

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 496/89
~~XXXXXXXX~~

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DATE OF DECISION 12-8-1991

Mr. K. K. Shivshankaran and 3 ors. Petitioner

Mr. G. K. Masand Advocate for the Petitioner(s)

Versus

Union of India and others Respondent

Mr. N. K. Srivasan & M. S. Ramamurthy Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. JUSTICE U.C. SRIVASTAVA, VICE-CHAIRMAN

The Hon'ble Mr. M. Y. PRIOLKAR, MEMBER (A)

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

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

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ORIGINAL APPLICATION NO.: 496/89

Shri Sivasankaran,
Sr. Transit Clerk,
Transit cell, Western Railway,
Churchgate, Bombay - 400 020
and other 3.

.... Applicants

Vs.

Union of India
and other four

CORAM : HON'BLE JUSTICE SHRI U.C.SRIVASTAVA, Vice-Chairman
HON'BLE MEMBER SHRI M.Y.PRIOLKAR, MEMBER (A),

Appearance :

Mr.G.K.MASAND, Adv
for the Applicant

Mr.N.K.Srivanasan, Adv,
and Mr.M.S.Ramamurthy, Adv,
for the respondents

JUDGMENT

DATED: 12-8-1991.

(PER : M.Y.PRIOLKAR, M/A)

The prayer of the applicants in this application is that they should be assigned seniority above respondents Nos., 3,4, and 5 with all consequential benefits including promotions to higher posts, after regularising their services with retrospective effect from their date of entry in the Transit Cell.

2. In 1971, the Western Railway decided to set up an independent organisation known as Transit Cell at Headquarters office and a revised cadre of the staff for the new set up was sanctioned. The notification

dated 16.10.1971 spelling out the details of the revised cadre structure inter alia stipulated that once an employee accepts promotion in the Transit Cell, he will not be allowed any promotion in his present Branch and he will have to seek further advancement in the Transit Cell according to the avenues of promotion. According to the applicants, they and Respondents Nos. 3, 4 and 5 had opted to work in the Transit Cell while they were Asstt. Goods Clerks but the applicants had joined the Transit Cell much earlier than Respondents 3, 4 and 5, and as such their seniority in the Transit Cell should be counted from the date of entry into the said Cell.

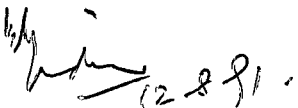
3. Respondents 1 and 2 have stated in their written reply that the applicants and respondents 3 to 5 were posted in Transit cell not in pursuance of notification dated 16.10.1971 but in pursuance of another notification dated 7.6.1981 and on their application under the latter notification. Subsequently they were also promoted in their original cadre. As such the Respondents 1 and 2 affirm that joining in the Transit Cell on ad hoc basis in the higher post has no relevance to their seniority so long as they have not qualified in the written suitability test for the post of Transit Clerk.


4. The notification dated 17.6.1981 specifically states that willing employees will be considered for posting as Transit Clerks on ad hoc basis. It makes no reference to the earlier notification dated 16.10.1971. Since the 1971 notification was in the context of the initial constitution of a new cadre for the newly set up Transit Cell, the deviation from the normal principles of Seniority made therein has, in our view, to be considered as a one time deviation from the

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normal rules and cannot be extended to cover the adhoc appointments made ten year later under the second notification dated 17.6.1981. In the absence of anything to the contrary in this latter notification, the normal seniority rules should be applicable to the appointments made in pursuance of the application; received under this notification of 17.6.1981. We have also to reject the applicants' contention that the principle laid down in the judgment of this Bench dated 3.8.1988 in TA No.s 265 and 267 of 1987 should have been followed in their case also since that judgment was only in the context of the earlier notification dated 16.10.1971, all the applicants and private respondents in that case having been appointed in Transit Cell prior to the issue of notification dated 17.6.1981, which is not even mentioned in that judgment. We have also to reject the contention of the applicants that Respondents 1 and 2 have acted illegally and in a malafied manner by not holding a written suitability test for the post of Transit Clerks for over sever years, since the delay was due to a pending Court case. The test has since been held in July 1989 and the applicants having appeared and passed in the said test, have also been further promoted.

5. We do not, therefore, see any merit in this application which is accordingly rejected, with no orders as to costs.


(M.Y. PRIOLKAR)
MEMBER (A)


(U.C. SRIVASTAVA)
VICE-CHIRMAN