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CAT/J/12

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

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T. A. No.

452/87

198

DATE OF DECISION 19.10.1990

Shri D.S.Agnihotri Petitioner

Shri G.K.Masand Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri N.K.Srinivasan. Advocate for the Respondent(s)

## CORAM

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

The Hon'ble Mr. D.K.Agrawal, Member(J).

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✓

*D.K. Agrawal*

(D.K.AGRAWAL)

MEMBER(J).

(15)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY.

Tr. Application No.452/87.

Shri D.S.Agnihotri. ... Applicant.

V/s.

Union of India & Ors. ... Respondents.

Coram: Hon'ble Member(A), Shri M.Y.Priolkar,  
Hon'ble Member(J), Shri D.K.Agrawal.

Appearances:-

Applicant by Shri G.K.Masand.  
Respondents by Shri N.K.Srinivasan.

JUDGMENT:-

[Per Shri D.K.Agrawal, Member(J)] Dated: 19.10.1990

The grievance raised in this writ petition, filed before the High Court of Judicature at Bombay and transferred to the Tribunal under the provisions of section 29 of the Administrative Tribunals Act, 1985 is to the effect that the applicant's seniority as indicated in the seniority list dt. 19.3.1981, Annexure-A to the writ petition (wherein the applicant has been placed at Sl.No.98) has been unilaterally disturbed without any valid reason which has resulted in denial of promotion to the applicant to the post of Head Goods Clerk and consideration for selection to the post of Chief Goods Clerk. The other prayer made in this petition is that the pay of the applicant on the post of Senior Assistant Goods Clerk is to be fixed w.e.f. 6.8.1979 and not w.e.f. 20.7.1981 when he actually joined the post of Senior Assistant Goods Clerk at Mahim and also that he is entitled to backwages on the post of Head Goods Clerk w.e.f. 1.1.1984 when his next junior viz. Shri N.J.Hegde and 5 others placed at Sl. Nos. 100, 101, 102, 103, 105 and 107 in the seniority list dt. 19.3.1981 (Annexure-A) were upgraded to the post of Head Goods Clerk.

*Dr. Agrawal* ...2.

2. Briefly, the facts are that order was issued on 6.8.1979 whereby the petitioner was transferred to Virar Goods Depot, Western Railway on promotion as Senior Assistant Goods Clerk in the scale of Rs.330-560. The petitioner, it is alleged was not relieved from Andheri Goods Depot till 20.7.1981 when Assistant Commercial Superintendent personally issued relieving memo enabling the petitioner to take up the promotional appointment at Mahim Goods Depot. The promotion to the post of Senior Assistant Goods Clerk was also subject to written suitability test, which, it is alleged, was held on 10.2.1980 and 9.3.1980. The petitioner could not appear at the test for want of intimation as alleged by him. He appeared in the next test held in October, 1980 and passed the same successfully. He was therefore, deemed to be junior to those who passed the test held on 10th February, 1980 and 9th March, 1980 vide result declared on 17th June, 1980. The petitioner placed reliance on para 317 contained in Chapter III of the Indian Railway Establishment Manual and alleges that since he was not informed about the test to be held in February and March, 1980 he was not able to appear at the said test and therefore, he would be deemed to have passed the test along with his juniors held in February and March, 1980. The relevant rule in this connection may be stated. Note.III mentions that if the intimation of the examination is not given to a candidate he will be deemed as if he had passed the examination on his turn. Rule 317 provides that if railway servant is unable to appear in the examination/test along with others for reasons beyond his control and is declared successful at the subsequent examination/test held thereafter, he shall be entitled for promotion to the post as if he had passed the examination/test in his turn. The petitioner placed reliance on the said rule. In this connection it

*Dr. Aggarwal*

has also been mentioned by the petitioner that the intimation to the candidate is to be given by the immediate superior and the immediate superior has also to furnish a certificate in the prescribed form mentioning that the eligible candidates were duly informed about holding the test and asked to submit application giving willingness or otherwise in writing. Thus the petitioner has invoked the production of the said certificate from the Station Master, Andheri. The respondents have failed to produce the same. On the other hand, the respondents case is that the record was lost and therefore they were not in a position to prove their case about the intimation given to the petitioner. They have only placed reliance on the fact that one Shri S.R.Parulekar, working as Assistant Coaching Clerk at Andheri Railway Station was intimated about the test held in February and March, 1980 and that he actually participated in the test. Thus a inference is desired to be raised on the basis of the intimation furnished to Shri S.R.Parulekar. The petitioner has further alleged that the Railway Administration has discriminated, inasmuch as, one Shri N.M.Salkar who was also not able to appear in the test held in February and March 1980 and appeared in the test held in October, 1980 along with the petitioner was not made to lose his seniority and thus alleges that the railway administration adopted a different yardstick for determining the seniority of the petitioner.

3. We have heard learned counsel of the parties and perused the records. The only point to be determined in this petition is as to whether the petitioner did not appear in the examination/test held in February, and March, 1980 despite intimation to him to that effect by Station Master, Andheri. The petitioner has denied

*DK Aggarwal*

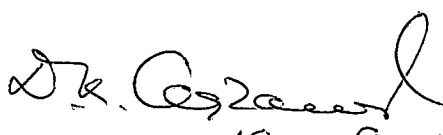
knowledge of the examination/test held in February and March, 1980. The fact that the petitioner had been duly intimated had to be proved by the respondents by production of necessary documents. The respondents have expressed their inability to produce the same vide their pleading in para 9 of the counter affidavit. Thus the intimation to the petitioner remains unproved. The respondents have also not produced the certificate from the Station Master, Andheri as required under the rules. Consequently, the conclusion is inevitable that the petitioner was not informed about the examination/ test held in February and March, 1980. Thus the petitioner, in our opinion, is entitled to benefit of Note.III of Rule 317, Chapter III of the Indian Railway Establishment Manual. It may be further mentioned that Shri N.M.Salkar was also given the benefit of the said rule on the ground that he was not <sup>given</sup> intimation of the examination/test held in February and March, 1980. It is undisputed fact that Shri N.M.Salkar also appeared in the subsequent test along with petitioner and was declared successful. On this analogy as well we are inclined to treat the petitioner at par with Shri N.M.Salkar. It would thus mean that the petitioner would be deemed to have passed the examination/test in his turn. If so the seniority cannot be disturbed i.e. he will maintain the seniority as shown in the seniority list dt. 19.3.1981 at Sl.No.98 which would impliedly mean that the petitioner is entitled to consequential benefits i.e. promotion to the post of Head Goods Clerk w.e.f. 1.1.1984 as granted to his immediate juniors.

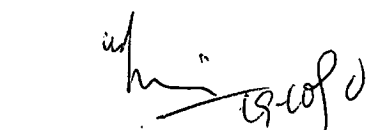
3. The next point which requires our attention is about the fixation of pay and payment of backwages to the petitioner. We are of the opinion, that notwithstanding the controversy that the petitioner was relieved

*Dr. Aggarwal*

or not, soon after his orders of promotion dt. 6.8.1979, it remains a fact that the petitioner joined the post of Senior Assistant Goods Clerk on 20.7.1981. If so the petitioner is not entitled to back wages for the period he has actually not worked on the post of Senior Assistant Goods Clerk in the grade of Rs.330-560. Similarly, the petitioner would not be entitled to back wages on the post of Head Goods Clerk in the grade of Rs.425-640 w.e.f. 1.1.1984. However, we make it clear that his pay would be actually fixed in the grade of Rs.330-560, as if he had joined on 6.8.1979 and again in post of Head Goods Clerk w.e.f. 1.1.1984 to enable the petitioner to maintain his seniority and pay equivalent to his juniors. Thus the petitioner would be entitled to the benefit of the increments, but not to back wages.

4. In the result the petition is allowed. We hereby declare that the petitioner's seniority/<sup>would remain as per</sup> list dt. 19.3.1981 (Annexure-'A') at Sl.No.98 and he would be entitled to consequent promotion to the post of Head Goods Clerk w.e.f. 1.1.1984 when the post of Head Goods Clerk was upgraded and his juniors placed in the upgraded post of Head Goods Clerk in the grade of Rs.425/640, that he would earn his due increments on the post of Assistant Goods Clerk/Head Goods Clerk except that he would not be entitled to back wages. The respondents are further directed to consider the petitioner for the selection post of Chief Goods Clerk from the due date in accordance with the rules. The parties shall bear their own costs.

  
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(D.K.AGRAWAL)  
MEMBER(J)

  
(M.Y.PRIOLKAR)  
MEMBER(A).