

(17)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 122 of 1992, O.A.No./427/93, O.A.NO./428/93,
~~XXXXXX~~
O.A. NO. 429 of 1993, and O.A./430 of 1993.

DATE OF DECISION 14th February, 1994.

1. Shri Tarunkumar K.Thakkar,
2. Shri Ramesh C. Rawal,
3. Shri Ramsingh D.Parmar,
4. Shri A.B.Bhatt, Petitioners
5. Shri Rakesh Chauhan.

Shri K.K.Shah Advocate for the Petitioner(s)

Versus

Union of India and Others Respondent

Shri 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)

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 ?

} NB

: 2 :

O.A./122/92

1. Shri Tarunkumar K.Thakkar,
Sr.Asstt.Luggage Clerk,
Anand Railway Station,
BRC Divn.,
ANAND.

...Applicant.

Versus

1. Union of India,
Notice to be served through :
The General Manager,
Western Railway,
Head Quarter Office,
Churchgate,
Bombay - 400 020.
2. The Divl.Rly.Manager,
Divisional Office,
Pratap Nagar,
Western Railway,
Baroda.
3. Divl. Commercial Supdt.,
Western Railway,
Divl. Office,
Pratap Nagar,
BARODA.

...“espondents.

O.A./427/93

1. Shri Ramesh C.Rawal,
C/o.Kiran K.Shah,
3,Achalayatan Society,
Division II,
Navrangpura,
Ahmedabad - 380 009.

...Applicant.

Versus

1. Union of India,
Notice to be served through,
The General Manager,
Western Railway,
Churchgate,
Bombay - 400020.
2. The Divisional Railway Manager,
Divisional Office,
Pratapnagar,
Baroda.
3. Divisional Commercial Superintendent,
Divisional Office,
Pratapnagar,
Baroda.

...Respondents.

: 3 :

O.A./428/93

1. Shri Ramsingh D.Parmar,
C/o.Kiran K.Shah,
3,Achalayatan Society,
Division II,
Navrangpura,
Ahmedabad - 380009.

...Applicant.

Versus

1. Union of India,
notice to be served through
The General Manager,
Western Railway,
Churchgate,
Bombay-400020.

2. The Divisional Railway Manager,
Divisional Office,
Pratapnagar,
Baroda.

3. Divisional Commercial Superintendent,
Divisional Office,
Pratapnagar,
Baroda.

...Respondents.

O.A./429/93.

1. Shri A.B.Bhatt,
C/o.Kiran K.Shah,
3,Achalayatan Society,
Division II,
Navrangpura,
Ahmedabad - 380 009.

...Applicant.

Versus

1. Union of India,
Notice to be served through
The General Manager,
Western Railway,
Churchgate,
Bombay-400020.

2. The Divisional Railway Manager,
Divisional Office,
Pratapnagar,
Baroda.

3. Divisional Commercial Superintendent,
Divisional Office,
Pratapnagar,
Baroda.

...Respondents.

: 4 :

O.A.NO.430/93.

1. Shri Rakesh Chauhan,
 C/o.Kiran K.Shah,
 3,Achalayatan Society,
 Division II,
 Navrangpura,
 Ahmedabad-380009.

...Applicant.

Versus

1. Union of India,
 Notice to be served through,
 The General Manager,
 Western Railway,
 Churchgate,
 Bombay-400020.

2. The Divisional Railway Manager,
 Divisional Office,
 Pratapnagar,
 Baroda.

3. Divisional Commercial Superintendent,
 Divisional Office,
 Pratapnagar,
 Baroda.

...Respondents.

(Applicants Advocate : Shri K.K.Shah
 Respondents Advocate: Shri N.S.Shevde)

J U D G M E N T

Q.A.NO. 122 OF 1992
 Q.A.NO. 429 OF 1993
 Q.A.NO. 430 OF 1993
 Q.A.NO. 427 OF 1993
 Q.A.NO. 428 OF 1993.

220
Dated : 14th Feb.1994.

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

1. Five applications are considered together for a common Judgment as the basic facts and reliefs sought are similar.

2. The applicants were working as Asstt.Luggage/ Coaching/Goods Clerks with the Railways and have approached this Tribunal challenging the order of the Railway

Department passed in 1992 whereby their names were deleted from the panel of candidates who had been earlier declared as having successfully passed the departmental examination held in 1987. The applicants had appeared in a written test which was a selection test for promotion and were notified as having been successful in the examination vide notification dated 15.10.1987. However, in 1991, the Railway Department decided to delete the names from the list of successful candidates of this test. According to the applicants this action of the Railways to change the result after almost a period of 5 years is arbitrary, discriminatory and hence illegal.

3. In their written statement the respondents have stated that -

" after declaration of the said Memorandum dated 15.10.1987 (Annexure-A/1) a complaint was filed by one of the employees who was declared failed in the said test. The said complaint was filed by him to the CBI. Thereafter CBI made some inquiry into the matter. Thereafter a Committee of Officers was nominated by the competent authority to verify the evaluation of answer books of the candidates who appeared in the said test. The Committee on verifying the answer books found that some employees who had passed the written test were shown as failed and some employees who had not passed the written test were shown as passed. The employees, who had not passed the written test or who had not secured the qualifying marks in the said test or who were not eligible to be placed on the panel because of size of the panel had no right to be empanelled."

: 6 :

Since the candidates had got declared as successful due to a clerical error, the Railways had a right to correct the errors, which had been done.

4. The Tribunal had called for the answer books to see for itself the sources of error. On a scrutiny of answer books, it was clear that there were errors in the totalling and as a result of rechecking, the marks assigned to the applicants did undergo a change. It is not the case of the Railways that the applicants themselves were in any way concerned or instrumental for the error in totalling which led to their being declared as successful.

5. It is true that the Railway authorities have given the applicants an opportunity before the marks were changed by issuing them a show cause notice vide their letters issued in November, 1991.

6. In the five cases concerned, the range of short fall of marks was from 1 to 7.

7. The in-equity in this matter arose from the fact that the Railways have come up with the formal orders declaring them as unsuccessful after nearly 5 years of the examination during which period the applicants have got one or more promotions. The applicants had also successfully discharged their functions in their promotion posts as is seen from the fact that some of them have got subsequent promotions also.

23

: 7 :

8. A statement showing the salient facts and dates involved is reproduced below :

Sr.No.	O.A.NO.	Name of the applicants.	Originally shown marks leading to notification of 1987 along with required marks for passing.	Marks obtained on re-checking	Short fall as compared with the minimum required marks for passing.	Date of promotions and further promotions.
1.	2.	3.	4.	5.	6.	7.
1.	122/92	Tarunkumar K. Thakkar	51 (50)	44	6	22.11.1987
2.	429/93	A.B.Bhatt	51 (50)	49	1	31.10.1987 & 30.1.1990.
3.	430/93	R.C.Chauhan	40 (40)	37	3	21.10.1987
4.	428/93	Ramsing D.Parmar	50 (50)	43	7	7.10.1987
5.	427/93	R.C.Raval	51 (50)	43	7	19.11.1987 & 20.12.1989.

9. Looking to the very narrow margin of the short fall and taking into account the long lapse of time after which the error is sought to be rectified and the applicants ~~are~~ proposed to be reverted, the Tribunal is of the opinion that it would be inequitable to visit the applicants with the orders of reversion on the ground that they were not entitled to get promotion in the first place. The Tribunal recognises the fact that errors, if discovered, could be corrected even if there was no specific provision to make

changes in the results already declared. However, it is also necessary to see that such changes are made within reasonable time periods. To revert the applicants after discharging functions in promotion posts for a long period (more than 6 years by now) is not considered equitable.

10. However, the Tribunal is also conscious of the fact that the applicants should not get the advantage of the error to operate against colleagues who have passed the examination with higher marks and in time. It was also brought to our notice by the counsel for the respondents that the applicants had been given an opportunity to appear in the subsequent departmental examination but the applicants had chosen not to sit in the examination because of this petition. The applicants have also accepted this position, and, therefore, do not claim any seniority rights over their colleagues who have appeared in the 1987 examination and were declared as having finally passed the examination. They also concede the fact that the cases of persons who have appeared in the subsequent examination and have passed should also be not adversely affected and will accept the position as if they had cleared the examination only in 1992.

11. In view of the fact that the candidates have actually officiated in higher posts, the Tribunal is of the view that their reversion at this stage is not equitable.

: 9 :

The applicants should be deemed to have appeared in the subsequent examination held in 1992 and qualified therein, and their promotions will be considered as arising from this "deemed" passing. This is being ordered as a measure of equity only.

With the above observations, the application is allowed with no order as to costs.

✓ Ram
(K.Ramamoorthy)
Member (A)
14.02.1994.
✓
AIT. ✓

✓
(N.B.Patel)
Vice Chairman
14.02.1994.
22-2-1994