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Central Administrative Tribunal

~~HYDERABAD BENCH : AT HYDERABAD~~

NEW BOMBAY BENCH : AT NEW BOMBAY

O.A. No.393/91

Date of Decision : 15-11-91

T.A.No.

Brijmohan C.	Petitioner.
Ms.A.S. Kaushik.	Advocate for the petitioner (s)
Versus	
Union of India & Others.	Respondent.
Mr.N.K. Srinivasan	Advocate for the Respondent (s)

CORAM :

THE HON'BLE MR. M.M. SINGH, MEMBER (A).

THE HON'BLE MR. T. CHANDRASEKHAR REDDY, MEMBER (J).

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 Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

MS

Yes

Remarks of Vice Chairman on columns 1, 2, 4

to be submitted to Hon'ble Vice Chairman where he is not on the Bench)

(T. CHANDRASEKHAR REDDY)
MEMBER (J).

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY.

O.A.393/91.

Date of Order: 15-11-91

Brijmohan C.

.. Applicant.

V/s.

1. Union of India, through
The General Manager,
Western Railway, Churchgate,
Bombay - 400 020.
2. Chief Commercial Superintendent,
Western Railway, Churchgate,
Bombay - 400 020.
3. Divisional Commercial Superintendent,
Western Railway, Bombay Central,
Bombay - 400 008.

.. Respondents.

Counsel for the Applicant : Ms. Akhila S. Kaushik

Counsel for the Respondents: Mr.N.K. Srinivasan, SC for
Railways.

Coram :

The Hon'ble Shri T. Chandrasekhar Reddy : Member (J).

The Hon'ble Shri M.M. Singh : Member (A).

(Order of the Division Bench delivered by
Hon'ble Shri T.C. Reddy, Member (J))

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This is an application filed under section 19
of the Administrative Tribunal's Act. 1985, by the
applicant herein for the following reliefs:-

(a) to call for the record and proceedings
of the impugned order dt. 21.11.90 and
after examining the legality and/or the
propriety of the said order, quash and set
aside the same;

(b) in the alternative, to prayer (a), issue
an order and/or direction to the respondents
to cancel and withdraw the impugned order
dt. 21.11.90 reverting the applicant from the
post of Assistant Coaching Clerk to the post
in Class-IV cadre;

(c) to set aside the order if any rejecting
the request of the applicant for being
permitted to changeover to ticket checking
category/branch;

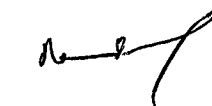
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(d) to direct the respondents to take the applicant in the Ticket Checking branch or category and accord him all benefits and privileges including seniority, promotion, etc., on par with the similarly placed juniors who were taken in the Ticket Checking Branch or category;

The facts giving rise to this application in short may be stated as follows:-

The applicant was initially appointed in Western Railway in class-IV category as Platform Porter on or about 24.10.1973. Thereafter he was posted as Assistant Coaching Clerk (ACC) on adhoc basis with effect from 13.1.1978. Anyhow the applicant was regularised in Class-IV service from 11.3.1982. He was selected and empanelled for being appointed as a regular Asst. Coaching Clerk under the letter dt.21.4.1984. Pursuant to the said empanelment a letter dt.21.1.1984 was issued by the Divisional Commercial Superintendent(CE), Western Railway, Bombay Central, directing several employees including the applicant whose name appeared at Sl. No.30 in the said letter to attend initial training course of Assistant Coaching Clerk (Commercial Clerk) from 25.1.84 to 24.4.84 at the Zonal Training Institute, Udaipur. A copy of the said letter dt. 21.1.84 is annexed to this application and is Exhibit-B. Anyhow the applicant avoided the said initial training course of Commercial Clerk from 25.1.84 to 24.4.84. A further selection was held in the month of October, 1988 for being promoted/posted on regular basis as Assistant Coaching Clerks (Commercial Clerks) in the scale of Rs.975-1540 and as Ticket Collectors in the scale of Rs.950-1500. On this occasion also the Respondents included the name of the applicant in the category of Assistant Coaching Clerk (also called as Commercial Clerk). The said

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selected employees whose names appeared under letter dt. 4.11.88 were required to be sent for training to Udaipur. A copy of the said letter dt.4.11.88 is annexed to this application and is Exhibit-G. The applicant failed to appear for the said training as Assistant Coaching Clerks (Commercial Clerk) at Udaipur. As the applicant failed to attend training at Udaipur on both the occasions an office order dt.21.11.90 was issued by the Respondents to the effect that the applicant should be reverted to the Class-IV post with immediate effect for the reasons mentioned therein. A copy of the said office order dt. 21.11.90 is annexed to the application and is Exhibit-N. A memo dt.26.11.90 (impugned in this application) was issued to the applicant asking him to report in the Sr. Divisional Commercial Superintendent (E) Office for posting in the Class-IV category. A copy of the said letter is annexed to this application and the same is Exhibit-B. So one of the prayers of the applicant as already indicated above is to set aside the order reverting the applicant from the post of Assistant Coaching Clerk(Class-III post) to that of Class-IV post.

The 2nd grievance of the applicant is that he was not taken as Ticket Collector while he was working on adhoc basis as Assistant Checking Clerk (Commercial Clerk). The applicant on 18.02.1986 made an application to the Sr. Divisional Commercial Superintendent(E), Western Railway, Bombay Central, stating that he was suffering from Piles from the past two years as per the certificate issued by the Railway Doctor namely Assistant Divisional Medical Officer, Bandra, and therefore he should be shifted from the category of Commercial Clerk which was a sedantory job to that of checking category. A copy of the said application

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dt.18.2.1986 together with endorsement of Railway Doctor is annexed to the application and the same is Exhibit-C. Under circular letter dt.28.4.1986 applications were invited from the Commercial Clerks and staff of other departments for being posted as Ticket Collectors in the Ticket Checking Branch. The applicant applied in response to the said letter dt.28.4.1986 by his application dt. 10.5.1986. A copy of the said application dt. 10.5.1986 is annexed to this application and is Exhibit-D. The grievance of the applicant is that 34 employees who were working as adhoc Assistant Coaching Clerks were taken as Ticket Collectors on adhoc basis subject to their being reverted to their original post on resumption by R.R.B. candidates. According to the applicant one Mr.R.R. Tiwari was one of the employee selected and sent to Udaipur for regular appointment, prior to his appointment as regular Assistant Checking Clerk and that the said Tiwari completed his training and he was regularly appointed as Ticket Collector, whereas the applicant was not taken as Ticket Collector. According to the applicant several adhoc Assistant Checking Clerks were selected for the post of Ticket Collectors and sent for the training to the Zonal Training Institute, Udaipur. But in the case of the applicant he had not been allowed to comeover to the category of Ticket Collector. According to the applicant in the selection held in the month of October, 1988, to which a reference already made, the Respondents included the name of the applicant in the category of Commercial Clerks and not in the category of Ticket Collector.

According to the applicant Respondents issued a further notification calling for the applications from Class-IV employees including those who are working as Commercial Clerks for selection to the post of Ticket Collectors and that the applicant had applied as per his

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application dt.18.7.89 for being considered for the category of Ticket Collector. A copy of the application dt.18.7.89 is annexed to this application and is Exhibit-H. A written test was held in which the applicant appeared. The results of the said written test were published under letter dt.14.3.90 by the Respondents. The applicant was declared successful in the said written test and his name was included in the said letter at Sl.No.142. Thereafter the applicant appeared for the via-vocie and a panel of 57 persons was published under letter dt.12.5.90. The applicant's name was not included in the said panel of Ticket Collectors as the applicant had been selected to the post of Commercial Clerk in the year 1984 and in the year 1988 also. It may be pointed out that the said final panel of Ticket Collectors included the names of only Class-IV employees.

A further selection was announced for promotion to the post of Commercial Clerk and Ticket Collectors from Class-IV staff under circular letter dt.28.6.90. The name of the applicant was included at Sl.No.235 in the list of eligible employees called for the written suitability test proposed to be held in connection with the said promotion announced under the circular dt.28.6.90. The applicant was called for written test on 21.7.90. A memo dt.19.7.90 was also issued by the Chief Booking Supervisor, Borivli, addressed to the Divisional Railway Manager, Bombay Central, directing the applicant to appear for the written suitability test on 21.7.90. A copy of the said memo dt.19.7.90 is annexed hereto and marked as Exhibit-K. But a letter dt. 17.7.90 by the Divisional Office at Bombay Central to the Station Superintendent, Borivli was sent to the effect that the applicant should not be relieved to appear for the

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written suitability test, as he had been already selected for the post of Commercial Clerk in the year 1988. A copy of the said letter dt.17.7.90 is annexed to the application and is Exhibit-L. The applicant thus was not allowed to appear for the written suitability test though he reported at the examination centre. Subsequently the applicant had made a representation to the concerned authorities pointing out that he had been left out of consideration for being taken in the category of Ticket Collector. A copy of the said representation dt.28.11.90 is annexed to this application and is Exhibit-O. It is the case of the applicant that even though he is eligible to be appointed as Ticket Collector, he had not been considered by the Respondents for the category of Ticket Collector. Hence the present application, as already indicated above, to direct also the Respondents to take the applicant in the Ticket Checking Branch/category with all the benefits and privileges etc.,.

A short reply is filed by the Respondents opposing the admission of this application.

At the admission stage we have heard Shri Rama Murthy, Advocate appearing on behalf of Ms. Akhila S. Kaushik, learned counsel for the applicant and Shri M.K. Srinivasan, learned standing counsel for the Respondents. First we will take-up the validity of the order dt.21.11.90 reverting the applicant from the post of Class-IV category. Admittedly the applicant had been promoted on adhoc basis as Assistant Checking Clerk, which is a class-III post from the class-IV post with effect from 13.11.1978. Admittedly the applicant

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was selected and empanelled as Assistant Checking Clerk post in the year 1984 and in the year 1988. On both the occasions as could be seen from the records the applicant had been deputed to undergo the training for the post of Assistant Checking Clerk at Udaipur. We have perused the concerned file relating to the notices issued to the applicant to undergo the training after his empanelment as A.C.C. It is quite evident that the applicant had avoided the training and on certain occasions he had avoided to receive the notices. No doubt it is pleaded that the applicant was not aware of the letters and memos issued to him through the Heads of the Department for undergoing the said training as ACC at Udaipur but the same cannot be believed and accepted from a perusal of the record as notices asking the applicant to undergo training at Udaipur were sought to be served on the applicant through the Heads of the Department where he was working. As a matter of fact, it can be seen that the persons who were selected along with the applicant to the post of Assistant Checking Clerks on both the occasions were deputed for the Training and accordingly they had undergone the training also. The applicant never seems to have cared to ascertain why he ~~had~~ was not sent for training like others, who were empanelled. From the conduct of the applicant it can be seen that he was never eager to undergo the training at Udaipur as ACC (Commercial Clerk).

Para 180 of the Indian Railway Establishment Manual, Revised Edition of 1981, reads as follows:-

"180. Transportation (Traffic) and Commercial Deptt.- All railway servants in the lowest grade should be eligible for consideration for promotion to higher grades in both the Transportation and Commercial branches.

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Applications should be invited from amongst categories eligible for promotion from both the branches. All Railway servants who apply will be considered. An adhoc seniority list will be prepared on the basis of length of continuous service in the grade and suitable men selected and placed on a panel for training. Systematic and adequate training and examinations or tests must precede actual promotions.

So from the above said para it is evident that the person empanelled for promotion to higher grade should undergo the training that is prescribed. Unless such a training is undergone, it is quite evident that the said person cannot get a right for being regularised in the said post. We see serious lapses on the part of the applicant. As already indicated he had intentionally avoided to undergo the training at Udaipur on both the occasions and his appointment is continued only on adhoc basis. The services of the applicant had never been regularised and a regular appointment to the post of Assistant Coaching Clerk could not be made as he had failed to undergo the training at Udaipur. It is needless to point out that any length of service of a government servant officiating on adhoc basis would not give him right to continue in the said post until he qualifies himself to be appointed on the regular basis after passing the requisite tests and undergoes the prescribed training. The applicant's services as Assistant Coaching Clerk as pointed out earlier had never been regularised. So the Respondents had reverted the applicant to his original Class-IV post. As a matter of fact the Respondents had every right to revert the applicant from the post of Assistant Coaching Clerk, which is a Class-III post to the Class-IV post as the applicant did not ~~qualify~~ ^{qualify} himself for regular appointment to Class-III post as Assistant Coaching Clerk. So the action of the Respondents

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in the circumstances of the case is legal and valid. Hence the prayer of the applicant to declare the action of the Respondents in reverting him from the post of Assistant Coaching Clerk to the Class-IV post is liable to be held as legal and valid. In the result the applicant will not be entitled to the said relief of prayer (a) as indicated by us earlier.

The respondents have pleaded in the reply opposing the admission that the post of Ticket Collector and Assistant Coaching Clerk are filled by due process of selection and the written examination for both the posts are same. Successful candidates will be called for viva-voce test. At the time of Viva-voce test according to the respondents the selection board will decide as to who should be selected for ACCs post and who should be selected for TCs posts and two separate panels for TCs and ACCs are formed from the candidates who appear for Viva-voce. The selection board had considered the applicant fit only for the post of ACC. According to the respondents the applicant had no right to contend that he should be selected for the post of Ticket Collector. The said selection procedure is not disputed by the applicant. As a matter of fact, in page-8 in para-(g) of the application reads as follows:-

"There was a further selection held in the month of October-November, 1988 for being promoted/posted on regular basis as Assistant Coaching Clerks (Commercial Clerks) scale Rs.975-1540 (RP) and as Ticket Collectors scale Rs.950-1500 (RP). Even on this occasion the respondent included the name of the applicant in the category of Commercial Clerks and not in the category of Ticket Collectors."

The selection board did not consider~~ed~~ as fit the applicant for the post of Ticket Collector. The selection board

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had found the applicant fit only for the post of Assistant Commercial Clerk. Absolutely no malafidies can be attributed to the selectkon baord in not selecting the applicant for the post of Ticket Collector. Absolutely there is no material before us to come to the conclusion that the department had acted with maladidies in not selecting the applicant as Ticket Collector. Hence in the circumstances the applicant will not be entitled to the relief he seeks for, to take him in the Ticket Checking Branch.

As already pointed out while narrating the facts, the grievance of the applicant is, that he was not allowed to appear for the written test in July, 1990 for the selection of Ticket Collectors. In the circumstances of the case, the interest_s of justice would be met, if a direction is given to the respondents to permit the applicant for the written test/oral test for the post of ticket collectors if he is eligible and if he qualifies in the said tests, to consider the applicant for the post of Ticket Collector. After the arguments were concluded, the learned standing counsel for Railways, Shri Srinivasan made it clear that the Respondents will not revert the applicant to the class-IV post from the post of Assistant Coaching Clerk if the applicant gives his consent within a week from the date of the receipt of this order to undergo the training as Assistant Coaching Clerk ^{and} undergoes the said training at Udaipur and that the respondents will also issue suitable orders to enable the applicant to continue as Assistant Coaching Clerk. It is upto the applicant to accept the said offer or decline the same. ^{for the reasons aforesaid,} The applicant is not entitled for any of the reliefs prayed

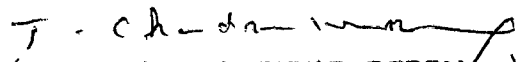
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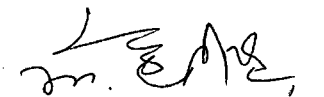
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for by him. But we direct the respondents to permit the applicant to appear for the next written and oral tests for the post of Ticket Collector if the applicant is eligible for the same and if the applicant qualifies in the said tests to consider the applicant for the post of Ticket Collector. The application is disposed of accordingly at the admission stage.

In the circumstances of the case we make no order as to costs.


(T. CHANDRASEKHAR REDDY)
MEMBER (J).


(M.M. SINGH)
MEMBER(A).