

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**O.A. NO.** 450/90**T.A. NO.**DATE OF DECISION 5-9-95Jitendra K.Ved & Ors. PetitionerMr.Y.V.Shah & Mr.K.V.Sameat Advocate for the Petitioner (s)

Versus

Union of India & Ors. RespondentMr.N.S.Shevde 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

7.

: 2 :

1. Jitendra K. Ved
2. Manubhai Girdhar
3. Chandu Ganesh
4. Manu Chhita.
5. Mavji Vala
6. Jani Jiva
7. Nandkishore S.
8. Mohmed Idrisa
9. Ahmed A.
10. Nagji Dhula
11. Amarram K.
12. Peter John.

through General Workman's Union, by its
secretary Jitendra K. Ved, having office
at 406/B G.L. Yard Colony, P.O. GODHRA-389001
Dist: PANCHMAHALS

(Advocate : Mr. Y. V. Shah
Mr. K. V. Sampat)

.... Applicants.

Versus

1. Union of India by the General Manager,
Western Railway, Churchgate,
BOMBAY 400 001.
2. Divisional Personnel Officer,
Western Railway, Baroda Division,
Pratapnagar, P.O.: VADODARA 390 004.
3. Sr. Divisional Mechanical Engineer,
Western Railway, Baroda Division,
(Carriage & Wagon Dept),
Western Railway Yard, Pratapnagar,
P.O.: VADODARA 390 004.
4. Sr. Divisional Mechanical Engineer (Loco)
Western Railway Yard, Pratapnagar,
P.O.: VADODARA 390 004.

..... Respondents

(Advocate: Mr. N. S. Shevde)

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: 3 :

J U D G M E N T

O.A.No:450 of 1990

Date 5-9-95

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

In this application, the applicants have sought relief for being shown at the proper position in the seniority list of loco staff in B.R.C Division and also for giving them benefits of promotions as a result of such inclusion in the Loco Shed list.

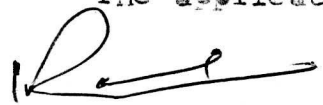
2. The short facts of the case are as under :-

The applicants were working as substitute Khallasis in the Loco Shed, BRC in NFO BRCY. On their becoming surplus substitutes, they were relieved to work under WFO BRCY (Part of the Carriage and Wagon section) under order dated 29.11.1980. In the order, it was specifically stipulated that as and when vacancies occurred in WFO BRC due to normal wastage, these substitutes will go back to Loco Department. It is the contention of the applicants that they have not been taken back in the Loco Department when the Loco Department vacancies arose. On the other hand, Loco Shed have recruited people from the open market. In view of the fact that they were not taken back, they have missed the opportunities for getting the normal promotions in the Loco Shed Branch which promotions, according to the applicants, were more beneficial.

3. The respondents in their reply have admitted the fact of the applicants having been originally substitute Khallasis in the Loco Shed. They have, however, stated that Loco Shed cadre was a shrinking cadre in view of the progressive dieselisation and electrification of engines. When a surplusage occurred in 1980, instead of terminating the services of the applicants the respondents took alternative action of sending them to other departments where work was available. While, of course, the option for these persons to come back to the Loco Department was available, the chance for getting themselves absorbed in the new departments, if earlier vacancies were available, was also there. In fact, such absorption against regular vacancies had occurred in mechanical department and the present applicants also get empanelled against regular vacancies in their new departments. Such empanelment orders were passed in 24.4.1983 and 23.2.1985 as contained in Annexures R/3, R/4 and R/5. In fact, some of the applicants could get further promotion as Khallasai Helpers also thereafter. Once the applicants have chosen to get absorbed in the new cadre, the question of continuing lien as substitute Khallasi in Loco Shed did not arise. The respondents have further stated that no casual labour or substitute labour as such had been engaged in Loco Sheds. Promotions have been given only to those persons who were rendered surplus in 1980 and were continued in Loco Shed. The condition of taking back the substitute Khallasis was not operable against direct recruitment in the Loco Shed.

4. After going through the documents and the averments made both in the statements and in the written arguments furnished by the applicants, it is clear that the applicants have chosen to avail themselves of the benefit of absorption and even further promotion in the new units to which they have been transferred. As shown in Annexure R/1, a specific seniority list showing the present applicants in the Carriage and Wagon Division had been circulated on 4-12-89 calling for objections against this seniority list. The applicants have not chosen to file any such representations. It is also clear from Annexure R/2 that some of the applicants have even appeared in a trade test for Khallasi Helper which could have been possible only if they had agreed and also passed the trade test to get themselves absorbed as Khallasi in the Carriage and Wagon department. Therefore, there is merit in the contention of the respondents that the applicants cannot both approbate and reprobate. Having chosen to get absorbed in the Carriage and Wagon Department and having secured regularisation/promotions therein, they cannot reagitate this issue at a point when a particular vacancy could have arisen in the earlier cadre which might be more attractive to the applicants. Having accepted the fact of their inclusion in the seniority list as is evident from the documents produced at Annexures R/1 to R/5, we do not see any merit in the contention of the present applicants to be included in another seniority list of 1992.

5. The application, therefore, fails. No order as to costs.


(K. RAMAMOORTHY)
MEMBER (A)


(N.B. PATEL)
VICE CHAIRMAN