

THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI-

O.A. No. 1311/97, OA 1312/97 199
T.A.No. with
OA 1313/97

DATE OF DECISION 23-5-2000

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Mohd. Azaj KhanPetitioner
& Ors (OA 1311/97)
Satya Parkash Tripathi &
Ors (OA 1312/97)Advocate for the
Mohd Zubair Khan & Ors (OA 1313/97)Petitioner(s)
Shri B.S. Mainee

VERSUS

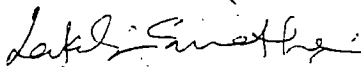
The Secretary, M/O Rlys.Respondent
and Ors.

Sh.R.P. Aggarwal, B.S. JainAdvocate for the
and R.L. Dhawan Respondents.

CORAM

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)
The Hon'ble Shri H.O. Gupta, Member (A)

1. To be referred to the Reporter or not Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No.


(Smt. Lakshmi Swaminathan)
Member (J)

Central Administrative Tribunal
Principal Bench

O.A. 1311/97,
O.A. 1312/97
with
O.A. 1313/97

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New Delhi this the 23rd day of May, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri H.O. Gupta, Member(A).
OA - 1311/97

1. Mohd. Azaj Khan,
S/o Mohd. Niaz Khan,
2. Shahnawaj Khan,
S/o Namtaz Ahmad Khan,
3. Jagat Bahadur Singh,
S/o Shri Rajendra Bahadur Singh,
4. Shyam Sunder Singh,
S/o Shri Barad Rai Singh,
5. Trilokinath Shukla,
S/o Shri Shiv Ram Shukla,
6. Brij Mohan Singh,
S/o Shri Triloki Nath Singh

(Enquiry & Resvn. Clerks, Central
Telephone Enquiry, Northern Rly.,
New Delhi).

..... Applicants.

By Advocate Shri B.S. Mainee.

Versus

Union of India through

1. The Secretary,
Ministry of Railways,
(Railway Board),
Rail Bhawan, Raisina Road,
New Delhi.
2. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
3. The Divl. Railway Manager,
Northern Railway,
State Entry Road,
New Delhi.
4. The Chairman,
Railway Service Commission,
Allahabad (UP)

..... Respondents.

By Advocate S/Shri B.S. Jain and R.P. Aggarwal.

B.S.

O.A. 1312/97

1. Satya Parkash Tripathi,
S/o Shri Raj Mani Tripathi,
2. Vijay Bahadur Singh,
S/o Shri Raj Narain Singh,
3. Syed Mehdi Hasan Abidi,
S/o S. Zamir Husain Abidi,
4. Mohd. MA Slahuddin Khan,
S/o Mohd. Salahuddin Khan,
5. Anil Kumar Pandey,
S/o Shri V.R. Pandey,
6. Ratan Kumar Shukla,
S/o Ranchhore Kumar Shukla,
7. Ram Nath,
S/o Shri Dwarika Prasad,
8. Ashok Kumar Singh,
S/o Shri Damodar Singh,
9. Sheelendra Kumar,
S/o Shri Lala Babu

... Applicants.

(Senior Clerk, Under Dy. Controller
of Stores, Northern Railway, Alam
Bagh, Lucknow)

By Advocate Shri B.S. Mainee.

Versus

Union of India through

1. The Secretary,
Ministry of Railways,
(Railway Board),
Rail Bhawan, Raisina Road,
New Delhi.
2. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
3. The Chairman,
Railway Recruitment Board,
Allahabad (UP).
4. The Controller of Stores,
Northern Railway,
Baroda House,
New Delhi.
5. The Dy. Chief Controller of Stores,
Northern Railway,
Alam Bagh,
Lucknow.

... Respondents.

By Advocate Shri R.P. Aggarwal.

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O. A. 1313/97

1. Mohd. Zubair Khan,
S/o Mohd. Sultan Khan,
Asstt. Station Master,
Northern Railway,
Pilkhani.
2. Mohd. Nasruddin Khan,
S/o Mohd. Arif Khan,
Asstt. Station Master,
Northern Railway,
Maler Kotla.
(Ambala Division).

... Applicants.

By Advocate Shri B.S. Mainee.

Versus

Union of India through

1. The Secretary,
Ministry of Railways,
(Railway Board),
Rail Bhawan, Raisina Road,
New Delhi.
2. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
3. The Divl. Railway Manager,
Northern Railway,
Ambala Cantt.
4. The Chairman,
Railway Recruitment Board
Allahabad (UP)

... Respondents.

By Advocates S/Shri R.P. Aggarwal and R.L. Dhawan.

ORDER (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The learned counsel for the parties in the aforesaid three Original Applications (O.A.1311/97, O.A. 1312/97 and O.A.1313/97), have submitted that the issues involved in these cases are identical and they have been heard together. Accordingly, these cases are being disposed of by a common order. For the sake of convenience, the facts in Satya Parkash Tripathi & Ors. Vs. Union of India & Ors. (OA 1312/97) have been referred to.

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2. The grievance of the applicants in the aforesaid three applications arises out of the action taken by the respondents in respect of recruitment for the posts of Assistant Station Master (ASM)/Enquiry-cum-Reservation Clerk(ERC) in the Northern Railways against Category Nos. 1 and 2 of Employment Notice No.1/79-80 (Annexure A-I). According to the applicants, for no fault of theirs, the respondents are ~~not~~ giving them seniority from the date they had been selected and posted as Clerks, that is 1.9.1994, although they had been selected by the aforesaid Employment Notice No.1/79-80 and selections were held in 1981-82. Shri B.S. Mainee, learned counsel for the applicants has submitted that the applicants were among the top of the list of 1386 candidates when the results were declared in 1983-84. However, because of various reasons which have been set out in the judgement of the Hon'ble Supreme Court dated 26.8.1993, (Annexure A-3), as a result of complaints and inquiries held, the respondents had taken a decision to cancel the Board's Selection. The Supreme Court, after dealing with the relevant facts had observed that "we have no doubt in our mind that the basis for preparing the final select list was wholly arbitrary. 579 candidates out of the final list were appointed on September 22, 1983 and thereafter 809 more candidates were appointed on February 22, 1984". The appellants before the Supreme Court were in the provisional list but were not included in the final list. The learned counsel for the parties before us in the three O.As have submitted that the applicants in the present O.As were among the appellants before the Supreme Court. In other words, they were in the provisional list, as contended by Shri B.S. Mainee, learned counsel. They had also challenged the final

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list and the consequent appointments of certain candidates firstly before the Allahabad High Court, which was later transferred to the Central Administrative Tribunal, Allahabad Bench, which case was disposed of by the order dated 16.9.1988. The Supreme Court in its order dated 26.8.1993 has set aside the judgement of the Tribunal (Allahabad Bench) and allowed the appeals before them in terms of their order. In view of the judgement of the Supreme Court, we do not consider it necessary to deal with the judgement/order of the Tribunal (Allahabad Bench) with regard to those of the applicants, who were in the provisional list and are now before us.

3. The relevant portion of the Supreme Court order dated 26.8.1993 reads as follows:

"Mr. Venugopal, learned counsel for the appellants, stated before us that 79 vacancies in the concerned cadres and pertaining to the selection in dispute are still available. Mr. Altaf Ahmed, learned Additional Solicitor General after consulting his clients states that though the vacancies pertaining to the selection in dispute have already been filled, but the Railway authorities are prepared to pool-up 79 vacancies to afford an opportunity to the appellants to compete for the jobs. We appreciate the fair stand taken by the Railway authorities. Mr. Altaf Ahmed has placed on record the letter dated August 26, 1993 wherein the Railway authorities have offered to fill 79 vacancies on the basis of the method of selection indicated in the said letter. We find no fault with the method of selection laid down in the letter dated August 26, 1993. It is not disputed that at the time when the posts were originally advertised the eligibility qualification was matriculation. The said qualification has now been enhanced to that of graduation. We are of the view that it would be in the interest of justice that for the purpose of filling these 79 vacancies out of the appellants the eligibility qualification should be kept as matriculation.

All the appellants who are before us shall be eligible to compete for these 79 posts irrespective of their ages. The written examination, viva voce and the psychology test wherever applicable shall be completed

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within six months from today. The appointments of the selected candidates shall be made within two months thereafter".

4. The copy of the letter which was produced by the learned ASG before the Supreme Court dated 26.8.1993 is annexed at Annexure R-I. In this letter, 79 vacancies are stated to be available in the years 1981-82, but they had been ear-marked for ex-servicemen. It is also relevant to note that the Supreme Court in the aforesaid order had noted the submissions made by the learned ASG that the vacancies pertaining to the selection in dispute, that is of Category Nos.1 and 2 of Employment Notice No.1/79-80, have already been filled, but the Railway authorities were prepared to "pool-up" 79 vacancies to afford an opportunity to the appellants to compete for the jobs. Admittedly, in pursuance of the order of the Supreme Court in the aforesaid case pertaining to this very selection, the respondents held the necessary tests on 12.12.1993 and viva-voce thereafter. As a result of this selection, the applicants were appointed to various posts in Category Nos.1 and 2 on the basis of their merit on 1.3.1994.

5. One of the main contentions of Shri B.S. Mainee, learned counsel for the applicants is that for no fault of the applicants, they cannot be made to suffer ~~by~~ loss of seniority. He has contended very vehemently that the important point, ^{to be} noticed is that the aforesaid selection of the applicants has been done in pursuance of Employment Notice No.1/79-80 for the 79 vacancies. He relies on Paragraph 306 of the Indian Railway Establishment Manual (IREM) Vol.I. His contention is that those persons who have been empanelled by a later selection cannot steal a march over those who have been empanelled earlier. He also relies on the judgement of A.B. Muranjan & Ors. Vs. Union of India & Ors. (SLJ

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1998(2)(CAT-Bombay)191). Accordingly, he has submitted that the applicants should be treated as having been employed on the basis of the panel of 1983-84 pursuant to Employment Notice No. 1/79-80 and should be placed above the candidates who have been selected in subsequent panels. He has also contended that in the case of C.S. Tripathi & Anr. Vs. Railway Service Commission, Allahabad & Ors., the order of Lucknow Bench of the Tribunal dated 28.9.1990 has been upheld by the Supreme Court as the SLP had been dismissed which had been filed by the Union of India. In this case, it is noticed that the claim of petitioner 1, Shri C.S. Tripathi, was dismissed and only the claim of petitioner 2, Shri Abid Ali, was allowed on which the applicants rely. Shri R.P. Aggarwal, learned counsel, on the other hand, submits that this case has no bearing on the present cases, as Shri Abid Ali was not a similarly situated person like the applicants. Apart from the above fact, admittedly the respondents have complied with the detailed order of the Supreme Court dated 26.8.1993.

5. We have considered the submissions of the learned counsel for the parties on the applicability of the order of the Tribunal in Abid Ali's case (supra) and find force in the submissions made by Shri R.P. Aggarwal, learned counsel that in the light of the detailed order of the Supreme Court dated 26.8.1993 which admittedly pertains to the applicants before us, the order of the Supreme Court dated 3.12.1992 dismissing the SLP filed by the Union of India with regard to Abid Ali will not ~~operate~~^{B.} be applicable to the facts of the present case.

B.
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6. From the orders of the Apex Court dated 26.8.1993, reproduced in paragraph 3 above, it is seen that all the appellants, who were before them and none else were held eligible to compete for the 79 posts, which were mentioned in respondents' letter dated 26.8.1993 which appear to be over and above the earlier vacancies pertaining to the selection in dispute and arising out of Employment Notice No. 1/79-80 which have already been filled. This fact had already been submitted to the Supreme Court and the Railway authorities had submitted that they were prepared to "pool-up" 79 other vacancies to afford an opportunity to the appellants to compete for the jobs because of the unfortunate circumstances attending the earlier selections held by the Railway Recruitment Board. We also see force in the submissions made by Shri R.L. Dhawan, learned counsel for the respondents in OA 1313/97 that taking into account the facts and circumstances of the case, the applicants cannot agitate the matter of seniority at this stage, as it was open to them to have done so, if they had chosen to before the Hon'ble Court and, therefore, it is barred by the principles of constructive res judicata.

7. Taking into account, therefore, the facts and circumstances of the case and the Apex Court order dated 26.8.1993, we have no doubt in our mind that the 79 vacancies which were made available by the Railway authorities against which the Supreme Court had directed that all the appellants shall be eligible to compete are outside the purview of earlier vacancies which were advertised in the Employment Notice No. 1/79-80. Reliance has been placed on the appointment letter issued by the respondents to the applicants in 1994 in which they have referred to the Employment Notice

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No.1/79-80. This appointment letter is clearly stated to be in compliance with the judgement of the Supreme Court dated 26.8.1993 and, therefore, we cannot ignore the submissions made by the learned ASG that the vacancies pertaining to the selection in dispute have already been filled which has already been noted by the Court.

8. According to the respondents, the applicants in the three O.As before us have been appointed on the basis of the examination held on 12.12.1993 in pursuance of the aforesaid order of the Apex Court and they have been assigned their seniority accordingly. In the facts and circumstances of the case, the judgement of the Tribunal in A.B. Muranjan's case (supra) relied upon by the applicants will not be applicable to the facts of the present case. We have also considered the other contentions of Shri B.S. Mainee, learned counsel, but find no merit in the same. We are also unable to agree with the contentions of Shri B.S. Mainee, learned counsel that in the circumstances of the case, there is any justification to interfere with the actions taken by the respondents.

9. In the result, for the reasons given above, we find no merit in these applications (OA 1311/97, OA 1312/97 and OA 1313/97) and they are accordingly dismissed. No order as to costs.

10. Let a copy of this order be placed in O.A.1312/97 and O.A.1313/97.

(H.O. Gupta)
Member(A)

(Smt. Lakshmi Swaminathan)
Member(J)

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23/5/2000

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