

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

Tr. Application No. 513 of 1986

Shri Prabhudas G. Shrimali,
At: Laxmi Dhawr Co-Operative
Housing Society Ltd.,
Behind Woodland Cinema,
Virar (West)

.. Applicant

v/s.

1. Union of India through
the General Manager,
Western Railway,
Churchgate,
Bombay.
2. General Manager,
Western Railway,
Churchgate,
Bombay.
3. Divisional Rail Manager,
Western Railway,
Bombay Division
Divisional Office,
Bombay Central,
Bombay-8.
4. Divisional Commercial Supdt.,
Western Railway,
Bombay Division,
Bombay Central,
Bombay-8.
5. M.G. Gohil,
Head Booking Clerk,
At: Surat Railway Station,
Surat,
Gujarat State.
6. Roopsingh H.
Head Booking Clerk,
Western Railway,
At: Charni Road Station,
Charni Road,
Bombay-7.

.. Respondents

Coram: Hon'ble Vice-Chairman, Shri B.C. Gadgil
Hon'ble Member (A), Shri J.G. Rajadhaksha

Appearance:

1. Mr. Ramamurthy
Advocate
for the applicant.
2. Mr. R.C. Master,
Advocate
for respondents No. 1 to 4

JUDGMENT:-

Date: 7.4.1988

(PER: Shri B.C.Gadgil, Vice-Chairman)

Writ Petition No.575 of 1984 of the file of the High Court of Judicature at Bombay is transferred to this Tribunal for decision.

2. The applicant (Original Writ Petitioner) as well as respondents Nos. 5 and 6 are employees working with the Western Railway. Before 1980, all of them were Assistant Coaching Clerks. The applicant was senior to respondents Nos. 5 and 6 in this grade. The next promotional post is that of Senior Assistant Coaching Clerk. The employee is required to pass a suitability test for this promotion. Such a test was held on 10.2.1980 where respondents Nos. 5 and 6 appeared and succeeded. There is a provision that an employee unable, for reasons beyond his control, to appear for the test is given a second chance. The applicant did not undergo this test on 10.2.1980 or at the second chance on 9.3.1980 but the respondents Nos. 5 and 6 passed in that test. The next test ~~therefore~~ took place on 26.10.1980. The applicant passed in it. The next promotional post from the post of Senior Assistant Coaching Clerk is that of the Head Booking Clerk. Respondents Nos. 5 and 6 were promoted to this post of Head Booking Clerk on 15.10.81 and 13.11.1981, respectively. The applicant's grievance is that he being senior to respondents Nos. 5 and 6 should have been promoted to the post of Head Booking Clerk and that the promotion of respondents Nos. 5 and 6 is

Contd...3/-

erroneous. He made a representation (Exhibit-D to the application) on 18.11.1981 about this grievance. The administration replied on 2.1.1982 (Exhibit-E to the application) that respondents Nos. 5 and 6 had passed the suitability test earlier to the applicant and that under the rules, on so passing the test they become senior in the grade of Senior Assistant Coaching Clerks. It is contended that it is on account of this seniority that respondents Nos. 5 and 6 were promoted to the higher post. The applicant made further representations. However, they were of no use. Hence he filed the Writ Petition in the High Court contending that he was not relieved by the then Chief Booking Clerk at Churchgate (under whom the applicant was then working) for the test held on 10.2.1980, and that no intimation was received by him as regards the second chance for the suitability test to be held on 9.3.1980. The applicant relies upon the letter dtd. 6.1.1982 (Exhibit-G to the application) which was written by the Chief Booking Clerk to his higher officers that at the time of the suitability test to be held on 10.2.1980 four Assistant Coaching Clerks were to be relieved. However, it was not possible to relieve all of them, and hence only two of the Assistant Coaching Clerks namely respondent No.5 and one more person were relieved. In that letter it was also stated that no intimation was received by that office for sending the staff on 9.3.1980 for the second chance in the suitability test. The applicant contends that he could not take the suitability test

Contd...4/-

on 10.2.1980 as he was not relieved by his superior officer and that he could not also take the second chance dtd. 9.3.1980 as communication about holding of this second chance test was not at all received by the Churchgate Station. The applicant alleged that he was not at fault on these two occasions and that he passed the next test held on 26.10.1980 as he could not appear for the earlier tests for the reasons mentioned above. The applicant further contends that in view of this circumstance he cannot lose seniority which he had over respondents Nos. 5 and 6 and that, therefore, it was erroneous on the part of the department to promote respondents Nos. 5 and 6 to the higher post of Head Booking Clerk in 1981.

3. The respondent administration, namely, respondents Nos. 1 to 4 resisted the claim by filing their reply before this Tribunal. It was contended that the application was barred by laches. On merits, it was pleaded that the applicant did not appear for the test held on 10.2.1980 as he had not prepared himself for that test. As far as the second chance dtd. 9.3.1980 is concerned, the respondents contended that the communication to that effect had been sent on 20.2.1980 and that in spite of that communication, the applicant did not avail of that chance. The respondents, therefore, alleged that giving seniority to respondents Nos. 5 and 6 on account of their passing the suitability test is quite legal and proper. Consequently their earlier promotion to the next

higher post of Head Booking Clerk was also pleaded to be legal.

4. We have heard Mr. Ramamurthy, Advocate for the applicant and Mr.R.C. Master, Advocate for respondents Nos. 1 to 4. Respondents Nos. 5 and 6 had remained absent. We will deal with the preliminary objection raised by Mr. Master that the application was barred by laches. The suitability test was held in 1980 and respondents Nos. 5 and 6 were promoted to a still higher post in 1981. The Writ Petition was filed in 1984. Mr. Master contended that this long lapse of about three years would come in the way of the applicant successfully to claim any relief. However, it is material to note that immediately after the promotion of respondents Nos. 5 and 6, the applicant made a representation dtd. 18.11.1981 (Exhibit-D to the application). When that representation was rejected on the ground that respondents Nos. 5 and 6 had passed suitability test earlier, the applicant sent another letter dtd. 7.1.1982 vide (Exhibit-E to the application) clarifying the position that he was not relieved for the test held on 10.2.1980 and that no intimation was given to him about the test to be held on 9.3.1980. The applicant then made another representation to the higher authorities on 1.7.1982. Ultimately, he gave a notice through an advocate vide Exhibit-R dtd. 21.2.1984. Thereafter, he filed the Writ Petition. In view of these circumstances it will not be possible for the respondents to contend

that the application is barred by the principle of laches. The learned Advocates appearing on behalf of both the sides frankly stated that the applicant would succeed if he was not relieved to undergo the test on 10.2.1980 as also if no intimation was given to him about the second chance dtd. 9.3.1980.

Similarly, it is not disputed before us that this application would be liable to be dismissed if it be found that the applicant himself decided not to take the test on 10.2.1980. Thus, the dispute is on the question as to whether the applicant chose not to appear for the suitability test on 10.2.1980 or he was prevented therefrom as he was not relieved by the Chief Booking Clerk of the Churchgate Station. Mr. Ramamurthy relied upon the letter dtd. 6.1.1982 (Exhibit-G to the application).

5. It is stated in the letter that four persons including applicant and respondent No.6 were asked to appear for written suitability test on 10.2.1982. Thereafter the Chief Booking Clerk wrote as follows:-

"..But four ACCs cannot be spared on 10.2.1980, only two ACC's Shri Roopsingh H. and Shri Dager Mangilal were sent to your office for suitability test on 9.2.1980 vide my letter No.CBC/80/2/82 of 9.2.80..."

As per your letter No.E/C/III/3610 of 2.1.1981. It is stated that no such information were received from your office for sending staff on 9.3.80.. Shri P.G. Shrimali was on duty on 9.2.80...."

Mr. Ramamurthy contends that this letter would show that the Chief Booking Clerk did not relieve the

applicant for the test held on 10.2.1980 and that the applicant was also not relieved on 9.3.80 as communication in that respect was not received by that office.

6. As against this, Mr. Master relied upon another letter (Exhibit-I to the reply) written on 2.6.1982 by the Chief Booking Clerk. The relevant portion reads as follows:-

"... On informing the above mentioned employees about the suitability test to be held on 10.2.80 Shri P.G. Shrimali (i.e. the applicant) and Shri Shivchand requested this office verbally to please omit their names from the suitability test to be held on 10.2.80 as they were not prepared for the same and that they would appear for the next test along with other absentees. Hence the request of these employees was acceded to as it would give them sometime for preparing and also at the same time as there being shortage of staff it was thought right to detain the above mentioned employees.

It appears that absentees were called upon for suitability test on 9.3.80 vide your letter No.E/C/III/3610 of 2.1.82. However your letter of intimation is not received by this office till today. This has resulted in not sparing Shri P.G. Shrimali and Shri Shivchand be on 10.2.80 and 9.3.80."

Mr. Master contends that this letter would show that the reasons for not relieving the applicant on 10.2.80 were two fold, namely the applicant himself was not prepared for the test and that he told the Chief Booking Clerk that he would appear at the next test. He, therefore, urged that the applicant cannot take

advantage of his inability to take the test on 10.2.1980.

7. The contents of the letter dtd. 6.1.1982 and 2.6.1982 are common to a certain extent namely that both the letters state that the applicant was not relieved and that the communication for the second chance of suitability test to be held on 10.3.80 was not at all received by that office. The letter dtd. 2.6.1982, however, has added something more. It states that the applicant himself opted not to take the suitability test as he was not prepared. Mr. Ramamurthy contends that this additional statement in the second letter dtd. 2.6.1982 is an improvement made by the department with a view to deny the lawful right of the applicant by suggesting that the applicant himself decided not to appear for the test. It is, therefore, necessary to find out as to what the exact position was. It is material to note that on 10.2.80 one Mr. Chablani was the Chief Booking Clerk. Both the letters have been signed by Mr. K.B.Patel who was the successor to Shri Chablani as stated before us in writing on 22.3.1988 when we made a query in that respect. The applicant in paragraph 6 of his rejoinder has stated that the letter dtd. 6.1.1982 was entirely written out by the then Chief Booking Clerk at the relevant time (i.e. on 10.2.80), Shri Chablani, and that it was signed by Shri K.B.Patel who took over as Chief Booking Clerk at about the time when the

Contd...9/-

letter was sent. Thus the contents of the letter dtd. 6.1.1982 were written on the basis of the personal knowledge of Shri Chablani, the Chief Booking Clerk who was expected to relieve the applicant on 10.2.1980. As against this, the other letter dtd. 2.6.1982 is signed by Shri Patel who was not the Chief Booking Clerk at the relevant time. In that letter, Patel has stated that the applicant had verbally asked to omit his name from the test to be held on 10.2.1980 as he was not prepared for the same. The word "verbally" would itself indicate that there would not be any record of any such statement alleged to have been made by the applicant. Obviously, the statement could not have been made to K.B.Patel as he was not the Chief Booking Clerk on 10.2.1980.

8. There is one circumstance in favour of the applicant. On 2.4.1982, the superior officer of Chief Booking Clerk has written to the officer in charge of the Churchgate Railway Station making the query as to why Shri Shrimali, though senior, was not relieved for the suitability test held on 10.2.1980. In the reply sent to this letter, it was repeated that due to acute shortage of the staff only two Assistant Coaching Clerks namely Roopsingh H. and Shri Dager Mangilal were spared. Copies of these letters have been made available for the perusal of the Tribunal during the course of the hearing. It is material to note that in the reply dtd. 24.4.1982 there is no

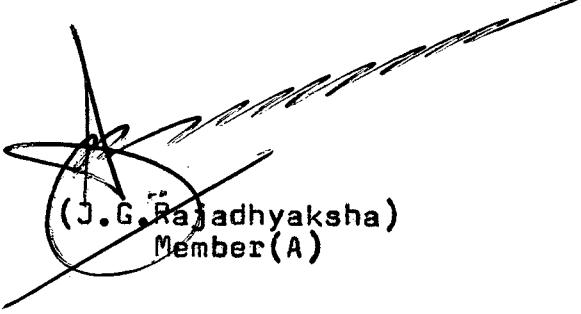
mention that the applicant himself orally informed that he would not be ready to take the test for want of preparation. In these circumstances, it will not be possible to accept the contents of the letter dtd. 2.6.1982 that the applicant did not want to appear for the test. This is more so when the letter was written by a person who was not the Chief Booking Clerk at the relevant time i.e. 10.2.80 and when the alleged statement of the applicant is said to be oral the author of that letter could not have any personal knowledge about the said oral statement.

9. As far as the second chance dtd. 10.3.80 is concerned, Mr. Master contended that a letter was sent to the Churchgate Railway Station asking to relieve the applicant for that chance. However, contents of both the letters 6.1.1982 and 2.6.1982 clearly affirm that the said communication was not at all received by the Churchgate Railway Station. In the absence of the receipt of such a letter, the applicant could not have taken the said test. Of course, Mr. Master wanted to get over this difficulty by contending that the applicant was not entitled to have a second chance inasmuch as under Rule 317 of the Indian Railway Establishment Code, the second chance is permissible only to those persons who are unable for reasons beyond their control to take the first chance. It was urged that the applicant was not entitled to the second chance as he himself decided not to appear because of his unpreparedness and that this cannot be said to be a reason beyond his control.

We have already rejected the contention of the department that the applicant had himself said that he was not prepared for the test. Secondly, the fact that the Railway administration wanted to give a second chance to the applicant is a circumstance which goes to show that the case of the applicant fell within the provisions of Rule 317 i.e. the applicant was unable, for reasons beyond his control, to appear for the examination. This inability beyond his control would necessarily flow when the applicant was not relieved by the Churchgate Railway Station to undergo the test on 10.2.1980.

10. For all these reasons the application succeeds. The respondents are directed to treat the applicant as Senior to the respondents Nos. 5 and 6. To be specific the seniority of the applicant and the respondents Nos. 5 and 6 should continue to be the same as it was in the grade of Rs. 260-430, after all of them passed the suitability test for the post in the grade of Rs. 330-560. The respondents are further directed to treat the applicant as promoted to the post of Head Booking Clerk on 15.10.1981. That is the date on which his junior namely respondent No.5 was promoted to that post. Respondents are further directed to pay to the applicant all monetary benefits arising from such promotion with effect from 15.10.1981.

Parties to bear their own costs.


(J.G. Rajadhyaksha)
Member(A)


(B.C. Gadgil)
Vice-Chairman.