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

D.A. 279/89.

1. Sayed Sibte Hyder,
Senior Ticket Collector,
Grant Road Station,
Western Railway,
BOMBAY - 400 007.

2. Naresh Pratap Singh,
Senior Ticket Collector,
Churchgate Station,
Western Railway,
BOMBAY - 400 020.

.. Applicants.

V/s.

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

2. Divisional Railway Manager,
Western Railway,
Bombay Central,
Bombay - 400 008.

... Respondents.

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

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

Appearances:

Shri M.S. Ramamurthi,
Advocate
for the applicant.

Shri A.L. Kasturey,
Advocate
for the respondents.

ORAL JUDGMENT

DATED : 20.6.1991.

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

The applicants in this case were originally working as Firemen Gr.C and being rendered surplus due to electrification/dieselisation of railways, they were absorbed in clerical cadres. Their prayer in this

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application is that their seniority be refixed in the cadre of Ticket Collector in the Bombay Division and also for grant of further promotion and consequential benefits on that basis.

2. It appears that Firemen Gr.C who were rendered surplus were given an option under Western Railway letter dated 26.3.1980 for absorption in popular categories such as Ticket Collector, Assistant Coaching Clerk etc. if they had the qualification of Matriculation. Accordingly some surplus staff who had given willingness for absorption and possessed the matriculation qualification were absorbed as Assistant Coaching Clerk on 27.11.1980.

3. Subsequently the remaining surplus staff amongst whom were many non-matriculates but who had passed 8th standard examination were also considered for absorption in this category. By letter dated 21.2.1981 the absorbed ACCs as well as non-matriculates were considered for the post of Ticket Collector alongwith those who had submitted their option for absorption in commercial category and a written test was conducted for this purpose on 25.3.1981 and for absentees on 7.4.1981. Thereafter viva-voce was also conducted and the results declared on 31.8.1981. However, the applicants did not appear on both the occasions though their names were in the list of staff called for the test which was circulated on both the occasions.

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4. The respondents contend that the applicants never represented even after the results were declared on 31.8.1981 regarding the justification for their remaining absent in Viva-Voce and it was, therefore, not possible for the Railway Administration to give them a second chance for screening immediately on their assumption of duties.

5. It seems that some of the aggrieved persons had also approached the High Courts of Bombay and Gujarat on this issue and while the Bombay High Court had rejected their petition, the High Court of Gujarat had directed the Railway Administration to give one more chance at its discretion to such persons who had either failed in that test or did not appear at the test. The Railway Administration had accepted the High Court of Gujarat direction and a special test was conducted for such persons and it was also extended to the employees within the jurisdiction of Bombay High Court as a special concession.

6. The applicant's contention now is that they had no intimation about this supplementary test being conducted and, therefore, could not appear for the test, while earlier, when the main test was conducted, one applicant was sick and the other was away on territorial army duty.

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7. The respondents had stated that on no occasion when such persons attended the test, individual communications were given to them and the candidates had to appear in response to an open circular.

8. It is also difficult for us to accept the applicant's contention that they were not aware as to when the tests were held, particularly when a large number of their colleagues had appeared for the tests and also had been promoted on the basis of the earlier test. The applicants had also appeared subsequently for the test without any protest or without any condition. It is not open for them now to claim higher seniority over the candidates who had passed in the earlier examination as the higher seniority to them is in accordance with the standard rules on the subject.

9. The only prayer in this application is regarding fixing of seniority immediately below Shri Nandalal Singh who was senior to them in the erstwhile fireman Gr.C category. We cannot ~~pass~~ ^{give} such a direction for the reasons stated above.

10. The application is accordingly rejected with no order as to costs.


(M.Y. PRIOLKAR)
MEMBER(A).


(U.C. SRIVASTAVA)
VICE CHAIRMAN.