

(a)

CAT/J/13

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
AHMEDABAD BENCH

**O.A. NO. 319/91**

**TXN NO.**

**DATE OF DECISION 25.4.1995**

Dilip M. & Ors.

**Petitioner**

Mr. K. K. Shah

**Advocate for the Petitioner (s)**

**Versus**

Union of India & Ors.

**Respondent**

Mr. N. S. Shevde

**Advocate for the Respondent (s)**

**CORAM**

**The Hon'ble Mr. V. Radhakrishnan : Member (A)**

**The Hon'ble Mr. Dr. R. K. Saxena : 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 Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

• 2 •

1. Dilip M.
2. H.M.Sayed
3. Rajnikant I,
4. Dewakar Mishra
5. Sitaram G.
6. Yogendra G.
7. Kammrudhin H.

C/o. Shri Kiran K. Shah, Advocate,  
3, Achalayatan Society Div. II,  
B/H. Memnagar Fire Station,  
Navrangpura, Ahmedabad - 380 009.

...Applicants.

(Advocate : Mr.K.K.Shah)

Versus

1. Union of India,  
Notice to be served through  
General Manager,  
Western Railway,  
Churchgate,  
Bombay.
2. Divisional Railway Manager(E),  
B.R.C., Divisional Office,  
Western Railway,  
Pratapnagar,  
Baroda.
3. Divisional Electrical Engineer,  
Western Railway,  
Divisional Office,  
Pratapnagar,  
Baroda.
4. Shri N.D.Shah
5. Shri Satish Kumar Sarin
6. Shri Rajiv J. Sharma
7. Shri Naresh Singh T.

Address : for respondents no.4,5,6,&7,  
C/o. Divisional Electrical Engineer,  
Western Railway, Divisional Office,  
Pratapnagar,  
BARODA.

...Respondents.

(Advocate : Mr.N.S.Shevde)

(11)

ORAL JUDGMENT  
O.A.NO. 319 of 1991.

Date : 25/4/1995.

Per : Hon'ble Mr.V.Radhakrishnan : Member (A)

Heard Mr.K.K.Shah and Mr.N.S.Shevde learned advocates for the applicants and the respondents respectively.

2. The applicants in this case are working as A.C.Assistants, who were promoted on adhoc basis from 15.9.1987 to 25.1.1988, and continued on adhoc basis, until they were regularised from 13.4.1989 to 15.7.1989. The grievance of the applicants is that the administration had made direct recruitment to the same post and these direct recruit after training joined between 22.7.88 and 5.8.1988. In view of the above, direct recruits being appointed on earlier date from the date of which the applicants were regularised, they were considered senior. The contention of the applicants is that the administration had not held the required selection test in 1987 or 1988, prior to the direct recruitment. It is their contention that had the selection test has been held at that time they would have passed and would have been regularised before the appointment of the direct recruits. Hence, it is not the fault of the applicants that the test was held only in 1989. The orders regarding direct recruitment to the post of Diesel Assistants, Electrical Assistants, First Fireman, Steam Shunter, are contained in Ministry of Railways letter dated 3.11.1987. The respondents have not been able to give the break up of vacancies existing at that time when the requisition for direct recruitment was made to the Railway

Recruitment Board. It is also not clear whether the exercise as contemplated in para 4, of the letter Annexure-A/2, was in fact carried out to ascertain if all the available departmental candidates were first considered and screened before the number of vacancies for direct recruits was intimated to the recruitment board. It is also a fact that the applicants were continued on adhoc basis without any break ~~until~~ they were regularised after passing the selection test. It requires to be considered as to whether the continuous officiation of the applicants on their original date of adhoc appointment shall count for seniority, keeping in view the judgment of Hon'ble Supreme Court in Writ Petition No.1889 of 1978, in the case of Shri A.N.Pathak and ors. Vs. Secretary to the Govt. Ministry of Defence and another, where it was decided that promotees kept in continuous officiation for number of years even though not confirmed, could not become junior to the direct recruit candidates appointed subsequently. It has been stated by the respondents that the seniority list is provisional. In view of this, the matter requires thorough reconsideration by the Railway administration who may decide the matter after giving opportunity to both the applicants as well as the direct recruits keeping in view the following parameters.

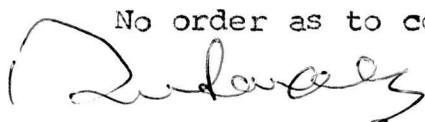
(B)

: 5 :

1. The total number of vacancies which were available in 1987, 88, 89; and the number of employees in the required grades who were eligible for selection to the post of First Fireman Gr.I/A.C.Assistant, with a view to finding out as to whether all the eligible employees were in fact considered before vacancies were arrived at for direct recruitment. In case the number of vacancies **intimated** was higher than the number arrived by the exercise stated above, the excess number should be **distributed** in the future years.
2. The seniority of the applicants vis-a-vis, for direct recruits may be determined afresh with all consequential benefits as may be admissible keeping in view the decision taken by the General Manager, Western Railway, in similar matters in Ratlam and Ajmer Divisions, within a period of three months from the date of receipt of this order and intimate the concerned employees within a period of two weeks thereafter.

The application is disposed of on the above lines.

No order as to costs.

  
(Dr.R.K.Saxena)  
Member(J)

  
(V.Radhakrishnan)  
Member(A)

ait.

AT ANGLER'S AD BENCH

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Date	Office Report	ORDER
22.7.1994.		<p>Leave note filed by Mr. K.K.Shah. Adjourned to 09.8.1994.</p> <p><i>RS</i> (Dr. R.K.Saxena) Member (J)</p> <p><i>LR</i> (K.Ramamoorthy) Member (A)</p> <p>ait.</p>
9-8-94		<p>A the request of Mr. K.K.Shah adjourned to + 11-8-94 to be heard <del>xxxx</del> along with O.A. 527/90 which is adjourned on that date.</p> <p><i>RS</i> (Dr. R.K. Saxena) Member (J)</p> <p><i>LR</i> (K. Ramamoorthy) Member (A)</p> <p>*AS.</p>
25/4/95		<p>HEARD LEARNED ADVOCATES FOR APPLICANT AND REPLIED TO ORAL ORDER PRONOUNCED IN OPEN COURT.</p> <p><i>RS</i> (Dr. R.K. Saxena)</p> <p><i>PR</i> (Mr. Radhakrishnan)</p> <p>Member (J) Member (A)</p>

Office Report	ORDER
	Leave note filed by Mr. K.K.Shah. Adjourned to 09.8.1994.
(Dr. R.K. Saxena) Member (J)	(K. Ramamoorthy) Member (A)
alt.	
A <sup>+</sup> the request of Mr. K.K.Shah adjourned to 11-8-94 to be heard <del>xxxx</del> along with O.A. 527/ which is adjourned on that date.	
(Dr. R.K. Saxena) Member (J)	(K. Ramamoorthy) Member (A)
*AS.	
REARD. I PUNISHED A. 527/1994 APPLIED FOR ADJOURNMENT ORAL ORDER PRONOUNCED IN OPEN COURT,	
Dr. R.K. Saxena Member (J)	Mr. Radhakrishnan Member (A)