

IN THE CENTRAL ADMINISTRATIVE TRIAUNAL
AHMEDABAD BENCH

O.A. Nos. 455/90, 11/91, 46/91 & 72/91
T.A. No.

DATE OF DECISION 20-8-1993.

Shri Himatlal Manishanker Pandya Petitioners
and Ors.

Mr. M.K. Paul, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent s

Mr. B.R.Kyada, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C.Bhatt, Judicial Member.

The Hon'ble Mr. M.R. Kolhatkar, Admn. Member.

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 ?

O.A.No.455/90

Shri Himatlal Manishanker Pandya,
Ticket Collector,
Western Railway,
Rajkot Junction.

: Applicant

Versus

1. The Union of India,
Owning Western Railway,
Through: The General Manager,
Western Railway, Headquarters Office,
Churchgate, Bombay-400 020.
2. The Divisional Railway Manager,
Western Railway,
Divisional Office, Kothi Compound,
Rajkot.

: Respondents

O.A.No.11/91

Shri Karshanbhai Bhikhabhai Parmar,
Hindu Adult Assistant Commercial Clerk,
Railway Station, Chansama.

: Applicant

Versus

1. The Union of India,
Owning Western Railway,
Through: The General Manager,
Western Railway, Headquarter Office,
Churchgate, Bombay-400 020.
2. The Divisional Railway Manager,
Western Railway,
Divisional Office, Kothi Compound,
Rajkot.

: Respondents.

O.A.46/91

1. Shri B.K.Patel,
Assistant Commercial Clerk,
Railway Station, Hapa.
2. Shri Abdulkarim Noormohmed,
Assistant Commercial Clerk,
Railway Station, Hapa.
3. Shri Chandulal P.Waghela,
Assistant Commercial Clerk,
Railway Station, Jamnagar.
4. Shri Harilal J.Solanki,
Assistant Commercial Clerk,
Railway Station, Sikka.

5. Shri Mohanbhai Naranbhai Desai,
Assistant Commercial Clerk,
Katesan Road.

: Applicants

Versus

1. The Union of India,
Owning Western Railway,
Through: The General Manager,
Western Railway, Headquarter,
Office, Churchgate, Bombay-400 020.

2. The Divisional Railway Manager,
Western Railway,
Divisional Office, Kothi Compound,
Rajkot.

: Respondents

O.A. 72/91

Shri Lilaji M.Thakar,
Assistant Commercial Clerk,
Railway Station, Vijapur
(Advocate: Mr.M.K.Paul)

: Applicant

Versus

1. The Union of India,
Owning Western Railway,
Through: The General Manager,
Western Railway, Headquarter
Office, Churchgate, Bombay-400 020.

2. The Divisional Railway Manager,
Western Railway,
Divisional Office,
Kothi Compound,
Rajkot.

: Respondents

(Advocate: Mr.B.R.Kyada)

C O M M O N J U D G M E N T

O.A./455/90

with

O.A./11/91

with

O.A./46/91

with

O.A./72/91

Date: 20-8-93

Per: Hon'ble Mr.R.C.Bhatt, Judicial Member

These four applications under Section 19 of the
Administrative Tribunals Act, 1985 are consolidated and
heard together by consent of learned advocates for the
parties and are being disposed of by a common judgment
in O.A./455/90.

2. The applicant Shri Himatlal Manishanker Pandya of OA No.455/90 has alleged in his application that he was promoted as Ticket Collector on adhoc basis and he is working on that post in the grade of Rs.950-1500 (R) at Rajkot junction. He has challenged the impugned order Annexure A-14 dated 20th September, 1990 passed by the respondents by which he is reverted to his substantive post and posted as F.C.A., Rajkot in the existing vacancy. The applicant Shri K.B.Parmar of OA No.11/91 has alleged in the application that he was promoted on adhoc basis from the post of Class IV to Class III as Assistant Commercial Clerk hereinafter referred to as A.C.C. at Railway Station, Bhandu in the year 1979 and he is working on adhoc basis continuously without any break on that post. He has challenged the order of reversion Annexure A-1 dated 28th December, 1990 by which he is reverted as P/man at Patan at a substantive post in Class IV category. Five applicants of OA/46/91 have alleged ⁱⁿ their application that they were promoted from Class IV to Class III on adhoc basis. The applicant No.1 was then posted as A.C.C. on 16.6.1980. The applicant No.2 was also promoted on adhoc basis as a Class III employee as A.C.C. but he has not given the date on which he was promoted on adhoc basis. The applicant No.3 was promoted on adhoc basis from Class IV category to Class III and was posted as A.C.C. from 3rd May, 1980 at Jamnagar. The applicant No.4 was similarly posted on adhoc basis as A.C.C. on 13th June, 1980 at railway station Hapa and applicant No.5 was similarly posted on adhoc basis as A.C.C. on 16th June, 1980 at Hapa. All these five applicants have challenged their order of reversion Annexure A-2 dated 28th December, 1990

to
by which they are reverted /their substantive post of
Class IV category and posted on the respective station
shown in their impugned order. The applicant Lilaji
M.Thakar has filed O.A./72/91 in which he has alleged
that he was promoted from the post of Class IV to the
post of Class III on 21.6.1980 on adhoc basis at Hapa
and then he was transferred to railway station Vijapur
as Assistant Commercial Clerk on the Class-III post
where he is continuously working on that post on adhoc
basis satisfactorily. He has challenged the impugned
order Annexure A-1 dated 28th December, 1990 by which
he is reverted to the substantive post in Class IV
category as PP.

3. The facts involved in all the matters, the
reply filed by the respondents in all these matters
and the rejoinder also in all these matters are almost
common and therefore, it would be proper to narrate
only the detailed pleadings in O.A.No.455/90/and not to
detail of
narrate pleadings in /another three matters as they are
almost identical.

4. It is alleged by the applicant in OA.No.455/90
that the Railway Board vide letter dated 23rd December,
1976 Annexure A-7 from Deputy Director Estt.Railway Board,
New Delhi addressed to the General Manager, New Delhi advise
that one Shri Ram Daresh who was promoted as TNC on
10.3.1976 had continuously worked for three years on
the said post and was declared failed in the selection
of TNC, that it was directed by the Board that since he
had continuously worked for 18 months on the officiating
post of TNC satisfactorily the selection was not necessary
and that he might not be reverted. It is alleged in the
application that the said Circular would apply to the
present applicant also as he has continuously worked a

a TNC satisfactorily. The applicant has also referred to the decision of the C.A.T. Principal Bench, New Delhi in OA.No.1174/86 decided on 20th August, 1987 on a similar point and one another judgment in O.A.329/88 decided by C.A.T., New Bombay Bench. It is the case of the applicant that vide order dated 7th May, 1980 Annexure A-I Class IV employees of Rajkot, were called for the interview for the post of TC. 62 class IV employees had appeared for the selection out of that, 13 were selected as a T.C. and the applicant was also selected as T.C. and was given practical training under Commercial Inspector, Rajkot from 28th May, 1982 to 5th June, 1982 and that practical training was passed by the applicant successfully and then he was given posting as T.C. at Rajkot Junction on 23rd August, 1980 and since that date the applicant is continuously working as T.C. at Rajkot Junction. It is the case of the applicant that he had passed the selection as a T.C. in the year 1980 and has taken the practical training and as he was continuously working as a Ticket Collector, it was not necessary at all for the applicant to sit again in the selection, but it was the duty of the Railway Administration to regularise the services of the applicant as T.C. as per the Circular of the Railway Board dated 23rd December, 1976.

5. It is the case of the applicant in O.A./455/90
on 27th May, 1988
that a written test was held for name sake and the illiterate Class IV employees are selected while the applicant who worked as a T.C. for more than 10 years is not selected. It is alleged that one Shri Nathalal R. who was working as Bhisty and who never worked for a single day as T.C. is selected as T.C. which shows the malafide intention of the respondents to accommodate the interested candidates. It is alleged by the applicant that the High Court of Gujarat

in Special Civil Application No.929/75 had decided to give the benefit of adhoc promotions to the tracers due to long continuous working on the post for three years and their services were regularised as claim tracers without subjecting them to selection. During the pendency of the application, the applicant has amended O.A. alleging that there was corruption and serious irregularities in the selection which is proved in the Vigilance Inquiry conducted by the Vigilance Officers of Bombay and CBI Railway Board and the said report is produced by the respondent in the Court in a sealed cover. It is alleged by the applicant that all the three members of the Selection Committee are given punishment by the Railway Administration for not following the rules, regulations, circulars of Railway Board regarding the selection and for committing serious irregularities in the selection. The applicant has sought the relief that the order of the Railway Administration reverting the applicant by the declared as impugned order be null and void against settled that principle of law and natural justice and the same is not binding to the applicant, that he has a right to hold the post of Ticket Collector and the respondents be directed to continue the applicant to the post of T.C.

6. The applicants of the three other O.As. working as Assistant Commercial Clerk purely on adhoc basis have also on similar facts challenged their order of reversion. They have alleged that they have been working on this post on adhoc basis since about 10 years and they ought to have been regularised on that post without being subjected ^{to} selection and prayed that the orders ^{their} of reversion should be quashed and set aside.

7. The respondents of O.A.455/90 have filed the reply contending that the applicant was never appointed on a clear vacancy as regular employee. It is contended that the applicant was working as a Coach Attendant and then he was promoted as a Ticket Collector (T.C) on adhoc basis temporarily but as he failed in the selection test, he was reverted to his substantive Class IV post vide O.M dated 20th September, 1990, marked Annexure R-1. It is contended that the adhoc appointment as a stop-gap arrangement does not automatically make the applicant eligible for a regular posting on that post because the post in question is a selection post and for one to be appointed in that post, he has to pass the test. It is contended that the applicant was asked to accept the impugned order dated 20th September, 1990 and was requested to hand over charge but he has not done so, and he is remaining absent from duty without returning the cash and tickets which were with him. It is contended that the applicant has no right to compare himself with the case of Shri Ram Naresh who was an SC employee and whose case falls within the rules of reserved quota. It is contended that the circulars and decisions referred to by the applicant are not applicable in this case. It is contended that the applicant was declared failed in the selection test and therefore he is rightly reverted to his substantive post. It is contended that the applicant is working on adhoc for short or long period

does not give ^{him} a right for regular automatic appointment or promotion.

8. The respondents have contended that a letter dated 7th May 1980 was issued calling 62 class IV employees for adhoc promotion to Class III post, that they were not called for interview but they were given local training for the work so that they could work on adhoc basis. It is contended that they were not sent for the prescribed course of training at Udaipur School and their appointment was purely on adhoc basis which was made clear in their appointment letter dated 16th June, 1980 and they were likely to be reverted as and when the RSC TC or a regular ranker was made available to the division at any time. It is contended by the respondents that the applicant has not passed the selection test of TC at any time in the year 1980 and therefore he is not eligible for regular posting without passing the prescribed test. It is contended that so far ^{as} the examination is concerned, it was held as per the selection procedure, that the applicant was called and he appeared along with others in the written test and he could not pass written test and therefore, he was not called ^{for} / the viva-voce test while others who had passed the written test were called, and after proper selection for the post of TC, the eligible employees were appointed on Class III post of T.C.

9. The applicant has filed rejoinder controverting the contentions taken in the reply. The respondents in other three cases, O.A.11/91, O.A.46/91 and O.A. 72/91 have also filed identical replies contending that the applicants of these O.As were taken as ACC purely on the adhoc basis and as they had not passed / regular selection and hence /they were appointed and posted as ACC in Class III post. in replies All other contentions taken/are almost identical to the reply given in O.A. 455/90.

10. The learned advocate Mr. M.K.Paul for the applicants ~~make~~ argued in detail the case of O.A.455/90 and submitted that in other three matters also his arguments are the same. The learned advocate for the applicant in O.A. 455/90 submitted that the applicant was appointed in the year 1955 to 1963 as a substitute Waterman at Rajkot division, that he was confirmed as a permanent Class IV employee on 14th April, 1963 as a Waterman at Rajkot division and then was promoted as a First Class Coach Attendant in the year 1971. It is submitted that thereafter he has been working as TC on adhoc basis at Rajkot division. He submitted that before the applicant was working on adhoc basis as TC, he was working in Class IV catagory as First Class Coach Attendant. Annexure A-1 dated 7th May, 1980 of the Western Railway shows that the applicant and others were promoted on adhoc basis from Class IV to Class III. The learned advocate for the applicant submitted that the applicant had taken practical training as TC as per Annexure A-2

dated 5th June, 1980. Annexure A-3 shows that the applicant, Group D employee was promoted purely on adhoc basis as TC. The order shows that all Group D promoted purely on adhoc basis employees/were liable to be reverted as and when the RSC TC or a regular rankers were made available on the said division or at any time necessary by the administration. The applicant was posted at Jamnagar as TC on adhoc basis, then at Rajkot as shown in Annexure A-4. Annexure A-5 dated 3rd May, 1985 is the appreciation letter of DCS Rajkot dated 3rd May, 1985. Annexure A-6 shows that the applicant had given an application dated 12th September, 1986 for giving him post as TC. The learned advocate Mr. Paul for the applicant urged that as the applicant was given practical training from 28th May, 1980 to 5th June, 1980 and as he had passed that practical training he should be deemed to have passed the selection test. There is no material produced by the applicant that he had passed the selection test as TC in the year 1980. The respondents in the reply have contended that the applicant and other 62 Class IV employees were posted on adhoc basis to Class III post and were given local training for the work so that they could work on adhoc basis but the respondents have denied that the applicant had passed the selection test in the year 1980. The learned advocate Mr. Kyada for the respondents submitted that if the applicant was selected as TC in 1980, he would not appear in selection test in 1988. There is absolutely no material to show that the applicant

was selected as TC in 1980 or had passed the selection test in 1980 and there is no force in the submission of learned advocate for the applicant that the applicant had been selected as TC or had passed selection test as TC in 1980.

11. The learned advocate for the applicants next relied on judgments referred to in his application and his submission other judgments in support of that if a Class IV employee has worked for more than 18 months on adhoc basis but on a promotional post, he can not be reverted / he could be regularised in that promotional post. He submitted that the Railway Board vide letter dated 23rd December, 1976 from Shri Ananta Raman, Dy. Director, ~~Estt.~~ Railway Ann. A-7 Board, New Delhi addressed to the General Manager Northern NDLS Railway, / advised that Shri Ram Daresh who was promoted as TNC on 10th March, 1976 had continuously worked for three years on the said post and was declared failed in the selection of TNC but as he had continuously worked for 18 months on the officiating post of TNC satisfactorily, in that case selection was not necessary and he may not be reverted. Relying on this circular Annexure A-7 he submitted that even if the applicants failed in the selection test and they having working for more than three years on adhoc basis on promotional post, they should not be reverted. Having read Annexure A-7, it appears that it is on the basis of the but administrative instruction / it also mentions that panel should be formed for selection to avoid adhoc

promotion. He also relied on Annexure A-8, A-9, A-10 and A-11 to show that the employees of Class IV who have worked for more than three years on adhoc basis in promotional post should be regularised and they should not be reverted. The applicant has also produced at Annexure A-15 undated letter addressed to the General Manager, Western Railway, Bombay, in which he has mentioned that out of 62 Class IV employees only 13 Class IV were selected as TC and he was one of them and he was given practical training. There is absolutely no material that he was selected as TC because the appointment of the applicant Annexure A-1 shows that he has been given an adhoc promotion from Class IV to further Class III and the subsequent orders Annexure A-3 shows that the applicant and others were Group D employee, that they were promoted purely on adhoc basis as TCs and they were liable to be reverted as and when RSC TC or a regular rankers were made available in the said division or at any time necessary by the administration.

12. The learned advocate for the applicants submitted that the applicants of this four applications though have experience of more than five years on the promotional post of Class III, no doubt, on adhoc basis the respondents instead of regularising their service on that promotional post have selected even a person who has not a single day's experience and he invited our attention to Annexure A-12 dated 8th September, 1990 in which there is a name of one Nathalal R, who was Bhisty

at Rajkot and who was provisionally promoted to the post of TC. The said Class IV staff had been placed in the provisional panel of TC as per the notification referred to therein but these employees had passed selection test. He also referred to Annexure A-13 on the same point. Annexure A-14 is impugned order dated 20th September, 1990 by which the applicant working on adhoc basis as TC Rajkot was reverted to his substantive post and posted as FCA Rajkot in the existing vacancy. This impugned order and the other identical impugned orders in other three matters show that the applicants were reverted to their substantive post because they had not passed the selection. Annexure A-15 is a letter of the applicant to the General Manager, Western Railway which is a request for granting justice and Annexure A-16 refers to the designation of the applicant. The learned advocate for the applicants has conceded that these present applicants have failed in the selection test, but according to him, as they have worked on promotional post on adhoc basis for more than five years, they ought to have been regularised in that promotional post even though they failed in the selection test.

13. The learned advocate for the applicants has relied on the decision in N.S.K.Nayar V/s. Union of India & Ors. reported in 1992 LAB.I.C. page 1532, where the promotee officers promoted under Rule 27(b) of Telegraph Engineering Service (Class-I) Rules, 1965,

who worked in STS for a continuous period of five years, and holding the posts to date were deemed to be regular members of Group A service in STS. It was held that the object of having Rule 27(b) was to provide a source of appointment to meet administrative exigency of short tenure and it could never be the intention of the framers of the said rule to permit the appointments under the said Rule to go on for 10 to 15 years and such appointments for a long period cannot be considered to be purely temporary/officiating or to hold charge. In the instant case the applicants were promoted provisionally on adhoc basis and they were liable to be reverted as and when RAC TC candidates or regular rankers were made available on the said division. Thus the applicants who were Group D employees ^{who} were promoted ^{on adhoc basis} but the promotional was ^{which} post /a selection post for /they appeared in the test but they were reverted as they failed in the selection test. Under these circumstances, the above decision would not help the applicants. The other decision relied learned advocate for the on by the applicants is Virendra Balwantrai Rawal V/s. District Superintendent of Police & Ors., 1192(2) G.L.H page 450. This decision does not apply to the facts of the present case. The next decision relied on is S.A.Joshi & Ors. V/s. Union of India & Ors. reported in 1985 G.L.H (N.O.C) page 18 in which it is held that guidelines issued by Government should be followed. This also does not apply to the facts of the present case. The next decision is Ratanlal and Ors. V/s. State of

in which case
Haryana & Ors., AIR 1987 SC page 478 / the Hon'ble Supreme Court deprecated the policy of the State Government under which adhoc teachers were denied the salary and allowances for the period of the summer vacation by resorting to the fictional breaks of the type referred in the decision. It was held that the adhoc teachers were unnecessarily subjected to an arbitrary hiring and decision firing policy. This/also does not help the applicants of the present cases. The next decision is All Manipur Regular Posts Vacancies Substitute Teachers' Association V/s. State of Manipur, AIR 1991 SC page 2088. The question involved in that matter/about regularisation of substitute/adhoc teachers in the Education Department of the State of Manipur. The teachers had been in service since number of years, but the State Government refused to regularise their services. More than one thousand substitute teachers had been recruited from 1981-82 and they were allowed to appear before the DPC for direct recruitment and in that process 23 of them were selected by the DPC for direct recruit/but they could not also be regularly appointed in view of the stay order of the High Court. The Hon'ble Supreme Court directed the State Government to consider the case of the regularisation of these teachers before making direct recruitment but the Government did not take any action. Ultimately, it was held that substituted/adhoc teachers who have put in five years of service or more as on October 1, 1990 shall be regularised without DPC and the said

regularisation whould be subject to their possessing the required qualifications at the time of their initial appointment. The Hon'ble Supreme Court directed State Govt. to consider case of regularisation before making direct recruitment and manner of making regularisation is laid down in this decision. This decision does not apply in these cases.

14. The applicants in their applications have relied on ~~the~~ Annexure A-7, Railway Board letter and copy of Railway Board contends dated 5.5.81, Ann.A-8. But the question about the regularisation of an adhoc employee came up for consideration before the Full Bench of the Central Administrative Tribunal in the case of Jetha Nand and Ors. V/s. Union of India & Ors., where the Full Bench had considered the Railway Board circular dated 9th June, 1965 and Rule 109 & 110 of Indian Railway Establishment Manual and letter issued by CPO North East Frontier Railway dated 11.3.76 and another circular of 21.11.77 of G.M. North East Frontier Railway at para 19. This decision is reported in Full Bench Judgments of Central Administrative Tribunals Vol.I, 1986-1989 at page 353. The Full Bench held that the right to hold the selection/promotional post accrues only to those employees who have undergone a selection test and empanelled for the promotion/selection post and continue as such for 18 months or more. An adhoc employee will also get the right if he has passed the selection test. It was held that a test is mandatory before a Class IV employee can be promoted permanently to Class III Post. It was further held that mere recording of satisfaction or even good entries in CR of the employee is not enough to entitle the employee holding a promotional post in an adhoc capacity to claim that his services be regularised in the Class III post.

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It is held that if the employee has appeared in the selection test and has failed, his services cannot be regularised in the promotional post. It was held that if he has not qualified in the selection test, he is liable to be reverted even after 18 months. In view of this decision the arguments of the learned advocate for the applicant that the applicant having worked on the promotional post on adhoc basis for a long period should be regularised even without subjecting to the selection test even without passing the selection test cannot be upheld. There is another decision on this point namely Suresh Chand Gautam and Ors. V/s. Union of India & Ors., reported in Full Bench Judgments of C.A.T., Vol.II (1989-1991) page 487 in which Jetha Nand case was relied on. The Railway Board's circulars were also considered in this decision. The Full Bench has also referred to the decision of the Supreme Court in this case. The Full Bench held as under:

"Therefore, we are in complete agreement with the decision of the Full Bench in Jetha Nand's case that a pass in the selection test is mandatory before a Class IV employee can be promoted to a Class III posts. We fully endorse the view that if a Class IV employee officiating in Class III post for more than 18 months failed to qualify in the selection test, he is liable to be reverted even after 18 months without following the procedure laid down in the Railway Servants (Discipline & Appeal) Rules. It is further held that three or more opportunities may be given to the Class IV Railway Employees officiating in Class III post to qualify in the selection test. But when fully qualified candidates or persons regularly selected by the Railway Service

Commission are waiting to be appointed to the regular vacancies the Class IV employees officiating in those posts even though for a period exceeding 18 months can have no right to hold those posts. They have to be reverted if necessary for the appointment of the qualified candidates. In Jetha Nand's case the Full Bench has not stated that even when regularly selected and fully qualified candidates are available, those who have failed to qualify in the selection test should be allowed to officiate in the Class III posts blocking the entry of the regularly selected candidates. Such a view would be putting premium on inefficiency which has never been intended in the judgment in Jetha Nand's case. Therefore we hold that the Railway servant who is allowed to officiate in higher post on temporary basis need not always be allowed at least three or more opportunities to appear and qualify in the selection for higher post before he can be reverted without following the procedure prescribed under the Railway Servants (Discipline and Appeal) Rules, 1968 and that he can be reverted if such reversion is warranted for administrative reasons, such as for appointment of regularly selected qualified candidates."

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This is a complete answer to the applicants' cases. Thus the documents namely Railway Board letter and circular relied by applicants do not help them in view of this decision. It is an admitted fact in this case that the applicants have been reverted as they have failed in the selection test and hence they have to make way for the candidates who have passed the selection test. More over, there is no substance in the affidavit of the applicants and others that one Nathalal R. who was working as Bhisty and who had no experience as TC is promoted provisionally and hence his promotion is illegal. The persons who passed a selection test have been promoted like Nathalal R. and there is no illegality committed by the *respondents.*

The applicants have failed in the selection test and therefore, they have been reverted from the promotional post which they were holding on adhoc basis. In view of above Full Bench decisions, it was mandatory for them to pass the selection test because this was a selection post. We therefore, reject the submission of the learned advocate for the applicants that the applicants should have been regularised on the promotional post looking to their continuous service for a number of years basis on adhoc even if they have failed in the selection test.

15. The applicants in all these applications have amended their O.A during the pendency of the matter alleging that there was corruption and serious irregularities in the selection which is proved in the Vigilance enquiry conducted by the Vigilance Officer of Bombay and C.B.I and Railway Board and the said report is produced by the Railway administration in the Tribunal as per the order of the Tribunal in a sealed cover. It is alleged that all the three members of selection committee were given punishment by the Railway Administration for not following Rules, Regulations and Circulars of Railway Board regarding the selection and for committing serious irregularities in the selection. The applicant had filed M.A.89/91 in O.A.No. 455/90 praying that the respondents be directed to produce the enquiry report of the Assistant Vigilance Officer. We

directed the respondents to furnish the copy of the enquiry report to the Tribunal in a sealed cover and they have produced the same. We also observed in our order dated 9th April, 1991 while considering M.A.89/91 that the said enquiry report may be taken into consideration at proper time and also the connected issue of whether an inspection of the same should be allowed to the applicant. The learned advocate Mr. Kyada for the respondents submitted that the Vigilance Officers' report is a confidential document. In our opinion, even if it is a confidential document, the Tribunal is entitled to inspect it in order to adjudicate the allegations of the applicants. The Vigilance report is not shown to the applicant's advocate but this Tribunal has examined the said report.

16. The learned advocate for the applicants submitted that the applicant of O.A.455/90 has filed affidavit during the pendency of this application on 13th March, 1991 that serious irregularities were done by some interested persons in the selection and the candidates who have not worked for a single day as TC and those who were not having any experience of working in the Commercial department and the candidates from other department were selected. The applicant has also stated in the affidavit that certain candidates were not even eligible to appear for the written test and oral test but with some ulterior motive, inspite of not having the requisite qualifications they were permitted

to appear in selection and they were declared pass. It is mentioned in the affidavit that one Kum. Dipti P. Sanghvi was appointed as a Mali at Rajkot and she had worked hardly for two years and the minimum confirmed service for appearing in the selection of Class IV is five years, but she was permitted to appear in the selection and without having a single day experience she was declared pass. The learned advocate for the applicants submitted that the respondents have not filed reply to this affidavit and the other affidavit of applicant which is at Ann.A-17 dated 11.2.91 and therefore, the averments made in the affidavit filed by the applicant should be taken as correct. He has, relied on the decision in Pratap Singh V/s. State of Punjab, AIR 1964 SC page 72. The learned advocate for the applicants relied on the head note (e) in which it is mentioned that the petition under Article 226 of Constitution of India was filed by Government servant alleging malafides on part of Minister in charge, that there is no counter-affidavit by Minister concerned but affidavit is filed by Secretary in the department having no personal knowledge regarding allegations against Minister. It was held that the malafides were proved. The learned advocate Mr.Paul has submitted that in this case this affidavit filed during the pendency of this application by the applicant is not controverted by counter-reply and therefore it should be deemed to have been admitted. It is important to note that in the

instant case, the learned advocate for the applicants submits that he does not want that the selection should be quashed, but he only wants that the applicants should be regularised. Therefore, if ultimately it is found that there were irregularities as alleged by the applicants which should affect the selection then the applicants should have prayed that selection be quashed, but the applicants could not get the relief that they should be regularised in the promotional post. More over, the ratio of the decision relied on by the applicants would not apply because in the said matter before the Hon'ble Supreme Court, the petition itself contained the allegations of malafides against the Chief Minister, who was a party(respondent) and he had not filed reply. Here, it is during the pendency of the petition that an affidavit is filed on the information received by the applicant and if that affidavit is not controverted, it cannot be held that the irregularities have been committed by the respondents and in any case relief can not be given to the applicants as prayed for by them for regularisation of their service on promotional post.

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The respondents in reply in para 12 to the O.A have contended that the examination was held as per the selection procedure..... and after proper selection for the post of TC, the eligible employees were promoted to Class III post of TC.

17. The applicants have produced at Annexure A-9, a copy of the notice given by the learned advocate dated

17th July, 1990 to the Divisional Railway Manager, Western Railway, Rajkot for reviewing the case and/or to set aside the selection process. The learned advocate for the applicants submitted that no reply is given to this letter. It is important to note that the present applications do not contain the relief that the selection should be quashed. Merely because a reply is not given to this notice Annexure A-9, it could not be held that the averments in the notice should be deemed to have been admitted by the other side. The learned advocate for the applicants submitted that the respondents have not given reply to the amended para 5(L) of O.A in which it is alleged by the applicants that Members of the selection committee were given punishment by the Railway Administration for not following the rules, regulations etc. and hence the said allegations should be deemed to have been admitted. As observed above, the question arises whether the applicants have prayed for the relief that the selection should be quashed on the alleged ground of irregularities and as observed above, the applicants do not want that the selection should be quashed nor ^{do} is such relief prayed nor they pray such relief even at the time of arguments. The learned advocate for the applicants has also relied on the decision in M/s. Kamalia Brothers & Co. V/s. State of Gujarat, 33(1)G.L.R page 310 in which is held that for claiming privilege under Evidence Act Section 123 and 124, it must be shown that the disclosure would be prejudicial to public interest or national security. In this case,

the respondents have produced the Vigilance report and the Tribunal has to examine the same and we have not held that this is a privileged document. He has also relied on the decision in S.P.Gupta & Ors. V/s. President of India and Ors., AIR 1982 SC page 149 which also deals with question about the privileged documents. He also relied on the decision in A.K.Shimpi & Ors. V/s. State of Gujarat & Ors., reported in 24(1)GLR page 398. It is held that if method of selection is arbitrary, irrational, unreasonable, irrelevant, biased or vitiated by malafides or contrary to rules, the Court has power to quash the selection in view of the mandate of Articles 14 & 16 of the Constitution of India. In the instant case, learned advocate for the applicants has however submitted that he does not want that the selection should be quashed, but according to him applicants should be regularised. This submission cannot be accepted.

18. Now we proceed to examine the investigation report of the Vigilance Officer in this case submitted to us by the respondents in the sealed cover. It consists of two investigation reports, one is dated 28th March, 1991 along with annexure (i) & (ii) and investigation report along with statement. One report is about the complaint against Shri H.T.Lalchandani, DCS/Rajkot. A source information of DDV(Intelligence), Railway Board was forwarded under Director Vigilance (Traffic)'s letter dated 15.11.90 for investigation and report. Another

complaint dated Nil was also received under Board's further letter dated 14th December, 1990 from one Rasikbhai Patel of Rajkot. The report shows that complaint of Shri Rasikbhai Patel was verified and it was found that there was no person by the name of Rasikbhai Patel residing at the address mentioned in the complaint. The Assistant Vigilance Officer examined the allegations made as per the source information against three suspects and also examined allegations as per complaint of Shri Rasikbhai Patel and had also examined various documents and statements were also recorded. The report was that the panel declared was not in order. It was found that there were some errors in the evaluation of the answer sheets due to which certain eligible candidates were not called for viva voce namely two eligible candidates were not called for viva voce and one ineligible candidate was called for viva voce and there were some corrections and overwriting in assessment sheets in some case. Annexure I and II show the types of discrepancies in the examination to the post of ACC/TC. The report further says that there has been no irregularity in declaration of panel and the issue of order on the same day and asking the candidates to join the duties on the same day. It was found that in some case people with lower merit had been empanelled and people with higher merit had been left out. However, so far the present applicant of O.A. 455/90 and three other TCs on adhoc basis are concerned, the complaint

was that the four TCs including the applicant of O.A. 455/90 were working as adhoc TCs for the last 10 years without any break but they were not selected and the other complaint was that in terms of Board's instruction dated 23rd December, 1976 employees who were officiating for more than 18 months continuously were not to be reverted but these employees were reverted. The answer to this allegation in the report is that the adhoc TCs who have been working for more than 10 years were not selected because they have not secured 60% marks in aggregate to find a place in the panel and the instructions of the Board quoted were not relevant to the selection and the allegation was not substantiated. The other allegation was that Shri Nathalal R., Bhisty and Arvind R., FCA who were illiterate have been declared as passed in the selection as they have paid Rs.15,000/- and therefore, duplicate writers have written the answer papers as they were not able to write. The answer to this allegation in the report is that it is not substantiated. It was held that they had secured more than 60% marks in aggregate and therefore, have been empanelled and there were no irregularity. It was also found that they were able to write in vernacular language as such it could not be said that they were unable to read and write. The allegations of corruption also were not proved. The other allegations were also examined and answers were given that they were unfounded.

B & C about the complaint against Shri H.T. Lalchandani, DCS/Rajkot was concerned, after considering the documents on record and the statements etc. the conclusion arrived at was that allegations regarding serious irregularities in the selection of TCs in Rajkot Division had not been proved. However, there have been minor procedural lapses on the part of the APO as well as the DCS Rajkot. Therefore these reports show that the allegations of the complainant about corruption have not been proved that also other allegations accepted referred to therein have also not been proved. It was held that allegation regarding serious irregularities in the selection of TCs on Rajkot division had not been proved. However, there were only minor procedural lapses on the part of both the APO as well as the DCS Rajkot. The main complaint of the TCs promoted on adhoc basis was that they were not selected though they worked for a long time and that Nathalal R., and Arvind R., who were illiterate have been declared passed because they paid some amount which allegations are rejected in the report. Moreover even if some irregularities are found, that itself does not help applicants' cases for quashing impugned order. Though, learned advocate for applicants vehemently urged that there were serious irregularities in selection, he submitted that panel of selection persons need not be quashed but reversion orders of applicants be quashed. As observed above, the reversion orders cannot be quashed as applicants have failed in their selection.

The report shows that allegations regarding serious irregularities in the selection of TCs on Rajkot division had not been proved, but there were minor procedural lapses on the part of both the APO as well as DCS Rajkot. The report does not show any irregularities committed regarding the present applicants in selection test. We do not know what happened after this report was given but this report does not establish the applicants' case about corruption or malpractice as alleged by the applicants. Learned advocate for the applicant submitted that the applicant of O.A. 455/90 did not resume duty after reversion order, while others are continued on their post according to him because they had obtained interim relief, while applicant could not get interim relief.

20. In view of the fact that as per report of Vigilance Officer, there were some irregularities in selection test, we hope that respondents will closely examine the report and would see that wrongs found are set right by taking appropriate steps. This is our observation and not direction. More over we also hope that respondents would sympathetically examine the cases of these applicants who are continued on the post though we do not quash their reversion order as they have failed to establish their cases.

21. In the result we dismiss the above four applications.

O R D E R

22. O.A.Nos. 455/90, 46/91, 72/91 and 11/91 are dismissed. No order as to costs. Interim relief if any given is vacated.

M.R.Kolhatkar

(M.R.Kolhatkar)
Member(A)

R.C.Bhat

(R.C.Bhat)
Member(J)

vtc.

Date	Office Report	ORDER
20.8.93		<p>The learned advocates for the parties are present. The judgment pronounced in the open Court.</p> <p>2. The learned advocate for the applicants submitted that out of these four cases dismissed today, the applicants to two cases want to approach the Hon'ble Supreme Court by filing an appeal and hence the order of dismissal and also the vacation of interim relief granted in two cases may not be implemented for 90 days. This oral request is rejected.</p> <p><u>M.R.Kolhatkar</u> <u>RS</u> (M.R.Kolhatkar) Member (A) (R.C.Bhatt) Member (J)</p> <p>vtc.</p>

DATE	OFFICE REPORT	ORDER
27/8/93		<p>Heard learned advocate Mr.Paul for the applicants in M.A./447/93 in OA46/91 and M.A./448/93 in O.A./11/91.</p> <p>2. These applications are filed to grant interim relief against the operation of the judgements passed on 20/8/93, in the said two matters for 90 days. Learned advocate Mr.Paul for the applicants, vehementaly submitted that this Tribunal did not permit the applicants to file an appeal before the Hon'ble Supreme Court on 20/8/93, when oral request was made to postpone implementation of vacation of interim orders, when the said matters were dismissed. This submission is not correct.</p> <p>On 20/8 20/8/93, after we delivered the judgements in open court, in above matters with two others, the learned advocate for the applicants submitted that as in these two cases, the applicants want to approach the Hon'ble Supreme Court by filing an appeal against the orders of dismissal of O.A.s. and vacation of interim relief granted earlier in these two cases, the same may not be implemented for 90 days. Thus, what was submitted before us on</p>

on 20/8/93, orally was that our judgement should not be implemented for 90 days. However, that oral request was rejected by us. We have not rejected the prayer of the applicants to approach the Hon'ble Supreme Court. The learned advocate for the applicants invited our attention to one decision in Seth Chunilal Nagaji v/s state and another, reported in Gujarat Law Times, 1974 vlon 10, page-137. In that case, under the criminal procedure code learned Magistrate at the stage of investigation concluded without any material, without any trial, without any inquiry, ^{and} found that the allegations were true and that the complaint ^{or owner of the sheep and goats} was ~~not~~ and on this footing, the accused ~~was~~ found at the ^{were found guilty} very stage of investigation before the witnesses deposed on oath. The Hon'ble High Court, therefore, observed that in ^{other} that case, what remained to be done at the stage of trial ?.

^{Condemned}

The accused in that case, stood ~~convicted~~ at the very stage of investigation. The Hon'ble High Court observed, that ^{other} no comments are necessary for ~~the~~ facts speak for themselves. The Hon'ble High Court ultimately held that at the stage of investigation, it is not the function of the court to determine with any finality such case. It was held that it was two premature at such stage to do so. The learned Magistrate refused even permission to the accused to give short time to approach the High Court. It was, therefore, held that why such undue and vulgar ~~indulge~~ in the case. In our opinion, this is a case, which can never be compared with the two cases, which we have decided on merits. We cannot dispute the proposition that the applicants

DATE OFFICE REPORT

ORDER

have a right to approach the Higher Court.

~~In every case~~ They have ~~even~~ right to ~~against~~ our

judgement before Hon'ble Supreme Court.

We have only rejected the prayer of the applicants for giving the stay against implementation of our judgement. Thus, we find, no substance in the M.A.s. in which again the same prayer is for extension of interim relief for 90 days.

We reject M.A.s ~~in~~ these application.

M.R.Kolhatkar

(M.R.KOLHATKAR)
Member(A)

R.C.Bhatt

(R.C.BHATT)
Member(J)

ss

DATE	OFFICE REPORT	ORDER
27/8/93		<p>Heard learned advocate [redacted] Mr. Paul for the applicants in M.A. 447/93 in O.A./46/91 and M.A. 448/93 in O.A./11/91.</p> <p>2. These applications are filed to grant interim relief against the operation of the judgements passed on 20/8/93, in the said two matters for 90 days. Learned advocate Mr. Paul for the applicants, vehemently submitted that this Tribunal did not permit the applicants to file an appeal before the Hon'ble Supreme Court on 20/8/93, when oral request was made to postpone implementation of vacation of interim orders, when the said matters were dismissed. This submission is not correct. On 20/8/93, after we delivered the judgements in open court, in above matters with two others, the learned advocate for the applicants submitted that as in these two cases, the applicants want to approach the Hon'ble Supreme Court by filing an appeal against the orders of dismissal of O.A.s. and vacation of interim relief granted earlier in these two cases, the same</p>

may not be implemented for 90 days. Thus, what was submitted before us on 20/8/93, orally was that our judgement should not be implemented for 90 days. However, that oral request was rejected by us. We have not rejected the prayer of the applicants to approach the Hon'ble Supreme Court. The learned advocate for the applicants invited our attention to one decision in Seth Chunilal Nagji v/s State and another, reported in Law Gujarat/Times, 1974 v10m10, page-137. In that case, under the criminal procedure code, learned Magistrate at the stage of investigation concluded without any material, without any trial, ^{and} without any inquiry, found that the allegations were true and that the complainant was owner of the sheep and goats and on this footing, the accused at the very stage of investigation were found guilty before the witnesses deposed on oath. The Hon'ble High Court, therefore, observed that in that case, then what remained to be done at the stage of trial ?. The accused in that case, stood condemned at the very stage of investigation. The Hon'ble High Court observed, that no comments are necessary for these facts speak for themselves. The Hon'ble High Court ultimately held that at the ~~xx~~ stage of investigation, it is not the function of the court to determine with any finality such case. It was held that it was too premature at such stage to do so. The learned Magistrate refused even permission to the accused to give short time to approach the High Court. It was, therefore, held that why such undue and vulgar haste was indulged in the case. In our opinion, this is a case, which can never be compared with the two cases, which we have decided on merits. We cannot dispute the proposition that the applicants

DATE	OFFICE REPORT	ORDER
		<p>have a right to approach the Higher court. They have every right to assail our judgement before the Hon'ble Supreme Court. We have only rejected the prayer of the applicants for giving the stay against implementation of our judgement. Thus, we find no substance in the M.A.s in which again the same prayer is for extention of interim relief for 90 days. We reject ⁱⁿ M.A.s <u>L</u> these applications.</p> <p><u>M.R.Kolhatkar</u></p> <p>(M.R.KOLHATKAR) Member (A)</p> <p><u>R.C.Bhatt</u></p> <p>(R.C.BHATT) Member (J)</p> <p>SS</p>