

(59)

CAT/J/13

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 98/92
T.A.NO.

DATE OF DECISION 14.5.98

Shri Nathuniprasad & 20 others **Petitioner**

Mr. S.J. Shah & Mr. M.S. Trivedi **Advocate for the Petitioner [s]**
Versus

Union of India and Others **Respondent**

Mr. R.M. Vin **Advocate for the Respondent [s]**

CORAM

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

The Hon'ble Mr. P.C. Kannan, 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 Lerdships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

DR

ND

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- 1) Nathuni Prasad
Devnandram Harijan
Opp: Baroda Rayon Gate,
Prabhunagar,
Abbasbhai's Chawl.,
Udhna,
Dist. Surat.
- 2) Bhalerao Ramdas Patil,
Railway Colony, Room No.T/33/A,
Railway Station, Udhna,
Dist. Surat
- 3) Hamidali Pirmohmad Sheikh,
Udhna Yard,
Near Jamnasing Dairy,
Madina Masjid, Udhna Yard,
Udhna, Dist. Surat.
- 4) Navnitlal Prabhudas Patel,
Railway Colony, Room No.208/2/B,
Udhna, Dist. Surat.
- 5) Rameshbhai Uttambhai Agle,
Railway Colony, Room No.T/75/B,
Near Railway Goods Yard, Udhna,
Dist. Surat.
- 6) Vijaykumar Shukhlal Sonar,
Railway Colony, Room No.257/B,
Udhna, Dist. Surat.
- 7) Ghanshyamlotan Soni,
Railway Colony, Room No.208/A,
Udhna, Dist. Surat.
- 8) Jashvantbhai Khodabhai Parmar,
Railway Colony, Porter Chawl,
Room No.T/3/D,
Udhna, Dist. Surat.
- 9) Anverhusen Mansuri,
Shashi Chowk,
Udhna, Dist. Surat
- 10) Ankush Balkrishna Rout,
East Railway Yard,
Chali No.288, Room No.D,
Balsar, Dist. Balsar.
- 11) Suresh Dipsingh Vaghela,
Kailash Road, Opp. Int-ni-Bhatti,
Balsar, Dist. Balsar.

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- 12) Narvin Maganbhai Das,
Ayojit East Railway Yard,
Abrama Road, Near Supreme
Bungalow, Morgrawadi, Balsar.
- 13) Ishver Bababhai Patel,
Pardi Ponia,
Rly. Falia, Tal. Pardi,
Dist. Balsar.
- 14) Mohmad Hanif,
c/o G.L. Soni,
Udhna Yard,
Udhna, Surat.
- 15) Chandrakant Maganbhai Patel,
Mograwadi, Sukhiwadi, Balsar,
Dist. Balsar.
- 16) Ashok Ram Das Patel,
Killa Pardi, Near
Railway Station, Killa Pardi,
Dist. Balsar.
- 17) Madhukar Navalbhai Bagul,
Rly. East Yard, Rly. Colony,
Room No. 778/A, Balsar,
Dist. Balsar.
- 18) Mohan Sukkar Patel,
Near Rly. Station,
Killa Pardi, Dist. Balsar.
- 19) Ramabhai Hirabhai Patel,
Opp: Sanjan Rly. Station,
East Side, Sanjan, Dist. Balsar.
- 20) Satish Chhotubhai Patel,
Koliwad, Ratlav, Udhna R.S.
Tal. Pardi, Dist. Balsar.
- 21) Gamanbhai Chhanabhai Rathod,
Sunderwadi, near Gandevi Rly.
Station, Gandevi, Dist. Balsar.

... Applicants

(Advocate: Mr. S.J. Shah & Mr. M.S. Trivedi)

VERSUS

1. Union of India,
Notice to be served to
General Manager, Western Railway,
Church Gate,
Bombay.

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... Respondents

2. The Divisional Railway Manager,
Western Railway,
Bombay Central.

(Advocate: Mr. R.M. Vin)

JUDGMENT

O.A./98/92

Dated: 14-8-98

Per: Hon'ble Mr. P.C. Kannan, Member (J)

The applicant has filed the above OA and claimed the following reliefs:-

(A) That the order for examination for selection for promotion of Class - 4th post to Class - 3 post Traffic Department TNCS Scale Rs.950-1500 (H.P.) under No.E/T/1025/16-Vol.VI dt. 16-9-91 may be declared illegal, improper and unjust in the light of facts submitted in Para 6.

(B) That the respondents may be directed not to degrade your applicant and they may be allowed to continue on the post of TNCS Class - 3 and the orders may be regularised.

(C) Any other reliefs that the Hon'ble Tribunal may deem fit to award the applicants, in view of the facts and circumstances may kindly be awarded.

(D) The respondents may be ordered to pay the costs of the applicants.

2. The applicants who are 21 in number are the employees of the Respondents and were promoted on adhoc basis between 2 to 7 years to the post of T.N.C.S. (Class III) ~~From~~ Class IV post (Annexure A-1 to A-8). Even though the vacancies against which the applicants were promoted was shown as adhoc

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the same were clear vacancies and the applicants were holding the posts continuously. The applicants were directed to appear in an examination as per the order of DRM vide letter dt. 16.9.91 along with Class IV employees (Annexure A-11). Some of the Class IV employees who were called to appear in the examination along with the applicants did not complete even one year of service. In the examination, all the 21 applicants in this OA were declared as failed. The applicants have challenged the holding of examination for selection to the posts of TNCS on the following grounds:-

- (i) The posts on which the applicants were working are the selection posts and the applicants were officiating on adhoc basis since very long time. Hence the applicants ought to have been regularised without any formalities of examination;
- (ii) The selection to the posts of TNCS were held after 7 years and therefore not legal, proper and against the rules, regulations and orders of the Railway Board (iii) For the examination, 397 persons were called, out of which only 26 candidates were declared as 'passed'. Looking at the result, it shows that the interests of Class IV were not considered;
- (iv) Only staff who completed 3 years of service could be considered. However, staff with less than 3 years were called for the examination; (v) Adhoc employees are required to be put through Selection with a first batch. The Railway Board have also issued detailed instructions. However, the Respondents violated these instructions.

3. The Respondents in their reply denied the various allegations with regard to the holding of examination and stated that the applicants who were regular Class IV employees

have to pass the selection test in order to be promoted to ~~posts~~ Class III ~~posts~~ of TNCS. Applicants appeared in the said examination voluntarily and were declared as failed. In the circumstances, the applicants were estopped from challenging the holding of examination.

4. The Respondents stated that the regular selection for the post of TNCS could not be conducted because of a stay order on holding selection in OA 172 of 1987 in the case of Shri Anil Kumar. M & Others vs. UOI before the Bombay Bench of C.A.T. It was only after the finalisation of the said OA, the respondents could proceed with regular selection. Pending the selection to the said posts on regular basis, the applicants were appointed on adhoc basis. As the applicants were holding the post only on adhoc basis and also failed in the examination, ~~of~~ ^{could not regularise from post} the Respondents. In the circumstances, the applicants cannot challenge the holding of examination. The Respondents further stated that in terms of Para 216 of IREM all Class IV employees are eligible to be called for the examination for promotion to the post of Class III(TNCS). Hence, all the 397 persons who were eligible were called for the exam.

5. We heard Shri Trivedi and Shri Vin, counsel for the parties. Shri Trivedi argued that the posts in question were selection posts and the General Manager of the Railways is competent to convert the same to non-selection in 1993. He stated in 1993, posts were converted into non-selection and promotions were made on the basis of screening of eligible Class IV employees. He also argued that Respondents should not have called 397 persons when the posts were limi-

ted. He also stated that the applicants were officiating on adhoc basis for a long time and therefore eligible to regularisation in terms of the judgment dt. 19-1-98 of this Tribunal in O.A. 275/90 in the case of B.N. Parihar & another vs. UOI & Others. Shri Trivedi also stated that there were certain malpractices in the conduct of the examination and therefore the same is liable to be struck down. In this connection he relied upon the judgment of Jabalpur (Indore Circuit) Bench of CAT in OA 764 of 1989 in the case of Prem Kumar Dewashes & 62 others vs. UOI & Others. In the aforesaid case, the written test was quashed on the basis of certain specific allegations.

6. Shri Vin for the Respondents contended that the applicants voluntarily appeared in the selection test, knowing well that promotion to the post of Class III TNCS posts are through selection only. Having appeared and failed in the examination, the applicants were estopped from challenging the examination. He also stated that the applicants did not implead the 26 successful candidates in the examination who have acquired valuable rights. Hence the OA is liable to be rejected on this ground alone. Shri Vin also referred to the additional reply dated 11-03-98 filed by the Respondents and stated that the posts of TNCS have not been converted to non-selection posts and also denied that in 1993, promotions were ordered to the posts of TNCS merely on screening as alleged by the counsel for the applicants. As per the provisions of Para 216 of IREM all the Class IV employees are eligible to appear in the Selection to Class III posts and accordingly 397 class IV employees were called for appearing in the exa-

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and appointments were made. The applicants however have chosen, ^{not} to implead the successful candidates who are directly affected by the outcome of this application. The entire exercise is therefore seriously distorted because of this ~~consideration~~. The Hon'ble Supreme Court recently in the case of Arun Tiwari & Others vs. Zila Mansavi Shikshak Sangh & Others (1998 Lab. I.C. 44) held that application challenging provisions of recruitment and appointment of certain persons as per that provision cannot be decided by the Tribunal unless the persons directly affected by the outcome of the Application are made as Respondents.

9. In view of the above, the application fails and is accordingly dismissed. No costs.


(P.C. Kannan)

Member (J)


(V. Radhakrishnan)

Member (A)

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mination. The examination was conducted as per the provisions of IREM and instructions issued by the Railway Board. With regard to the delay in holding regular selection to the posts of TNCS, Shri Vin referred to the stay order issued by the Bombay Bench of CAT as referred to in the O.A. He therefore submitted that in the facts and circumstances, the applicants cannot be granted any relief.

7. We have carefully considered the submission of the counsel, examined the pleadings and the judgments referred to by the counsel for the applicants. The facts as emerged from the case shows that due to certain stay orders, the Respondents were prevented from holding regular selection to the posts of TNCS and consequently the applicants were appointed on adhoc basis to the posts of TNCS. The appointment to the post of TNCS is required to be made only through selection from among all Class IV employees of the Respondents in terms of Para 216 of the IREM. In the circumstances, there appears to be no infirmity in calling 397 Class IV employees to appear in the examination. No specific instances regarding malpractices or other breaches in the conduct of exam were referred to in the OA and we therefore hold that the examination has been conducted as per the provisions of IREM and instructions of the Railway Board. We have also carefully considered the judgements referred to by the counsel for the applicants. In our view, the ratio of these judgments have no application to the facts of the present OA.

8. In this case, the applicants were aware that the examination for selection of candidates for appointment to the post of TNCS were held ~~and~~^{on} the basis of the results of the examination

CENTRAL ADMINISTRATIVE TRIBUNAL, DELHI

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Application No.

97/98/92

of 19

Transfer application No.

Old Writ Pet. No.

CERTIFICATE

Certified that no further action is required to be taken and the case is fit for consignment to the Record Room (Decided).

Dated: 02/06/98

Countersigned:

84648

Section Officer/Court Officer.

Signature of the
Dealing Assistant.