

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD**

O.A.No. 92/1993

Ahmedabad this the 9th day of September, 1999.

Hon'ble Mr. V.Ramakrishnan, Vice Chairman
Hon'ble Mr. P.C. Kannan, Judicial Member

Irwin V. Dennis
Serving as Junior Clerk
Under Assistant Engineer.
Radhanpur, Western Railway,
Residing at: Railway Qtr.No. E/33-A
At & Post Radhanpur
Dist. Banaskantha.

Applicant.

By Advocate: Mr. B.N. Patel.

VERSUS

1. Union of India,
Notice to be served through
General Manager,
Western Railways,
Churchgate, Bombay-20.
2. Assistant Engineer
Radhanpur, Western Railway.
At & Post Radhanpur,
Dist. Banaskantha.
3. The Divisional Personnel Officer
(Establishment Pay Bill)
Ajmer, Western Railway,
At & Post Ajmer
Rajasthan.

4. The Divisional Railway Manager
Ajmer, Western Railway,
At & Post Ajmer, Rajasthan. Respondents.

By Advocate : Mr. P.K. Handa.

ORDER (Oral)

Hon'ble Mr. V. Ramakrishnan, Vice Chairman.

We have heard Mr. Patel for the applicant. Mr. Yagnik, Railway counsel has not been appearing any longer for the Railways. At our direction Mr. Handa has taken notice for the respondents and has assisted us.

2. The applicant, a regular employee in Group D category in the Railway Administration, who had been functioning for quite some time as Junior clerk in the office of the Assistant Engineer, Pratapnagar, has challenged the action of the Railway Administration seeking to revert him to his original post. The Tribunal by its order directed maintenance of status quo and we are informed by Mr. Patel that the applicant is continuing as junior clerk and has not been reverted. The admitted fact is that the applicant was a Senior Welder and belongs to a category which was eligible to ^{take} promotion for the post of junior clerk. It is also not disputed that on account of his knowledge he was utilised on adhoc basis to function as junior clerk even though not continuously. We find from the reply statement and also from the materials on record that he had been working at different times as junior clerk from January 1980 as seen from the letter dated 21.7.88 as at Annexure A-5. It is brought out that in the last spell he was continued from 20.8.87

without any interruption for a period of 22 months. The applicant submits that he had appeared in the written test for junior clerk and according to the applicant in 1985, 1991 and 1992 and he had come out successful in the written test in all these years and in fact, he claims that in 1991 written test he had obtained second rank but when he appeared for the interview he was declared unfit. Mr. Patel for the applicant submits that there are instructions of the Railway Board which stipulate that care should be taken to see while forming panels that employees who have been working in the posts on ad hoc basis quite satisfactorily are not declared unsuitable in the interview and in particular any employee reaching the field of consideration should be saved from harassment. The learned counsel submits that the applicant had been working as a junior clerk on ad hoc basis and his work has been found quite satisfactory. He also contends that he had been holding senior position and in such a situation the action of the Railway Administration in disqualifying him on the ground that he had failed in the interview is irregular as per their own circular.

3. Mr. Handa for the respondents refers to the reply statement. We find from the reply statement that the applicant was replaced on 9.1.82 from the post of junior clerk held on ad hoc basis and the applicant was given his original posting but given the post of junior clerk later on ad hoc basis. The Railways however do not specifically deny the contention raised by the applicant that he had come out successful in the written test all these years and in fact he secured the second rank in the test which was held in 1991. Mr. Handa however is not sure whether interview is required for the level of junior clerks. However, in the light of the clear averments of the applicant in the OA and in the absence of any denial in the reply statement it would be

seen that the applicant had in fact appeared in the written test but had failed in the interview.

4. Mr. Patel also draws attention to the decision of this Bench in the case of Abdul Wahabkhan Abdul Gafurkhan vs. Union of India & Ors., ATR 1989(1) CAT 96, where instructions of the Railway Board were considered by the Tribunal and a direction was given to the Railway Administration to reconsider the case of the petitioner therein for selection to the higher post in the light of the instructions of the Railway Boards letter dated 23.12.76. The relevant para of the Railway Board letter of 23.12.76 reads as follows:

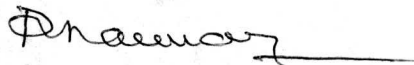
"Panels should be formed for selection posts in time to avoid ad hoc promotions. Care should be taken to see, while forming panels that employees who have been working in the posts on ad hoc basis quite satisfactorily are not declared unsuitable in the interview. In particular any employee reaching the field of consideration should be saved from harassment.

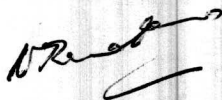
2. The Board desires that the above instructions should be strictly complied with, particularly in regard to S.C/S.T employees."

If the applicant is found to have done very well in the written test and also had been holding the post of junior clerk for a number of years, there is force in the contention of Mr. Patel that he cannot straight away be disqualified in the oral interview. We record the submission of Mr. Patel that the applicant has been working as long as 22 years in different spells and when he filed this OA in 1993 he had been continued as junior clerk on account of the interim direction of the Tribunal.

5. In the light of the submission of the learned counsel and following the decision of this Tribunal in the case of Abdul Wahabkhan Abdul Gafurkhan referred to supra, we direct the Railway Administration to verify whether the applicant had in fact passed the written test for the post of junior clerk and have done very well in 1991 examination and while assessing his suitability in the oral interview whether they have taken into account the Railway Board's instructions dated 23.12.76 which had been reproduced earlier. If on verification his claim is found correct, the Railways shall reassess his suitability in the oral interview in terms of the instructions dated 23.12.76 and if on that basis, they find him suitable they shall take further steps keeping in view the position in the merit list. They shall also communicate the decision in this regard by means of a speaking order within three months from the date of receipt of a copy of this order. Till the above exercise is completed, the applicant shall not be reverted from his present position.

6. With the above direction, the OA is finally disposed of. No costs.


(P.C. Kannan)
Member(J)


(V. Ramakrishnan)
Vice Chairman

Vtc.

CENTRAL ADMINISTRATIVE TRIBUNAL, DELHI

Application No.

001/92/93

of 19 .

Transfer application No.

Old Write 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:

27/10/99

Countersigned.

Section Officer/Court Officer.

Ankur
27-10-99

Signature of the Dealing Assistant.

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

CAUSE TITLE O.A. / 92 / 93

NAME OF THE PARTIES

I. V. Dennis

VERSUS

U.O.I. & ORS.

SR. NO.	DESCRIPTION OF DOCUMENTS	PAGE
01.	907	1 to 27
02.	PR Reply	28 to 30
03.	O.O. dtd. / 09-09-99	31 to (5 Pages)