IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY - 400 614
CIRCUIT SITTING AT NAGPUR

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TRANSFERRED APPLICATION NO.308/87

TRANSFERRED APPLICATION NO.310/87

TRANSFERRED APPLICATION NO.315/87

TR NO.308/87

Rambhau Anandrao Bondre
New Mehandi Bag Road
Baraipura
Itwari
NAGPUR .. Applicant

V/s.

1. The General Manager
Central Railway
Bombay V T

2. The Divisional Railway Manager
Central Railway
Nagpur .. Respondents

TR.NO.310/87

Shankar Laxman Shende
Railway Quarter No.RB-1/85/A
Wardha
Tah.&Dist. Wardha .. Applicant

V/s.

1. General Manager
Central Railway
Bombay VT

2. The Divisional Railway Manager
Central Railway
Nagpur .. Respondents

TR.NO.315/87

Umrao Kunjilal Deshmukh
Dangaria
Post. Badagaon
Tah. Multai
Dist. Betul

V/s.

1. The General Manager
Central Railway
Bombay V T

2. Divisional Railway Manager
Central Railway, Nagpur .. Respondents

p.t.o.

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.308/87;
.310/87&
r.315/87.

Coram: Hon.Shri Justice U C Srivastava, Vice Chairman
Hon.Shri P S Chaudhuri, Member (Adm.)

Appearance:

Shri A Y Pathak
Advocate
for the applicant

Smt. Indira Bodade
Counsel
for the respondents

JUDGMENT:
(PER: JUSTICE U.C. SRIVASTAVA, VICE AHAIRMAN) DATED: 12-7-199

In these three applications common questions of fact arise and so these have been heard and are being disposed of together.

2. The applicants were initially appointed on Central Railway in Class IV posts as Gangmen in the pay scale of Rs.200-250(RS) on Nagpur Division. They were promoted to Class-III posts having the pay scale of Rs.225-308. As per allegations of the applicants promotion from Class-IV to Class-III is made by different procedures and generally on the basis of seniority and there is provision for selection of a panel for promotion to Class-III posts from Class-IV. Persons promoted from Class-IV to Class-III on ad hoc basis are allowed to appear for the examination conducted for the selection of panel. The applicants were promoted but thereafter reverted for some time before again being posted in Class-III and continued to work as such till the impugned reversion order dated 25.7.1984 was passed. Applications for appearing in the examination for selection of panel for Class-III cadre were invited in April 1983.

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3. The applicant in Tr.A.No.308/87, Rambhau Aanadrao Bondre, alleges that he applied for the same but he was not called for the examination. The respondents have stated that this notification was issued on 12.1.1983 and the examination was scheduled to take place on 24.7.1983; 31.7.1983 and 7.8.1983. Ultimately the test was held only on 29.4.1984. It is alleged by the applicant that only those who have failed in the July 1983 examination were allowed to appear and the applicant was not invited. After this selection a panel was prepared and persons who were junior to the applicant in Class-IV cadre but who had passed the selection examination were retained / promoted to Class-III posts and the applicant was reverted.

The applicant in Tr.A.No.310/87, Shankar Laxman Shende, states that he had passed the examination by order dated 7.7.1984 and thus he qualified himself for regularisation in Class-III post and was entitled to retain his promotional post, but he was reverted and his juniors have been promoted. In the panel so prepared in 1984 the name of the said applicant finds place. The respondents have stated that all the posts which are available were filled in on the basis of merit position in the panel and as no more vacant posts were available, the applicant could not be promoted.

The applicant in Tr.A.No.315/87, Umrao Kunjilal Deshmukh, has stated that he had applied for the examination and like the applicant in Tr.A.No.308/87 R.A. Bondre, he was qualified to appear for the written test held in

1983 and applied to appear in the examination but he was not called and the examination held in 1984 was never notified. In the written statement it has been stated that since he did not apply he was not called for written test which was held on 29.4.1984.

4. The respondents were directed to produce the record but they have not brought the same. The examinations were not held on the dates notified and were postponed and two of the applicants were not called for the examination. The averment made by the respondents in their written statement are obviously incorrect and that is why the record has not been produced. There appears to be merit in the argument why it should not be accepted that when the examination was postponed earlier the same should have been notified again and should not have been confined to the failures only when it took place in the year 1984. No rules and regulations of the Railway Board were placed before us which provide that these who are entitled to appear will be deprived from such examination and only those who failed in the earlier examination will be allowed to appear in that examination when it is held subsequently in the next year. The examination not having been notified obviously two of the applicants R.A. Bondre in Tr.A.No.308/87 and U.K. Deshmukh in Tr.A.315/87, were deprived without any rhyme or reason. These applicants continued to work for 18 months and were deprived of the opportunity of appearing for the examination in this manner. Yearwise vacancies were not considered and the subsequent examination was confined only to those who had failed and

even this later examination was not notified. So these two applicants have been deprived from appearing for the said selection without any valid reason and the respondents have taken a wrong plea that they did not apply even after notification was sent to them.

5. So for as the applicant S L Shende in Tr.A.No.310/87 who was allowed to appear in the examination but not been appointed, the applicants have placed before us the Railway Rules in this behalf which say that all those who qualify in the written and oral test shouldin order of their seniority be given promotion against the yearly vacancies. The principle of yearly vacancies also was not taken into consideration while holding the test. Para 4 of Chapter 3 of "Railways' Establishment Manual" by Shri M.L. Jand published by Bahri Brothers deals with "Promotion from Class IV to Class III (Group D to Group C)." Sub-paras (i), (iii), (v) and (vi) at page 83 of the 2nd edition provide that all such promotions should be made on the basis of selection, .. there should be written test to assess the educational attainments, followed by viva voce where felt necessary, vacancies will be assessed on yearly basis, all those eligible may appear in the test without restriction of any member and panel will be as per seniority of those who finally qualify. No doubt the Indian Railway Establishment Mannual does laydown that in selections those who secure 80% marks and above are placed in the category of 'outstanding'

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but there is no allegation in the respondents' written statement that any of the candidates who were empanneled were classified as 'outstanding'. The applicant S.L. Shende who was placed in the panel is obviously senior to Namdeo etc., who have been regularly appointed in the promotion post of Class III whereas by virtue of his seniority applicant S.L. Shende was entitled to be appointed earlier even if he has secured lesser marks than them.

6. Accordingly the Transferred Applications 308/87 and 315/87 are allowed. The respondents are directed to hold a written test and give the applicants therein the next two opportunities and in case they do not succeed in these next two opportunities only then they will be reverted and so long as these next two opportunities are not given to them they shall not be reverted.

Transferred Application No.310/87 is also allowed. The applicant in this application has been empaneled and hence shall be regularised and promoted like others in the panel from the date his junior was promoted.

7. All the three applications are disposed of on the above lines with no order as to costs.