

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 531/89
~~TxAxxNo~~

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DATE OF DECISION 19.4.1991

Shri R.K.Gadgil & Ors. Petitioner

Shri G.D.Samant Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri V.G.Rege Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. 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 ? *Yes*
2. To be referred to the Reporter or not ? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *No*

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

Original Application No. 531/89

Shri H.K. Gadgil & Ors.

.. Applicant

V/s.

Union of India & Ors.

.. Respondents.

CORAM: Hon'ble Vice Chairman, Shri U.C. Srivastava.
Hon'ble Member (A) Shri M.Y. Priolkar.

Appearances:

Mr. G.D. Samant, Advocate for the Applicant.

Mr. V.G. Rege, Advocate for the Respondents.

JUDGEMENT:

Dated: 19-4-1991

(Per Shri U.C. Srivastava, Vice Chairman.)

The applicants are aggrieved with the seniority list, which according to them marred their chances of promotion, which has thus been relegated into the background. Hence the applicants having retired or to be retired from the service have prayed that the seniority list as published in the year 1983 of senior clerks in the grade 330 - 560, that is, Grade I class in the Head Quarters Office, Personnel Branch, Bombay V.T. Central Railway is bad and may be declared to be inoperative in law, null and void and that the respondents be ordered to rectify the seniority list in accordance with the rules and Railway Board's orders and they may also be directed to show the correct position of the applicants in the said seniority list dated 1.1.1983, above Shri S.B. Kulkarni at Sr. No. 107 and be granted consequential benefits. Further prayer is that the respondents be ordered to promote the applicants to higher grades on due dates.

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2. Although on facts, certain controversies have been raised, the applicants have admitted in the rejoinder affidavit that in case their contention is accepted, actually only three persons are now likely to be placed below them namely, S/Shri T.R. Narayanan, M.M. Ranade and Smt. S. Kukharji, after the publication of the said list on 1.1.1983, which was published consequent upon the representation made by the staff who came on transfer from the Divisional Office, Personnel Branch against 20% quota reserved for them, which representation resulted in the seniority list being revised vide letter dated 28.3.1983. On behalf of the applicants it is contended that while revising their position in the seniority list of 1983, the existing rules were not followed, hence natural justice is violated and several errors and irregularities were committed and even though the Chief Personnel Officer, respondent No. 3 to this application, should have assigned posting one employee against one vacancy, yet the names of more than one employee against one vacancy were shown giving benefit to the staff transferred from Divisional Head Quarters. The main grievance of the applicants in this application is that the promotion to the post of Senior Clerk to the grade of Rs. 130 - 330 (330 - 560) is subject to passing of suitability test. But the respondent No.3 according to the applicants has not followed the rules laid down by the Railway Board. Instead of assessing the suitability of the candidates at the time of occurrence of actual vacancy he held a mass suitability test and prepared an abnormally

lengthy list of suitable candidates disproportionate to number of vacancies available at the time of conducting such suitability test. This was done despite the instructions of the Railway Board contained in their letter dated 9.2.1977 in which it was categorically mentioned that such list could not be a valid list and even then promotions continued to be made from this list. The respondent No.3 also violated para 320 of the Indian Railway Establishment Manual and the list of suitable candidates which is in question was declared on 9.10.1965. The direction of the Railway Board contained in the above letter was ignored when the seniority lists were prepared in the year 1983. The applicants passed the suitability test on 2.7.1967 from which date they became available for promotion but the respondent No.3 went on promoting other persons from the unduly long list referred to above with the result they have been deprived of the promotion, which could have led to even further promotions in the channel. As a matter of fact, under the relevant rules of the Railway, suitability test is to be held every six months on the basis of actual occurrence of vacancies and if the said rule had been followed faithfully, steps should have been taken to rectify the incorrect position of seniority in terms of Railway Board letter dated 9.6.1970. But for applicant No.1 who was in vigilance, the other applicants started filing representation on 27.4.1983 while on 25.4.1984 all have filed representation and subsequently also representation were filed. The reply letter was received by them on 3.4.1985 but they were not satisfied with the reply and made further

representation and ultimately the matter was raised before the meeting between the Railway Board and the All India Railwaymen's Association and ultimately the reply to the representation was given on 27.1.1989, which in fact was given to General Secretary, National Mazdoor Union justifying the action and rejecting the plea of the applicants. Thereafter, the applicants approached this Tribunal and this is how according to them the present application is within the limitation.

3. The application has been opposed by the respondents who have filed a written statement on behalf of respondents. It has been pleaded that this application is barred by time and the applicant cannot get the settled position unsettled when they have not taken any action at the appropriate time and it is no longer open for them to challenge the seniority list. It has been stated that prior to the publication of the seniority list of the year 1983, seniority lists of senior clerks grade 330 - 560 were published in the years 1972 and 1977 vide letters dated 19.10.1972 and 9.8.1977, which were drawn according to the order contained in the Railway Board's letter dated 13.10.1967. The similar list on 20.3.1983 is based on the position of the applicants which was shown in the seniority lists of 1972 and 1977 against which no representation was made by the applicants and thus they have acquiesced in the said list and it is no longer open for them to challenge the seniority in the subsequent lists. The representations have been replied on 3.4.1985. The limitation is barred from that date and therefore the application is time barred. It has

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been further pleaded that those who would be affected have not been impleaded as a party to this application and no order to their detriment can be passed in their absence and because of the non-impleadment of the necessary party, the application is liable to be dismissed. The applicants cannot derive benefit of the discussion with the Union or cannot take limitation from the date of the communication which was sent to the Secretary of the Mazdoor Union on merits. It has been contended that so far as giving proforma fixation to a number of persons against one vacancy is concerned, though the Railway Board did not agree to give proforma fixation as by way of regularisation or by delegation of normal rules, but the facts were reported to the Railway Board. But the Railway Board did not object to the assignment of seniority to the persons concerned even though it was not done with particular reference to the vacancies and as such the seniority is not questionable. So far as the suitability test is concerned it has been stated that for 25 vacancies of the Senior Clerks, 50 Junior Clerks were considered, that is twice, as eligible to appear in the test. The Railway Board vide letter dated 13.10.1967 had issued instructions calling candidates equal to the number of vacancies. The question of assignment of seniority to the staff transferred from the Divisional Officer against 25% quota was not considered and the action of the respondents was upheld by Railway Board as has been stated above and because of the transfer they are entitled to seniority and their names were interpolated. But they were not made senior with the Head quarters staff who have been promoted prior to arrival from the Divisions. Thereafter the list on

20.3.1983 was published. Out of the 50 candidates called for suitability test, only 25 candidates were found suitable against 25 vacancies but all the candidates could not be considered for posting including the applicants due to large number of posts having been held in abeyance as a measure of economy. The left over persons like applicants were also promoted subsequently and their seniority has been fixed on the basis of actual date of promotion. The applicants were included in the list which was published on 24.8.1967 while those against whom they have a grievance, were included in the list published as a result of test which took place on 9.10.1965.

4. The case of the applicants is that the other persons who have not been impleaded are not necessary party to the application as their grievance is against administration and they want redressal on the basis of principle of seniority. In the rejoinder they have also stated that they are likely to be affected adversely and if it is required to join them, they will be filing a separate application in this behalf which has not yet been done. ~~As~~ Regarding the applicant No.1 it has been said that he was working in the vigilance department and was not informed of the changes made in the seniority list and as such he had no opportunity to represent his case earlier but the others were representing their case. It has been further reiterated that the seniority position of 1973 has been changed in the year 1983 without giving any opportunity to them and as such it is open to challenge the said list. According to the applicants,

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in pursuance of Railway Board letter of 1970 the entire seniority lists from 1958 onwards which were not prepared in accordance with para 320 of the Establishment Manual in any case were vitiated.

Para 320 of the Manual reads as under: -

" Seniority of Promotion of Non-selection posts. Promotion to Non-selection posts shall be on the basis of seniority-cum suitability, suitability being judged by the authority competent to fill the post, by oral and/or written test or a departmental examination or a trade test as considered necessary and the record of service. the only exception to this would be in cases where for administrative convenience, which should be recorded in writing, the competent authority considers it necessary to appoint a railway servant other than the seniormost suitable railway servant to officiate in a short term vacancy not exceeding two months as a rule and four months in any case. This will, however, not give the railway servant any advantage not otherwise due to him. A railway servant, once promoted against a vacancy, which is non-fortuitous, should be considered as senior in that grade to all others who are subsequently promoted. The suitability of a railway servant for promotion should be judged on the date of the vacancy in the higher grade, or as close to it as possible."

5. Apparently what has been complained of in this application may not stand scrutiny of para 320 (a) extracted above. It may be, the contention of the applicants regarding the unduly long list may have some force and it is true that the life of the panel has not to go beyond two or three years and the promotions should not have been made from a list which was prepared in the year 1965. This was clearly against the provisions of rules made by the Railway Board. In the Railway Board rules, after every six months suitability test is provided for and if one long list is prepared, then the chances of better candidates are affected who may have now been ranked higher than the candidate who ranked lower in the earlier test. But in the instant case, it is not possible to interfere in as

much as if any order is passed, the same will affect persons who have already benefited. Such persons who are now three in number will be affected without giving them any opportunity of hearing. A mere declaration in the said case will not be of any consequence. The question of limitation also stares the applicants on the face. Their representation was replied to in the year 1985. Thereafter, undoubtedly, they again started making representation but there is no provision for making representation after representation when once the same is rejected and the limitation cannot be taken with reference to last representation which was filed on 24.5.1985. The limitation is not available to the applicants who have been allegedly denied certain personal rights against others who also appear to be members of the Railway Federation from the reply which was given by the Railway Board to the Secretary of the Federation. In view of the facts that necessary parties have not been impleaded although the rejoinder affidavit offered to do the same, and further since the application is barred by time, the application deserves to be dismissed even though the action of respondents in drawing a long *panel* *disproportionate to vacancies* *by* *seniority list* may not be outside the pale of challenge. *by*

The action of the respondents in the face of the Railway Board's Circular and para 320 (a) of Manual extracted above cannot be appreciated but, for the reasons mentioned above, no interference can be made. In view of what has been said above, the application is dismissed. However, there will be no order to costs.

19-4-81
(M.Y. PRIOLKAR.)
MEMBER (A)

by
(U.C. SRIVASTAVA.)
Vice Chairman.