

1. Madhukant N.
 2. Punamchand A
 3. Anilkumar M.
 4. Upendrakumar
 5. Sukhdew T. : Applicants
 C/o.Punamchand A.
 Quarter No.196/A
 Railway Colony,
 Gandhidham,
 Kutch

Versus

1. Union of India
 Through:
 General Manager,
 Western Railway,
 Churchgate, Bombay.
 2. Divsional Railway
 Manager, W.Rly.,
 Ajmer Division,
 Ajmer.
 3. Mr.U.S.Varma, Or
 his Successor in Office,
 C.W.S., Western Railway,
 Gandhidham (Kutch) : Respondents

Coram : Hon'ble Mr. A.V.Haridasan : Judicial Member
 Hon'ble Mr. M.M.Singh : Administrative Member

O R D E R

Date: 9/8/1990

Per: Hon'ble Mr. A.V.Haridasan : Judicial Member

Heard the counsel for the applicant and Mr.B.R.Kyada, appearing for the respondents. The grievance of the applicants five in number who have been working as Khalasis in the Western Railway is that though they have been working as Fitters on an officiating basis with effect from 8.3.1986 onwards, the railway conducted a written test and oral test for selection of candidates to be appointed to the post of Fitter on a regular basis and this according to the applicants is violative of the principle of natural justice since they/have been without requiring to undergo the selection process appointed as Fitters. The applicants have been declared successful in the written test but they did not ~~call for~~ ^{qualify in} the oral test and therefore their names

do not occur in the panel of successful candidates published by the railways. The prayer of the applicants is that the selection list should be scrapped or in alternative it should be kept in abeyance till such time as ~~where they~~ ^{is} interest of safeguarded by declaring that they have passed. They have one more prayer that since they were not paid at the rates applicable to the regular fitters though they have been officiating as fitters from 8.3.1986, the respondents should be directed to pay them the difference of the wages. Mr.Kyada the learned counsel appearing for the respondents submitted that the applicants were not officiating as Fitters and that they were officiating only as W.A.Grade-III in the scale of Rs.260-400 and that they were also being paid at that rate. Regarding the prayer of the applicants for scrapping the list of successful candidates or for declaring them also ~~passed~~ ^{based} the learned counsel for the respondents submitted that there is no merit in the prayer because the applicants have voluntary undergone the selection process and having ^{care} failed they ~~have~~ ^{not} entitled to turn down that the selection is bad.

Having heard the learned counsel on either side and perusing application and the connected papers, we find that the two reliefs namely, ^{for} scrapping of the list and the claim for difference in wages cannot be clubbed together in this application. Further, as the applicants ^{vide} ~~who~~ were appointed ~~by~~ Annexure-A order dated 8.3.1986 only as W.A. Grade III in the scale Rs.260-400(R) they cannot say that they should be paid at the rate applicable to the fitters because it is not desirable ^{desirable} ~~The records that~~ from W.A. Grade III ~~that~~ it is equivalent to the post of the Fitters. Hence prima facie it appears that there is no merit in the claim of the applicants that they are entitled to the wages of Fitters since 8.3.1986.

Regarding the first prayer in the application, the applicants have without ^{demur} ~~mark~~ participated in the written test and also in the viva voce test. They did not make any complain^t at the time when the department proposed to hold the test, on the other hand they voluntary participated in it. It is not open for the successful candidates in a selection process to turn down and say that the selection is bad just for the reason that they did not ^{un} ~~s~~ucceed it. If the applicants aggrieved by the decision of the railway authorities is to hold a selection test they should have approached the appropriate forum against such a decision but ~~not~~ having ^{submitted} ~~subjected to~~ themselves to such a selection process, they cannot say that the list prepared after the selection should be scrapped. The alternative relief that the applicants should be declared to have passed also cannot be granted because the authority ^{ed} ~~who~~ conduct the test ^{has} ~~have~~ declared the applicants have failed, then on what basis can the applicants request the Tribunal to declare them passed? The learned counsel for the applicant invited our attention to a judgment of the Hon'ble High Court of Gujarat in Civil Application No.5116/82 wherein the Collector High Court had held in the case of Ticket and Train Clerk ^h ~~that~~ it was not open for the railways to subject them to a written and oral test since they have been ^{on these posts} working satisfactorily for a long period. Relying of these two judgments, the learned counsel submitted that the facts in that case and ~~are~~ ^{those} in this case are also similar and that the same principles should apply to this case. We do not find any similarity in the facts of these two case. In the case before the High Court, the fact that the applicants ^{wherein} ~~were~~ working satisfactorily for a fairly long period as

Mr. Sanjiv Lalab →

Train Clerk and Ticket Collectors ~~which~~ was not in dispute
The High Court held that ~~the~~ to declare them ~~to hold the~~
post which they were already hold in a satisfactory manner
for a long period ~~it~~ is not proper ~~to~~ conduct a written and oral test. In
this case, the applicants ~~who~~ were appointed only as
W.A. Grade III purely on adhoc basis and only as a stop-
gap arrangements ~~they~~ they have not been appointed on adhoc
basis as Fitters. Further it is open for the railway
to prescribe qualification and to frame recruitment rules
for different posts ~~it is being the forgetive of the~~
~~department~~, the applicants cannot say that no such change
should be made in the process of selection ~~as observed as~~
earlier having submitted to the process of selection without
raising any complain^{ts} the applicants cannot be at this late
~~stage permitted~~ ^{As} ~~round~~
time to turn down and complain about the decision to hold
a selection examination.

For the reasons mentioned above, we are convinced that there is no merit in the claim of the applicants and hence we dismiss the application without being admitted.

H H. Lee

(M.M.Singh)
Administrative Member

(A.V.Haridasan)
Judicial Member

a.a.b.