

**(1986) 03 DEL CK 0054**

**In the Delhi High Court**

**Case No :** Interim Application No. T-543 of 1985

Pramod Kumar and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision :** 20-03-1986

**Acts Referred:**

**Citation :** (1986) 30 DLT 195

**Hon'ble Judges :** S.P. Mukerji, J;H.P. Bagchi, J

**Bench :** Division Bench

**Advocate :** G.D. Bhandari and K.N.R. Pillai, for the Appellant;

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## **Judgement**

(1) The petition under Article 226 of the Constitution has come up before us on transfer from the Hon'ble High Court of Delhi u/s 29 of the Administrative Tribunals Act. The case of the six petitioners is that having been selected by the Railway Service Communion along with other respondents in 1982 as Apprentice Elect "the Chargemen, they were given along with the respondents a concentrated six months training instead of the normal two year training. After six months of training they appeared along with the respondents in a departmental test and interview on 26-12-1982 and while the six petitioners were successful 17 other apprentices of their batch failed. While the six petitioners were given working posts after successful correlation of the concentrated training on passing the test, the failed 17 apprentices continued with extended training and took the second test held on 7-11-1983. In the second test 15 out of 17 apprentices passed and the two failed candidates were given a third test in June 1984. The General Manager of the Northern Railway on 18-1-1985 issued orders Annexure M to the Petition) indicating that "those who qualified after six months training would be placed above those Chargemen of their batch who qualified later-after two years. Their inter-se seniority will be fixed on the basis of marks obtained by them in respective examination! test." (Italics supplied)

(2) Soon after, on 27-3-1985 the aforesaid order was superseded "with orders of

the Addl. CPO" and it was decided (Annexure N to the petition) that "the seniority of all apprentices (those who qualified before 6 months training and others who qualified after 2 years training) should be fixed on the basis of marks obtained by each candidate in the test irrespective of the date/ stage of the test i.e. presuming as if all were tested/qualified after 2 years training."

(3) The petitioners claim that since they had qualified after six months of concentrated training and qualified in the first test itself and were given working posts they should be held senior to those who failed in the first examination as per the order of 18-1-1985. They have prayed that the impugned order No. 7642/148/EMU(SIIA) of 27-3-1985 should be quashed and their seniority amongst their batch-mates should be fixed on the basis of the seniority list already circulated with Northern Railway's order no. 939-E/156/P-7 dated 25-1-1985 based on the order of 18-1-1985.

(4) We have heard the arguments advanced by the learned counsels for both the parties and have carefully gone through the documents on record. It is admitted that normally the period of training is two years but because of shortage of supervisory staff the Railway Board approved the Northern Railway's proposal for curtailing the training period of directly recruited chargemen from one year to a minimum of six months. The following extracts from Northern Railway's confidential letter No. E 383/EI do/12/I of June 23, 1982 (Annexure A to the petition) will be relevant :

"IN view of the acute shortage of supervisory staff. Board have approved N. Rly's proposal for curtailment of the training period for directly recruited Chargemen from one year to a minimum of six months, subject to their being found suitable for posting at the end of that period. The Chargemen posted before the completion of one year's training period would be entitled to the difference between the stipend & chargemen's pay as personal pay till the completion of two years" period A total of 114 trainee chargemen have reported so far and have been directed to various divisions Extra divisional offices/ workshops for training. The standard training programme in TRD/TRS/GS trades etc has already been circulated vide letters No- j86-Elec./ G/8/Rectt. dated 14-8-81. It may please be ensured that concentrated on the job training is given during the first six months, so that trainees found fit after the initial period of 6 to 7 months training could be posted against working posts."

(Italics supplied)

(5) It will be useful to refer to Rule 303 from the Establishment Manual of the Indian Railway which reads as follows :

"303. The seniority of candidates recruited through the Railway Service Commission or by any other recruiting authority should be determined as under :  
(a) Candidates who are sent for initial training to training schools will rank in seniority in the relevant grade in the order of merit obtained at the examination held at the end of the training period before being posted against working posts.

(b) Candidates who do not have to undergo any training the seniority should be determined on the basis of the merit order assigned by the Railway Service Commission or other recruiting authority."

(Italics supplied)

(6) Reading the letter of June 23, 1982 with Rule 303 quoted above, it is transparently clear that the normal training period of two years was compressed and concentrated into six months and the test which was held after six months was held to be as good as the test that was held after two years. We are not able to accept the contention of the learned counsel for the respondents that since all recruits of the batch including the petitioners had been invited to take the third examination held after training of two years Therefore the first examination held after six months should not be recognised. If this were so, the marks obtained by the petitioners in the first examination could not be into taken account for inter-se seniority even in pursuance of the impugned order of 27th March 1985 on which the respondents are now building up their case.

(7) We cannot also overlook the admitted fact that after the petitioners had been successful in the examination held after six months in which 17 other apprentices had failed, the petitioners were "posted against working posts" as per orders of June 23, 1982. Further, in addition to the normal stipend they were given the difference between regular pay of the Assistant Electric Chargemen and the stipend as personal pay. It does not Therefore lic in the mouth of the Railway authorities now to deny the validity of the first examination. Sub-clause (a) of Rule 303 as quoted above clearly indicates that at the end of the training period they will be "posted against working posts" which words occur in the order of June 23, 1982 quoted above. Thus the examination held after six months is as good as the examination held after two years. Having said so, the rest of the respondent's case does not stand the scrutiny of reason. The entire batch of 23 apprentices who had been successful in the competitive examination held by the Railway Service Commission appeared in the first departmental examination held after six months and the six petitioners passed while the respondents amongst the remaining 17 had failed. The word "failed" occurs in the Northern Railways order No. 220-E/132-20-A(Rectt) of 12th April 1984 (Annexure F to the petition). Therefore by the elementary principles adopted by academic and professional institutions, public service commissions, the petitioners who passed the first test must necessarily rank in seniority above those who took the first test and failed. Any departure from this principle will make a travesty of selection by tests. Since seniority is based on marks obtained in the departmental test, the inter-se seniority amongst apprentices who were successful in the first departmental test would be based on the marks obtained by them in that test. Likewise, the inter-se seniority of the apprentice who passed the second test and the third test would be so determined. But, the successful candidates of the first test must rank on bloc above the candidates who failed in the first test put qualified in the second test, and those of the same batch who failed in the first two but qualified

in the third test should be at the bottom. Reason and common sense dictate such an obvious course. This is exactly what the Railway authorities had ordered in their order of 18-1-1985. This order was passed as the text of the order says, after collective consultation by Additional C.E. and C.ES. It appears that under some pressure this order was unilaterally changed by the Addl. Cpo without much substance and justification.

(8) In the result, we allow the petition, quash the impugned order of 27-3-1985 and restore the inter-se seniority of the petitioners and respondents and others of the same batch as circulated with the letter of 25-1-1985 (Annexure D to the petition) on the basis of order No. 754E/148-IV (EMU)EIIA of 18-1-1985. In the circumstances there will be no order as to costs.