the points mentioned in the check list in
the light of the provisions contained in the Administrative
Tribunals Act, 1985 and Central Administrative Tribunals
(Procedure) Rules, 1985.

The application has been found in order and may be
given to concerned for fixation of date.

The application is not been found in order for the
same reasons indicated in the check list. The applicant
may be advised to rectify the same within 21 days/Draft
letter is placed below for signature.

✓ Ann. A, not properly filed.
✓ Request not for own application not filed

Asst
to

DRD

We may in form accordingly.

[Signature]
11/10/89

C. S. S. S.
11/10/89

C. S. S. S.
11/10/89

K. B. S. S.
11-10-89

Asst
to

DRD

[Signature]
11/10/89
K. B. S. S.
11-10-89

CENTRAL ADMINISTRATIVE TRIBUNALAHMEDABAD BENCHAPPLICANT (S) Smt Diloben Memshani &RESPONDENTS (S) Union of India & CoPARTICULARS TO BE EXAMINEDENDORSEMENT AS TO
RESULT OF EXAMINATION

1. Is the application competent? Y
2. (A) Is the application in the prescribed form? Y
- (B) Is the application in paper book form? Y
- (C) Have prescribed number complete sets of the application been filed? Y
3. Is the application in time? Y
If not, by how many days is it beyond time? -
Has sufficient cause for not making the application in time stated? -
4. Has the document of authorisation/ Vakalat nama been filed? Y
5. Is the application accompanied by B.D./I.P.O for Rs.50/-? Number of B.D./I.P.O. to be recorded. DD 234606.
6
6. Has the copy/copies of the order(s) against which the application is made, been filed? Ys, Annex A2 P29/
7. (a) Have the copies of the documents relied upon by the applicant and mentioned in the application been filed? Y
- (b) Have the documents referred to in (a) above duly attested and numbered accordingly? Y
- (c) Are the documents referred to in (a) above neatly typed in double space? Y
8. Has the index of documents has been filed and has the paging been done properly? Y

PARTICULARS TO BE EXAMINED

ENDORSEMENT AS TO BE
RESULT OF EXAMINATION.

9. Have the chronological details of representations made and the outcome of such representation been indicated in the application?
10. Is the matter raised in the application pending before any court of law or any other Bench of the Tribunal?
11. Are the application/duplicate copy/spare copies signed?
12. Are extra copies of the application with annexures filed.
 - (a) Identical with the original.
 - (b) Defective.
 - (c) Wanting in Annexures
No _____ Page Nos _____?
 - (d) Distinctly Typed?
13. Have full size envelopes bearing full address of the Respondents been filed?
14. Are the given addressed, the registered addressed?
15. Do the names of the parties stated in the copies, tally with those indicated in the application?
16. Are the translations certified to be true or supported by an affidavit affirming that they are true?
17. Are the facts for the cases mentioned under item No.6 of the application.
 - (a) Concise?
 - (b) Under Distinct heads?
 - (c) Numbered consecutively?
 - (d) Typed in double space on one side of the paper?
18. Have the particulars for interim order prayed for, stated with reasons?

yes
checked.
cpl at
11/10/85

From :

Rasesh J. Oza,
708, Samruddhi,
7th Floor, Sattar Taluka Society,
Opp: Gujarat High Court,
Ahmedabad. 380 009.

20th October, 1989.

To,

DAF 425/89

The Registrar,
Central Administrative Tribunal,
Ahmedabad Bench,
Ahmedabad.

Sub : Permission for filling joint
application in case of Diluben
Marubhai & ors.

V/s.

Union of India & Ors.
(O. A. Stamp No. 461/89.)

Respected Sir,

With reference to the above

I have to inform you that the above application
is filed jointly by more than one person. The
cause of action of each petitioners are same and
in the circumstances permission may be granted to
file joint application for all the petitioners.

Thanking you,



Advocate for the petitioners

Recd on
11.11.89 at 15.02 Hm
Am
0.11.89

SIC no 461/89
4/10 ①

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL,
AHMEDABAD BENCH, AHMEDABAD

ORIGINAL APPLICATION NO. 475- OF 1989

Smt. Diloben Merubhai &
13 Others.

.....PETITIONERS

Versus

The Union of India & Anr.

.....RESPONDENTS.

I N D E X

Sr. No.	Annexure	Particulars	Page Nos.
1.		Memo of Original Application.	1-23
2.	"A/1"	Copy of letter dated 29.4.1988 alongwith list of eligible persons.	24-28
3.	"A/2"	Copy of letter of Respondent No.2 dt. 4.8.1988.	29-30
4.	"A/3"	Copy of letter of Respondent No.2 dt. 20.2.1989.	31
5	"A/4"	Copy of letter Dated: 2-2-89	32-33

AHMEDABAD
SEPTEMBER ,1989.

(R.J. OZA)
ADVOCATE FOR PETITIONERS

42
(R.J. OZA)
Copy furnished
to
R. M. Vin
Adv
3/10/89

1/9

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD

ORIGINAL APPLICATION NO. 475 OF 1989

1. Smt. Diloben Merubhai.
2. Smt. Malo Devji.
3. Smt. Javal Ganda.
4. Smt. Baya Ganda.
5. Smt. Kanku Dhudah.
6. Smt. Nani Mavji.
7. Smt. Liliben Mohan.
8. Smt. Kali Natha.
9. Smt. Gauri Pitha.
10. Smt. Ganga Nanji.
11. Smt. Jaya Uka.
12. Smt. Dhani Mohan.
13. Smt. Shantu Keshu.
14. Smt. Prem Tida.

ALL C/o. Shri Maganbhai L. Patel,
Divisional Chairman,
Western Railway Employees' Union,
Medical Colony,
Railway Quarter No. 449-A,
Bhavnagar Para,
BHAVNAGAR.

.....PETITIONERS.

Versus.

1. Union of India
(Notice to be served through :
The General Manager, Western Rly,
Church Gate, Bombay).
2. The Divisional Rly. Manager,
Western Railway,
Bhavnagar Para,
BHAVNAGAR.

.....RESPONDENTS.

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(1) Particulars of the Petitioner :

- (i) Name of the Petitioner. : Smt. Diluben Merubhai
(ii) Name of the father : and Others.
(iii) Designation & Office in which employed. : Casual Labour.
(iv) Office Address. : Nil.

(2) Particulars of the Respondents:

- (i) Name and/or designation of the Respondents. :
(ii) Office address of Respondents. : As stated in cause title.
(iii) Address for service of all Notices. :

(3) Particulars of the order against which application is made. The application is against the following orders :

ORDER IN ORIGINAL

- (i) Order No. : EM./891/4/Screening.
(ii) Date : 4-8-1988
(iii) Passed by : Respondent No.2.
(iv) Subject in ~~brief~~ brief : Non inclusion of the names of the petitioner in the penal prepared by Respondent authority of the Recruitment to the post of Group-D Service in the Unit of Loco-Formen.

(4) Jurisdiction of the Tribunal : The petitioners declared that the subject-matter of the decision against which they wants redressal is within the jurisdiction of this Hon'ble Tribunal.

(5) Limitation. : The impugned order of emplement was issued on 4.8.1988. The petitioners through their recognised Union, visal Western Railway Union made Representation dtd.15.8.1988. The said Representation remain un-attended to for long time. The petitioners have preferred Spl.Civil Application Stamp No.5738/1988 dtd. 30.3.1989 in the Hon'ble High Court of Gujarat, for want of jurisdiction

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Registration of the said Special C.A. was refused on - -1989. The present application is filed before this Hon'ble Tribunal on today, and therefore the application is within the period of limitation prescribed in section 21 of the Administrative Tribunals Act, 1985.

(6). Facts of the case :

- 6.1. The petitioners are citizens of India and are entitled to the protection of all the fundamental rights and rights ~~conferred~~ conferred by other provisions of the Constitution of India.
- 6.2. The petitioners say that all the petitioners are working as Casual Labours/Coal Loaders under the establishment of the respondent No.2. The petitioners have joined the service as Casual Labours during the period between February 1980 to February, 1981. Since Then, all the petitioners are continuously working with the respondent authorities without any break in service. The petitioners say that all the petitioners have also acquired temporary status on completion of 120 days of their respective service, for which appropriate orders have been passed under authority of the respondent No.2. The petitioners say that the petitioners Nos.2,3,4,5,9,10,11 and 14 belong to Scheduled Caste Category, petitioner No.8 belong to Scheduled Tribe Category and rest of the petitioners belong to General Category.
- 6.3. The petitioners says that under the Rules set out by the Railway Administration, the Casual labours are eligible for being absorbed in the regular vacancies in Class-IV services. At the time of considering of absorbing such persons, the Railway Administration is required to apply the criteria of seniority.

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The petitioners say that in the past, Railway Administration, with a view to deprive the petitioners and other similarly situated persons of the benefit of absorption in the Class-IV Service, made artificial classification of Casual Labours/Coal Loaders and Substitutes and by making such classification, the ~~junior~~ Junior persons working as substitutes were placed in such a situation by which they may get benefit of absorption in the service at earlier point of time than the petitioners and the Railway Administration has also made an attempt to terminate the services of the petitioners and other similarly situated persons on count of such artificial classification and also without following provisions of Industrial Disputes Act. In this event, the petitioners alongwith other similarly situated persons have preferred Special Civil Applications Nos. 1679/82, 4281/82 and 132/83 in this Hon'ble High Court. All those petitions were admitted by this Hon'ble Court and in the proceedings of spl. Civil Application No.1679/82, the interim relief restraining the Railway Administration from terminating the services of the petitioners, was granted by this Hon'ble Court. Subsequently, on constitution of the Central Administrative Tribunal, all those matters were transferred to the Central Administrative Tribunal at Ahmedabad and by a common judgment delivered by the Hon'ble Tribunal, on 21.7.1987, all those petitions have been allowed

by the Hon'ble Tribunal. While quashing and setting aside the action of the Respondent-authorities, the Hon'ble Tribunal has directed re-instatement of all the petitioners in service with full back-wages. The petitioners crave leave to refer to and rely upon the said Judgment at the time of hearing of the petition.

6.4. The petitioners say that during the pendency of the anove proceedings, the Railway Administration decided to fill in 141 vacancies in the initial recruitment grade of Group-"D" services of Mechanical(L) Department in the Unit of Loco Foreman, Bhavnagar Para. It may be pointed out that the said attempt of the respondent-authorities was part of the design to deprive the petitioners and similarly situated persons from being considered for the absorption in the Class-IV services, the petitioners have moved this Hon'ble Court by filing Civil Application in Spl.C.A.No.1679/82. In the said Civil Application this, Honourable Court has passed an order restraining the Railway Administration from absorbing in regular vacancies, Casual Labours/Substitutes who have acquired temporary status, except on the strength of an intigrated list of both the categories of workmen in which the names of the workmen will be arranged on the basis of the date of acquisition of temporary status and the absorption will be made strictly in order in which the names are placed on such list. The petitioners submit that the Rly. Administration has held medical test, wherein all the petitioners are found fit and A-I Category has

been assigned to the petitioners in the said test. subsequently, a screening was held by the Railway Administration and as per the information of the petitioners in the said screening, all the petitioners are found fit to be empanelled in the list of the selected candidates. However, with a view to see that directions of this Hon'ble Court be not carried out, the respondent Railway Administration has not issued any list of panel.

6.5. The petitioners say that the screening which was held in the year of 1984 and the result thereof remained undisclosed, for years together. The Railway Administration has with a view to defeat the legitimates right of the petitioners, did not publish the list of panel. Subsequently, by letter under the signature of Divisional Railway Manager (E), Bhavnagar Para dated 29.4.1988, list of eligible Casual Labours/substitutes/Coal Loaders who have worked in the Mechanical Department in Loco Foreman unit for the purpose of screening was published. The petitioners say that all the petitioners are eligible and, therefore, the names of the petitioners are also included in the said list. The petitioners say that the said list contains the service history of the petitioners and other Casual Labours/Substitutes/Coal Loaders. Annexed hereto and marked ANNEXURE 'A/1' is a copy ANN. 'A/1' of the said letter dated 29.4.1988 alongwith the list of eligible persons.

6.6 : The petitioners say that the screening of Casual Labours/Substitutes who are found eligible was held on 19.7.1988 by the screening Committee. The petitioners say that at the time of screening, all the copies were called upon to bring the following material with them :-

- (i) Yellow Card.
- (ii) Educational qualification Certificate in original and two attested true/xerox copies thereof.
- (iii) Proof of date of Birth-School leaving Certificate or Date of Birth Certificate issued by the Municipality or Gram Panchayat or Affidavit in case of illiterate candidates in original and two attested true/xerox copies of these documents.
- (iv) Caste Certificate in case of Scheduled Caste/Scheduled Tribe issued by the prescribed Authority in the prescribed Proforma in ~~se~~ original and two attested true/xerox copies thereof.

The petitioners say that on the date of screening all the petitioners have been appeared before the screening Committee alongwith required documents. The petitioners say that when they appeared before the selection Committee, they have first verified the documents brought by the petitioners and thereafter asked the name and age of the petitioners. The

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Petitioners say that thereafter they were put a question as to what type of work they were doing in service of the Railway. The petitioners say that no other question to assess intelligence or sincerity of the petitioners was put by the said Committee. The petitioners say that the similar method was adopted in case of all candidates who have appeared before the screening Committee on the said day. The petitioners say that the process of screening was taken place during the office hours on 19.7.1988 and 142 candidates have been interviewed by the said Committee in the same fashion as the petitioners were interviewed on the said day.

6.7. The petitioners say that in view of the said selection, thereafter the Respondent NO.2. has issued a letter dated 4.8.1988 declaring provisional panel in order to seniority base of total number of days of working as Casual L-abours/Substitutes for Class-IV Staff. In the said list, total 107 persons are interviewed. The petitioners submit that the names of the petitioners are not found in the said list and junior persons to the petitioners are included in the said list. Annexed hereto and marked ANNEXURE 'A/2' is a copy of the said letter of the Respondent No.2 dated 4.8.1988.

ANN. 'A/2'

6.8. The petitioners say ~~the~~ and submit that in view of the method of screening and also in view of the fact that the screening was mere a formality, there was no reason of non-inclusion of the names of the petitioners in the list of panel declared by the Respondent No.2. In these circumstances, the petitioners have through Western Railway Employees' Union approached the respondent No.2 and represented their case that the names of petitioners also be included in the list of panel declared by the Respondent No.2 by his order at ANNEXURE 'A/2' to this Petition, ~~is not a complete~~ The petitioners say and submit that the respondent-authority have informed the Union that the list published by the Respondent No.2 at Annexure 'A/2' to the petition is not a complete list and the second list is to be published, wherein the names of the petitioners will also be included. The petitioners submit that they have waited for publication of further list of empanelment. However, the Respondent No.2 has issued letter dated 2.2.1989 by which the persons whose names are included in the list at Annexure A/2 to the petition have been given posting on regular cadre post of Class-IV services under the establishment of respondent No.2. The petitioners submit that on the other hand, the respondent No.2 has issued a letter dated 20.2.1989 by which it is proposed that the services of the Casual Labours/ Substitutes be retained as Safaiwala in Traffic and C.& W. Department. It is submitted by the said letter that willingness of the concerned

Casual Labours/substitutes has been sought by the Railway Administration. The petitioners submit that they are entitled for absorption in the regular services in Class-IV cadre of the Respondent Rly. Administration. However, they cannot afford to lose the job and in these circumstances, the petitioners are willing to accept the said work without prejudice to the rights and contentions raised by them in this petition. Annexure marked hereto as ANNEXURE 'A/3' is a copy of the said letter of the Respondent No:2 dated 20.2.1989.

ANN. 'A/3'

6.8. The petitioners submit that it is clear that the respondent-authorities, though have promised to the Western Railway Employees' Union, decided not to include the names of the petitioners in the list of panel published by them for the purpose of absorption in Class-IV services of the Railway Administration. The petitioners submit that such an action of the Respondent-authorities is arbitrary and discriminatory and it would have last long effect on the service career of the petitioners inasmuch as the persons junior to them would be absorbed in the regular services and would gain seniority over the petitioners in regular cadre and it will have adverse effect so far as the future promotional avenue of the petitioners is concerned in the services of the Railway Administration. Further, the work which is sought to be offered to the petitioners of Safaiwala, does not have any promotional avenue and it will also have adverse effect on the services of the petitioners.

7. In the premises aforesaid, the petitioners have no other promot adequate or equally efficacious alternative remedy at law except by way of the present petition to remedy their legitimate grievances and the petitioners approach this Hon'ble High Court under Article 226 of the Constitution of India on the following main amongst the other grounds which are without prejudice to one another :-

G R O U N D S

- (a). The petitioners submit that the impugned action of the Respondent-authorities in not including the names of the petitioners in the list of empanelment published by Notification at Annexure 'A/2' to the petition is illegal, arbitrary, discriminatory, violative of Articles 14 and 16 of the Constitution of India, contrary to the provisions of absorption of the Casual Labours/Coal Loaders/Substitutes in the regular Class-IV services of the Railway Administration and the same amounts to change in conditions of service of the petitioners as well as unfair labour practice on the part of the respondent-authorities. The petitioners, therefore, submit that the impugned action of the respondent-authorities requires to be quashed and set aside by this Honourable High Court.

(b). The petitioners submit that all the petitioners are persons who are in service with the Respondent Railway Administration as Casual Labours/ Coal Loaders since from the year 1980 and 1981. All the petitioners have acquired temporary status and have put in continuous service since from the date of their appointment. The petitioners submit that all the petitioners are eligible to be absorbed in regular Class-IV Services of the Railway Administration. Moreover, the petitioners have also passed the medical test as required under the Rules. The petitioners submit that the duties which are required to be performed by Class-IV employees are more or less manual and there is no work of intelligence as required to be put in by the persons working in the Class-IV Services. In these circumstances, the process of screening is nothing but a formality and the question of applying test of suitability does not arise in the said screening. The petitioners submit that as they have experience by appearing before the Screening Committee, no question relating to any subject or even relating to assess intelligence and/or even common sense of the petitioners was put to them. In the process of screening, the members of the Screening Committee have after scrutinising

the documents only asked the name and age of the petitioners. The petitioners have given correct reply to the questions put to them and the documents submitted by the petitioners are also found genuine and valid by the said Committee. In these circumstances, the question of the petitioners being declared unsuitable, does not arise at all. Moreover, under the practice as prevailing from years together in the Respondent Railway Administration that the formality of screening is taken place only for the purpose of ascertaining as to whether the ~~concerned~~ concerned Casual Labour is eligible or not. The petitioners, therefore, submit that as there being no reasons whatsoever with the respondent-authorities not to treat the petitioners unsuccessful in the screening, the petitioners submit that in these circumstances, non-inclusion of the names of the petitioners in the list appended to the Annexure A/2 to the petition, is illegal, arbitrary, discriminatory and contrary to the Rules and precedent regarding absorption of Casual Labours/Coal Loaders/substitutes in the Class-IV services in the Railway Administration and requires to be quashed and set aside by this Honourable High Court.

- (c) The petitioners submit that screening of all the eligible candidates who are more than 140 in number was held by the Selection Committee during the office hours on 19.7.1988 only. It

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is learnt ~~that~~^{by} the petitioners that similar treatment was given to all other persons who appeared before the screening Committee. Moreover, in view of the fact that the screening was completed in a day during the office hours, it was not possible for the screening Committee to offer more than 4 to 5 minutes to each candidates and in such a time, there was no question of assessing suitability of the candidates appearing before the screening Committee. The petitioners, therefore, submit that by excluding the names of the petitioners from the list appended to Annexure 'A/2' to the petition, the respondent-authorities have acted in arbitrary and discriminatory manner and without ~~laying~~ laying down any criteria or test, in colourable exercise of power, by applying system of pick and choose, published the panel and included the names of only those persons who can arrange to include the names in the said list with the authorities. The petitioners submit that the respondent-authorities while publishing the list at Annexure 'A/2' to the petition has included the names of the Casual Labours/Coal Loaders who have put in less number of days service with the respondent authorities and are admittedly juniors to the petitioners. The petitioners, therefore, submit that by not offering equal treatment to the petitioners and excluding the names of the petitioners

from the said panel, the respondent-authorities have denied equal opportunity to the petitioners and, therefore, the impugned action of the respondent-authorities is violative of Articles 14 and 16 of the Constitution of India.

(d) The petitioners submit that it can be seen from the letter dated 4.8.1988 at Annexure 'A/2' to the petition that the candidates shown in the attached sheet have been placed on the provisional panel in order of seniority based on total number of days of working as Casual Labours/Substitutes. The petitioners submit that in the list appended to the said letter, there are several persons whose names are included, though they have put in less number of days service as Casual Labours/Substitutes. The petitioners further submit that it is also clear from the said letter that the criteria of appointment of the name in the panel has been applied solely on the strength of seniority of concerned Casual Labours/Substitutes. The petitioners submit that there are no reasons whatsoever with the respondent-authorities to exclude the names of the petitioners from the said list and, therefore, the impugned action of the respondent-authorities deserves to be quashed and set aside the this Honourable High Court.

(e) The petitioners submit that assuming the criteria of merit and suitability is required to be applied in the process of screening

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for appointment in Class-IV services of the Railway Administration, in that case also, there was no proper test nor any proper yard-stick was applied to assess the comparative suitability of eligible candidates. The petitioners submit that in absence of system of assessing the comparative suitability of eligible candidates, the selection made by the Screening Committee is illegal, null and void.

- (f) The petitioners submit that before the screening of Casual Labours/~~Coal~~ Loaders/ Substitutes was conducted on 19.7.1988, the earlier screening Committee which was constituted in the year 1984, has made screening. The petitioners have reliably learnt that the names of the petitioners are included in the list of panel recommended by the said Screening Committee, but the respondent-authorities with a view to defeat the legitimate right of the petitioners, have deliberately not published the panel of the said Committee. The petitioners submit that at the time when the screening was held in the year 1984, there had been at about 141 vacancies in Group "D" services of Mechanical (L) Department under the establishment of the Respondent No.2.

Subsequently, the said vacancies have exceeded and as per the information of the petitioners, at the time of issuance of letter dated 4.8.88 there had been at about 210 vacancies in Class-IV Services under the establishment of the Respondent No.2. The petitioners submit there are no reasons with the Respondent-authorities to keep more and more vacancies unfilled though the eligible and suitable candidates like the petitioners are available. The petitioners submit that on the one hand, though there are sufficient vacancies with the respondent-authorities, they choose not to fill in all the vacancies under the pretext of administrative exigencies and the work for the said work is being taken from the Casual Labours/ substitutes who are similarly situated to the petitioners. The petitioners submit that such an action of the respondent-authorities is nothing but unfair labour practice and the same deserves to be deplicated by this Hon'ble Court.

- (g) The petitioners submit that it can be seen from the Annexure 'A/3' to the petition that the Respondent-authorities intend to utilise the services of the petitioners as Safaiwala in Traffic and in C.& W. Department. The Petitioners submit that there are no further promotional avenue so far as the cadre of

Safaiwala, whereas on the other hand, person who is recruited as Khalasi Cleaner which is Class-IV Services under the establishment of the Respondent No.2, has promotional avenue for the post of promotion as Ranker than in Class-III Service likewise further promotions even in Class-II services. The petitioners submit that by arbitrary and discriminatory manner, the respondent-authorities have excluded the names of the petitioners from the list appended to Annexure 'A/2' to the petition and thereby deprived them from their legitimate right of being considered for promotion in future to the higher post. The petitioners submit that by offering services to the petitioners as Safaiwala, the respondent-authorities have made an attempt to change the service conditions of the petitioners which is contrary to provisions of Industrial Disputes Act and not permissible in law.

The petitioners crave leave to amend to, alter and/or substitute any of the above grounds as and when necessary to ~~xxxxx~~ do so.

8. Relief(s) sought :

P R A Y E R S

On the grounds urged above and those which may be urged at the time of hearing of this Writ Petition, the petitioners most respectfully pray that :-

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- (A) Your Lordships be pleased to declare that the action of the respondent-authorities in not including the names of the petitioners in list appended to the letter dated 4.8.1988 at Annexure 'A/2' to the petition, is illegal, null and void and further to be pleased to direct the respondents, their agents and/or servants to include the names of the petitioners in the said list and assign seniority on the basis of services put in by them as Casual Labours and grant all consequential deemed date benefits to the petitioners :
- (B) Your Lordships be pleased to award the costs of this petition;
- (C) Your Lordships be pleased to grant such other and further final and/or interim/ad-interim relief to the petitioners as may be deemed fit and proper in the interest of justice.

9. The petitioners submit that the petitioners have a strong prima facie case. The balance of convenience is also in favour of the petitioners and against the respondents. The petitioners

submit that if the interim relief as prayed for is not granted, the petitioners will suffer irreparable loss and injury which cannot be compensated in terms of money afterwards. On the other hand, if the interim relief as prayed for is granted, the respondents will not suffer any loss or injury. The petitioners, therefore, submit that this is a fit and proper case for granting the interim injunctions as prayed for.

- (A) Your Lordships be pleased to restrain the respondents, their agents and/or servants from terminating the services of the petitioners and grant all consequential benefits as are available to the petitioners as on today, pending the admission, hearing and final disposal of this petition;
- (B) Your Lordships be pleased to grant such other and further final and/or interim/ad-interim relief to the petitioners as may be deemed fit and proper in the interest of justice.

10. The petitioners submit that the petitioners has no other adequate efficacious alternative remedy against the substantial injury being inflicted and sought to be inflicted upon the petitioners except to approach this Honourable Tribunal by way of this

27 (12)

: 21 :

humble application to remedy his legitimate grievance.

10. STATEMENT:

The petitioners further declared that the petitioners has not filed any other application, petition or appeal on the subject-matter or this Application, before this Honourable Tribunal or before any other Tribunal or Court of before the Honourable Supreme Court of India, except Special Civil Application No.5738 of 1988 as stated in para.5 of this Application.

11. No. of Postal Order : DD 234806
Name of Post Office : High Court of Gujarat
Post Office, Ahmedabad.
Date of Postal order: 4-10-89
Postal Order for amount of Rs.50/-.

AND FOR THIS ACT OF KINDNESS AND JUSTICE, THE PETITIONERS ARE, AS IN DUTY BOUND, SHALL EVER PRAY :

Place : Ahmedabad.

Date : 4th Oct
September, 1989.

*Prav
Advocate
(R.J.029)*

(Smt. Diloben Merubhai)

(Smt. Malo)

(Smt. Jyoti Ganda)

(Smt. Bala Ganda)

(Smt. Kanku Bhudah)

..22/-

22
: 22 :

(Smt. Nani Mayji)

(Smt. Lili Mohan)

(Smt. Gauri)

(Smt. Ganga Nani)

(Smt. Jaya Uka)

Shei (Smt. Dhanu Mohan)

(Smt. Shantu Keshu)

(Smt. Prem Tida)

Smt. Kati Matha

: VERIFICATION :

We, below mentioned the petitioners do hereby
verify and state that what is stated hereinabove in
this Application is true to the best of my knowledge,
information and belief and I believe the same to be
true. I have not suppressed any material facts.

Verified at AHMEDABAD, on this _____ day
of SEPTEMBER, 1989.

(Smt. Diloben Memphai)

(Smt. Malo Devji)

(Smt. Javal Ganda)

(Smt. Baya Ganda)

23 (13)

: 23 :

(Smt. Kanku Bhagah)

(Smt. Nani Mavji)

(Smt. Liliben Mohan)

(Smt. Kali Natha)

(Smt. Gau)

(Smt. Ganga Nanji)

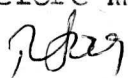
(Smt. Jaya Uka)

Shri (Smt. Bhani Mohan)

(Smt. Shantu Keshu)

(Smt. Prem Pida)

All RHTI
Before me


(R. J. OZA)
Advocate.

Filed by Mr. R J Oza
Learned Advocate for Petitioners
with second set & 2 copies
copies copy served/not served to
other side

Di. 4/10/88 
Dy. Registrar C.A.T.(I)
A'bad Bench

Western Railway

No. EM/391/4 (Screening)

24
Screening
DRM's Office,
Bhavnagar Para,
Dt. 29.4.1968.

To
LEs:-BVP/BTD/FICs:-DLJ/MIV.

Sub:- Screening of Casual Labours/Substitutes/
Coal Loaders Mech. Deptt. LF-BVP Unit
BVP Division.

Eligibility list of Casual Labours/Substitutes/
Coal Loaders who have worked in Mech. Deptt. in LF-BVP Unit
for the purpose of screening is enclosed herewith.

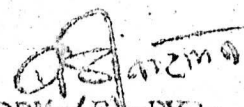
You are hereby instructed to get this noted by
all Casual Labours/Substitutes & Coal Loaders.

Necessary certificate to that effect may be sent
to this office at once.

Representation if any may be submitted to this
office within one month from the issue of this letter in
one bunch with your remarks.

The date of screening will be notified hereafter.

Please acknowledge the receipt.


for DRM (E)-BVP.

Copy to:-

Divl. Secy. WREU/WRMS-BVP.

On File No. EM/391/4/Screening.

27/19

ANNEXURE 'A/2'

Western Railway

No.EM/891/4/Screening

Divisional Office,
Bhavnagar para,

Dt. 4-8-1988.

The LFs-BVP/BTD.

The FICs-DLJ/MHV.

Sub : screening of casual labours/substitutes
Class IV staff - Mech. deptt. - LF/BVP
Units.

Ref : This office letter No.EM/891/4/Screening
dt. 2.5.88.

The screening of casual labours/substitutes of LF/BVP unit was conducted on 19th July, 1988 by the Screening Committee. The candidates/shown in the attached sheet have been placed on provisional panel in order of seniority based on total number of days of working as casual labours/substitutes subject to passing the prescribed medical Examination; verification of character as per extend rule.

The above panel is provisional. A copy of the same should be placed on Notice Board.

This has the approval of the competent authority.

Sr.No.107 - He was under age at the time of initial engagement. Actual position on screening panel will be advised here after after verifying the boy ~~XXXX~~ service from his total working days.

The candidates, against whom the sing (*) put, have to submit the original certificate of date of birth and caste Certificate with photo state copy to this office within a fifteen days after receipt of this letter.

Sd/-
for DME(E) BVP

Copy to : DME(E)/AME/BVP
O.O.File - Clerk - R&T / PRT/SS
Quarter Clerks - P/file of each
Divl. Secy. WREU/WRMS-BVP.

*True Copy
RHS
RC*

Sr.No. Name S/Shri

1. Ibrahim R.
2. Keshav Vithal (SC)
3. Mansukh Popat
4. Tulshi Bhikha
5. Babu Bachu
6. Ramesh Popat
7. Dharmshi Jetha (SC)
8. Premji Mulji (SC)
9. Sureshkumar D.
10. Devji Uka(SC)
11. Gobar puna
12. Ramji Chaman (SC)
13. Ghanshyam Ravji.
14. Kanji Bachu (SC)
15. Gordhan Puna
16. Keshav Harji (SC)
17. Nain Bahadur. R.
18. Krishan Kumar J.
19. Bhikhalal Savji
20. Jitendra U.
21. Unus M.
22. Valji Hira (SC)
23. Pravin Bachu
24. Jayantilal Hari (SC)
25. Ramji Harji (SC)
26. Babu Mavji (SC)
27. Dharmshi Punja
28. Ramesh Hari
29. Satar Karim
30. Kanji Bhikha
31. Bijal Amba (SC)
32. Odhav Karmshi
33. Popat Devji (SC)
34. Nandlal Mulji
35. Hanif Rehman
36. Pragji Harka
37. Kanu Mitha (SC) photo state copy of Sch.Cer.& SC certificate to be submitted.
38. Kishor Bindumal
39. Tulshi Raghv
40. Machsh Tulshi
41. Ramji Mula (SC)
42. Ramji Khoda (SC)
43. Vishvanath singh
44. Mohan Valji (SC)
45. Jiva kala (SC)
46. Bhirajlal Tapu
47. Devji Pala (SC)
48. Abdul Rajak A.
49. Anandrai J.
50. Keshv Rauli (SC) subject to produced original caste cer. & photo state copy
51. Keshv Mitha (SC)
52. Adamali
53. Devji Chagan
54. Ramesh Nagji
55. Dhiru serdul
56. Jayanti Santu
57. Babu Magan
58. Gokul Vaghji
59. Abdul gafar S.
60. Amrit Dhanji (SC)
61. Mahipat singh B.
62. Gajanand Madhu
63. Babu Gela
64. Kanji bhikha
65. Remesh Mulji
66. Bhagvantsingh U.
67. Jayanti Nanji
68. Shankar Uka
69. Govind Magan
70. Manu Tulshi (SC)
71. Parshotam Magan
72. Abdul Kadar M.
73. Kama Babu Ori.afidevit of DOB is to be produced
74. Amarshi S.
75. Sabita Bhikha
76. Dilip suru (SC)
77. Arjan Harka (SC) subject to produced original caste cer. photo state copy.
78. Chagan mukun
79. Jayantilal M. (SC)
80. Gamelsing S. Ori.afidevit is to be produced.
81. Bhagwan Tulshi (SC)
82. Bhikha Bachu
83. Jivaraj Karshan (SC)
84. Bhikha Ravji
85. Manu Vithal (SC)
86. Banushankar K.
87. Pratap Nagji
88. Kalu Govind (SC)
89. Aubkhan A.
90. Manchar Naran
91. Kantilal Thakarsi
92. Bijal Kamji (SC)
93. Sefudin
94. Mohmad Nanu
95. Rupa Mala (sc) Ori.afidevit of BOB is to be produced.
96. Kalayan Kanji
97. ajendra singh P.
98. Vasant Jivraj (SC)
99. Rashiklal L.
100. Sidik Mustak
101. Ramesh Kanji (SC)
102. Chandu Bachu (SC)
103. Aslam
104. Sahdev Singh K.
105. Manhor Dhanji
106. Himat Buta (SC)
107. Natvarlal M. He was under at the time of initial engagement actual position will be kept after reducing the boys service from his total working.

3/20

ANNEXURE 'A/3'

WESTERN RAILWAY

Divisional Office
Bhavnagar Para
Dt. 20/2/1989.

No.EP.615/O Vol.II

The MS/DMO(H&G)-BVP.

All ME AENS/PWIs/TOWs/LFs/FICs/CHI-BVP Divn.

Sub : Engagement of old faces as Casual Labour/
Substitutes - Safaiwala in Tfc. and C&W
Department.

Difficulties are being experienced in filling up of regular short term and leave and sick vacancies in the categories of Safaiwala of various departments. Problem is more acute in C&W and Traffic departments of this Division.

2. In order to make available the adequate number of staff to man these posts of Safaiwala on regular basis and also the vacancies arising out of short term leave/sick vacancies over and above LRs, it has been decided to call ~~for~~ for the willingness from amongst the working casual labour/substitutes of all units of all department. Those who are willing to work as Safaiwala in C&W and Traffic departments should give their willingness in writing to their supervisors. This should be forwarded to Divisional office in a bunch per bearer.
3. In case none is willing, a 'NIL' statement should also be sent in the prescribed proforma enclosed herewith.
4. Willingness/Unwillingness should be obtained from all working Casual labour/substitutes and a certificate to this effect that willingness/unwillingness has been obtained from all working casual labours/substitutes should be furnished alongwith the forwarding letter. It should be made clear to the casual labours/substitutes that once they opt to come to C&W or Traffic department, they cannot withdraw their option subsequently. Moreover, they will not be allowed to come back to their parent unit/Department subsequently.
5. The information in the proforma along with the willing application/unwilling of casual labours/substitutes should be forwarded to this office by 28-2-1989 positively.

Encl: as above.

c/- Divl. Secretary
WREU/WRMS-BVP.

Sd/-
DRM(E)/BVP

*True copy
R/S
AV*

Western Railway.

D.R.M.'s Office,
Bhavnagar para,

No.EM/891/4/Screening/BVP.

Date : 2/12/1989.

To

LFS: BVP BTD:
FICS: DLJ: MHV:

Sub : Screening of casual labour/Sub.Mech.
Deptt. LF BVP Unit.

Ref : This office No.EM/891/4/Screening/BVP
dt. 4/8-8-1988.

The screening of sub/casual labours of LF BVP Unit, was conducted during July'88 as the following persons on approved list as per above.

These persons were placed on the panel in orders of merit base on, no of the total days of work. As per Railway Board's letter No.E / /74/EL/99 dt. 25/8/75, maintaining that inter-SE-Seniority.

The person placed on panel are there does regularised on regular basis subject verification at character certificates of employee concerned may be collected from employee and sent to this office early.

Sr. No.	Name S/Shri	Desig.	Stn. of posting	D.O.B.	Remarks
1	2	3	4	5	6
1.	Ibrahim. R.	Kh.Cl.	BVP	12/4/45	
2.	Saifuddin. I.	Kb/wout.	BVP	7/7/52	
3.	Keshav Vithal (SC)	SNI Cl.	BTD	3/7/52	
4.	Mansukh. Popat.	Kh.Cl.	BVP	17/7/53	
5.	Tulshi Bhikha.	"	"	28/7/55	
6.	Babu Bachu.	"	"	17/7/53	
7.	Ramesh Popat	"	"	6/4/54	
8.	Dharmeshi Jetha(SC)	"	"	3/9/57	
9.	Premji Mulji. (SC)	"	BTD	15/2/52	
10.	Sureshkumar B.	"	MHV	11/4/56	
11.	Devji Uka	"	BTD	1/1/57	
12.	Gobar Poona	B.M.Lab.	"	18/10/54	
13.	Ramji Chaman.(SC)	Art.Kh.	BVP	21/8/58	
14.	Ghanshayam.Ravji.	Kh.Cl.	"	18/7/56	
15.	Kanji Bachu(SC)	Art.Kh.	15/	15/8/58	

33

- 2 -

1	2	3	4	5	6
16.	Gordhan Poona	Box Boy.	BTD	13/8/56	
17.	Keshav Harji (SC)	Kh.Cl.	BVP	20/9/54	
18.	Mainbahadur. R.	"	"	15/6/54	
19.	Krishnakumar. J.	"	"	1/6/53	
20.	Bhikhalal Savji.	"	"	4/1/52	
21.	Jitendra. U.	"	"	31/12/59	
22.	Unus. M.	Art.Kk.	"	14/9/55	
23.	Valji Hira (SC)	Kh.Cl.	"	30/10/58	
24.	Pravin Bachu	"	"	18/8/58	
25.	Jayantidāl Hari (SC)	Art.Kh.	"	6/11/58	
26.	Ramji Harji (SC)	"	"	23/7/55	
27.	Babu Mavji (SC)	Kh.Cl.	"	15/8/56	
28.	Dharamahi Panja	Art.Kh.	"	10/1/58	
29.	Ramesh Hari	Kh.Cl.	"	8/1/59	
30.	Sattar Karim.	RRB	BTD	9/6/52	
31.	Kanji Bhikha	Stone Kh.	BVP	14/4/53	
32.	Bijal Amba (SC)	Kh.Cl.	"	10/1/57	
33.	Odhav Karmshi	"	BTD	23/6/59	
34.	Popat Devji	"	BVP	26/9/58	
35.	Mandlal Mulji	"	"	10/1/49	
36.	Hanif Rehman	Stone Kh.	"	25/8/51	
37.	Pragji Harkha.	Kh.Cl.	"	1/10/59	
38.	Kanu Mitha (SC)	W/out Kh.	BTD	10/4/58	
39.	Kishore Bindumal	RRB	"	10/8/58	
40.	Tulshi Raghev	Art.Kh.	"	3/2/56	
41.	Natwarlal M.	ShedMess.	BVP	23/12/57	
42.	Mahesh Tulshi	Art.Kh.	BTD	11/5/54	
43.	Ramji Mulla.(SC)	Store Kh.	BVP	10/8/58	(10/3/58)
44.	Manji Govind	Art.Kh.	BTD	1/8/47	
45.	Ramji Khoda (SC)	Kh.Cl.	BVP	3/7/57	
46.	Vishvanathsing.	"	"	10/10/57	
47.	Mohan Valji	"	"	2/3/54	
48.	Jiva Kala (SC)	"	12/	19/11/54	
49.	Dhirajlal Tapoo	WSP Kh.	"	22/10/55	
50.	Devji Pala (SC)	"	"	16/10/54	
51.	Abdulrajak. A.	Kh.Cl.	MHV	24/4/53	
52.	Anantrai J.	WSP Kh.	BVP	9/2/56	
53.	Keshav Mulji, (SC)	Kh.MWT	BTD	1/2/58	
54.	Adm. Alli.	W/SPA	"	3/4/58	
55.	Devji Chhagan	Gen Lab.	BVP	15/11/56	
56.	Ramesh Nagji	Kh.store	BTD	11/5/59	
57.	Dhiru Sadul	Art.Kh.	"	7/7/55	
/		Kh.W/sh		1/6/56	

for D.M.E. (E) B V P.

C/- DAO; BVP; OS SB: (2 copies): LF BVP:BTD:FICS:DLJ:MHV(2copies)
 LF JND (2 copies) : for information and arrange to relieve
 Shri Kanji Govind.
 Memo file. O O File. PRT Clerk. Concerned Unit. P.file of each.
 S/Sheet.employee concerned etc.
 Divl. WREU/WRMS BVP.

Truely
 Yours
 JTE

D/C

~~1000~~ ~~1000~~

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD.

O. A. No. 475/90. 69 (22)

Smt. Diloben Merubhai & Others Applicants

V/s

Union of India & Others Respondents.

Respondent Railway Administration Files its
written Statement as under:-

1. That the application is not according to law, and not tenable, being otherwise defective.
2. Rly. Administration doesnot admit the truth, or correctness of any Statement, allegation, contention, or suggestion setout in the application, unless the truth or correctness of any one of them, is specifically and expressly admitted in this reply.
3. Without prejudice to the above contention Rly. Administration submits it's reply as under.
4. No comments for Para 1 to 4 of the application being formal.
5. Referring to the contents of Para 5 of the Application it is stated that applicants are referring the order No. EM/891/4/Screening of dt. 4.8.88 for bringing the present application, before the honourable Tribunal on 25.6.1990 is barred by the limitation Act. and hence it is prayed that same to be rejected accordingly.
6. Contents of Para 6(i) and (ii) are pertaining to the service particulars and need no comments.

Read by
Adminstr
General
R. S. 09
H. 10-90

PMU

(23)

7. Contents of Para 6(3) & 6(4) of the application are fully not correct. It is clarified that, Casual Labours, if possesses required educational qualifications, passes required Medical Test, and fulfil other conditions as per Rly. Rules, and found suitable in the Screening Test, becomes eligible for their absorption in Class IV Service. Seniority of the substitutes is arranged on the basis of total number of days of their working and not on the basis of Temporary Status. Though the applicant passed medical test, but they were found unsuitable in screening test, for their absorption in Class IV Service, held on 19.7.88. And as such their names were not included in the panel. However, their screening test is held again on 3.8.90. Keeping in view some relaxation in condition in regard to literacy and age and the matter is still under the Administrative process.
8. That referring to the Contents of para 6(5) it is stated that, the screening test held on 16.6.84 and 19.7.84, were cancelled by the competent authority vide No. EM/891/4/Screening of 23.3.88 on technical ground. Thereafter screening test was held on 19.7.88 in which applicants were not found suitable hence they are not placed on panel.
9. Referring to the contents of Para 6(6) I to IV it is stated that the same is done as per Administrative procedures, and hence no comments.
10. Referring to the contents of Para 6(7) it is once again clarified that, the applicants were found unsuitable in screening test,. Names of the failed persons cannot be included in the panel and as such, their names were not there in the panel notified vide DM(E) Bhavnagar Para's No. EM/891/4/Screening of 4.8.88.

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11. Referring to the contents of Para 6 (8) it is stated that the matter is sufficiently clarified in foregoing paras. It is not correct that the Rly. Administration has informed the Union, that second list is to be published, wherein the names of the petitioners will be included.

Further it is clarified that the screening of Substitutes of Mechanical Deptt. is entirely separate than, the engaging Safaiwalas in other deptt., However willingness were asked for from amongst the working casual labours/Substitutes of all the units of all the deptt. vide DRM(E) - Bhavnagar Para letter No. EP/615/0 Vol.II of 20.2.89 (Annexure A/3 of applicant) but applicants have not submitted their willingness to work as Safaiwalas in other Units.

12. That referring to the contents of Para 6(8) and 7 no comments required as the entire matter is clarified in foregoing Paras.. and as such repeatation is avoided.

13. Respondent Rly. Administration respectfully States that, Rly. Administration has taken all the actions regarding screening and the same are as per rules and regulations. Since the applicants were found unsuitable in the screening test, they have got no any prima facie cases, nor and ground and as such no any relief to be granted to ^{them} ~~the~~. But their application may be rejected, with cost, in favour of Rly. Administration.

28

14. Respondent Rly. Administration craves leave to add, alter, modify or amend the contents of this reply as and when required.

Bhavnagar.

On and behalf of Union of India.

Date: 28-9-90

[Signature]

Addnl. Divisional Rly. Manager,
Western Railway, Bhavnagar Para.

Verification.

I S. Mandhani,

Addnl. Divl. Rly. Manager, W.Rly. Bhavnagar Para, do hereby solemnly affirms that, what is stated above is gathered from official records and I believe same to be true.

[Signature]

Bhavnagar.

Addnl. Divl. Rly. Manager,
Bhavnagar Para.

Date: 28-9-90

Reply/Rejoinder/written submissions
filed by Mr. R. N. V. N.
learned advocate for petitioner/
Respondent with second
Copy served/not served to other side

DI. 5/10/90 By Registrar C.A.T. (1)
A'bad Bench

26

38



BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD.

ORIGINAL APPLICATION NO. 475 OF 1989.

Smt. Diloben Merubhai &
13 Others.

...Petitioners .

Versus

The Union of India & Another.

... Respondents.

AFFIDAVIT-IN-REJOINDER

I. Smt. Diloben Merubhai &

Petitioner No. 1 herein do hereby solemnly affirm
and state as under :-

1. I have read a copy of the Affidavit-in-Reply
filed Shri S. Mandhani, Additional Divisional Railway
Manager, Western Railway, Bhavnagar Para, Respondent
No.2 herein. Being conversant with the facts
stated hereinafter, I am filing this Affidavit-in-
Rejoinder to the same.

2. I may not be treated to have admitted any
of the averments or submissions made or contentions
raised in the said reply Affidavit. All the aver-
ments and submissions made in the reply Affidavit
which are contrary to or inconsistent with the

[Signature]

*Received by
K.N. VAIKARIMWALA
9/3/89*

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: 2 :

averments and submissions made in the Application and in this Affidavit, are categorically denied hereby as if traversed ad-seriatim.

3. I do not admit the contentions of the Railway Administration that the petitioners have not filed Application within period of limitation as required under Section 21 of the said Act. I submit that the facts and circumstances as explained in para 5 of the Application, it cannot be said that the Application is time barred and, therefore, the contentions of the respondents in this regard may kindly be overruled.

4. I do not admit that the Applicants, who were considered in the Screening Test were not found fit by the Screening Committee as alleged by the Railway Administration. I respectfully submit that in view of the settled procedure of screening, normally the Screening Committee is considering physical fitness of each of the candidates, there is no other criteria to assess suitability of an employee for being absorbed in the Class-IV services. I respectfully submit that in the selection wherein the Applicants were called for, no other formality except verifying their certificates of educational qualifications, age etc. were undertaken. I submit that there was

u

no selection by putting any question to the candidates. I submit that the same system was made applicable to all the candidates who appeared before the Screening Committee. I respectfully submit that in absence of any set procedure or specified criteria for selection, the question of holding a candidate suitable and other unsuitable, is not permissible under law. I, therefore, submit that since there had been arbitrary and discriminatory approach in the matter of selection by the Screening Committee, the said action is violative of Articles 14 and 16 of the Constitution of India. I further submit that under the prevalent guidelines being issued by the Railway Administration in the matter of Screening Casual Labourers for absorption in Class-IV services, no selection test is to be held and merely the relevant certificates were required to be seen, and scrutinised and the candidate who possesses eligibility for appointment in the Class-IV services is to be included in the list prepared by the Screening Committee. I, therefore, submit that the contentions raised by the Railway Authorities in respect of the Applicants being unsuitable for absorption in Class-IV services of the Railway Administration is misleading.

5. I submit that in any case of the matter, the respondent-Authorities have except making bare

W

statement regarding unsuitability of the Applicants, not produced any evidence on record including the documents showing criteria adopted by the Screening Committee and finding of the said Committee. I submit that in absence of the cogent material or evidence on record, the contentions of the respondent-Authorities as regards to the unsuitability of the Applicants cannot be believed.

6. I submit that in the reply, the respondent-Authorities have come forward with a case that the recruitment in Class-IV services of the Railway Administration is being done Division-wise. I respectfully submit that so far as the Class-IV employees are concerned, they have to perform manual duties and in the circumstances, there is no question of making recruitment Division-wise. I submit that even if the such practice is adopted by the respondent-Authorities, the same is in violation of Articles 14 and 16 of the Constitution of India and it amounts to arbitrary and discriminatory treatment to the eligible candidates who are to be absorbed in the Class-IV services of the Railway Administration.

7. In the premises aforesaid, I respectfully submit that the Application may kindly be allowed and the reliefs as prayed for in the Application may kindly be granted in the interest of justice.

42 ✓ (30)

: 5 :

What is stated hereinabove is true to the best of my knowledge, information and belief and I believe the same to be true and correct.

Solemnly affirmed at Ahmedabad this 6th day of March, 1993.

[Signature]
Deponent.

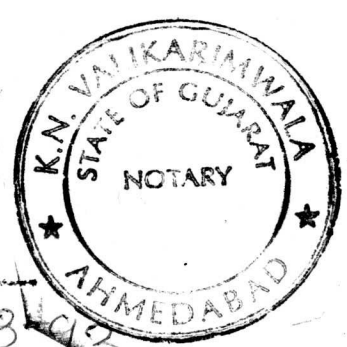


AFFIDAVIT

I, Dilaben Mexubhai,
petitioner No. 1 herein, do hereby solemnly affirm and state that what is stated in this Rejoinder-Affidavit is true to the best of my knowledge, information and belief. The averments and submissions made in the present Affidavit are based on legal advice and no part of it is false and nothing material has been concealed therefrom.

Solemnly affirmed at Ahmedabad, this 6th day of March, 1993.

[Signature]
Diloben
Deponent. Mexubhai



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SOLEMNLY AFFIRMED
BEFORE ME
K. N. Valikarimwala
NOTARY
(K. N. Valikarimwala)

K. N. Valikarimwala
NOTARY