

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

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NEW BOMBAY BENCH

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T.A. No. 38/87

DATE OF DECISION 8.1.1988Mr. S.I.Shaikh Ahmad & others Petitioner sMr. D.V.Gangal Advocate for the Petitioner(s)

Versus


Union of India and others RespondentMr. V.G.Rege Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. S.P.Mukerji, Member (A)

The Hon'ble Mr. M.B.Mujumdar, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*


 8/1

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY 400 614

TR. NO. 38/87

Mr.S.I.Shaikh Ahmad

2. Shri A.R.M.Ali

3. Shri S.Dattatraya Limba

All Telecommunication Maintainers
(C) under Divisional Superintendent
Central Railway, Solapur.

APPLICANTS

V/S.

Union of India
through the General Manager
Central Railway,
Victoria Terminus,
Bombay 400 001.

2. The Divisional Superintendent,
Central Railway, Solapur

RESPONDENTS

CORAM : Hon'ble Member (A) S.P.Mukerji
Hon'ble Member (J) M.B.Mujumdar

APPEARANCE :

Mr. D.V.Gangal
Advocate
for the Applicants

Mr.V.G.Rege
Advocate
for the Respondents

JUDGEMENT

Dated : 8.1.1988

(PER: Hon'ble Member (A) S.P.Mukerji)

In this Suit for Declaration filed by the
plaintiffs before the Court of Civil Judge, Solapur
on 27.9.1978 and transferred to the Tribunal under
Section 29 of the Administrative Tribunals Act, the
plaintiffs who have been working as Telecommunications
Maintainers (T.M.) (Grade C) have prayed that the tests

held by the respondents on 10.8.1978 and 11.8.1978 for promotion to the next grade of Telecommunications Maintainers (T.M.) (Grade B) should be declared to be illegal. They have also prayed that non-declaration of the results of the test held on 3.1.1978 should also be declared as illegal and the respondents be restrained from confirming Shri Joshi and Shri Rachalla, T.M.(B). The learned Jt.Civil Judge, Solapur in his order dated 2.12.1978 rejected the plaintiffs' application for temporary injunction for the declaration of the results of the test held on 3.11.1978 and ^{for} restraining the defendants from confirming Shri Joshi and Shri Rachalla as T.M.(B).

2. The material facts of the case are the plaintiffs along with Shri Joshi and Shri Rachalla were working as T.M.(C) in the scale of Rs.260-400. For promotion from the grade of T.M.(C) to T.M.(B) in the scale of Rs.330-480, trade tests are held and those who pass the tests are considered for promotion on the basis of seniority. The plaintiffs were called for trade test in January 1978 and one Shri Jaripatke, Assistant Signal and Telecommunications Engineer was to conduct that trade test. The tests were held on 3.1.78 but he failed to declare the results of the test as after holding allegedly only a part of the practical test on 3.1.1978 Shri Jaripatke met with an accident and lost his index finger. He was in sick list between 8.1.1978 and 23.3.1978. Since only four persons had been ^{partially} tested on 3.1.1978 the remaining portion of the trade test was abandoned. A second series of fresh trade tests were held on 10.8. 1978 and 11.8.1978 in which the plaintiffs also voluntarily

appeared, but again they failed. Shri Joshi and Shri Rachalla, however, passed the tests and were promoted. The plaintiffs have now challenged the legality of the second series of trade tests held in August 1978 on a number of grounds. Firstly, they have alleged that Shri Joshi and Shri Rachalla were passed because they were relatives of railway officials, and one of whom was a neighbour of Shri Jaripatke. According to the plaintiffs since one of them Shri Rachalla had failed in the test of 3.1.1978 the results of the test held in January 1978 were withheld. The plaintiffs affirm that if the results of the trade test held in January 1978 had been declared they would have been promoted.

3. The respondents have vehemently denied the allegation of victimisation of the plaintiffs and favouritism to others. They have referred to the number of previous occasions when the plaintiffs had appeared in the tests and had failed. They have also indicated that one of the plaintiffs Shri Irfan passed the test in 1981 when plaintiffs number (2) and (3) again failed. They have also stoutly repelled the allegations made against Shri Jaripatke. They have in passing referred to the disciplinary proceedings and punishments meted out to the first and third plaintiffs. They have indicated that the three plaintiffs were called for practical and oral test to be conducted by Shri Jaripatke on 3.1.78 when only a part of the practical test could be completed. After this, Shri Jaripatke met with an accident and remained in sick list till 20th March 1978 and ~~due to this~~ the trade test of January 1978 was abandoned. They have argued that having appeared in trade test held in August 1978 ^{the plaintiffs} ~~they~~ cannot after having

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failed, challenge the legality of the test and make a grievance of the non-declaration of ^{the earlier incomplete} trade test of January 1978. As regards Shri Joshi and Shri Rachalla they have indicated that they were promoted on the results of trade test in which they had succeeded, that they had been directly recruited in the Class III cadre, ^{that they} were matriculates and they have undergone ^{as} training as apprentice for a period of one year. As against this the plaintiffs were recruited only as Class IV khalasis.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The learned counsel for the plaintiffs fairly conceded that having appeared in the test held in August 1978 without protest, the plaintiffs cannot challenge its validity after having failed in the test. This is also supported by the ruling of the Supreme Court in Om Prakash Shukla V/S. Akhilesh K. Shukla A.I.R. 1986 S.C. 1043 to the effect that having appeared in a test one cannot question its validity after one fails in the test or finds oneself unlikely to pass the test. The main thrust in the argument of the learned counsel has been that the trade test on 3.1.1978 had been held only for the three plaintiffs and the tests for all of them were completed on that very day and therefore the results of the trade test could not be withheld by the respondents so as to deprive the plaintiffs of the benefits of the test. The learned counsel for the respondents on the other hand vehemently argued that the tests were NOT completed on 3.1.1978 and before it could be completed Shri Jaripatke met with an accident and therefore the test of January 1978 had to be dropped. In this connection, the following extracts from the affidavit dated 20.11.1978 filed by the respondents


against the application for interim injunction would be relevant.

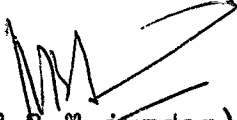
"9. By letter dated 28.12.77 the Three Plaintiffs were called for Trade Test on 2.1.1978, but actually commenced on 3.1.78. Trade Test consists of Practical Test (60 marks) and Oral Test (40 marks). Shri Jaripatke was to conduct the said Test. He conducted only a part of the Practical Test. The remaining part as well as Oral test were to be taken later on. Before Shri Jaripatke could complete the conduct of the test accidentally his finger was cut. He therefore was in sick list from 8.1.1978 to 20.3.1978. Due to this the trade Test was abandoned.

"10. The Trade Test that was to be held on 2.1.1978 as per letter dated 28.12.1977, was not confined to the three plaintiffs. Two persons were called on the same date for the test of Telecommunication Maintainer 'A' grade. Even this test remained incomplete due to above reason and hence was abandoned."

5. We see no reason to disbelieve this statement made on oath by the respondents that since the test could not be completed on 3.1.78, the same has to be dropped. It will be futile in view of the averment made by the respondents on oath ^{now} to call upon the respondents to declare the results of whatever test was held on 3.1.78 when the test was incomplete. Further, since the plaintiffs admittedly failed in the test held subsequently in August 1978 and had failed on several occasions earlier it cannot reasonable be presumed that if the results of the test held

on 3.1.78 ^{were} ~~are to be~~ announced they would have been
found fit for promotion. In the facts and circumstances we see no merit in the suit and dismiss the same. There will be no order as to costs.


8.1.88
(S.P. Mukerji)
Member (A)


(M.B. Mujumdar)
Member (J)