

18

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : BOMBAY BENCH
AT NEW BOMBAY.

T.A.No.491/1987 (W.P.No.3211/1984)

T.A.No.492/1987 (W.P.No.3812/1984)

T.A.No.493/1987 (W.P.No.3795/1984)

Date of the order: 23-7-90
6-90

BETWEEN

Miss Arifa Begum Abdul Karim Shaikh
@ Mrs.Arifa Begum Abdul Sattar

(Applicant in TA 491/87)

Miss Meena Govindrao Mandrupkar

(Applicant in TA 492/87)

Baliram Sopan Yadav

(Applicant in TA 493/87)

Versus

1. The Union of India

2. The General Manager,
Central Railway, Bombay VT,
Bombay-400 001.

(Respondents in all the
three cases)



Appearance:

For the applicants in the
three cases:

Mr. A.N.Maniyar, Advocate

For the Respondents

Mr. P.R.Pai, Standing Counsel
for the Railways.

CORAM:

The Hon'ble Mr.D.Surya Rao, Member (Judicial)
(Hyderabad Bench)

and

The Hon'ble Mr.M.Y.Priolkar, Member (Administration)

(JUDGMENT OF THE BENCH DELIVERED BY THE HON'BLE
SHRI D.SURYA RAO, MEMBER (JUDICIAL)).

...

The applicants herein are all teachers ~~working of~~
the Railway High School at Kurduwadi, district Sholapur
working under the jurisdiction of the 2nd Respondent.

It is their case that after ^{due advertisement and} selection, they were
^{appointed}~~selected~~ as Substitute Graduate Assistant Teachers to
work in Secondary School in the scale of Rs.440-750.

The applicant in TA 491/87 was appointed as
Officiating Assistant Teacher on 4-10-1980, the applicant
in TA 492/87 was appointed as such on 14-12-1977, while

the applicant in TA 493/87 was appointed as Substitute
Teacher on 27-6-1977. Since they were appointed as
Substitute Teachers, their services used to be terminated
every year during the summer vacations and they were
being re-appointed on the reopening of the schools.

Subsequently, by letter dated 24-9-83 of the Railway
Board, it was decided that the breaks caused during the
spells of vacation might be condoned for the purpose
of fixation of pay and termination of seniority.

All the three applicants were ^{Subsequently} regularised in the lower
grade of Rs.330-560 as Assistant Graduate Teachers in
Primary Schools, by an order dated 23-9-1982 issued by
the Chief Personnel Officer, Central Railway.

The applicant in TA 491/87 secured number 4 in the
merit, the applicant in TA 492/87 was placed at
serial No.7 in order of merit while the applicant in
TA 493/87 was placed at serial No.3. After the
applicants were regularised in the grade of Assistant
Graduate Teachers in Primary Schools, the Chief Personnel



Officer, on 16-12-1983 issued an alert list stating that it was decided to form a panel for the posts of Trained Graduate Teachers in Marathi Medium High Schools and that the scale of the said post was Rs.440-750. Sixteen persons were alerted including one S.C. and one S.T. The applicants made representations in December 1983 objecting to their non-inclusion in the alert list. It is their case that there was no seniority list of primary school teachers in the grade of Rs.330-560 and that holding of a test for selection/promotion of such primary school teachers without a seniority list, is illegal and irregular. The applicants contended that they hold graduate qualification both in Arts/Science and in Education. The second grievance was that two of the juniors in the merit list of Primary School Teachers published on 23-9-1982 namely M/s A.S.A.Shaikh (Merit list No.6) and B.B.Anantkawlas (merit list No.34) have been included in the alert list. It was stated that these two persons were Physical Education Trained teachers. The further contention raised was that in accordance with the Secondary School Code of Maharashtra State, the applicants, being graduate teachers, were eligible to be considered in preference to non-graduate teachers in the education field and as compared to some of these in the alert list. No reply was given to the applicants. Subsequently, the Union viz. the Central Railway Mazdoor Sangh, through its General Secretary, also made a representation on 7-1-1984. The General Secretary received a reply on 4-6-84 from the 2nd Respondent



stating that though the seniority list was not published it has been ensured that only senior eligible employees be called for selection. The reply also stated that out of the eight posts proposed to be filled up and with reference to which vacancies the alert notice was issued, two posts of Graduate Teachers were meant for teachers having prescribed qualification of a degree or diploma in Physical Education and two posts were reserved for S.C. and S.T. candidates. The applicants stated that disregarding the representations made by the applicants and of the Central Railway Mazdoor Sangh, the Respondents proceeded with the matter and held a selection on 19-7-1984 and empanelled 8 teachers for promotion to the post of Trained Graduate Teachers.

Sri A.S.A. Shaikh and Sri B.B. Ananthkavilas who were Juniors to the applicants in the list of Primary School Teachers as also the teachers who did not have requisite qualifications were selected. It was further specifically averred that Mrs. Diana Badvey, Mr. B.V. Bhagwat and Mr. S.V. Dhepe were having secondary Teachers Certificate course, Hindi Shikshan Sanad and D.Ed. respectively as their training qualification and that they did not possess a B.Ed. degree. It is contended that these three teachers should not have been preferred or considered for appointment since they did not possess B.Ed. degree. On 16-6-1984, the C.P.O. sent copies of the list of teachers empanelled for promotion. Thereupon the General Secretary, Central Railway Mazdoor Sangh again made a representation on 12-7-1984 drawing attention to the injustice done to the persons like the applicants. As no action was taken the applicants were compelled to approach the High Court of Bombay under Article 226 of the Constitution of India.



2. On behalf of the Respondents, replies were filed before the High Court itself denying the various contentions and allegations made by the applicants. It is stated that ^{their} ~~the~~ appointments made as Substitute Graduate Teachers were against temporary vacancies and it was made clear to the applicants that their appointments ^{were} ~~were~~ temporary, as Substitute teachers against temporary vacancies and will not confer on them any ^{prescriptive or} ~~prescribed~~ right for continuous retention or absorption, against any post in the Railways. It is further stated that the breaks in service during the summer vacations were directed to be condoned as per the Board's letter dated 24-9-83 only for the purpose of fixation of pay. As far as appointment to the post of Assistant Teacher (in the Primary School) in the scale of Rs. 330-560 is concerned, the reply states that the procedure prescribed was to call for applications from open market and make a selection by prescribed selection committee. So far as the post of Graduate Teacher is concerned (in secondary schools) the post is to be filled from out of the category of Assistant Teacher who is permanent having a substantive post. The process of selection to Assistant Teacher in the scale of Rs. 330-560 was duly followed, the applicants applied for the said post and after due process of selection, they were declared qualified for the said post on 23-9-82. Since the channel relating to Graduate Trained Teachers is from among the eligible assistant teachers, the administration in order to form a panel have advised (alerted) 16 candidates to be in readiness to attend the selection, by letter dated 16-12-1983.



95

The applicants names were not included in the said list as they were not senior enough. It is stated that the panel to be formed was for four teachers from Arts group, two Physical Training Instructors from the general group, one for S.C. category and one for S.T. category. It is denied that any of the juniors of the applicants in the general category for Arts group was included in the alert list. As per rules, consideration should be from an alert list comprising three times the number of vacancies for general category. Accordingly, 12 senior persons from the general category for Arts group were called for interview. Since only two candidates were eligible for the post of Physical Training Instructor, the only two eligible candidates were called for interview for the two vacancies of Physical Training Instructor. A viva voce was accordingly conducted on 17-4-84 and four candidates were empanelled from among the 12 called from the general category for Arts group, two persons for the post of Physical Training Instructor and one each for S.C. and S.T. category for arts group. It is stated that all the persons empanelled to the post of trained Graduate Teacher (Arts) of general category were seniors to the applicants. The post of Physical Training Instructor could not be given to an Arts graduate as for the said post a degree or diploma in Physical Education Training alongwith graduation is the prescribed qualification. While admitting that representations were received from the General Secretary, Central Railway Mazdoor Sangh, it is stated that a reply was duly given. It is denied that the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1978 and the Maharashtra Employees of Private Schools (Conditions of Service) Rules 1977 are applicable to the employees of the



(16)

railway schools. It is stated that the teachers working in railway schools are railway employees hence they are governed by the Railway Establishment Rules. It is also stated that appointment as Substitute Teachers does not give the applicants any right to regular appointment nor that they should be treated as on probation. It is contended that any person who officiated or worked in a fortuitous vacancy as Assistant Graduate teacher shall have no right whatsoever to the said posts. It is reiterated that initial recruitment of teachers is to the grade of Rs.330-560 after a due selection and that only such persons from this grade who are eligible for consideration as Graduate Teachers in the scale of Rs.440-750^{and for} will be considered for appointment. So far as Sri A.S.A.Sheikh and Sri B.B.Ananthkawas are concerned, it is stated that they were selected against the posts of Physical Training Instructor since they possess these qualifications. So far as the general category posts are concerned, it is stated that the three persons referred to by the applicants are seniors to the applicants in the category of Assistant Teachers (Primary School teachers) in the grade of Rs.330-560 and hence they were eligible for consideration in preference to the applicants. For these reasons it is contended that the applicants have not made out any case for the grant of^{the} relief prayed for and that the applications are liable to be dismissed.



3. The applications have been transferred to the Central Administrative Tribunal, Bombay Bench under Section 29(5) of the Administrative Tribunals Act, 1985.

4. We have heard the arguments of Sri A.N.Maniyar, Advocate for the applicants in the three cases and Sri P.R.Pai, Standing Counsel for the Respondents in all the cases.

5. The first question which is raised by Sri Maniyar is that there are no specific rules relating to appointment and promotion of teachers framed by the railways ^{and that} ~~But~~ in the absence of specific rules, the teachers in the Railway schools should be deemed to be governed either ^{by} ~~under~~ the Secondary Schools Code issued by the State of Maharashtra or the rules framed under Act No. III of 1978 viz. the Maharashtra Employees of Private Schools (Conditions of Service) Rules of 1978. It is contended by him that prior to the promulgation of Act-III of 1978, there was ^a Secondary Schools Code which governed the conditions of service of teachers in private schools. This Code requires certain conditions to be fulfilled before : recognition is given to any school other than a school run by the Maharashtra Government or by a local body in Maharashtra. Sri Maniyar seeks to contend ^{that} this Code as well as the rules framed under Act-III of 1978 were framed with an intention to protect the interests of the teachers so that in private schools they are not subjected to harsh conditions of service which normally prevail in private schools, ~~in contravention to the government schools.~~ Since recognition is subject to State Government's approval ^{and} ~~since~~ the railway schools are also recognised for the purpose of the Secondary School Certificate examination, he seeks to contend that the railway schools ^{should} ~~also~~ be subjected ^{to} ~~Secondary School Code or the rules framed under~~ Act-III of 1978. He further contends that the Railways ^{have} ~~has~~ accepted the syllabus for its schools in Maharashtra, ~~and~~ that they are also subjected to inspection of the educational officials of the Govt. of Maharashtra ^{and that}



18


since they have also sought recognition, it would follow that the rules applicable to other private schools should also be made applicable to the Railway Schools. He contends that under the rules applicable to private schools in Maharashtra it is made clear that only graduates with a further degree in teaching like B.Ed., or B.T. ^{are} ~~is~~ eligible for appointment as ~~te~~ teachers in the Secondary Schools. Applying these rules, he would contend that the applicants who are B.Ed. Graduates besides holding a graduation qualification were ~~also~~ eligible for consideration and appointment when the alert list was issued by the Respondents proposing to fill up eight posts of secondary school teachers in the year 1983 ^{in preference to non B.ed teachers.} On behalf of the railways, however, it is contended that the rules relating to private schools have no application whatsoever to teachers in the railways, that the railway teachers are class-III employees governed by the Indian Railways Establishment Manual (I.R.E.M.) which comprise of the directions and instructions issued by the Railway Board. These instructions of the Railway Board relating to non-gazetted staff have got statutory force vide Rule 157 of the Indian Railway Establishment Code. The conditions of service of railway employees are governed by the provisions of the Manual and it is contended that in accordance with the provisions in the Manual, senior teachers from Primary Schools are eligible for promotion as Teachers in Secondary Schools and that the applicants ^{being Junior} have no cause for grievance. It is also contended ^{as} in this regard that in issuing the alert notice dated 16-12-1983, notices were given to qualified persons in accordance



with the seniority, that the applicants having been appointed only in the year 1982 as Assistant Teachers in the Primary Schools grade of Rs.330-560, are far juniors to those considered for appointment against the four vacancies for general category employees.

6. We have considered these rival contentions as to the applicability of the rules in regard to teachers in the railways. The learned Standing Counsel for the Railways, Sri Pai admitted that there are no specific rules framed for the teachers in the railways but

they are governed by the general rules contained in the Indian Railway Establishment Manual (IREM).



It will also be useful to refer to Chapter I, Section-B of the I.R.E.M. relating to the Rules for recruitment and training of class-III, class-IV and Workshop staff. Rule 101 therein states that the rules in sub-sections (I) to (III) apply to class-III employees apart from other employees of certain workshops. This rule makes it clear that in Railway Schools, teachers and Headmasters/ Head Mistresses are governed by Section-B of Chapter-I. It will now be useful to extract the relevant rules relating to recruitment of teachers:

Chapter-I, Section-B:

Rule-102: Recruitment:- Subject to what has been specifically provided in the relevant rules, recruitment on Railways will be to the lowest grade of the category concerned. Direct recruitment on a limited scale to intermediate grades will be made as and when considered necessary by the Railway Administrations with the approval of the Railway Board. The qualifications for recruitment to grades higher than the lowest will be those as approved by the Railway Board.

95

Part-XI. RAILWAY SCHOOLS STAFF:

Rule 172: Recruitment:-- Recruitment of teachers in the railway schools is made by the railway administration concerned.

qualifications (a) Age: Below 40 years. Candidates with teaching experience are given preference.

(b) The categories, scales of pay and the qualifications required of candidates are given below:

Name of category	Scale of pay	Qualifications required
	Rs.	

1. PRIMARY SCHOOLS:

- i) Head Masters/ 150-240 Trained Matric Mistress
- ii) Teachers Grade-IV Trained Matrics who 118-225 teach (Primary) classes I to V.

2. MIDDLE SCHOOLS:

- i) Head Masters/(a) 210-395 (a) Trained Graduate for Head Mistresses Middle schools with Classes I to IV
- (b) 190-395 (b) Middle Schools with Classes VI to VIII

- ii) Non-Language 160-300 Trained Graduates or teachers and equivalent who teach English teachers (Middle) classes VI to VIII.

- iii) Language Grade-III Trained Graduates or teachers (other 160-300 equivalent who teach than English) (Middle) Classes VI to VIII.

- iv) Drawing Grade-III For Matrics with 2 years teachers 130-300 training in a recognised institution who teach (Middle) classes VI to VIII(only).

- v) Physical Grade-II Matriculation with Training 130-300 Certificate in Physical Education - One year course after Matriculation from a recognised institution for those who take Middle Classes VI to VIII.*

(*effective from 30-9-75 vide Board's letter No.E(NG)-III-73-RR-I/40 dated 30-9-75).



25

-12-

vi) Domestic Science Teachers	Grade-II 130-300	For Matrics with House Science diploma of Lady Irwin College or equivalent who teach (Middle) classes VI to VIII(Only).
-------------------------------	------------------	---

3. HIGH SCHOOLS:

i) Head Masters/ Head Mistresses.	325-575	Trained Graduates
ii) Teachers of English, Mathematics, History, Economics, Physics and Chemistry, Agricultural, Commerce, Biology, Geography, Hygien and Physiology.	Grade-II 170-380	Trained Graduates or equivalent who teach (high) classes VI to X
	Grade-IV 118-225	Trained Matrics who teach (Primary) classes I to V.
iii) Classical and Indian Language Teachers (other than English)	Grade-II	Trained Graduates or equivalent who teach (high) classes VI to X.
iv) Drawing Teachers	xxx	xxx
Physical Training Instructors	Grade-I 170-380	For Graduates with Diploma in Physical training who teach classes IX upwards.
	Grade-II 130-300	For Matrics with 2 years training in recognised Institution who teach Middle classes VI to VIII.
	Grade-III 130-300	For Matrics with 2 years training in a recognised Institution who teach Middle classes IV to VIII only.
vi) Domestic Science Teachers.	xxx	xxx
vii) Demonstrator	xxx	xxx



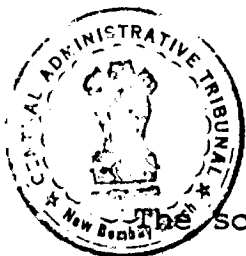
7. What we are concerned with in this Application is recruitment of teachers Grade-II in the scale of Rs.440-750 at the Secondary School or High School level. The qualifications prescribed are trained graduates or equivalent. It is clear from a reading of the Rule-102 that initial recruitment ^{should} ~~would~~ only be at the lowest grade in the category concerned. In the instant case, the lowest grade in the category being Primary School Teacher, the question of direct recruitment to the intermediate grades namely any grade above Primary School Teacher would normally not arise. However, ^{if} ~~the~~ direct recruitment on a limited scale to the intermediate grade that is, to any grade above Primary School Grade is to be made, it can be done with the approval of the Railway Board. In the instant case the department has resorted to recruitment by promotion from the category of Primary School Teacher and not for direct recruitment. ~~If there appears to be~~ ^{can be taken} No objection to this method of recruitment adopted by the Department since such a procedure would be in accordance with ^{Rule 102 of} the rules and if recruitment is to be made by promotion, then obviously seniority would be the criterion for determining who are eligible for promotion. It has been contended by the Respondents that for the four general vacancies, 12 of the senior-most Primary School Teachers were considered on the basis of 1 : 3. No doubt, at the time when the alert notice was issued, no seniority list of Primary School teachers has been published. But it has not been denied that in alerting the candidates, the Respondents have ^{or that any of the alerted candidates are seniors to the applicants.} followed their seniority. This is confirmed by the subsequent seniority list issued after the selections



23

-14-

had been made. Since the Railway Recruitment Rules governing the recruitment of teachers in the Railway Schools provide this method of recruitment namely by promotion from Primary School teachers, it would not be open to the applicants to contend that they are governed or should be governed by the rules framed by the State Government as contained in the Secondary Schools Code or in accordance with the rules framed namely the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1978. Rule 157 of the Railway Establishment Code lays down that the Railway Board has full power to make rules of general application to non-gazetted railway servants under their control. Rule 157 of the Indian Railway Establishment Code reads as follows:



"The Railway Board have full power to make rules of a general application to non-gazetted railway servants under their control."

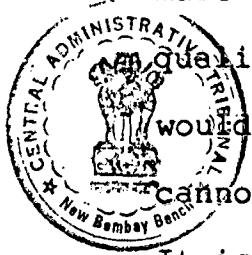
The scope and effect of this rule as also Rule-158 which gives powers to the General Manager of the Indian Railways, were considered by the Supreme Court in B.S.Vadera Vs. Union of India (AIR 1969 SC 118) wherein it was held that the Railway Board having been directed by the President to make rules (such authorisation being permitted by the proviso to Article 309 of the Constitution of India) can also make rules regulating recruitment and conditions of service of persons under its employment. The provisions of the Indian Railway Establishment Manual contained the instructions issued by the Railway Board regulating the conditions of service of persons under its employment. It, therefore, follows that

these instructions have general application and that they have statutory force. It follows that Rules 102 and 172 of Chapter-I, Section-B of the I.R.E.M. have specific application to teachers in Railways and have statutory force. On the other hand, no specific provision has been drawn to our attention extending the Secondary Schools Code or the Maharashtra Employees of Private Schools (Conditions of Service) Regulations 1978 or the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1977 applicable to teachers in the Railways. All that has been argued is that by inference these provisions must be deemed to be extended to Railway teachers as in the case of teachers in private employment. In view of the specific statutory instructions issued under Rule 157 of the Indian Railway Establishment Code whereby provision is made for recruitment and qualification of teachers, it follows that it is these instructions namely Rules 102 and 172 of Chapter-I, Section-B of the I.R.E.M. which govern conditions of service of Railway teachers and not the rules applicable to private teachers in Maharashtra State.



8. The next question for determination is as to what are the qualifications prescribed for Secondary School teachers in the grade Rs.440-750. Sri M. Niyar contends that the qualification prescribed in Rule 172 of Chapter-I, Section-B of the I.R.E.M. is "trained graduate or equivalent" and that trained graduate must be a person who possesses a B.Ed. or B.T. degree in addition to a degree in arts or science. He contends that three of those in the alert list viz.

Mrs. Diana Badvey, Mr. B.V. Bhagat^W and Mr. S.V. Dhepe did not possess either a B.Ed. or B.T. degree and were hence ineligible to be considered as "trained graduates". Sri Pai for the Railways, on the other hand, contends that "trained Graduate" means any graduate holding a degree in Arts or Science who has received teachers training and possesses either a diploma or degree in proof thereof. We are of the opinion that the interpretation put by Sri Pai is more valid. If the contention of Sri Maniyar is accepted, then even in Primary schools the teachers must have a B.Ed. or B.T. degree despite the basic qualification being only a Matric. Such a situation would not be possible since a mere Matric passed person cannot get entrance to a B.Ed. or B.T. degree course.



It is only if the term 'trained' is interpreted to mean training by way of receiving a diploma or certificate or obtaining a degree viz. B.Ed. or B.T. that it would be possible to give a ^{consistent} meaning to the terms "trained Matrics" and "trained Graduates" in Rule 172 of Chapter-I, Section-B of the I.R.E.M.


Applying this interpretation viz. the term 'trained' means a person who not only has a B.Ed. or B.T. degree but even a person who possesses a diploma or certificate in teaching, It would follow that the action of the respondents in issuing the alert notice dated 16-12-1983^{and R}, including Mrs. Badvey, Mr. Bhagat^W and Mr. Dhepe^{therein R} cannot be assailed.

9. We will now take up the next contention raised by the applicants viz. that two of the teachers selected and appointed as Assistant Teachers (Rs.330-560) by the order dated 23-9-82 were considered for selection as Secondary School teachers despite their being juniors to the applicants. The explanation of the respondents is that two of the vacancies had to be filled by graduates with training as Physical Instructors, that the only two eligible Primary School teachers were S/Sri A.S.A.Shaikh and B.B.Ananthkawalas who had been regularly appointed with the applicants as Primary School teachers. The fact that the applicants are ... not trained as Physical Instructors is admitted and hence the applicants cannot claim that they are discriminated against in so far as filling up of the two posts is concerned. The applicants had alleged that the vacancies were not of Physical Education Instructors but the allegation was denied by the Respondents. In the absence of proof or evidence that the two teachers were appointed to fill up general vacancies, we see no reason not to accept the version of the Respondents. This contention of the applicants is, therefore, rejected.

10. The next contention raised by the learned counsel for the applicants is that, after the applicants were appointed as Substitute Graduate Assistant Teachers in the grade of Rs.440-750 to teach in Secondary Schools with liability for ouster during summer vacations, the Railway Board had issued instructions by a letter dated 24-9-83 that breaks during the vacation period



should be condoned for purposes of fixation of pay and seniority. Since seniority is to be protected it is contended that the applicants are entitled to regularisation and seniority from the date of appointment as Substitute teachers. This argument has proceeded on the assumption that seniority also is to be protected by virtue of the order No.E(NG)II/83/SB.8 dated 24-9-83. The respondents have produced a copy of the order, a perusal of which discloses, at paras 1 and 2, as follows:



"The Ministry of Railways have had under consideration for some time past the question of condonation of break(s) in service caused by vacation in the cases of Substitute Teachers. They have now decided that such breaks caused for limited periods during the spells of vacation only may be condoned for the purpose of fixation of pay. In respect of existing cases of this type, the pay will be fixed proforma without payment of arrears.

The determination of seniority in such cases will, however, be governed by the normal rules, namely from the date of regularisation."

It is, thus, clear that the condonation is limited only to fixation of pay and not to seniority. This contention raised by the learned counsel for the applicants also fails.

11. For the reasons given by us in the preceding paragraphs, we find no merits in the claim put forth by the applicants. The Applications are accordingly dismissed and in the circumstances the parties are directed to bear their own costs.