

(8)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.19/88

P.V.Jambhekar and Ors.
C/o.T.R.Talpade,
Advocate High Court,
Narottam Niwas,
308, Javji Dadaji Road,
Nana Chowk,
Bombay - 400 007.

Applicants

vs.

1. Union of India
through
The General Manager,
Western Railway,
Churchgate,
Bombay - 400 020.

2. The Chief Personnel Officer,
Western Railway,
Churchgate,
Bombay - 400 020.

3. Controller of Stores,
Western Railway,
Churchgate,
Bombay - 400 020.

.. Respondents

Coram: Hon'ble Shri Justice U.C.Srivastava,
Vice-Chairman.

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

Appearance:

Mr.M.S.Ramamurthy
Advocate for the
Applicant.

ORAL JUDGMENT:

Date: 18-7-1991

(Per U.C.Srivastava,Vice-Chairman)

Mr.Ramamurthy counsel for the applicants.

None for the respondents. Mr.Ramamurthy states that on the last date of adjournment, he informed Mr.Poojary, Head Clerk, Court cell of the Western Railway Head Quarters Office about today's date and also told him to inform Mr.Dinesh Shah advocate for the respondents.

2. Against the refusal by the General Manager (E) Western Railway refusing to fix the seniority of the applicants in the seniority list of senior clerk in accordance with the principles which according to the applicants was a correct principle communicated to them vide letter dtd. 3.12.1986, the applicants

have approached this Tribunal praying that the respondents be directed to fix the seniority of the applicant properly, qua the employees promoted as Senior Clerks on the basis of suitability test against vacancies occurring on 1-10-1980 as a result of restructuring or against post 1-10-1980 vacancies in accordance with the correct principles as laid down by the Railway Board in this behalf and as correctly done earlier under Memorandum dated 15.2.85. They have also prayed for promotion as Head Clerks or to higher grades on the basis of the said corrected seniority.

3. Under Memorandum dated 30-8-83, the Additional Controller of Stores(E) announced the holding of a Competitive Test for Clerks in the scale of Rs.260-400 of the Stores Branch for promotion to the posts of Clerk, in the scale of Rs.330-560 against vacancies prior to 1-10-1980. It was also ~~announced~~ mentioned in the said memorandum that those who were working in the Stores Branch with atleast one year's continuous service on 30-9-1980 and all the Clerks who have been officiating in the scale of Rs.330-560 on adhoc basis on the said date were eligible to appear for the said competitive test and as a result of the same the applicant No.1 was promoted to officiate as Clerk in the scale of Rs.330-560 with effect from 17.12.83 and applicants 2 to 4 who were already working as Clerks in the scale of Rs.330-560 on adhoc basis were treated as regularly promoted to the said scale. A suitability test was held for promotion of clerks in the scale of Rs.260-400 ~~and~~ for promotion to the post of Clerks

in the scale of Rs.330-560 and the result of the the same was published on 6.3.84 whereby 78 Clerks were held suitable for the same . According to the applicants when the seniority list was notified on 7.11.84 their placement was not shown correctly. They made representation for fixation of seniority properly on 7-12-84. Vide memorandum dtd. 15-2-85 they were told that their seniority in the seniority list published under memorandum dated 7-11-84 has been fixed between C.S.Sailor and M.V.Dabke. Thus according to the applicants, their seniority as Senior Clerks have been rectified and correctly fixed. Again a revised seniority list was published on 28.5.86 and in this the places of the applicants were altered and brought down to Sr.No.59 to 62. According to the applicants it should have been between Sr.No.24 and 25. This was purported to be done according to the decision of the Railway Board dtd. 8-1-1986. Applicants again made a representation against the same stating therein that they were promoted against vacancies in the posts of Senior Clerks which were in existence prior to 1-10-1980 and further that the suitability test was held later than the competitive test and therefore they could not be ranked junior to the employees who had passed the suitability test subsequently. The applicants further representation to the GM failed to get any relief and they approached this Tribunal.

4. The respondents in their written statement have pleaded that the suitability test referred to above by the applicants ^{were} ~~have~~ meant for 88 vacancies out of which 45 vacancies were to be given with effect from 1-10-1980 and as a result of this suitability test 45 employees including SC/ST were promoted with effect

from 1-10-80. It has been further stated that restructuring of the Ministerial cadre was notified by the Railway Board vide their letter No.PC/III/81/UPG/7 dated 18-6-1981 and final orders in January, 1982 having effect from 1-10-80 was passed. As a result of this 50 vacancies of Sr.Clerks became available out of which 5 vacancies were reserved for graduate employees and remaining 45 vacancies for the suitability test. This upgradation was effective from 1-10-1980 and a suitability test was conducted from January, 1984 to March, 1984 for 45 vacancies having effect from 2-10-1980 onwards. As this upgradation was effective from 1-10-1980 and the competitive test of these four ~~persons~~ employees was conducted in November 1983, the question as to how the seniority of those who passed competitive test and those who passed suitability test should be determined was referred to the Railway Board under office letter dtd. 19-9-85. The Railway Board vide letter dtd. 8-1-86 have ruled that any of the persons who passed the competitive test had become due for retrospective benefit of restructuring with effect from 1-10-1980 by virtue of their seniority as Clerks in scale of Rs.260-400 but for their passing the competitive examination the same should not be denied to them merely because of their having passed the competitive test. Thus according to the respondents this Railway Board letter meant that those who have passed the competitive test conducted after 1-10-1980 cannot be given seniority position above those who passed suitability test and promoted against restructuring posts effective from 1-10-1980 and accordingly the applicants who passed the competitive examination

on 29-11-1983 and promoted on 17-12-1983 i.e. after 1-10-1980, their seniority position was revised. It has been further stated that as the competitive test was also held after 1-10-1980 as per Board's order dtd. 8-1-1986 no undue benefits is admissible to those who passed in competitive test though there was delay in holding the competitive test due to Court cases. It is further stated that post upgraded to scale Rs.330-560 in June 1981 are to be given effect from 1-10-1980.

5. Mr. Ramamurthy learned counsel for the applicants contended that the entire case is now based on the interpretation of the Railway Board's decision dtd. 8-1-1986. It was contended that as a ^{that} matter of fact/ fixation of pay was dealt with Commercial Branch and not applicable to the applicants. On being pointed out ~~xxx~~ the same was made applicable to all ~~xxx~~ and was in reply to letter dtd. 19-9-85 which the GM send and this was ^{with} reference to the dispute in question. Mr. Ramamurthy contended that even if it is assumed that the letter was in respect of the applicants vis-a-vis others but the same will not effect their seniority. In this connection learned counsel drew our attention to paragraph 4 of Railway Board's letter dtd. 8-1-86.

"It is noticed that in this case all the suitability/competitive tests to fill the vacancies in the senior clerks grade were held after the Rly. had received the restructuring orders from the Board. The suitability/competitive tests in question were held by your Rly. for filling up the existing vacancies as on 30.9.80 against 90% seniority-cum-suitability quota & 10% competitive quota and for 90% seniority-cum-suitability quota in respect of vacancies which arose as a result of restructuring on 1.10.80 and post restructuring vacancies to be filled by promotion. It is further noticed

that for filling up the promotion quota, in respect of the vacancies which arose as a result of restructuring, as on 1-10-1980 & for filling up post-restructuring vacancies, a combined suitability test was held by the Railway Admn. apparently as a matter of convenience."

Ultimately in the concluding para no.5 the Railway Board observed :

"It appears that the staff who were assessed on seniority-cum-suitability basis against pre-restructuring vacancies as on 30-9-80 will get precedence over those who were assessed against restructuring vacancies (as distinct from post-restructuring vacancies) plus those who qualified in the competitive examination held for pre-existing vacancies. If, however, any of these seven persons who passed the competitive test would have become due for retrospective benefits of restructuring by virtue of their seniority as Clerks in the scale Rs.260-440 but for their passing the competitive examination, the same should not be denied to them merely because of their having passed the competitive test."

6. The Railway Board's decision is quite clear. In case the applicants who have passed the competitive examination were entitled to have retrospective benefit after restructuring by virtue of the seniority they cannot be denied the same. The contention of the applicants that so far as they are concerned undoubtedly the examination took place in the year 1983 but the same was in respect of posts for pre-1-10-1980 and not for post 1-10-1980. As such the Railway Board's letter would come into their way and therefore their seniority cannot be affected.

7. Accordingly we direct the respondents to reconsider within two months from the date of receipt of a copy of this order whether the applicants were entitled to the position as they were examined ^{for} pre-1-10-80 posts and in case they were examined their seniority should be corrected accordingly.

8. With the above observation the application stands disposed of finally, with no order as to costs.

(M.Y. PRIOLEKAR)
Member(A)

(U.C. SRIVASTAVA)
Vice-Chairman