

(9)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, "GULESTAN" BUILDING NO.6  
PRESCOT ROAD, BOMBAY-1

TR.NO.13/91  
TR.NO. 1/92  
OA NO.301/87  
OA NO.328/87  
OA NO.668/87  
OA No.185/89

TR. NO.13/91

Mahesh Kumar Mulchand Parashar  
Near Dr. Randhawa  
Ward No.17  
Ahilya Nagar  
Itarsi; Dist.Hoshangabad

Applicant

V/s.  
Union of India, through  
Divisional Railway Manager(Personnel)  
Bhusawal Division;  
Central Railway; Bhusawal

..Respondent

TR. NO.1/92

Madhukar Avachit Patil  
Timber Market Area;  
Bhagat Singh Chal;  
Bhusawal; Dist. Jalgaon

Applicant

V/s.

1. Union of India  
through Chief Personnel Officer  
Engineering & Construction  
Bombay V.T.
2. Divisional Manager (Personnel)  
Central Railway  
Bhusawal;
3. Executive Engineer(Construction)  
now called Deputy Chief  
Engineer(Const.) Central Railway  
Bhusawal.

Respondents

O.A. No. 301/87

Laxmikant Pandharinath Vyavahare  
and two others

Applicants

V/s.

1. Union of India through  
General Manager; Central Railway;  
Bombay V.T.
2. The Divisional Railway Manager(P)  
Central Railway; Bhusawal

Respondents

(10)

-2-

O.A. No. 328/87

Sharad Rajaram Jadhav  
Railway Quarter No.RBI/60  
B. Ganesh Colony  
Near Khandes Extraction Mill  
Chalisgaon  
Dist. Jalgaon

..Applicant

V/s.

1. Union of India through  
General Manager  
Central Railway  
Bombay V.T.
2. The Divisional Railway Manager(P)  
Central Railway; Bhusawal

..Respondents

O.A. No. 668/87 & OA 185/89

Suhas Vishwanath Patil  
C/o. Shri Baliram Ukhardoo Bhole  
Juna Satara; Near Jalgaon Naka;  
Behind Gill Transport;  
Bhusawal; Dist. Jalgaon  
G.S. Surwade; Nandura, Jalgaon

..Applicant(668/87)

..Applicant(185/89)

V/s.

Union of India  
through Dvin., Railway Manager  
Central Railway; Bhusawal

Respondents

CORAM: Hon.Shri Justice U C Srivastava, V.C.  
Hon. Ms. Usha Savara, Member (A)

APPEARANCE

Mr. J G Sawant  
Counsel for respondents  
in Tr.13/91; Tr. 1/92 & OA185/89

Mr. V G Rege  
Counsel for respondents  
in OA 328/87; OA 301/87  
and OA 668/87

Mr. D V Gangal  
Advocate for applicants  
in OA 328/87 and OA 301/87

Mr. M D Lonkar  
Advocate for Applicant in  
OA 668/87.

ORAL JUDGMENT

DATED: 9~~th~~4-1992

(PER: U.C. Srivastava, Vice Chairman)

As common question of law is involved, all these applications are being disposed of by a common judgment. Though neither the counsel for the applicant nor the applicant are present, as the question involved is the same, we are disposing of the Tr. No. 13/91 also along with these cases.

All these applicants were working in the Class-IV posts for the last several years and according to them they were eligible to be considered for the post of Junior Clerk or any other Class-III post in Personnel Branch after completion of three years of service in Class-IV post. Notice for examination was issued and the written test took place on various dates. The claim of the applicants is that they have passed in the written examination and they were informed that the viva-voce examination would be held on a particular date. But the viva-voce examination did not take place on that <sup>day</sup> but, however, the viva-voce examination took place later on. According to the applicants, those who were called for interview have succeeded in the Viva-voce test. The claim of the applicants is that notwithstanding the fact that they have succeeded in the viva-voce test, they have not been appointed and and so far those who have not

been called for the viva-voce test, their case is that the marks were not correctly given and they were wrongly not called for interview and had the marks been correctly given they would have succeeded in the viva-voce test.

The respondents have produced the relevant record. From the record it is clear that the panel was prepared and for some reason or the other the panel was not finalised and the provisional panel was continued.

Some of the applicants who have been reverted stated that the provisional panel is illegal inasmuch as there is no justification as the Selection Committee must prepare a list of all the candidates based on consistent service record and that the non-declaration of the results of the applicants is illegal. They contended that they have legal right to continue as clerk as they were continuously working in that post for last several years.

In the cases which have been transferred from Jabalpur, it has been prayed that the panel i.e., the selection list dated 3.4.87 which was prepared as a result of the selection, provisional panel may be quashed and and declare the same as bad in

in law and inoperative against the applicant and that no candidate mentioned therein has a better right to replace the applicant, and that the applicant be declared to be a quasi permanent employee against the post of junior clerk.

The respondents have opposed the applications and said that the applicants have no claim. Applicants have come forward with the case that correct marking has not been given<sup>due</sup> to certain errors etc. The respondents have stated that so far as the marks are concerned, the correct marking is done and everything has been done in accordance with law. The condition for appearing at the selection for clerical grade is that one must have put in minimum 3 years of service in Class IV post. The applicants fulfilled the eligibility criteria and hence they were allowed to appear for the written test, and those who came out successfully in the written test were allowed to appear in the interview before the interview committee which consisted of senior officers. The following standards were laid down - minimum 35% marks for staff other than Scheduled Caste / Scheduled Tribe and minimum 30% marks for staff of SC/ST, in part (A) and minimum 40% marks for staff other than SC/ST and 35% marks for staff of SC/ST in part (B). The Committee had no choice but to select the candidates who succeeded in the tests and the evaluation was correctly done and it was after the evaluation the appointments were made.

On behalf of the applicants a rejoinder affidavit was filed pointing out that 8 to 10 additions and alterations have been made and included those who are not qualified and included few members of SC community.

We have perused the record and from the record, we have found that there is no fault in the proceedings of the selection committee and there is no flaw or any over writing or erasing in the matter of marking, and as such it cannot be said that there was any unfairness in the examination.

Learned counsel for the applicants then contended <sup>that</sup> / certain irregularities were found by the Department, and that is why certain additions/deletions have been made in the panel. The irregularities were in respect of some of the candidates belonging to Scheduled caste and they were included in it. Of course those who have not been there, they have been included in the panel. That will give a cause of action to those who have been made to suffer for it and they can agitate the matter if that be so.

It is not necessary for us to enter <sup>into</sup> this question.

It was contended that the applicant was working for the last 3 years in a Class IV post and were subsequently working in Class III post and can be considered for regularisation. Even other wise if they have worked for more than 18 months in the said <sup>posts</sup> there appears to be no question why they cannot be treated duly suitable for the post even though they have not been empaneled. In this connection a reference has been made by the applicant's advocate to the Tribunal's decision in of Jetha Nand V. Union of India, 1989(4) SLJ.

The case of Jetha Nand has been considered by the larger Bench in the case of SURESH CHAND GAUTAM & ORS V.

UNION OF INDIA & ORS, CAT(F.B.) VOL.II page 487. In

the said case it was specifically pointed out that,

"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 stated 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.

In the instant case the same principle would apply. In case there are regularly selected candidates who have not been appointed, the posts should be filled in by appointing the regularly

selected candidates, and in case even after filling the posts from the selected candidates, if some vacancies remain to be filled and selection has not taken place, all the applicants in order of their seniority, who are holding the said post, be allowed to continue in the said post, till a regular selection does not take place. However we make it clear that it is open to the applicants that if the respondents shall allow them another opportunity to participate in the selection and in case they succeed in the selection they may be given regular appointment even against the post in which they are working, if no regularly selected candidate is appointed and gets the said post.

With the above observations and directions all these six applications are disposed of finally. So far as the additions and subtractions are concerned it is for the department to take notice of the same and if the matter is agitated there appears to be no reason why the department itself will not consider it and require the persons to approach the Tribunal again. There will be no order as to the costs.