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**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

OA/34/92

Date of Decision: 19.06.2000

Mr. Bhikabhai Kikabhai Patel & Ors. : Petitioner (s)

Mr. M.K.Paul : Advocate for the petitioner(s)

Versus

Union of India & Ors. : Respondent(s)

Mr. N.S.Shevde : Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. V.Ramakrishnan : Vice Chairman

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 Lordships wish to see the fair copy of the Judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal? ✓

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1. Shri Bhikhahai Kikabhai Patel,
Assistant Commercial Clerk, Hapa
2. Shri Abdul Kadir Noor Mohmed, A.C.C.Hapa
3. Shri Chandulal P.Vaghela, A.C.C. ,Jamnagar
4. Shri Harilal J.Solanki, A.C.C., Sikka
5. Shri Mohanlal Naranbhai Desai, A.C.C. Katosan Road,
6. Shri Karsan Bhikabhai Parmar, A.C.C.Chanasama,
7. Shri Lilaji Megabhai Thakore, A.C.C.Vijapur,
8. Shri Himatlal Manishankar Pandya,
T.C., Rajkot Junction.

: Applicants

(Advocate: Mr.M.K.Paul)

Versus

1. The Union of India,
Owning Western Railway,
Through: The General Manager,
Churchgate, Bombay.
2. The Divisional Railway Manager,
Western Raiway,
Kothi Compound, Rajkot.
3. Shri B.D.Makwana,
Pointsman,
Lunsariya, Railway Station
4. Shri N.S.Chauhan,
Pointsman,
Wankaner Railway Station.
5. Shri Dharamsingh R.Yadav,
Pointsman,
Rajkot Railway Station.
6. Shri Tejabhai V
Pointsman,
Surendranagar Railway Station.
7. Shri M.V.Raval,
Pointsman,
Surendranagar Railway Station.

8. Shri Shukha S.Makwana,
Call Boy, Mehsana Railway Station
9. Shri Sureshchandra R.
Sr.Tele, Peon,
Mehsana, Railway Station.
10. Shri Kanaiyalal B.Modi,
First Class Attendant,
Ahmedabad Railway Station.
11. Shri A.S.Bhand,
Khalasi, Mehsana Railway Station.
12. Shri Bachu K Barot,
First Class Attendant,
Ahmedabad Railway Station.
13. Shri Bharat
Platform Porter,
Kanalus Railway Station.
14. Shri Daniel E.J.,
Khalasi,
Rajkot Railway Station.
15. Shri Laxman S.Parmar
Waiter,
Mehsana Railway Station.
16. Shri Rajendrasingh B.Khalasi,
Mehsana Railway Station.
17. Shri M.B.Patel,
Platform Porter,
Surendranagar,
18. Shri Raisingh S.,
Platform Porter,
Hapa Railway Station.
19. Shri Sashikumar C.Sharma,
Raikot Railway Station.

20. Shri K.P.Babu,
Platform Porter,
Rajkot Railway Station.

Advocate: Mr.N.S.Shevde

ORAL ORDER
OA/34/92

Date: 19.6.2000

Per: Hon'ble Mr. V.Ramakrishnan : Vice Chairman

We have heard Mr. M.K. Paul counsel for the applicant and Mr. N. S. Shevde counsel for the respondents. We have also gone through the relevant railway administration files.

2. The applicants were initially engaged as Group 'D' employees. They subsequently officiated on ad hoc basis as Ticket Collector. They took the written test as part of selection for regular appointment to the level of T.Cs. but did not succeed therein. Their grievance is that having served for a number of years at Group 'D' level on ad hoc basis, their reversion to Group 'D' post is not justified. They have also challenged the selection procedure adopted by the respondents and state that there were serious irregularities in the process of selection and the appointment of private respondents was not done properly.

3. Mr. M.K.Paul, counsel for the applicants submits that serious irregularities came to notice at the time of the selection in which the applicants participated and a vigilance inquiry was held. He states that the selection was not done on objective consideration but persons who were not qualified were declared as passed in the written test and called for viva

voce test on the basis of extraneous consideration. There was also an allegation that the concerned official has accepted illegal gratification for the purpose. He says that the selection process is vitiated.

Mr. Paul also submits that the applicants having served for a long time on ad hoc basis as Group 'D' post could not have been reverted. As per the Railway Board Circular, an employee who is permitted to officiate beyond 18 months cannot be reverted without following the procedure prescribed in the Discipline and Appeal Rules. Mr. Paul also contends that if the post is to be filled up on the basis of selection, the employees should be given minimum three chances to qualify themselves before being reverted. These requirements were not followed by the Railway administration and for these reasons the applicants should not have been reverted.

Mr. Paul also submits that the applicants No.1 to 6 have since been appointed to Class III post after they succeeded in the subsequent selection. However, the applicants No. 7 and 8 had not reached the level of Class III and they had retired as a Group 'D' employees.

4. Mr. Shevde, counsel for the respondents states that there were some allegations regarding evaluation, and an inquiry was held and it was found that even if proper evaluation had been done, the applicants could not have succeeded in the written test. He states that for appointment to Class III post, it is essential that the candidates who qualified in the written test shall also pass in viva voce with the prescribed minimum marks of 60 %. The applicants had not secured 60% in the written test. He contends that the OA deserves to be dismissed.

5. We have considered the rival contentions. We find that the applicants did participate in the selection for the post of Ticket Collector but

they were declared to have failed in the written test. We also find from the relevant file of the Railway administration that certain complaints were received regarding the selection and a detailed vigilance inquiry was held. On the basis of the preliminary inquiry report, it transpired that out of 21 successful candidates in the written test 6 candidates could not have passed the written test had the marking been done correctly and 2 unsuccessful candidates could not have passed the written test had the marking have properly done. After getting this report, disciplinary action was taken against the concerned officer who was DCS, Rajkot.

Pending such inquiry, DRM, Rajkot who was also directed to modify the panel in the following manner:-

- (i) Revision of the panel deleting the names of persons wrongly selected.
- (ii) Calling the two persons wrongly disqualified in the viva-voce and including their names in the panel if found suitable
- (iii) One person already empanelled as TNC should be asked to opt, before being finally included in TC panel."

We have seen the inquiry report and find that two persons who were wrongly disqualified were some others and not any of the applicants. In the light of this position, it is clear that part of the selection process relating to evaluation of marks was not properly done and when it came to notice, the administration held an inquiry and they ^{have} also taken remedial measures. We note that two persons who were wrongly disqualified were directed to be put in the panel if found suitable ^{and} none of the applicants ~~who~~ were wrongly disqualified. As such, ^{while} normally the selection process relating to evaluation

of marks was not done properly but remedial action was taken by the administration when it came to notice. The entire selection is therefore not vitiated. The applicants have appeared in the selection and even after further investigation, they were not found to have passed in the written test. As such the fact that there were certain irregularities in the evaluation of the marks will not support in the case of the applicant.

6. Mr. Paul had contended that having worked for a number of years and in any case for more than 18 months on ad hoc basis the applicants could not have been reverted without following due procedure as per the Discipline and Appeal Rules. He also contended that even if it is a selection post, the applicants ought to have been given sufficient opportunities to qualify themselves in the selection before reversion. This aspect has been gone into by the Full Bench of this Tribunal in the case of Suresh Chand Gautam and Others vs. Union of India & Ors. decided on 9.7.1991 reported at page 487 of Volume II of the Full Bench Judgements of the Central Administrative Tribunals (1989-1991). The issue involved in that case related to the effect of the Railway Board Circular relied upon ^{by} Mr. Paul. We may reproduce the head note of (ii) of the decision.

(ii) Rly. E.M. Rules 109, 110-Reversion, of ad-hoc employees- Applicants officiated on stop-gap ad-hoc basis- Failed to clear the selection test-Reverted after 2-3 years of officiation- Pleading to give at least three chances before reversion-Jetha Nand's case relied upon-Held, pass in the selection test is mandatory for promotion- An employee officiating in a higher post for more than 18 months liable to be reverted if failed to qualify selection test."

In para-15 the Full Bench had observed as follows:-

✓ According to Rule 109 of the Indian Railways Establishment Manual, Class IV Railway servants can be promoted to Class III posts on a regular basis only after holding

written and practical test, as may be considered necessary. Rule 110 of the Railway Establishment Manual provides that for promotion to higher posts in Class III the candidates should qualify in the prescribed test. 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 post. 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. 3 or more opportunities or several 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 said 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 3 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."

The full Bench had thus interpreted the relevant rules in the IREM and the Railway Board Circular and had held that when qualified candidates regularly selected are available, the Class IV employees officiating in higher class III post even for a period exceeding 18 months can have no right to hold

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such post. It has also held that the Railway servant who is allowed to officiate in higher post on temporary basis need not always be allowed at least 3 or more opportunities to appear and qualify in the selection for higher post before he can be reverted and that he can be reverted if such reversion is warranted for administrative reasons. These observations of the Full Bench are binding on us. In the present case a panel has been prepared of persons who are eligible to be appointed to Group 'C' post after conducting an inquiry into initial selection process and such persons have to be accommodated instead of the applicants who had failed in the selection. This contention of Mr.Paul cannot be sustained.

7. Mr.Paul at this stage states that the applicant No.7 & 8 having put in many years of service in Class III posts were made to retire by being reverted to Class IV and that this has resulted in substantial reduction in their retiral and pensionary benefits and they are put to recurring loss and the Railway administration may take a sympathetic view in their case . Mr.Paul states that these applicants will take up this matter with the Railway administration through appropriate representation for taking a sympathetic view. It is open to these applicants to take up the matter with the railway administration and we have no doubt the respondents shall take an appropriate decision keeping in view all the relevant facts and circumstances. We make it clear that the dismissal of this OA will not stand in the way of the Railway entertaining the representation and disposing of the same on merits.

8. With the above observations, we hold that the OA is devoid of merit and accordingly, dismiss the same. No costs.

~~P.C.Kannan~~
(P.C.Kannan)
Member (J)


(V.Ramakrishnan)
Vice Chairman