

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A. NO. 606 OF 1993

~~TAX NOX~~

DATE OF DECISION 19-04-1995

Shri Sukhram Lumbaji & Ors. Petitioner

Mr. M.S. Trivedi Advocate for the Petitioner (s)

Versus

Union of India & Another Respondent

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

CORAM

The Hon'ble Mr. N.B. Patel, Vice Chairman

The Hon'ble Mr. K. Ramamoorthy, Member (A)

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 ?

/ No

1. Shri Sukhram Lumbaji
2. Shri Rajkumar Parasram
3. Shri Chandrakant Hiralal
4. Shri Machhanal Annaram
5. Shri Sitaram Biharilal
6. Shri Bhuralal Lumbaji
7. Shri Laxmi Narayan Nanakram
8. Shri Bansilal Budhraj
9. Shri Radhey Shyam Budhraj
10. Shri Motisingh Gangaram
11. Shri Shyam Singh
12. Shri Sessa Ram

..... Applicants

C/o General Secretary,
Western Rly. Kamdar Sangh,
T.B.Z.-17, Gurnagar,
Gandhidham (Kutch) - 370 201.

(Advocate : Mr. M.S. Trivedi)

Versus

1. Union of India
Through the General Manager,
Western Railway,
Churchgate,
Bombay.
2. The Divl. Railway Manager,
Western Railway,
Ajmer, Rajasthan.

..... Respondents

(Advocate : Mr. B.R. Kyada)

J U D G M E N T

O.A. No. 606 OF 1993

Date : 19-04-1995

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

A point has been raised in the application as to whether the applicants can be asked to go through a trade test for getting promotions as Fitters when these posts had become available on the basis of restructuring.

2. The present applicants are 12 in number and had been working as Fitters in different grades and posts and the next higher grade became available because of the restructuring which had taken place under Railway Board letter No.PC/III/91/CRC/1 dated 27-1-1993. They have, however, been denied their promotions on the ground that they failed in the test which ^{was} ~~is~~ held for such promotions _{.2} as per their notification E/C & W/1130/3/Vol. 1 dated 13-9-1993.

3. The respondents, in their reply, had taken objection on the ground of misjoinder of parties as the 12 applicants did not belong to the same grade. The applicants had stated that since all the applicants had a common grievance against non-promotion merely because of the holding of a trade test, which was not necessary, the cause of action arose from a common act and hence they have filed a common application. Since the issue agitated before this Tribunal is this single issue as to whether a trade test could be held for filling in the post, that had become available under restructuring, this preliminary objection is not sustained.

4. The relevant portion in the orders regarding restructuring reads as under:

"3. Staff selected and posted against the additional higher grade posts as a result of restructuring will have their pay fixed under Rule 1316 (FR 22-C) I-II w.e.f. 1-3-93 with necessary option for pay fixation as per extant instructions.

4. The existing classification of the posts covered by these restructuring orders as selection and non-selection as the case may remain unchanged. However, for the purpose of implementation of these orders, if an individual railway servant becomes due

for promotion to a post classified as a selection post, the existing selection procedure will stand modified in such a case to the extent that the selection will be based only on scrutiny of service records and confidential reports without holding any any written and or viva voce test. Similarly, for posts classified as non-selection at the time of this restructuring the same procedure as above will be followed. Naturally under this procedure, the categorisation as 'outstanding' will not figure in the panels. This modified selection procedure has been decided upon by the Ministry of Railways as a one time exception by special dispensation, in view of the numbers involved with the objective of expediting the implementation of these orders.

4.1 Vacancies existing on 1-3-93 except direct recruitment quota and those arising on that date from this cadre restructuring including chain/resultant vacancies should be filled in the following sequence:

- i) from panels approved on or before 1-3-93 and current on that date ;
- ii) and the balance in the manner indicated in para 4 above.

4.2 Such selections which have not been finalised by 1-3-93 should be cancelled/abandoned.

4.3 All vacancies arising from 2-3-93 will be filled by normal selection procedure.

4.4 Extant instructions for D&A/Vigilance clearance will be applicable for effecting promotions under these orders with the critical date being 1-3-93."

The case of the respondents is that the modified procedure did not rule out provision for trade test which is in a different category altogether. In the written reply it was stated by the respondents that there is a specific headquarter letter dated 2-3-93 which clarified the position. However, the respondents have not been able to produce this letter even after adequate opportunity was given to the counsel for the respondents to produce this reference. The counsel for the applicants has also urged the additional point that even if there was such a circular, it could not

have gone against the basic structure of the scheme and therefore, such an order also would be void, even otherwise.

5. Both the counsel for the respondents and the applicants have given their written arguments and did not want to advance any oral arguments either.

6. In the absence of the specific letter of 2nd March, 1993 and in the absence of mention of any particular reasoning, the Tribunal will have to decide on its own as to whether the requirement of trade test is excluded in the case of promotions arising from the restructuring order.

7. From a reading of the scheme, it is more than clear that the department was keen to see that the objective of expediting the implementation of these orders is achieved immediately and hence the "one-time exception by special dispensation". Even selection posts have been held as non-selection posts and it has been specifically stipulated that "any written or viva voce test should not be insisted upon". It is further stipulated that same will also apply to non-selection posts. This particular clause would by implication cover trade test, since for a non-selection post, "written test" could only refer to a trade test. It has been further averred in the written arguments that in all the Divisions of Western Railways and even in Ajmer Division, such instructions were followed meaning thereby that trade tests were not insisted upon. In the written arguments, this particular argument has not been answered by the Railways. In the written reply, there

is a reference to trade test not being necessary for traffic department. However, reference to the practice of other Divisions as referred to this very Department is absent.

8. On the basis of the material available before us, the Tribunal has, therefore, necessarily to draw an adverse ~~xxxx~~ inference and rule that the holding of a written test in the form of a trade test was not a necessary requirement for filling in the post as had become available by way of restructuring. It is particularly so since the restructuring order clearly mentions that the basic functions and duties of the promoted employees will continue to be the same as has been performed by the employees themselves. The relevant para in this regard is reproduced below:

" In all categories covered by this letter even though more posts in higher scales of pay have been introduced as a result of restructuring the basic functions, duties and responsibilities attached to their posts at present will continue, to which may be added such other duties and responsibilities, as considered appropriate."

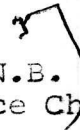
9. It is true that the present applicants were declared eligible vide letter dated 12-5-93 for the test and the applicants had also taken this test and have chosen to approach this Tribunal only after failing in the said test. But this fact by itself need not be held against the applicants as the application has been filed by October, 1993 within a period of 5 months of the notice calling for the test itself.

10. Under the circumstances, the application is allowed and the respondents are directed to consider

and decide within ten weeks from the date of receipt of a copy of this judgment the question of promotion of the applicants against the restructured posts as per the modified procedure without insisting on the applicants having to go through a written test. No order as to costs.



(K. Ramamoorthy)
Member (A)



(N.B. Patel)
Vice Chairman

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