

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 2/ 275/90
T.A.NO.

DATE OF DECISION 19-1-1998.

B.N.Parihar & ors.

Petitioner

Mr.M.S.Trivedi

Advocate for the Petitioner [s]

Versus

Union of India & ors.

Respondent

Mr A S Kothari

Advocate for the Respondent [s]

CORAM

The Hon'ble Mr. V.Radhakrishnan

Member (A)

The Hon'ble Mr. T.N.Bhat

Member (J)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lerdships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Ans.

1. Bhanaram N. Parihar
2. Chandrika Prasad

both residing at c/o,
Quante No.311-D,
Railway Colony,
Gandhidham,
Kutch.

APPLICANT

Advocate Mr. M. S. Trivedi

versus

1. Union of India, through ?
General Manager,
Western Railway,
Bomby

2. Divisional Commercial Supdt.,
W.Rly.,
Ajmer,

3. Station Supdt.,
W.Rly.,
Gandhidham.

RESPONDENTS

Advocate Mr. A. S. Kothari
C. A.

ORAL - JUDGMENT

O.A. No. 275/90

Date: 19/1/98

Per Hon'ble Mr. T. N. Bhat Member (J)

Verma/19.1.98

The applicants in this O.A. are working as Ticket Collectors, having been promoted on ad hoc basis in the year 1986. They had earlier also filed a special civil application No. 1962/81 with Misc. Applications No. 387 and 388 of 1982 in the High Court of Gujarat which Misc. Applications came to be disposed

of by the oral judgment dated November 23/24 1982 by the Hon*ble Mr.Justice D.K.Mehta. The High Court issued a direction to the Divisional Railway Manager concerned to examine the matter in detail and to take a decision within 12 weeks from the date of that order and in the meantime to continue to allow the applicants to function as Ticket Collector/Train Clerk.

2. Aggrieved by the inaction of the respondents, the applicants have come to the Tribunal in this Q.A. seeking the following reliefs:

" A) Declare the inaction of the respondents regarding regularisation of services of the applicants with effect from 24 July,1986 is illegal, improper unjust and violative of principle of natural justice and be further pleased to direct the respondents to regularise the services of the applicants as Ticket Collector with effect from July,1986 and that the applicants be paid all the benefits consequential and incidental and they may be fixed in seniority accordingly.

3. We have heard the learned counsel for the applicants and have perused the material on record, the learned counsel for the respondents

not having appeared on several dates of hearing.

4. The applicant o.1 was appointed in 1973, on regular basis on 18.12.1979, and was promoted on ad hoc basis as Talley Clerk. He was again promoted on ad hoc basis on 27.7.86 as Ticket Collector. Since then, he has continued to work as Ticket Collector. As regards the applicant No.2, he was appointed on regular basis on 16.1.80 in Group *D* and was promoted as Train Clerk on 11.6.86. Both the applicants were promoted against clear vacancies, though on ad hoc basis. The grievance of the applicants is that despite having worked on the higher posts as ticket Collector for nearly 4 years at the time of filing of this o.A. , they are not regularised. It is further averred that they have cleared the written test so many times, though in the oral test they were wrongly shown to have failed and the persons junior to the applicants were declared successful.

5. The respondents have in their written reply taken the plea that the applicants having failed in the viva-voce test, they cannot claim regularisation on the higher posts and, therefore the impugned order reverting them to their substantive posts was justified.

6. As already stated, the matter relating to the regular promotion of the applicants to the cadre of Ticket Collector/Train Clerk came up for adjudication before the High Court as far back as 1981-82 and there was a specific direction given to the Divisional Railway Manager to examine the cases of the applicants in the light of the observations made in the judgment of the High Court and to give a decision within 12 weeks from 23.11.1982. Admittedly, no such decision has been taken. It needs to be stated that while quashing the orders of reversion impugned in those Special Civil Applications, the Hon'ble High Court had observed that eligible employees who have worked on the respective posts as Train Clerk and Ticket Collector on ad hoc basis satisfactorily, would be entitled to be empanelled on applying the correct criteria of seniority-cum-fitness principle and that such persons should not be required to go through the gamut of oral interview. The D.R.M. was accordingly directed to draw the selection panels for the post of Ticket Collector/Train Clerk respectively and in the meantime to allow the applicants to continue on the higher posts. Apart from making the bald assertion that the applicants had failed to clear the viva-voce test

W.M.W.

the respondents have not given any reasons which would persuade us to hold that the applicants were found unfit on applying the criterian of seniority-cum-fitness or that the applicants' work was not found to be otherwise satisfactory. The learned counsel for the applicants further urged before us that the person who has worked for a number of years cannot be rejected merely on the ground that he did not clear the viva-voce test even though he has passed in the written test. The learned counsel contends that in viva-voce test seniority is also one of the important points to be taken into consideration and that merely asking the names and percentage etc. in the viva-voce, as has been done in the instant case by the respondents, would not be the correct method for assessment of fitness.

7. Having considered the pleas taken by the respondents in their reply statement and the contentions made by the learned counsel for the applicants before us, we are convinced that so far as the question of regularisation is concerned, the applicants are entitled to be regularised, particularly in view of the fact that the respondents have not cared to take any action in pursuance of the judgment-order of the

High Court of Gujarat dated 23.11.82. However, the further request of the learned counsel for the applicant that the regularisation should relate back to the date when the applicants were initially promoted on ad hoc basis cannot be accepted. We are inclined to take the view that this matter should be left to be decided by the respondents.

8. In view of the above, this O.A. is allowed and the applicants are held to be regularly promoted to the posts of Ticket Collector/Train Clerk and the respondents are directed to take a decision on the question as to from which date should the regularisation of the applicant take effect.

9. With this order, we dispose of the O.A., leaving the parties to bear their own costs.

19.1.1998.

(T.N.BHAT)
Member (J)

V.R.
(V.RADHAKRISHNAN)
Member (A)

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