

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

CP 11/95 in CP 128/94 in OA 245/1993

O.A. No.

T.A. No.

199

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DATE OF DECISION 20.4.1995

Shri Radhey Shyam Verma & Others **Petitioner**

Shri D.P.Gupta & Ms. Alka **Advocate for the Petitioner(s)**

**Versus**

Shri L.K.Sinha, GM, Northern Rly. **Respondent**

& Anr.

Shri R.L. Dhawan **Advocate for the Respondent(s)**

## CORAM

**The Hon'ble Mr. Justice S.C. Mathur**

**The Hon'ble Mr. P.T.Thiruvengadam**

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal?

(S.C. MATHUR)  
CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

CP 11/95 in CP 128/94 in OA No.245/1993

New Delhi, this 20<sup>th</sup> day of April, 1995

Justice Shri S.C.Mathur, Hon'ble Chairman  
Shri P.T.Thiruvengadam, Hon'ble Member(A)

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1. Shri Radhey Shyam Verma
2. Shri Jage Ram
3. Shri Maheshwar Pershad
4. Shri Ram Sanehi
5. Shri S.N. Mathur
6. Shri D.K. Sabharwal .. Applicants

All working as Booking Clerks in  
Northern Railway, New Delhi

By Advocates Shri O.P.Gupta & Ms. Alka

versus

1. Shri L.K. Sinha  
General Manager, Northern Railway  
Baroda House, New Delhi
2. Shri I.P.S. Anand  
Divisional Railway Manager  
DRM Office, Paharganj  
New Delhi .. Respondents

By Advocate Shri R.L. Dhawan

ORDER

Shri Justice S.C. Mathur, Chairman

Learned counsel for the applicant raised a number of preliminary objections. These were initially considered in detail as follows. He invited our attention to order dated 9.1.95 whereby notice was issued to Respondent No.2 Shri I.P.S.Anand. He pointed out that Shri Anand has not filed any reply but the reply has been filed by Shri Ved Prakash to whom notice had not been issued. According to the learned counsel, this reply can not be taken on record. A similar question arose for determination before a Full Bench of the Tribunal in D.P. Badola Vs. Arvind Dave (RA 152/90 decided on 12.8.92). The objection was negatived.

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2. The learned counsel further submitted that the Tribunal is not a court of record and, therefore, this Bench is not bound by the view expressed in Badola's case. It is not necessary to go into this argument as we find that the law laid down in that judgement is correct and deserves to be followed. Further Section 22 of AT Act, 1985 provides that the Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure but shall be guided by principles of natural justice and the Tribunal shall have power to regulate its own procedure. This provision enjoins upon the Tribunal to decide matters in accordance with justice, equity and good conscience and not on the basis of technicalities. The plea raised by the learned counsel is a technical one. We have to see in the present proceedings whether the judgement of the Tribunal has been complied with. Compliance may be shown through the affidavit of another employee of the department. Which affidavit shall be acceptable to the Tribunal is a matter to be decided by the Bench before which the matter comes. At this stage, we are not inclined to reject the reply filed by Shri Ved Prakash. The objection raised by the learned counsel is, therefore, overruled.

3. It is also submitted by the learned counsel that the reply filed on behalf of Shri Anand can not be accepted as it has been filed through Shri R.L. Dhawan, Advocate, who has not filed any vakalatnama and instead has filed memo of appearance. According to the learned counsel, Shri Dhawan is an advocate governed by the provisions of the Advocates Act and the Bar Council Act and he can represent a private individual only by filing vakalatnama and not by memo of appearance. Shri Dhawan's memo of appearance

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states that he has been authorised to appear for the respondents. Again, the question of technicality arises., We have no reason to doubt the statement of Shri Dhawan that he has been authorised to appear on behalf of the respondents. We, therefore, overrule this objection also.

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4. The learned counsel then proceeded to advance arguments on the CP on merits. Before we deal with the arguments, it would be appropriate to briefly state the background to the case.

5. On Indian Railways, Commercial Clerks (Booking Clerks, Parcel Clerks and Goods Clerks) perform the functions of booking of passenger, parcel and goods. The question of merging these streams had been under consideration of Indian Railways. In Northern Railway, there was already a combined cadre of booking and parcel groups in most of the divisions, the combined nomenclature being the coaching group. But even this combination of two of the three streams as a coaching group had not taken place in Delhi Division of Northern Railway. The respondents proposed the introduction of coaching group in Delhi division and accordingly provisional seniority lists of the combined groups of booking and parcel clerks in grades Rs.975-1540, Rs.1200-2040 and Rs.1400-2300 were issued on 17.12.1992, 11.1.1993 and 25.1.1993, respectively. Objections, if any, were called for within one month from the date of receipt from the concerned staff with regard to their position in the combined provisional seniority lists. Parcel clerks association of Delhi

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challenged the above lists and filed OA 245/93 in this tribunal. This OA was decided on 24.8.1993 and the following directions were given:

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"In view of what is stated above, the OA is disposed of with the direction to the respondents that notwithstanding the time limit given in the circular dated 17.12.92 they shall again invite objections from the parties concerned and give them at least one month's time to file such objections. On such objections being received, they shall consider the points raised therein and pass speaking orders. This may be done within a period of three months from the date of receipt of the representations, if any. Any seniority list will be finalised only after such representations are decided."

6. The petitioners in the CP No.11/95 are from the Booking Group and they got themselves impleaded as interveners in the above OA. This group was interested in merger with the parcel group. Subsequently, these interveners (booking group) filed CP 128/94 alleging that though they were one of the affected parties, further opportunity in pursuance of the orders of this Tribunal dated 24.8.1993 was not extended to them. The respondents had given notice only to the parcel clerks association, who were the applicants in OA 245/93. CP 128/94 was disposed of on 9.8.94 with the following observations/directions:-

"3. In paragraph 3 of the counter-affidavit filed on behalf of the respondents, it is averred that the objections were called for from the Parcel Clerks category. The averment clarifies that the objections were invited from the petitioners in the OA. The question, therefore, boils down to this: What was the intention of this Tribunal when it directed that the respondents shall give an opportunity to the parties concerned? The Tribunal had before it the situation that there was a proposal to merge the cadres of the Parcel Clerks and the Booking Clerks. In that context, the Tribunal observed that the respondents shall give an opportunity to the parties concerned. The Tribunal was aware that the intervenors before it were not the

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Parcel Clerks. It may be that the respondents while interpreting the order of the Tribunal may have committed a bona fide error. We are, therefore, not entitled to haul them on that ground or to punish them for not complying with the direction of this Tribunal.

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"4. We are afraid that the respondents will have to do a fresh exercise and invite objections and consider them and thereafter pass a fresh order.

"5. There is some controversy as to how the respondents should give notices in the parties concerned. As a result of the discussion, it has emerged that the best method will be to give notice to all concerned through the Divisional Railway Managers of the respective Divisions, who shall see to it that the circular issued by the relevant authority of the respondents is put up on the Notice Board of the Division. After the notices are issued in the manner indicated above, the objection/objections received shall be considered by the relevant authority and decided within the time specified in the judgement."

7. The petitioners in this contempt petition state they had been pursuing with the respondents to issue the final combined seniority list but this has still not been done. It is alleged that the respondents have committed further contempt by arranging for a selection for the post of Chief Parcel Supervisor in grade Rs.2000-3200 and by limiting the field of eligibility only to the Parcel Group vide notification dated 23.8.94 (Annexure A 9/1 to CP No.11/95).

8. The learned counsel for the respondents mentioned that while these proceedings were going on, the Ministry of Railways issued instructions on 6.8.93 (copy at Annexure R-4 to this CP). These instructions of the Ministry have statutory force. They relate to the subject of merger of cadres in Commercial Department. Relevant paras are extracted herein:

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"The question of merging different cadres of Commercial staff into a single cadre had been under consideration of the Board for some time past in view of the flexibility and the convenience in posting and transfers which such an arrangement would provide.

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2. Meanwhile, this issue was discussed in the recent CRC Meeting held in Board's office on 20.1.93, wherein it was noted that on most of the railways, the three cadres of Commercial Clerks, viz. Goods, Booking and Parcel Clerks are already combined, but on a few railways these cadres are separate.

3. With a view to have uniformity, Board have decided that the above three cadres should be merged into one combined cadre of Commercial Clerks in respect of new entrants on the railways where they are not already combined.

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5. All the employees appointed on regular basis to any of the three existing cadres upto 31st October, 1993 will continue therein, and progress in their respective cadres as is the position at present. However, employees working in the lowest grade in any of the three existing cadres will be given an option to come over to the new unified cadre. This option should be exercised within two months from the date of issue of corresponding instructions by your railway. Option exercised within this period of two months will be deemed to be effective from 1.11.93. Option once exercised shall be treated as final and no change will be permitted at a later date, and they will seek their promotion in the unified cadre in accordance with para 7 and 7.1 below."

9. It is the stand of the respondents that in view of the instructions of Railway Ministry, the position has changed and merger at the lowest grade alone is being effected. At higher levels, the cadres are being maintained separately as was existing prior to the receipt of Board's instructions. Thus, the introduction of Coaching Group in Delhi division has become irrelevant (para 3 of the reply to the CP - preliminary submissions).

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10. In the face of this explanation, we are unable to hold that there has been any wilful disobedience of the orders passed by this Tribunal. The main direction was to the effect that any seniority list of the combined cadres should be finalised only after representations are decided. It has not been established such lists have been issued without considering the representations. The respondents were not in a position to process the combined seniority lists in view of related instructions from the Ministry. We also note that the OA itself was filed by Parcel Clerks Association who had been opposing the merger of the Parcel Group with the Booking Group. In the circumstances, the action/inaction on the part of the respondents can not be faulted.

11. With regard to the contention that the respondents have committed contempt by ordering for selection for the post of Chief Parcel Supervisor in the grade of Rs.2000-3200 and by limiting the field of eligibility only to the Parcel Group vide notification dated 23.8.94, we observe that there was no direction of this Tribunal that selection to the post of Chief Parcel Supervisor should be held in a particular way. The Original Application had been filed challenging the combined seniority list in grades of Rs.975-1540, Rs.1200-2040 and Rs.1400-2300 and the orders passed were only with regard to seniority list pertaining to the grade Rs.975-1540. We are advised there is another grade between Rs.1400-2300 and Rs.2000-3200, namely grade Rs.1600-2660, which is the feeder grade for Rs.2000-3200. Since seniority in grade Rs.1600-2660 did not figure in the Original Application, holding of selection to grade Rs.2000-3200 can not be related to the

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orders passed by this Tribunal in the OA. For these reasons, we can not hold that the respondents have committed contempt in ordering for the said selection in grade Rs.2000-3200.

12. In view of what has been mentioned in paras 9 and 10, no further action by the respondents in pursuance of the order passed by this Tribunal on 24.8.1993 in the OA 245/93 is called for.

13. In the circumstances, the contempt petition is dismissed. Notice issued is discharged. There shall be no order as to costs.

P. J. Thiruvengadam  
20/4/95  
(P.T. Thiruvengadam)  
Member(A)

S. C. Mathur  
20/4/95  
(S.C. Mathur)  
Chairman

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