

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**O.A. NO.** 446 OF 1990~~**T.A. NO.**~~**DATE OF DECISION** 09-05-1995

Kishorkumar & Another **Petitioner**

Mr. C.S. Upadhyay **Advocate for the Petitioner (s)**

Versus

Union of India & Others **Respondent**

Mr. R.M. Vin **Advocate for the Respondent (s)**

CORAM

The Hon'ble Mr. N.B. Patel, Vice Chairman

The Hon'ble Mr. K. Ramamoorthy, Member (A)

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 Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

/ NO

1. Kishorkumar,
S/O Nagindas Raval,
4, Panchsheel Society,
Sanand Dist.,
Ahmedabad.
2. Pravinchandra,
S/O Tokarbhai Gohel,
676/8 Sarvodaya Chawl,
Near Hirabhai Chawl,
Rajpur,
Ahmedabad.

..... Applicants

(Advocate : Mr. C.S. Upadhyay)

Versus

1. The Union of India,
Through the General Manager,
Western Railway, Churchgate,
Bombay - 20.
2. The Financial Adviser and
Chief Accounts Officer
(Administration),
Western Railway,
Bombay.
3. The Senior Accounts Officer (W&S),
Western Railway,
Sabarmati 'D' Cabin,
Ahmedabad.
4. Shri H.C. Darji
5. Shri M.C. Tewani
6. Shri C.P. Joshi

Nos. 4 to 6 Clerk Gr. I
C/o Sr. Accounts Officer,
(W&S), Western Railway,
Sabarmati 'D' Cabin,
Ahmedabad.

..... Respondents

(Advocate : Mr. R.M. Vin)

J U D G M E N T

O.A. NO. 446 OF 1990

Date : 9-5-1995

Per : Hon'ble Mr.K. Ramamoorthy, Member (A)

The present application has been filed seeking a higher deemed date of promotion to the applicants.

2. The present applicants were initially appointed as Clerk Gr.II in the Office of the Assistant Account Officer (W&S) Bhavnagar Para on 27-1-1981 and 20-2-1981 and the following facts in their service history are not in dispute. The respondent Railway Administration had decided to re-organise the Accounts Department by virtue of letter of 16-5-1980 (Annex. A/1) and sought options from all its serving employees to decide on proposed new units of seniority groups of Accounts department with effect from 1-4-1982. The present applicants who were serving in Bhavnagar opted for Sabarmati. The Scheme itself provided that once the option is exercised for a particular unit, the applicants would be deemed to have been allotted to the new seniority group whether or not they actually had got transferred to new units. The present applicants who had exercised their options in 1981 itself formally got transferred only in 1988 but their seniority position in Sabarmati was duly notified in the order of 31-3-1982 (Annexure A/3).

3. The controversy as raised in this case pertains to the promotions which occurred during this inter-regnum between 1982 and 1988.

4. It is the case of the applicants that when the post of Junior Accounts Assistant became

available in 1985 even though the applicants were qualified Clerk Grade II by virtue of their having passed their Appendix-2 examination in October, 1984⁴ and May, 1985 respectively, these promotions were given to the local candidates available in Sabarmati ignoring the rights of the present applicants merely because they were in Bhavnagar. After their physical posting in Sabarmati, they had again represented in the matter. However, the applicants were denied such promotions on the ground that these vacancies were to be filled in by direct recruits as per reply given on 9-3-1990 vide letter No.A&S/SBI/ADM/839.

5. In their reply dated 4-2-1991, the respondents have sought to explain their action in promoting 3 of the employees who were senior but who had not passed Appendix-2 examination on the ground that they came within 25% of the vacancies which had been kept reserved for unqualified persons. Along with the reply, the respondents have also chosen to attach exchange of notes which had taken place in this regard. It is seen from the correspondence dated 14-6-1989 (Annex. R/6) that such adjustments should preferably be done ^{only} at the cost of deficiencies in the direct recruitment quota as direct recruits are yet to acquire any rights within the said system.


6. In any case, apart from the fact that the respondents have not made available, any specific orders in this regard, it is also clear that such a provision cannot be at the cost of qualified persons, if available. The case for promoting 3 unqualified persons is clearly not established specially when 2 qualified candidates were available from within the unit itself though they were then at Bhavnagar.

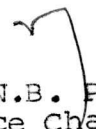
7. It is true that the applicants in their representation on their posting at Sabarmati have made reference only to the vacancies that were then available at Sabarmati and they have not made any reference to their higher claims over the unqualified persons who had already promoted. In the narrow sense of the request made in the representation, the respondents were perhaps correct in their reply that the new vacancies had to be filled in only from the direct quota. At the same time, the respondents had side-stepped the basic issue as to whether the present applicants had higher claims to be promoted to the post of CG II even if necessary by reverting CG II who had been promoted earlier but who had not qualified the Appendix-2 test. This Tribunal has no doubt in its mind that the present applicants had a right first to be promoted against CG II post over the promotees from within but who were unqualified.

8. At the hearing stage, the applicants stated that the other unqualified CG II have retired by now and the present applicants' request was only for being placed at the appropriate seniority slots. The Tribunal has not enough material to go into the question of the seniority slots as to the dates from which vacancies in CG-I became available and its assignment in the seniority positions as between promotee candidates and direct recruits.

9. We would, therefore, direct the respondents to reconsider the whole issue and allot the present applicants suitable positions in a regular post in the seniority list as is available to promotees over any unqualified promotee as might have found place in the seniority list after 1985. This is directed to be done within ten weeks from the date of the receipt of a copy of this judgment. Applicants to be informed of their position within seven days after it is fixed.

10. With this direction, the application is disposed of. No order as to costs.


 (K. Ramamoorthy)
 Member (A)


 (N.B. Patel)
 Vice Chairman