

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

Tr. Application No.157/86.

1. Shri K.G.Sakare,  
Ganesh Mandir Road,  
Near Nehru Maidan,  
Dombivili, 421 201.
2. Shri Shanmugam,  
Pathamadai Thiraviyam Pillai,  
16/137, Siddarth Nagar,  
Part 5, Near Samrat Theatre,  
Goregaon West,  
Bombay. 400 104.

v/s.

1. Union of India through the General Manager, Central Railway, Bombay V.T.
2. K.Ramakrishnan, Divisional Railway Manager, Bombay Division, Central Railway, Bombay V.T. ... Respondents.

Coram: Hon'ble Member J.G.Rajadhyaksha  
Hon'ble Member (J) M.B.Mujumdar.

Appearances:

Mr. Nair for the Applicants,  
Mr. V.G.Rege for the  
Respondents.

Tribunal's Order: (Per M.B.Mujumdar, Member(J) Dt: 8.10.1986

Applicants had filed Writ Petition No.2662/1984 in the High Court on 28th December, 1984 under Article 226 of the Constitution of India and it is transferred to this Tribunal under sec.29 of the Administrative Tribunals Act, 1985.

The applicants are serving as Commercial Clerks with the Central Railway. On 20th of December, 1984 the Railway Board issued directions for cadre review and restructuring of non-gazetted cadres. The letter containing the instructions is at Ex.'A' attached to the petition, these instructions were issued as it was decided that the employees of Group 'C' cadres should be

•••2•

re-structured in view of the directions given in the letter. The main direction is in clause 4.2 of the letter. According to that clause, if a Railway Servant becomes due for a promotion to a grade more than one grade above that of the post held by him on a regular basis, the benefit of the modified procedure of selection was to be applicable only to the first such promotion, if that post happens to be a selection post, and the second and subsequent promotions were to be based only on the normal rules relating to <sup>filling of</sup> ~~any~~ of such selection or non-selection posts, as the case may be. The further clause says that the relaxations in selection procedure were applicable only to the vacancies existing as on 31st December, 1983 and the vacancies arising on 1st of January, 1984, due to cadre restructure <sup>in</sup> ~~in~~ terms of the orders. The other instructions are not material for our purpose. By another order dt. 6.8.1984 which is at Ex. 'B' a written test was directed to be held at 10.30 A.M. on 2.9.84 and there was to be only one supplementary test for those employees who could not attend the test on 2.9.1984 due to reasons beyond their control, on 8.9.1984. It appears that in the written examination held on these two dates 175 employees had appeared and out of them 78 passed (Ex. 'D' gives names of the successful candidates). The letter dated 28.9.1984 at Ex. 'C' shows that 'viva voce' test in connection with those employees who passed in these two written examinations was to be held on 15.10.1984 and 16.10.1984. But by an order dt. 11.10.1984 (Ex. 'E') that 'viva voce' test was postponed until further orders.

The letter which is material in this case, is dated 19.12.1984 and it is at Ex. 'F'. The letter shows that there were representations received from the staff with regard to the written examinations held on 2.9.1984 and 18.9.1984 and after examining the representations it was decided as a special case on sympathetic considerations to hold a fresh written examination on 30.12.1984. The list of the employees who had failed in the earlier two examinations was attached to the letter and it was clarified that those employees who were declared passed in these examinations were not required to appear again. After this letter, the applicants filed the writ petition in the High Court on 28.12.1984 for preventing the respondents from holding the written examination on 30.12.1984 as directed in the said letter. Some interim reliefs were also requested for. After hearing the applicant's advocate, the High Court has passed the following order on the same day:

" No ad-interim relief. Any appointment made from amongst those who passed examination dt. 30.12.1984 shall be subject to the result of this petition".

The respondents have filed an affidavit of one Mr. Rama Murthy who was then working as the Assistant Personnel Officer in the Central Railway. In this affidavit the circumstances in which supplementary written examination was held on 30.12.1984 are explained in detail. It is pointed out that in the written examinations held on 2.9.1984 and 18.9.1984, 175 employees had appeared and only 78 were declared

successful. Thus more than 55% of the employees had failed. There were representations from two recognised Unions that questions outside the Commercial Departmental work were asked in the two examinations and that had caused injustice and hence entire selection proceedings should be cancelled. It was also contended that the entire procedure was meant for mass up-gradation which comes rarely. The persons who were to be up-graded were to do the same work which they were doing prior to the up-gradation, but they were to get more salary. It was in these and other circumstances that it was decided to hold the examination on 30.12.1984. It may be pointed out here that at that examination 80 employees had appeared and out of them 76 were declared successful.

Mr.Nair the Learned Counsel for the applicants pointed out that only 68 vacancies in the up-graded post were to be filled and when 78 persons had passed in the written examinations held on 2.9.1984 and 18.9.1984, it was not necessary to hold the supplementary examination on 30.12.1984. According to him the examination held on that day was quite contrary to the rules. While making this submission, he relied on Rule.216 of the Railway Establishment Mannual. He pointed out that there is no provision for supplementary test anywhere in this rule.

We have carefully considered the submissions made by Mr.Nair and we have found that they are devoid of any merit.

Rule 216(d) specifically says that it is desirable to hold written test as part of the selection in respect of initial selection grade posts in the different channels of promotions. In every case, the viva voce

test has to be held. However, if the written test is proposed to be held an advance intimation should be given to the candidates. Mr. Nair therefore did not challenge the written examinations held on 2.9.1984 and 18.9.1984. But according to him the third written examination held on 30.12.1984 was illegal and contrary to rules. But if the Railway authorities were justified in holding the written tests on the two dates there is no reason to hold that they were not justified in holding the supplementary test on 30.12.1984. The review and restructuring of non-gazetted cadres was directed to be done by the Railway Board as a special case. As already pointed out the promotions to the grade more than one above were to be made only on the normal rules relating to promotions. As submitted by Mr. Rege, Learned Counsel for the Respondents, more than one written examinations were not prohibited by any of the rules. Even before the viva voce test was held, the Railway authorities had declared its decision to hold the written examination on 30.12.1984. We, therefore, hold that the written examination on 30.12.1984 is neither illegal nor contrary to any rules.

To complete the record, we may point out that the viva voce test was held on 12th, 13th, 16th and 17th of March, 1985 for those who had passed in the written examinations. Out of the 78 employees who had passed in the written examinations held on 2nd and 18th of September, 1984, 41 were duly promoted and out of them 29 were from the general category, 10 were from Scheduled Castes and 2 were from Scheduled Tribes. Out of the 80 candidates who had appeared for the written examination

held on 30.12.1984, 76 passed and out of them 27 were duly promoted. The employees who were promoted were promoted on the basis of their seniority in the gradation list. The applicants' grievance appears to be that though they had passed in the written examinations held on 2nd and 18th of September, 1984 the chances of their promotions were marred because of the supplementary examination was held on 30.12.1984. But as the examination held on that day cannot be attacked on any valid ground, the applicants will not be entitled to any relief. The seniority of the applicants is not disturbed in any way. We therefore, dismiss the application with no orders as to costs.

  
(J.G. RAJADHYAKSHA)  
MEMBER(A)

  
( M.B. MUJUMDAR )  
MEMBER(J)