

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 389/92

XXXXXXXXXXXXXXXXXXXXX

DATE OF DECISION 18.8.93

D K Jalpoot Petitioner

Mr. G J Mohan Rao Advocate for the Petitioners

Versus

UOI & Ors. Respondent

Mr. N K Srinivasan Advocate for the Respondent(s)

CORAM:

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

The Hon'ble Shrimati Lakshmi Swaminathan, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. ~~To be referred to the Bench for consideration~~
3. ~~Whether their Lordships are of the opinion that the Judgement should be circulated to other Benches of the Tribunal ?~~ *no*
4. Whether it needs to be circulated to other Benches of the Tribunal ?

[Signature]
Member (A)

NS/

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, BOMBAY-1

OA No. 389/92

D K Jalpoot
Commercial Inspector (ad hoc)
Issabhai Chawl
Room no. 4 Bazar Ward;
Virar; Dist. Thane

.. Applicant

V/s.

Union of India
through General Manager
Western Railway
Churchgate; Bombay 20
and FIVE others

.. Respondents

Coram: Hon. Shri M Y Priolkar, Member(A)
Hon. Smt. Lakshmi Swaminathan, Member(J)

APPEARANCE:

Mr. G J Mohan Rao
counsel for the applicant

Mr. N K Srinivasan
counsel for the respondents

ORAL JUDGMENT:
(Per: M Y Priolkar, Member(A))

DATED: 18.08.1993

The main prayer of the applicant in this case is that his seniority and promotion should be counted along with that of respondents nos. 3 to 6 from the date of promotion of the latter which is 10.10.1990. While officiating as ad hoc Commercial Inspector, the applicant appeared for written-cum-suitability test notified on 3.10.84 for the post of Assistant Commercial Inspector. According to the applicant, 114 candidates had been called for this written test to fill 38 vacancies and by notification dated 8.9.86 a select list was published of 38 candidates in order of merit. This notification also stated that the select list will be valid

for six months from 5.9.86. The names of the applicant and of the respondents nos. 3 to 6 were not included in this select list.

2. The grievance of the applicant is that on 19.11.90, respondents nos. 3 to 6 have been promoted as Assistant Commercial Inspectors, although they are junior to the applicant and had also not been successful in the written examination and suitability test held on 8.9.86. The applicant's contention is that since the earlier select list was stated to be valid only for six months, the railway administration could not have promoted respondents nos. 3 to 6 without inviting fresh applications and holding another selection through a fresh notification.

3. The learned counsel for the respondents has drawn our attention to Rule 214 of the Indian Railway Establishment Manual Vol. I (revised edition 1989), which states that "an employee who has passed suitability test once should be eligible for promotion as and when vacancies arise". According to the learned counsel, initially only a list of 38 candidates was published since the number of vacancies anticipated was only 38. Subsequently, however, some more vacancies had arisen and respondents nos. 3 to 6 who had also

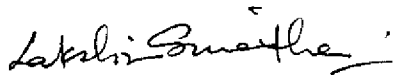
passed the written/suitability test held on 8.9.86 and who were officiating on ad hoc basis in this post were also promoted in terms of the above rule since they had already passed the suitability test. The applicant had, however, failed to qualify in the written test.


We have perused the record and found that respondents 3 to 6 are at Sr. No. 39 to 42 of the statement of successful candidates which has been compiled on the results of the suitability test of 8.9.86. The learned counsel for the applicant argued that no cognizance should be taken of this statement as it has not been signed by any officer. We do not however have any reason to disbelieve this statement which is contained in the relevant record. It is clear from this statement that the applicant was unsuccessful in the written-cum-suitability test. Respondents 3 to 6 ^{Though Successful, ~~the~~} having obtained lower ranking as compared to the number of vacancies anticipated at that time did not find a place in the panel. Rule 214(4) which is a statutory rule is very clear that an employee who passes the suitability test once need not be called for the test again and should be promoted as and when vacancy arises. It is to be noted that no time limit has been prescribed in this rule. We do not, there-

by

fore, find any merit in the applicant's contention that since it was stated that the panel will be valid for six months respondents 3 to 6 cannot be appointed after the expiry of six months from the date of notification of the panel. Evidently, an office order by which this period of six months was specified issued by a lower authority cannot over ride the provisions in the statutory rule notified by the Railway Board.

4. We do not, therefore, find this to be a fit case for interference by the Tribunal. The O.A. is dismissed with no order as to costs.


(Lakshmi Swaminathan)
Member (J)


(M Y Priolkar)
Member(A)