

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 331/93
T.A. No.

199

DATE OF DECISION : 23.02.2001

Narendra Kumar & Ors.

Petitioner^s

Mr. S.K. Jain

Advocate for the Petitioner (s)

Versus

Union of India & Ors.

Respondent

Mr. R.G. Gupta,

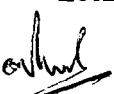
Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

The Hon'ble Mr. N.P. Nawani, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? No
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? YES
4. Whether it needs to be circulated to other Benches of the Tribunal ? Yes


(N.P. NAWANI)
Adm. Member


(JUSTICE B.S. RAIKOTE)
Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 23.02.2001

OA No. 331/93

1. Narendra Kumar s/o Jeth Mal, r/o Link Road, Naghbai Siddarth Nagar H.No:25 Ajmer, now a days Mistry III Loco Shop No.7, Ajmer.
2. Mohd. Iqbal s/o Rahim now a days Mistry Gr.III, Loco Shop No.7, Ajmer.
3. Ashok Kumar s/o Poonam Chand now a days Mistry Gr.III, Loco Shop No.7, Ajmer.
4. Harish Kumar Acharya s/o P.B.Acharya, now a days Mistry Gr.III, Loco Shop No.7, Ajmer.

.. Applicants

Versus

1. Union of India through the General Manager, Western Railway, Mumbai.
2. Chief Works Manager, Lock Workshop, Western Railway, Ajmer.
3. Shri Kishan Lal s/o Chittar Fitter Gr.I, Loco Workshop, Ajmer.

.. Respondents

Mr. S.K.Jain, counsel for the applicants

Mr. R.G.Gupta, counsel for respondents.

CORAM:

Hon'ble Mr. Justice B.S.Raikote, Vice Chairman

Hon'ble Mr. N.P.Newani, Administrative Member

Order

Per Hon'ble Mr. Justice B.S.Raikote, Vice Chairman

In this application, filed under Section 19 of the Administrative Tribunals Act, 1985, applicants have challenged the impugned order vide Ann.A1 dated 20.5.1993 by which the promotion of the applicants issued vide proceedings dated 16.1.1993 (Ann.A8)

[Signature]

is cancelled.

2. Applicants contended that they were working on the post of Fitter Trade Grade-I, pay scale Rs. 1400-2300. For the purpose of promotion to the post of Mistry (Fitter Trade), pay scale Rs. 1400-2300 applicant Nos. 1,2 and 4 were asked to appear in the written test to be held on 23.12.1992 vide Ann.A2 and accordingly, applicants Nos. 1,2 and 4 appeared in the written test and vide Ann.A6 dated 12.1.1993 they were declared passed. Likewise, applicant No.3, Shri Ashok Kumar, was also called for to take written test to be held on 30.10.1992 vide Ann.A3 and accordingly applicant No.3 took the examination and vide Ann.A7 dated 4.12.1992 the result was published declaring him as passed. Accordingly, applicants were promoted vide Ann.A8 dated 16.1.1993 to the post of Mistry (Fitter Trade) pay scale Rs. 1400-2300. The applicants accordingly contend that they have been promoted vide Ann.A8 after having passed the necessary written test etc. and their promotion cannot be cancelled by the impugned order Ann.A1. Therefore, the impugned order is liable to be set-aside.

3. On the other hand, by filing a reply, respondents have denied the case of the applicants. They contended that the second test held in respect of applicant No.3 and third test held in respect of applicants No.1,2 and 4 were illegal since the persons who had failed were seniors to the applicants and were required to be given an opportunity within six months to take the suitability test, and accordingly holding the second suitability test and third suitability test was itself illegal. They relied upon the Government of India, Ministry of Railways circular dated 10.10.1991 and contended that under Para 6.2 of the said circular, the next suitability test should be held within a gap of not less than six months of all eligible staff including those who failed in the

earlier test and since the persons who were senior to the applicants and who had failed were required to be given opportunity in terms of Para 6.2 of the said circular, the promotion of the applicants were rightly cancelled vide Ann.A1. They have also contended that since cancellation was a result of the policy matter, the applicants are not entitled to any personal hearing and, therefore, the impugned order does not call for any interference.

4. Heard the counsel on both sides. On the basis of the pleadings and also the contention urged by the applicants, few things are admitted in this case. It is admitted that in the first test in question, results of which were announced vide Ann.A5 dated 28.8.92, all the candidates who took the written test were declared failed. From the reading of Ann.A5, it is further clear that persons named Nanda, Khem Singh, Dal Singh and Mohan Lal were senior to the applicants but they failed. Thereafter, second test was held on the basis of the notification dated 13/14.10.1992 and result of it were published vide Ann.A7 on 4.12.1992 in which the applicant No.3 was declared passed. Immediately thereafter, third test was held in pursuance of Ann.A2 dated 11.12.1992 and the results were published vide Ann.A6 dated 12.1.1993 declaring the applicants Nos. 1,2 and 4 as passed. From this sequence, it is clear that the applicants were declared eligible only in the second and third tests. But the contention of the Department is that the persons who have failed vide the result Ann.A5 dated 28.8.92 were senior to the applicants and they were required to be given an opportunity to take the further test within the period of six months, therefore, holding the second and third test in respect of the applicants and some other persons were illegal. On the other hand, the contention of the applicants is that in terms of Para 6.1 of the Government of India, Ministry of Railways circular dated 10.10.91, the number of persons required to be considered at a

suitability test would be equal to posts available. If the sufficient number of suitable candidates are not available, further candidates to meet the shortfall may be called up in continuation and so on, but the whole process should be completed within six months. The learned counsel for the applicants relying upon Para 6.1 strenuously contended that the entire exercise of second test and third test shall be within a period of six months and thus Para 6.1 applies to the facts of the case and not para 6.2. On the other hand, the contention of the respondents is that all eligible staff including those who failed in the earlier test should be called within a period of six months for considering the suitability and if that is so, the senior persons to the applicants are required to be called after the first test within a period of six months and holding the test for the applicants vide second and third test was illegal. In order to appreciate the rival contentions, we think it appropriate to extract Para 6.1 and 6.2 of the Government of India, Ministry of Railways (Railway Board), New Delhi letter No. E(NG)I/90-PML/41 dated 10.10.1991 which reads as under:-

"6.1 The number of eligible candidates to be considered at a suitability test should be the same as the number of vacancies calculated for this purpose in accordance with para 4 above so that persons qualified need not wait long for promotion. If sufficient number of suitable candidates are not available further candidates to meet the shortfall may be called up in continuation and so on, but the whole process, should be completed within six months. If this period is exceeded, it will be treated as a fresh suitability test and those who failed in the earlier test should be eligible for reconsideration.

6.2 Next suitability test should be held after a gap of not less than six months. All eligible staff, including those who failed in the earlier test should be called. Period of six months is reckoned from the date of announcement of results."

5. From reading of Para 6.1, it is clear that number of eligible candidates to be considered at the suitability test should be the same as the number of vacancies calculated for the purpose of filling up by promotion. It is further provided that if senior candidates are not available further candidates to meet the shortfall may be called in continuation and so on, but the whole process should be completed within six months. If the period of six months exceeds, it will be treated as a fresh suitability test and those who failed in the earlier test should be eligible for reconsideration. Thus, from the reading of this Paragraph, it would be further clear that the process of selection of the suitable candidates should be completed within six months and number of such suitable persons should be equivalent to the number to be selected for such promotion. In any case, if the period of six months exceeds then any test to be held after six months should be considered as fresh suitability test and the persons who had failed also would be eligible for reconsideration. Under Para 6.2, next suitability test should be held after a gap of not less than six months. All eligible staff including those who failed in the earlier test should be called. Para 6.2 further makes it clear that the period of six months should be reckoned from the date of announcement of results. Therefore, in terms of Para 6.2, we have to see the date of these results for the first test, second test and the third test. The applicant relies on para 6.1 whereas respondents rely on Para 6.2.

[Handwritten signature]

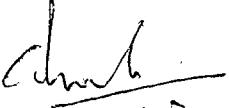
6. In our opinion, in order to ascertain the entailment of the circular, both the Pāras should be read together and not in isolation. Under para 6.1, the suitability test shall be held for the posts which have fallen vacant and the persons qualified need not wait long for promotion and they shall be promoted immediately. If the senior persons are not available, further candidates may be called to meet the shortfall within the period of six months and whoever qualified the test would be entitled to promotion and in case this period of six months lapses and still posts to be filled up fall vacant, a fresh suitability test may be held for those who have failed in the earlier tests for consideration and in Pāra 6.2 such suitability test for failed and other eligible candidates should be held within a period of six months thereafter. In other words all the exercise to fill up the posts should be done by holding the suitability test and the posts may be filled up within a period of six months and in case the posts could not be filled up within the period of six months on the basis of suitability and some posts are yet to be filled, the next suitability test should be held within six months thereafter. The second test is only to give an opportunity to the failed candidates and other eligible candidates within a further period of six months and such period of six months should be reckoned from the date of announcement of the results. In the instant case, admittedly the result of the first test was published on 28.8.1992 vide Ann.A5 and all those persons who are senior to the applicants were declared failed. Thereafter, second test was held and the result were published vide Ann.A7 on 4.12.1993 in which Ashok Kumar was declared as being eligible, and the third test was conducted and the results of which was published vide Ann.A6 dated 12.1.1993 in which applicant Nos. 1,2 and 3 were declared eligible. Now we have to see whether three tests fall within the period of six months or beyond. As per Pāra 6.2 the date of announcement of the result would be the relevant date for computing the period of six months. If that is so, we have to see

the date of the first result which was published on 28.8.92 (Ann.A5) from this date the continuous process of selection shall go on for a period of six months i.e. upto 27.2.1993. If the second and third test fall within the period of this six months, their action would be proper. Therefore, we now refer to the result of the second test dated 4.12.92 (Ann.A7) regarding Ashok Kumar, applicant No.3 and the result of the third test vide order dated 12.1.1993 vide Ann.A6 regarding applicants Nos. 1,2 and 4. From these dates, it is clear that both the second and third tests, results of which were declared on 4.12.92 and 12.1.93 are within the period of six months i.e. before 27.2.1993. Therefore, the contention of the respondents that the other failed candidates are required to be given an opportunity within a period of six months and the result of the second and third tests are required to be cancelled appears to be not correct. In terms of para 6.2, the consideration of the failed candidates and other candidates would start only after the first exercise of six months and that regarding the posts which could not be filled up within that period of six months. Para 6.2 says that within a further period of six months the second process should be completed. Therefore, the applicants' seniors who have failed in the first test would get an opportunity for the second test only after the period of six months from the date of the first test that means only after 27.2.93 and not earlier to that. In this view of the matter, we find that the applicants have been correctly and properly selected on the basis of the second and third tests, results of which were within a period of six months in terms of para 6.1. Therefore, the impugned order vide Ann.A1 dated 20.5.93 could not have been passed by cancelling their promotion. The promotion order of the applicants vide Ann.A8 itself refers to the letter of the Department dated 4.12.1992 by which the result of the second test was published and another letter dated 12.1.1993 by which the result of the third

(31)

test was announced. Thus, from reading of Ann.A8 it is clear that applicants were promoted to the post of Mistry (Fitter Trade) on the basis of the second and third tests which were within a period of six months and as such the promotion of the applicants vide Ann.A8 was proper and in accordance with law. From the promotion order Ann.A8, it is further clear that applicants were promoted as Mistry (Fitter Trade) in the pay scale Rs. 1400-2300 and their names are found vide para 3,4,6 and 8 of Ann.A8. Therefore, the impugned promotion order vide Ann.A8 could not have been cancelled by the impugned order vide Ann.A1, and the authorities have misinterpreted the Government of India, Ministry of Railways circular dated 10.10.1991 and accordingly the impugned order vide Ann.A1 dated 20.5.93 is liable to the set-aside. Even though the applicants contend that the impugned order Ann.A1 was passed without any sufficient notice and opportunity to them, but in view of our conclusion referred to above, this point does not merit consideration since they are getting relief on the other points. Moreover, vide interim order dated 1.6.1993, the impugned order vide Ann.A1 has already been stayed and accordingly the applicants are continuing on the promotional post on the basis of Ann.A8. For the above reasons, we pass the order as under:-

Application is allowed and the impugned order vide Ann.A1 dated 20.5.1993 is set-aside. No costs.


(N.P. NAWANI)

Adm. Member


(B.S. RAIKOTE)

Vice Chairman