

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No: 769/91

Transfer Application No:

DATE OF DECISION: 9.2.1995

Shri Hassan Mohiddin & Ors.

Petitioner

Shri M.S.Ramamurthy

Advocate for the Petitioners

Versus

Union of India & Ors.

Respondent

Shri N.K.Srinivasan

Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

The Hon'ble Shri M.R.Kolhatkar, Member (A)

1. To be referred to the Reporter or not ?
2. Whether it needs to be circulated to other Benches of the Tribunal ?

M.R.KOLHATKAR

(M.R.KOLHATKAR)

MEMBER (A)

M.S.DESHPANDE

(M.S.DESHPANDE)

VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, BOMBAY

OA. NO. 769/91

Shri Hassan Mohiddin & Ors. ... Applicants  
v/s.

Union of India & Ors. ... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande  
Hon'ble Member (A) Shri M.R.Kolhatkar

Appearance

Shri M.S.Ramamurthy  
Advocate  
for the Applicants

Shri N.K.Srinivasan  
Advocate  
for the Respondents

ORAL JUDGEMENT

Dated: 9.2.1995

(PER: M.S.Deshpande, Vice Chairman)

By the present application the 5 applicants challenge the orders reverting them as Class IV while they were holding the post of Ticket Collector in the scale of Rs.950-1500 (RP) by three orders passed on 18.9.1991, 11.10.1991 and 10.10.1991 which cover the case of all the five applicants. The applicants were appointed originally in Class IV posts and started holding Class III post from 1975 to 1978 and were working continuously as Ticket Collectors from 1986 onwards for a period of six years. By the three impugned orders, the applicants were informed that since they were officiating as Ticket Collectors in the scale of Rs.950-1500 (RP) on ad-hoc basis from Class III post, they were being reverted to their original cadre. The applicants urge that they were promoted in view of their original seniority and they passed the selection for the post of Ticket Collector held for Class IV staff. Though the contention of the applicants was that 3 of the applicants had passed some sort of examination, the details even according

to the learned counsel for the applicants could not be ascertained because the requisite documents were not in the possession of the applicants. The position that the applicants had passed <sup>any</sup> such examinations has been denied by the respondents by the written statement. The contention of the respondents was that the applicants had failed to pass the prescribed examination which would have enabled them to be promoted as Ticket Collector and they were therefore properly reverted.

2. Shri Ramamurthy, learned counsel for the applicants urged that the promotion of the applicants were not adhoc except to the post of the Ticket Collectors. We asked the learned counsel to produce the documents bearing upon the promotions which the applicants successively got but he was not in a position to produce any such documents. The position therefore remains that the applicants were working on adhoc basis as Ticket Collectors and they would not have any right to the post of Ticket Collectors.

3. Shri Ramamurthy urged that in view of the decision of a Division Bench of this Tribunal in K.Srinivasan vs. Senior Commercial Officer and others, 1986 (1) (CAT) AISLJ 79, the applicants who had been working since 1977 in Class III posts could not be reverted to Class IV grade on the ground that they had been holding the higher post only on ad hoc basis. This proposition, however, is no longer a good law in view of the Full Bench decision in Jetha Nand & Ors. vs. Union of India & Ors., Full Bench Judgements (CAT) Vol. I p. 353, where it was laid down that "Railway Board Circular dated 9.6.65 that an employee who had officiated in a promotional post more than 18 months is not liable to be reverted without following the discipline and Appeal Rules <sup>only</sup> can be applicable <sup>to</sup> those who have been selected or empanelled for the said promotional post and that the basic

feature is that the Railway servant should first be qualified and found suitable by a test, to be empanelled for appointment to the promotional post. It is only then, he acquires a prescriptive right to hold the post. Such a person acquires a further right when he completes 18 months officiation in the promotional post and that is why he cannot be reverted without following the procedure under Discipline and Appeal Rule. The applicants who were appointed on adhoc basis should have no such right, though according to the proposition laid down in Jetha Nand's case they will be entitled to be ed a grant/chance to pass the requisite qualified examination at which it is stated they have failed.

4. By the interim order passed by the Tribunal on 15.6.1992 modifying the order dated 22.11.1991, it was directed that :-

"The respondents shall first consider the selected candidates for the post of Asstt. Coaching Clerks as well as the Ticket Collectors, and also, after considering for appointment, on regular basis, the employees promoted from the rankers' quota, the applicants may continue to hold their present posts, in case the vacancies still exist."

Shri Srinivasan, learned counsel for the respondents stated that the duly selected candidates have not yet become available though the process of selection is in progress and that these vacancies shall have to be filled by the duly selected candidates who have qualified in the examination. He also invited our attention to a later decision where Full Bench of the Tribunal in Suresh Chand Gautam & Ors. Vs. Union of India & Ors., 1992 (19) ATC 664 pointed out :-

"In Jetha Nand's case the Full Bench has not stated that even when regularly selected and fully qualified candidates are available, those who have failed to qualify in the selection test should be allowed to officiate in Class III posts blocking the entry of the regularly selected candidates. Such a view would be putting premium on inefficiency which has never been intended in the judgment in Jetha Nand's case. Therefore we hold that the Railway servant who is allowed to officiate in higher post on temporary basis need not always be allowed at least 3 or more opportunities to appear and qualify in the selection for higher post before he can be reverted without following the procedure prescribed under the Railway Servants (Discipline and Appeal) Rules, 1968 and that he can be reverted if such reversion is warranted for administrative reasons, such as for appointment of regularly selected qualified candidates."

5. Shri Ramamurthy produced before us a copy of the DRM office letter dated 9.7.1986 in which while appointing some of the applicants, it was mentioned that the appointment of the candidates therein as TCs was purely on ad hoc basis in the scale Rs.260-400(R) and it did not confer on them any right to regular posting in ticket checking branch & privileges attached to it and they will be reverted to their original post, on resumption by RRB candidates. This order also would not help the applicants because of the ratio of the Suresh Chand Gautam's case. We find that the applicants did not have right to the posts unless they were to qualify at the prescribed test which they have not so far done.

6. In the result, we see no merit in the application but since the regularly selected candidates are not so far available the applicants may be continued until the regularly selected candidates become available for the posts now held by the applicants. As soon as such candidates become available, the respondents will be at liberty to give effect to the impugned orders which were stayed. Since the applicants No. 1 & 2 have already retired, these directions will not apply to them but only to applicants No. 3 to 5 who are still in service.

*AKR kolhatkar*

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(M.R.KOLHATKAR)  
MEMBER (A)

*[Signature]*  
(M.S.DESHPANDE)  
VICE CHAIRMAN