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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

O.A. No. 339/97 &
T.A. No. MA No.299/99

199

DATE OF DECISION 13-9-2000

Lala Ram and Anr. **Petitioner**
Shiv Kumar **Advocate for the Petitioner (s)**
Versus
Union of India and ors. **Respondent**
Mr. U.D.Sharma and Mr. P.P.Mathur **Advocate for the Respondent (s)**

CORAM :

The Hon'ble Mr. S.K.AGARWAL, JUDICIAL MEMBER

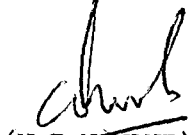
The Hon'ble Mr. N.P.NAWANI, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ?

✓ 2. To be referred to the Reporter or not ? *yes*

3. Whether their Lordships wish to see the fair copy of the Judgement ?

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


(N.P.NAWANI)

Adm. Member


(S.K.AGARWAL)

Judl. Member

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,
JAIPUR

Date of order: 13.09.2000

OA No.339/97 with MA No.299/99

1. Lala Ram S/o Shri Kajja at present employed on the post of Shunting Jamadar in Carriage and Wagon Shop, Western Railway, Ajmer.
2. Bhanwar Lal T.No.44696 S/o Shri Ladu, at present employed on the post of Shunting Jamadar in carriage and wagon shop, Western Railway, Ajmer.

.. Applicants

V e r s u s

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. Dy. Chief Mechanical Engineer, Carriage and Wagon Shop, Western Railway, Ajmer.
3. Madan S/o Shri Devaji, aged around 40 years R/o Paplach, Distt. Ajmer, working as Shunting Porter in the office of 29 yard carriage shop, Western Railway, Ajmer.
4. Lal Chand S/o Shri Moti Lal presently working as Shunting Porter in the office of 29 yard, Carriage and Wagon Shop, Western Railway, Ajmer.
5. Dashrath Singh, Shunting Porter, working in the office of 29 yard, Carriage and Wagon Shop, Western Railway, Ajmer.
6. Hazari Lal Meena, PMA, in the office of 29 yard, Carriage and Wagon Shop, Western Railway, Ajmer.

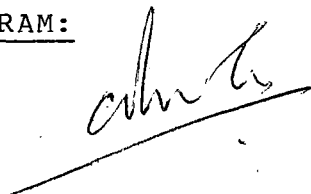
.. Respondents

Mr. Shiv Kumar, counsel for the applicants

Mr.U.D.Sharma, counsel for official respondents

Mr. P.P.Mathur, counsel for private respondents.

CORAM:



category, under the column under heading "Whether Selection/Non-Selection", it clearly mentions selection. It, therefore, is clear that, as stated by the official respondents in their reply, the category of SJ is decided as "selection" in the letter dated 29.7.1983 of the Railway Board. The letter itself stated in para 3 as under"-

"The classification of the posts in the categories covered by these orders has been changed in some cases and the revised classification indicated in Column 7 of the Annexure enclosed.. In respect of vacancies in these categories arising after 1st August, 1983, promotions to posts in the various grades in terms of revised classification will be made in accordance with the normal practice for filling in 'selection' and 'Non-selection' posts as obtaining at present".

10. In view of the position as emerges in the preceding paragraph, it is clear that the Ministry of Railways/RB has categorised the Shunting Jamadar as a 'selection' category and this applied to all the categories of Shunting Jamadar including the grade in question in this OA i.e. Shunting Jamadar in the scale of Rs. 1200-1800. The impugned order dated 28.7.1997 obviously is covered by the letter dated 29.7.1983 of the RB and unless the the applicants had shown us any order of the RB issued subsequent to 29.7.1983, which they have not shown, we have to hold that the selection process initiated vide the impugned letter dated 28.7.1997 was valid and legal.

11. Having arrived at the conclusion that the selection

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CORAM:



Hon'ble Mr. S.K.Agarwal, Judicial Member

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

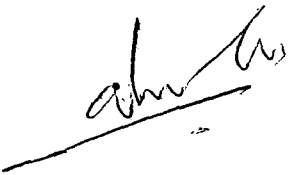
ORDER

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

In this Original Application filed under Section 19 of the Administrative Tribunals Act, the two applicants, Lala Ram and Bhanwar Lal, seek quashing of order dated 28.7.1997 (Ann.A1) and further that it may be declared that no written test is required for artisan category as per the rules.

2. This Tribunal vide order dated 12.8.1997 provided that in case written examination is held as per Ann.A1, the result thereof shall not be declared till next date. The interim direction was continues till 16.9.1998. MA No. 299/99 was filed by the learned counsel on behalf of private respondent N.3 for vacation of stay but now that the OA has already been heard on merits on 29.8.2000, the said MA has become redundant and is disposed of accordingly.

3. The brief facts, as stated by the applicants are that they were initially appointed as Gangman on 20.8.1971 and 21.4.1972 respectively. They possess only 2nd and 3rd standard qualification. Their channel of promotion, with scales of pay, is : Shunting Porter (Rs. 775-1025), Shunting Porter (Rs. 800-1150), Shunting Jamadar (Rs. 1200-1800) [for short SJ], Shunting Jamadar (Rs. 1200-2040). They belongs to artisan category and their promotion on the basis of tests consits of practical test and viva-voce. They got their last promotion to SJ in the scale Rs. 1200-1800 vide order dated 21.3.1987 (Ann.A2). In the eligibility list for written test for promotion to SJ, scale Rs. 1200-1800 and names of applicants appear at Sl.No.1 and 2. The applicants are not willing to



appear in the written test as Para 225 of the Indian Railway Establish Manual (for short IREM) provides for no written test, portions (II) and (III) of which have been extrated in para 8 of the OA. The contention of the applicants is that no written test is provided for artisan category to which they belong and if they, who only know how to write their names, are forced to appear in the written test, their career will be jeopardised. It has also been contended that they were promoted to the post of SJ on the basis of seniority-cum-suitability and their such promotion cannot be considered as ad-hoc, at the most it can be said to be officiating and thus holding the post on regular basis. They have a vested right on the said post. The notification dated 28.7.1997 (Ann.A1) is, therefore, illegal, arbitrary and deserved to be quashed.

4. The respondents, both official and priviate, by filing replies, have controverted the averments made in the application. It has been stated at the very outset that the applicants were promoted purely on ad-hoc basis on the post of SJ and it has clearly been indicated in that order that such appointment ~~on~~ on temporary/ad-hoc basis, will not confer any right on them for promotion on permanent basis. Further, they had appeared and taken the written test and viva-voce for being selected on regular basis on three occassions earlier (emphasis supplied) but did not qualify in any. The first one was conducted in February-March, 1989, the second in March, 1991 (Ann.R1) and the third in June-August, 1992 (Ann.R2). In all of these, the names of the applicants were included in the eligibility list, they had appeared and failed to qualify. The applicants had appeared in these selections without any objection and having concealed these facts, have approached the Hon'ble Tribunal with unclean hands and this OA deserves

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to be dismissed on this ground alone. It has further been stated that the impugned order (Ann.A1) was issued pursuant to notification dated 7/11.12.1995 in which a Selection Board for preparing a panel of 4 officials for SJ with date to be notified later and names of eligible officials including those of the applicants were included but the applicants did not raise any objection even at that time.

5. It has further been stated on behalf of the respondents that as per Railway Board's (for short RB) letter of 29.7.1983 (Ann.R4) restructuring of certain Group 'C' and 'D' cadres had been carried out and as a result, the post of SJ had been classified as a selection post and it was further stipulated in para 3 that in respect of vacancies in the cadres covered by the said letter after 1.8.1983, the promotions will be made in accordance with the normal procedure for filling any 'selection' or 'non-selection' posts as obtaining at present. It has also been stated that the post of SJ is a safety post (emphasis supplied) and, therefore, vacancies of SJ are required to be filled up on the basis of selection procedure which comprised of written and viva-voce. It has also been mentioned that if the applicants do not, on their own, appear in the selection process, they would not only not get appointed on the post of SJ on regular basis and their posting on the post of SJ might also be adversely effected.

6. The only additional contentions made in the reply of private respondents is that the respondents have committed serious illegality in continuing the applicants on ad-hoc promotion and the delay in selection does not create any right in favour of applicants in seeking regularisation and the

ad-hoc

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applicants have managed to continue working on the post of SJ only on the perpetual illegality on the part of respondents (official). It has also been mentioned that being illetrate, if the applicants cannot understand the memo assigning them duties, how can they perform the duties of SJ which are very important and any negligence or error committed could cause great loss of life and property.

7. We have heard the learned counsel for the parties and have perused all the material on record.

8. The applicants have referred to Para 225 of the IREM and although, any subsequent circular of the RB, which have statutory force, could modify/supersede a Para, it will be in the interest of justice to examine the said Para, which we extract hereunder:-

"225. Trade Test for Artisan Categories:-

(i) An employee may officiate on ad-hoc basis for six weeks without passing a trade test.

(ii) Trade test may comprise both oral and practical test but no separate oral tests not forming part of the trade test should be given to candidates in Artisan category to screen them etc.

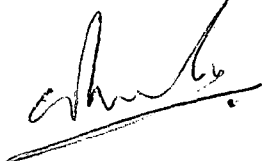
(iii) In so far as interval between two trade tests, calculation of vacancies, number of staff to be called for trade test etc. are concerned, orders issued from time to time regarding suitability tests apply also to the trade test."

A plain reading of this para will show that it speaks about the trade test for the Artisan categories. The

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applicant have claimed that they belong to the Artisan category. The official respondents have, in their reply to this averment, stated that Para 225 of IREM is not applicable on applicants and it is the RB's letter of 29.7.1983 (Ann.R4) which is applicable and according to stipulations therein, the post of SJ has been classified as a selection post, the process for which is composed of written test and viva-voce. It has also been stated by them that the post of SJ is a selection post and, therefore, vacancies of SJ are, therefore, required to be filled up by a positive act of selection, consisting of written test and viva-voce.

9. It is also necessary to examine the letter dated 29.7.1983 (Ann.R4). The letter is prefaced by "Arising out of certain proposals made in the Departmental Council of the JCM (Railways) by the staff side, the Ministry of Railways have decided.....". The import of this preface is that the said letter has been issued on consideration of a proposal from the staff side at the highest body in the Joint Consultative Machinery (JCM) and the proposal itself is taken to have the backing of the general body of the staff. As already mentioned, the letters/circulars of the RB have the force of statutory rules and as mentioned in the Prefectory Note by the Secretary, Railway Board in the latest Volume-I (Revised Edition- 1989) of IREM, various editions of IREM embody all administrative orders on code, rules and allied establishment matters issued by the RB from time to time. The letter of RB in question (Ann.R4) is regarding certain Group 'C' and 'D' cadres, indicated in Annexure to the said letter. The said Annexure is duly attested by the learned counsel for the official respondents and we find that at Sl.No.21, it incorporates the category of Shunting Jamadar. Against this



category, under the column under heading "Whether Selection/Non-Selection", it clearly mentions selection. It, therefore, is clear that, as stated by the official respondents in their reply, the category of SJ is decided as "selection" in the letter dated 29.7.1983 of the Railway Board. The letter itself stated in para 3 as under"-

"The classification of the posts in the categories covered by these orders has been changed in some cases and the revised classification indicated in Column 7 of the Annexure enclosed. In respect of vacancies in these categories arising after 1st August, 1983, promotions to posts in the various grades in terms of revised classification will be made in accordance with the normal practice for filling in 'selection' and 'Non-selection' posts as obtaining at present".

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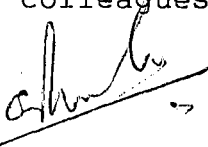
process initiated through the letter dated 28.7.1997 is in consonance with the provision of the RB's letter dated 29.7.1983, there is really no necessity for us to further consider the contention of the applicants that it was Para 225 of the IREM which is applicable for promotion to SJ. We have already seen that Para 225 talks of Trade Test for Artisan category. However, during the arguments, we directed the learned counsel for the applicants to show us the relevant provisions which will establish that SJ category is included in the Artisan category and allowed him a week's time for this purpose. He has drawn our attention to RBE No.170/85 the subject of which is "revision of minimum rates of wages in respect of categories of labour employed in scheduled employments under the Minimum Wages Act, 1948" and stated that in the Schedule, the category of Jamadar (semi skilled) is ^{shown} and that it follows that the promotion to the Shunting Jamadar in the scale Rs. 1200-1800 was to be made on the basis of passing of the trade test. We cannot accept this contention because the circular RBE No.170/85 is really regarding wages of certain categories of labour under the Minimum Wages Act and also because the post of Jamadar (emphasis supplied) is shown as same scale. More importantly, the controversy is regarding promotion to the post of Shunting Jamadar and it cannot be said that Jamadar as mentioned in the RBE No.170/85 ^{and} Shunting Jamadar are the same categories of post. Therefore, the applicant failed to satisfy us that the category of Shunting Jamadar falls in the artisan category. Even if, for argument's sake, the SJ falls in the Artisan category, the applicants would have been required to satisfy us whether the Para 225 is also applicable for promotion from one grade of SJ to another and if actually Para 225 was prescribing trade test as only a qualifying test. They would also have to establish that notwithstanding the specific provision in the letter of

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the RB dated 29.7.1983 that the category of Shunting Jamadar will be governed by the Selection process, Para 225 of IREM as it stands, will still be applicable to promotions in the category of SJ and further that SJ is not a 'safety' post as contended by the official respondents. To us, it appears to be a tall order in the face of RB's letter dated 29.7.1983 which unambiguously provides for 'selection' process for the category of Shunting Jamadar, as already discussed in preceding paragraphs.

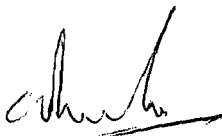
11. In view of the above discussions, we are of the considered view that applicants have pathetically failed in establishing their case. The letter/circular of the RB, issued after deliberations of the proposal from the staff side in the Departmental Counsel of JCM is found to be applicable on the grades of the category of Shunting Jamadar and we find no justification for interfering with the letter dated 28.7.1997 (Ann.A1).


12. The question of applicants appearing in the previous three selection processes held in February-March, 1989 March, 1991 and June-August, 1992 without any protest and failed to qualify. It is regrettable that the applicants have approached this Tribunal with unclean hands and have concealed these material facts. They perhaps were aware that it is a settled principle in law that it is not permissible to challenge a selection process after having participated in it without any objection. This is an example as to how the applicants have not only dis-abused the legal system and wasted the time and financial resources from the public exchequer. Worst of all, they have, in the process deprived promotion chances of their colleagues who might have come out successfully in the



selection process and got appointed in the posts of Shuting Jamadar in the pay scale of Rs. 1200-1800 way back in 1997. This, was therefore, a fit case where heavy cost could have been imposed on the applicants but considering that they are low paid railway servants and have crossed the age of 50 years, we refrain from doing so.

13. The Original Application having no merits is accordingly dismissed. To remove confusion, if any, the interim direction dated 12.8.1997 is hereby vacated.


(N.P.NAWANI)
Adm. Member


(S.K.AGARWAL)
Vice Chairman