

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

Original Application No.172/86.

Shri Shashikant Prabhakar Phatak,  
Behind Bhusawal High School,  
Jalgaon Road, Bhusawal-425201 &  
Nine Others.

... Applicant

V/s.

1. Union of India through  
The General Manager  
Central Railway,  
Bombay V.T.

2. The Divisional Railway Manager,  
Central Railway,  
Bhusawal.

3. Divisional Personnel Officer,  
Central Railway,  
Bhusawal.

... Respondents.

Coram: Hon'ble Member(A), Shri S.P.Mukerjee,  
Hon'ble Member(J), Shri M.B.Mujumdar.

Appearances:

Mr.D.V.Gangal, advocate  
for the applicant and  
Mr.S.R.Atre, counsel for  
the Respondents.

JUDGMENT:

(Per Shri S.P.Mukerjee, Member (A))

Dated: 9/10/87

The applicant Shri S.P.Phatak and nine others who were working as Senior Clerks in the office of Senior Divisional Electrical Engineer, Bhusawal moved the Tribunal under section 19 of the Administrative Tribunals Act praying that the impugned orders dated 22.5.1986 cancelling the suitability test by which they were promoted as Senior Clerks, the order dt. 26.5.1986 calling upon them to reappear again in another suitability test and the order dt. 2.6.1986 stating that the second suitability test stands should be declared as illegal and that on the basis of the suitability test of 1983 which may be declared as legal and valid, their promotion and seniority as Senior Clerks already determined should be taken as valid. The matrix of relevant facts which

are not in dispute can be summarised as follows. The petitioners were working as Junior Clerks in the scale of Rs.260-400 having been appointed to that grade between 1976 and 1980. They appeared ~~for~~ for the suitability test for promotion of Senior Clerks held in August, 1983 and on the basis of the results they were appointed as Senior Clerks in accordance with the office order of 7/13 February, 1984 (Annexure 'E'). Their position in <sup>the</sup> ~~that~~ seniority list of Senior Clerks was also published on 14th December, 1984. On 22nd May, 1986 (Annexure 'G') by the impugned order of that date the suitability test held in 1983 was cancelled <sup>though</sup> but it was indicated in the same order that those who were promoted on the basis of that test will not be reverted, <sup>they</sup> ~~but~~ will be continued as Senior Clerks on an ad hoc basis subject to the results of <sup>a</sup> ~~the~~ fresh suitability test. The representations made by the applicants against the cancellation order and their request that they should not be subjected to a fresh suitability test <sup>were</sup> ~~was~~ rejected by the second impugned order dt. 26.5.1986(Annexure 'I'). Their further representations also met with similar fate, hence this application before the Tribunal. The petitioners did not appear in the second suitability test and this Tribunal passed an interim order dt. 13.6.1986 that results of the second suitability test should not be declared without the express permission of the Tribunal. In accordance with the applicants the unilateral cancellation of the first suitability test after a lapse of 30 months <sup>of</sup> ~~after~~ their regular promotion is illegal as the first suitability test was held properly in accordance with the prescribed procedure. They have also argued that the respondents have not given any specific ground on which the first suitability test was declared to be irregular

or illegal and cancellation of the first suitability test without giving them an opportunity to be heard is against the principles of natural justice. They further argued that the first suitability test held in August, 1983 was identical with the similar suitability tests held in the past.

2. In accordance with the respondents the first suitability test of 1983 was cancelled in 1986 on the basis of allegations of irregularity in conducting the test and the examination of answer books by Class.II Officers, whereas such examination should have been <sup>conducted</sup> ~~done~~ by a Senior Scale Officer as per the decision taken in the meeting of the Permanent Negotiating Machinery (PNM).

3. We have heard the arguments of the learned Counsels for both the parties and gone through the documents carefully. The learned counsel for the applicants indicated that the first suitability test was held as per normal procedure by which thousands of officials had been promoted in the past. The learned counsel for the respondents however argued that there was some irregularity in the answer papers not having been marked by the Senior Scale Officer. On the query whether there were any rules and instructions under which only Senior Scale Officers are authorised to mark the answer papers, the learned counsel for the respondents drew our attention to (Annexure 'B') to the rejoinder. This annexure relates to delegation of powers of promotion to various grades and is not relevant to the question of the authority to mark the answer books. On the other hand in their SIR rejoinder filed by the respondents it has been clearly stated by them that at the time of conducting the suitability test "the assessment and result was approved and declared by Senior D.M.E.(P) who is a Class.I Officer". Thus it is clear that even the so called irregularity pointed out by

the respondents had been washed away by the approval of the results given by a Class.I Officer. Further the respondents have chosen to remain silent in the SIR rejoinder on the averment made in the rejoinder by the applicants that in the past suitability tests <sup>were</sup> conducted by Shri Khotekar who is a Class.II Officer who had assessed the answer books of Junior Clerks and that similarly other results were declared by Shri Pashilkar Assistant Personnel Officer during the last 5 years.

4. The genesis of the cancellation of the first suitability test is exposed by paras 3 and 4 of the remarks of Divisional Railway Manager (DRM) dt.18.6.1986 at Annexure 'E' to the written reply of the respondents. These are quoted below:

"The very validity of this test was challenged by the National Railway Mazdoor Union in the Meeting held on 18/19.5.1984. The Union representatives pointed out in the PNM meeting that people who had worked for a longer period have been declared failed though there was no adverse report against their working at any stage. Sr.DEE(G) considered the case and granted 8 grace marks to these clerks. It was, therefore, conclusively proved that suitability test was not conducted as per required standard.

ADRM(O) who is the convenor of the PNM meeting later considered the issue and felt that it would not be desirable to declare a person to have passed by giving certain number of grace marks and desired a fresh suitability test to be conducted cancelling earlier result. Point to be noted is that the persons who are supposed to be affected today are not likely to be reverted in case they succeed along with other persons who attend the test. The issue is, therefore that they are indirectly afraid that whether their seniority will be retained from that date or not, from the date they have passed the earlier test. If 8 grace marks had been given picture would have been different.

Therefore, to give everybody a fair chance, revised test was ordered, cancelling the earlier ones".

It will thus be clear from the above that the motive behind cancellation of the suitability test was not ~~the~~ <sup>the so</sup> called irregularity but the need felt by the respondents to somehow accommodate some seniors who had failed to pass the first suitability test.

5. Since we do not find any irregularity of such a nature as to render the first suitability test void, we cannot persuade ourselves to undo the promotion made on the basis of that suitability test. The fact remains that the respondents themselves promoted the applicants <sup>regularly</sup> on the basis of that test, <sup>regularly</sup> relating to the scale of Senior Clerks without any reservations, <sup>regularly</sup> and they were shown even in the seniority list. It does not therefore, lie in the mouth of the respondents to say that the suitability test was irregular three years after the test was held <sup>regular</sup> and unilaterally downgrade the promotion of the applicants as ad hoc. Such an action is barred not only by the principle of equitable and promissory estoppel, but also by the requirement of the principles of natural justice. It is now settled law that rights already <sup>accrued</sup> ~~approved~~, as a result of pre-existing instructions or orders and circulars cannot be taken away by administrative and executive orders.

6. In the facts and circumstances we allow the application and set aside the impugned orders dated 22.5.1986, 26.5.1986 and 2.6.1986 to the extent of directing that the order No.105 dt. 7/13.2.1984 promoting the petitioners to the scale of Rs.330-560 as Senior Clerks should be allowed to stand as if the impugned orders had never been passed and that the applicants should be deemed to be continued as Senior Clerks on a regular basis right from their <sup>dates</sup> of promotion to that grade without being called upon to take any other suitability test for such promotion. The interim order passed in this case is also vacated with a direction that the results of the second suitability test should be declared only to the extent of filling up such vacancies in the

grade of Senior Clerks as would remain after accommodating the petitioners in that grade on the basis of the aforesaid order of 7/13.2.1984. There will be no order as to costs.

*S.P.M.* <sup>q.1c.87</sup>  
(S.P.MUKERJEE)  
MEMBER(A)

*M.B.M.*  
(M.B.MUJUMDAR)  
MEMBER(J).