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CAT/J/12

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No.  
T.A. No.

644 of 1988

198

DATE OF DECISION 8.10.1991

Shri Johb Elia Vanaparthi and 4 others Petitioner

Sri D.V. Gaagal

Advocate for the Petitioner(s)

Versus

Union of India and others

Respondent

Sri P.R. Pai

Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. Justice U.C. Srivastava, V.C.

The Hon'ble Mr. M.Y. Pralokar A.M.

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

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, BOMBAY BENCH.

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Registration O.A. No. 644 of 1988

Shri John Elia Vanaparthi and 4 others ... .. Applicants.

Versus

Union of India and others ... .. Respondents.

Coram :- Hon'ble Mr. Justice U.C. Srivastava, V.C.  
Hon'ble Mr. M.Y. Priolkar, Member (A)

Appearances:- Counsel for the applicants, Sri D.V. Gangal.  
Counsel for the Respondents Sri P.R. Pai.

Oral Judgment;

( By Hon'ble Mr. Justice U.C. Srivastava, V.C.) Dated: 8<sup>th</sup> 10.1991.

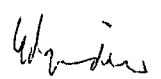
The grievance of the applicants who are working as Assistant Guards w.e.f. 22.5.1986, is against the reversion order dated 18.8.1988. The applicants are working obviously for more than 24 months and therefore, under the relevant Railway Board Orders dated 21.5.1986, 26.9.1979 and 27.6.1983, they are eligible to be confirmed and further they have passed the training course conducted by the Railway Training School, so their promotions were legal. It is contended by the applicant that initially they failed in the written test but they were not given an opportunity to appear in the second written test, although they applied for the same, as such they can not be reverted from their present post.

2. The applicants were initially appointed as Pointsman-B and after intervening promotion, they were promoted as Assistant Guards and were directed to proceed to training which they did. A selection was conducted in English and Hindi. The applicants prayed that they are not conversant with the languages very much and as such they may be examined in their mother tongue but that was not done and due to that very reason, they failed in the examination, and in the second selection, they were not called. Five employees were transferred on punishment to Hubli Division although, they belonged to Vijaywada Division and they have no

legal right to remain in that division and as such their appointments in Hubli Division ought to have been cancelled because people from Hubli Division will suffer if these employees are allowed to remain in Hubli Division. The applicants relied upon 18 months in reference to Railway Board's letters. The respondents have pleaded that the applicants, as a matter of fact, were initially appointed as 'Porters' and thereafter promoted as 'Pointsman'. The applications were called from the employees working in the scale of Rs. 210-270. The applicants volunteered for the post of Assistant Guards. There were vacancies existing in Hubli Division then. Being a safety category, a decision was taken to promote 9 senior most employees of Operating and Commercial Departments who appeared for the written examination for the said posts conducted on 27.10.1985, purely on temporary and adhoc basis, and thereafter they were sent for training. So far as the examination regarding <sup>which</sup> the complaint has been made by the applicant, it has been stated that no provision is made <sup>there is</sup> for examining the mother-tongue other than English and Hindi and the rules do not provide the same. A decision was taken by the Competent Authority to fill up the existing vacancies by promoting these 9 employees on adhoc basis and on passing the oral examination, they were promoted as Assistant Guards which included the applicants. In the second selection the applicants were not called except one as they were not substantive holders in the scale of Rs. 950-1400, <sup>and the</sup> one who was called was not successful. <sup>It is also</sup> ~~Now the~~ <sup>stated</sup> allegation that the Assistant Guards of Vijaiwada Division were <sup>to</sup> transferred to Hubli Division on the administrative grounds and not on punishment basis and as such the plea of the applicant regarding vacancies is not correct.

3. It is stated that the employees who were successful <sup>ful</sup> in the examination were empanelled for the post of Assistant Guards and posting orders were issued to them and as such the reversion orders were issued and the allegation of favouritism is incorrect. So far as the 18 months rule is concerned, the same does not prohibit the

Railway Administration from reverting the applicants on Administrative grounds. Regarding the 18 months rule, the learned counsel for the applicant placed reliance on the full Bench Decision of Central Administrative Tribunal in the case of Jetha Nand Vs. Union of India, 1989(4) SLJ page 737, in which it was clearly held that benefit of 18 months rule was available to those who were found suitable and were empanelled but in the said case, giving up more than 2 opportunities was also mentioned. The said case was also considered by the Full Bench in the case of Suresh Chand Gautam and others Vs. Union of India and others, Reported in Full Bench Judgment of C.A.T., Vol-2 Page 487, after considering the Jetha Nand's case, the Full Bench explained it and held that those who officiated on Stop Gap Adhoc basis having failed to clear the selection test, <sup>the</sup> passing of selection test is mandatory for promotion and an employee officiating in a higher post of more than 18 months is liable to be reverted, if he fails to qualify the selection test. It was observed that in Jetha Nand's case, the Full Bench has not stated that even when regularly selected and fully qualified candidates are available, and those who ~~were~~ failed to qualify in the selection test, should be allowed to officiate in the Class-III post blocking ~~an~~ entry of the regularly selected candidate. The Full Bench in Gautam's case held that the Railway Servant <sup>who</sup> is allowed to officiate in higher post on temporary basis need not always be allowed at least 3 or 4 opportunities to appear in and ~~qualified~~ the selection for higher post before he can be reverted, <sup>if</sup> and such reversion <sup>has been</sup> warranted <sup>by</sup> Administrative reasons. In the instant case, this reversion has been warranted <sup>by</sup> Administrative Reasons, and the application of the applicant is liable to be dismissed. The applicant can avail fresh chances for qualifying the examination. In the above terms, the application is dismissed with no order as to costs.

  
Member (A)

Bombay Bench.  
(n.u.)

  
Vice-Chairman