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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)

23-7-90  
Date of the order: 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)

(2)

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.

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. <sup>one</sup> ~~is~~ eligible for appointment as ~~as~~ 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 ~~alone~~ 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 <sup>in preference to non B.Ed teachers.</sup> ~~in~~ the year 1983. 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 <sup>being juniors</sup> ~~have no cause for grievance.~~ It is also contended <sup>in this regard</sup> that in issuing the alert notice dated 16-12-1983, notices were given to qualified persons in accordance



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 <sup>or</sup> But in the absence of specific rules, the teachers in the Railway schools should be deemed to be governed either <sup>by</sup> ~~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 <sup>a</sup> 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 <sup>seeks</sup> 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, <sup>and</sup> since the railway schools are also recognised for the purpose of the Secondary School Certificate examination, he seeks to contend that the railway schools <sup>should</sup> also be subjected to Secondary School Code or the rules framed under Act-III of 1978. He further contends that the Railways having 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 <sup>or</sup> and that



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<sup>and above</sup> will be considered for appointment. So far as Sri A.S.A.Shekhan and Sri B.B.Ananthkawals 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 relief<sup>and above</sup> prayed for and that the applications are liable to be dismissed.

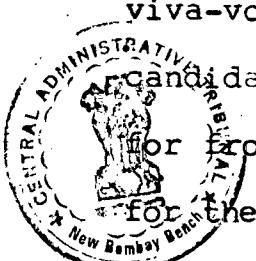
3. The applications have been transferred to the Central Administrative Tribunal, Bombay Bench under Section 29(5) of the Administrative Tribunals Act, 1985.

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.





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 for 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



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 ~~the~~ <sup>their</sup> appointments made as Substitute Graduate Teachers were against temporary vacancies and it was made clear to the applicants that their appointments ~~were temporary~~, as Substitute teachers <sup>were</sup> ~~against temporary~~ vacancies and will not confer on them any <sup>prescriptive</sup> ~~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 ~~a~~ 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.



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.Ananthkawlas who were seniors 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.

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



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

...  
The applicants herein are all teachers ~~working at~~ the Railway High School at Kurduwadi, district Sholapur working under the jurisdiction of the 2nd Respondent. It is their case that <sup>due advertisement and</sup> after ~~selection~~, they were ~~selected~~ appointed 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 <sup>subsequently</sup> 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

