

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH, JODHPUR.

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O.A. No. : 145/1998

Date of Order : 28-10-99

Makbool Ahmed S/o Shri Fazal Khan by caste Mohammedon aged about 40 years, resident of at present working as A.O.M. (M) Khalasi in the control Office, Northern Railway, Bikaner.

2. Mishri Babu S/o Shri Khem Chand by caste Meghwal (S.C.), aged about 44 years, resident of at present working as T.T.E., Northern Railway at Bikaner.

3. Rameshwar Kachhwaha S/o Shri Suraj Mal, by caste Rajput, aged about 47 years, at present working as T.T.E., Northern Railway at Bikaner.

4. Hari Kishan S/o Shri Khyali Ram by caste Sharma, aged about 44 years, at present working as T.T.E., Northern Railway, Hanumangarh (Bikaner Div.)

5. Mohd. Yunas S/o Shri Enamul Haq by caste MOhammedon, aged about 48 years, at present working as T.T.E., Northern Railway at Hanumangarh (Bikaner Division).

..Applicants.

Versus

1. The Union of India through its General Manager, Northern Railway, Baroda House, Headquarter Office, New Delhi.

2. The Divisional Railway Manager, Northern Railway, D.R.M.'s office, Bikaner.

3. The Divisional Personnel Officer, Northern Railway, D.R.M.'s Office, Bikaner.

..Respondents.

Mr. S.N. Trivedi, counsel for the applicants.

Mr. R.K. Soni, counsel for the respondents.

O.A. no. : 313/1998

1. Nazir Khan S/o Ast Ali Khan, aged about 41 years, working as Lamp-Man, under station Superintendent, Northern Railway Suratgarh, resident of Railway Colony, Suratgarh.

2. Nathu Singh S/o Shri Ram Chandera, aged about 44 years, working as Marker under Station Superintendent, Northern Railway, Suratgarh, Resident of Railway Colony, Suratgarh.

3. Ramesh Kumar S/o Shri Shri Chand, aged about 44 years, working as Lamp-Man under Station Superintendent, Northern Railway, Suratgarh, Resident of Railway Colony, Suratgarh.

4. Mohamed Ali S/o Shri Rahmed Ali, aged about 40 years, working

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as Gateman under Station Superintendent, Northern Railway, Suratgarh, Resident of Railway colony, Suratgarh.

5. Rajendra Prasad S/o Shri Nathu Lal, aged about 44 years, working as Gateman under Station Superintendent, Northern Railway Bhagwansor, Resident of Railway Colony, Bhagwansar.

6. Anil Kumar S/o Shri Dust Kumar, Aged about 38 years, working as Gateman under Station Superintendent, Northern Railway, Hanumangarh, Resident of Railway Colony, Hanumangarh.

7. Prakash Chandra S/o Shri Rudhan Dass, Aged about 40 years, working as A.S.M. Khallashi, under Station Superintendent, Northern Railway, Hanumangarh, Resident of Railway Colony, Hanumangarh.

8. Dinesh Prasad S/o Shri Mahendra Prasad, aged about 42 years, working as A.S.M. Khallashi under Station Superintendent, Northern Railway, Hanumangarh, Resident of Hanumangarh.

..Applicants.

Versus

1. Union of India through its General Manager, Northern Railway, Baroda House, H.Q. Office, New Delhi.

2. The Divisional Railway Manager, Northern Railway, D.R.M.'s Office, Bikaner.

3. The Divisional Personnel Officer, Northern Railway, D.R.M.'s office, Bikaner.

..Respondents.

Mr. Y.K. Sharma, counsel for the applicants.

Mr. R.K. Soni, counsel for the respondents.

CORAM :

Mr. A.K. Misra, Judicial Member.

Mr. N.P. Nawani, Administrative Member.

PER HON'BLE MR. A.K. MISRA :

In both these Original Applications, common question of law and facts is involved, the relief claimed by the applicants is also common. Therefore, both these applications shall be disposed of by this common order.

2. In both these applications, the applicants have prayed that the order dated 21st May, 1998 (Annexure A/1) passed by the

Divisional Personnel Officer, Northern Railway, Bikaner be quashed and the respondents may be directed to hold the selection for the annual vacancies occurring in a particular year and eligibility be fixed accordingly.

3. In both these applications the applicants have prayed for staying the operation of impugned order dated 21st May, 1998 passed by the respondents.

4. Notices in both these OAs were issued to the respondents who have filed their detailed reply. In OA No. 145/1998, the applicants have filed rejoinder to which an additional reply was filed by the respondents. Although relief claimed in applications is common yet there is a little difference in facts. Therefore, brief facts of the each OA shall be narrated hereby.

O.A. No. 145/1998 :

It is stated by the applicants that presently except applicant No. 1 all the applicants are working as adhoc T.T.E. in Bikaner Division. As per the Board's letters dated 29th November, 1962 and September, 1976, there is a provision for promotion of Class IV employees to Class III. In these letters the selection procedure and criteria has been laid down. It is also laid down by the Railway Board that selection from the year 1979 and onwards is to be held annually for the vacancies occurring in a particular year and the eligibility is to be determined accordingly. As per the instructions contained in the aforementioned letters, the respondents made selection of 18 Ticket Collectors against the 24 identified vacancies, and prepared panel of successful candidates. However, this selection was challenged by 5 candidates including the applicants No. 2 to 5 on the ground of irregularities etc.,

before Hon'ble the High Court. The Writ Petition was eventually transferred to the Tribunal and was decided on 4.8.1992. By the said order the Tribunal quashed the selection and the respondents were directed to hold selection for annual vacancies and prepared separate panels for each year. This order of the Tribunal was challenged by the respondents before Hon'ble the Supreme Court. Hon'ble the Supreme Court decided the S.L.P. on 16.12.1997 with the observation that in absence of any factual data, the Tribunal was not justified in holding that clubbing of vacancies for the year 1979 to 1982 has caused prejudice to the claimants. ~~Further~~, the above order, passed by Hon'ble the Supreme Court, the respondents have notified vide Annexure A/l proposed selection for 70 vacancies by clubbing the vacancies for the year 1982-83 to 1997 i.e. of 14 years. The list of eligible staff has been prepared for appearing in written examination to be held on 7.6.1998. Applicants No. 1, 2 and 3 have been shown in the list but names of applicants No. 4 and 5 have not been shown in the list of eligible candidates but they have applied in protest.

The applicants have challenged the action of the respondents on the ground that clubbing of such a large number of vacancies has resulted into a large competition and the applicants shall have to face more competitors than they would have faced had the yearwise vacancies and eligibility list been prepared and thus the applicants would suffer prejudice. It is also stated by the applicants that as per the direction of the Railway Board, yearwise vacancies were required to be determined and yearwise eligibility and ~~eligibility~~ list ought to have been prepared and yearwise vacancies should have been filled in as per the list of selected candidates. But the respondents have violated the Railway Board's instructions and thereby ~~infringed~~ the rights of the applicants by clubbing the vacancies of these years and preparing the eligibility ~~list~~.

The respondents have permitted ineligible candidates to compete for the vacancies of the earlier year. Thus the action of the respondents deserves to be quashed.

The respondents have filed their reply stating therein that the applicants No. 2,3,4 and 5 were not successful in the examination. Hence, they did not find place in the panel. Applicant No. 5, Mohd. Yunas, filed the Writ Petition before Hon'ble the High Court in which it was ordered that if any <sup>ments/</sup> appointments/promotions are made out of empanelled candidates then such promotion shall be subject to the decision in the Writ Petition. Applicant No. 3, Rameshwar, also filed a Writ Petition in Hon'ble the High Court in which it was directed that 5 posts be kept vacant and respondents were given liberty to appoint Sunil Dutt and Kishore Kumar who were respondents in that Writ Petition. Thus present applicants No. 2,3,4 and 5 others were given adhoc promotion on temporary basis pending passing selection vide respondents order dated 12.10.1983. These persons were further <sup>writs, OA and</sup> promoted subject to the out come of S.L.P. pending before the <sup>Court</sup> Courts vide order dated 24.8.1993 Annexure A/5. The S.L.P. eventually came to be decided on 16.12.1997 by Hon'ble the Supreme Court and the order of the Tribunal was quashed. During pendency of the S.L.P., status quo was ordered to be maintained by the respondents. Consequent thereto, all the adhoc promotees continued to work. When the S.L.P. was decided by Hon'ble the Supreme Court, the applicants No. 2 to 5 were reverted to their substantive post of Group 'D' by the respondents' letter dated 25.5.1998 Annexure A/10. The applicants without availing the departmental remedy against the reversion order filed an OA before the Tribunal which was decided on 12.6.1998 with a direction that the applicants may file their appeal before the competent authority within a period of one month and the same should be disposed of by a speaking order.

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Since the operation of reversion order was not ordered to be stayed, the applicants preferred a Writ Petition before Hon'ble the High Court in which operation of order dated 25.5.1998 reverting the applicants No. 2 to 5 to their substantive post was stayed subject to condition that the petitioners shall continue to work on adhoc basis till the duly selected candidates are available and the rights and interests of the selected candidates for the year 1982-83 shall not be affected adversely. This order presently continues. So far as the selection of the year 1982 is concerned, the same became final as per the judgement of the Hon'ble Supreme Court. After the Hon'ble Supreme Court decided the S.L.P. on 16.12.1997, impugned notification Annexure A/1 dated 21.5.1998 for selection for the post of Ticket Collector Grade 3050-4590 (RPS) against 33 1/3 promotee quota was issued. In pursuance of this notification examination was conducted in which applicant No. 1 appeared but he could not qualify the written test. Applicants No. 2 and 3 did not appear in the examination inspite the information. However, applicants No. 4 and 5 were left out may be inadvertently or otherwise. It is further stated by the respondents that no sooner the S.L.P. was decided by the <sup>Hon'ble</sup> Supreme Court the respondents took steps for filling the promotional posts. Till the Supreme Court decided the controversy the status quo order was in force. Therefore, the examinations could not be organised earlier. In view of these facts, it was not possible for the respondents to adhere to the instructions as contained in the circular issued by the Railway Board. The action of the respondents is perfectly as per rules and the rights of the applicants are not adversely affected. If the competitors are more in number then certainly there are posts also in great number. The contentions of the applicants are ill founded and the OA is rejected.

The applicants have filed their rejoinder to which reply has

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also been filed by the respondents. However, both these pleadings contained more argumentative material than clarification of opponents' pleadings. Therefore, the points raised in these pleadings shall be considered and disposed of as and when contentions of the parties are discussed.

OA No. : 313/1998

It is stated by the applicants that the applicants that the selection of 18 Ticket Collectors undertaken by the respondents to fill in the 24 notified vacancies was challenged by the candidates which was quashed by the Tribunal vide its order dated 4.8.1992 passed in TA No. 121/1986, 193/1986 and 12/1990. The order of the Tribunal was challenged before the Supreme Court by the respondents by preferring S.L.P. This S.L.P. came to be decided in the year 1997 by the Supreme Court's order dated 16.12.1997. From 1982-1997 no departmental selection was held for filling the vacancies. By impugned notification dated 21.5.1998, the respondents are undertaking the process of filling the 70 vacancies which relate to the year 1982 to 1997 whereas the department as per the instructions given by the Railway Board should have organised examination for filling the year-wise vacancies. By organising such examination, all the vacancies relating to earlier years have been clubbed which is against the rules, notifications and guidelines. The rights of the applicants have adversely been affected because ineligible candidates would be participating in respect of earlier vacancies. In view of this, the action of the respondents must be quashed.

The respondents have stated in their reply that no doubt the earlier selection was quashed by the Tribunal but the selection was upheld by the Supreme Court and the order of the Tribunal was quashed. When the S.L.P. was instituted by the respondents, the

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status quo was ordered to be maintained by the Supreme Court. Consequently no change in situation could be made and no selection could be undertaken by the respondents. When the Supreme Court decided the S.L.P., the respondents undertook the process of selection to fill up the long-awaited vacancies of Ticket Collectors by issuing the impugned notification Annexure A/1. The applicants appeared in the written examination, they could not qualify. Successful candidates were interviewed ~~before~~<sup>on</sup> 4.2.1999 but their result could not be declared in view of the stay order granted by the ~~Tribunal~~ in the connected OA. It is further stated by the respondents that the applicants having failed in the written test are estopped from challenging the notification dated 21.5.1998. The rights of the applicants have not adversely been affected and no rules and guidelines have been violated because right from 1982 till 1997 the matter was subjudiced before the Hon'ble Supreme Court. The applicants have not been able to establish that the selection process would be affecting their rights prejudicially. In view of this, the OA deserves to be dismissed.

5. We have heard the learned counsel for the parties and have gone through the case file. Before we proceed to dispose of the rival arguments, it would be useful to mention some facts which have ~~gave~~ bearing on the controversy.

6. Applicant No. 1, Maqbool Ahmed of OA No. 145/1998 and all the applicants of OA No. 313/1998 had appeared in the written test held in pursuance of notification dated 21.5.1998 but all of them remained unsuccessful in the written test. Applicants No. 2 and 3, Mishri Babu and Rameshwar Kachhwaha respectively failed in earlier selection which was challenged and they did not appear in the written test held in pursuance of notification Annexure A/1 on the ground of sickness and also did not appear in supplementary

examination on the ground that they were on leave. Applicants No. 4 and 5 Hari Kishan and Mohd. Yunas were not included in the list of eligible candidates. Therefore, they were directed to be allowed to appear in supplementary examination as per the order dated 19.3.1999 of the Tribunal passed in MA No. 30/1999 filed by the Railway for permitting them to notify the result of the selection in question. However, the applicants who were so keen about in appearing in examination and were so particular about challenging the process of selection did not appear in the written examination on the ground that they were not given 15 days' time for preparation as per rules. Thus, they did not avail the opportunity ~~by~~ of appearing in the supplementary examination as was directed by the Tribunal to be organised by the respondents.

7. It was argued by the learned Advocates for the applicants that as per the notification of the Railways that after the year 1979, the effort should be made to hold selection annually and in any case one selection in every two years, <sup>ie.</sup> the respondents should have undertaken the process of selection each year or in any case once in two years. Since they have not carried out the instructions of the Railway Board, therefore, the selection process deserves to be quashed. We have considered this argument. In our opinion, the argument is without any substance. For the earlier vacancies, the respondents have organised selection test, the result of which was published in the year 1982, that selection was upheld by the Hon'ble Supreme Court. It was observed by Hon'ble the Supreme Court that in the absence of any factual data we fail to see how the Tribunal could have held that the clubbing of vacancies from 1979 to 1982 ~~as~~ has caused prejudice to respondents No. 5 to 8. It was further observed by Hon'ble the Supreme Court that they do not see any reason for ~~faulting~~ the examination. The respondents No. 5 to 8 ~~as~~

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had failed in the examination and were therefore, not qualified for selection. In view of this, the controversy relating to filling the vacancies up to year 1982 can not be questioned. Thereafter, the matter remained pending initially before the High Court then before the Tribunal and then before Hon'ble the Supreme Court. Therefore, no fault can be attributed to the respondents for not organising yearwise selection process for filling ~~in~~ the promotional post of Ticket Collectors. Moreover, the order directing the respondents to maintain status quo passed by Hon'ble the Supreme Court remained in force from September, 92 till the final disposal of the S.L.P. During this period the respondents were not in a position to organise any test whatsoever. In relation to the earlier selection, the applicants could not show that they were prejudiced by clubbing the vacancies for the year 1979 to 1982. This time also they have not been able to show as to how they are prejudiced by the respondents' action of clubbing the vacancies of Ticket Collectors from 1982 to 1997 for the purpose of filling these posts from promotional 33 1/3 per cent quota. Therefore, the notification relating to the selection process can not be faulted.

8. It was argued by the learned counsel for the applicant that by clubbing all the vacancies of the past years, they have automatically enlarged the scope of eligible candidates and those candidates have been permitted to participate in the examination who otherwise would not have been eligible to participate in the examination if the vacancies ~~were~~ identify yearwise. We have considered this argument. In our opinion, after lapse of 14 years, <sup>not be forced to</sup> the respondents should identify yearwise vacancies for filling the promotional 33 1/3 quota of Ticket Collectors. In view of the high number of vacancies all the participants have a greater scope of showing their performance both in written and in viva-voce and each one of them has a greater scope of being selected. Therefore, the

apprehension of the applicants that due to clubbing of the vacancies, the competition has increased and the chance of selection has decreased is quite imaginary. During these 14 years many persons must have retired or many persons must have chosen some other venue for betterment of their career. The applicants' insistence for yearwise identifying of vacancies and selection may be due to the fact that for earlier years few limited seniors will have no competitors at all and <sup>few</sup> vacancies of the later years, there may be greater number of eligible competitors but this approach of the applicant can not be the right approach. When the process of selection is required to be held then it may be not merely a show of selection but should be a positive result oriented selection. Therefore, the arguments of the learned Advocate deserves to be rejected. At the cost of petition, we may mention that the applicants have not been able to show as to what prejudice each one of them would suffer in the instant case where the vacancies have been clubbed together for all these 14 years.

9. It was further argued by the learned counsel for the applicant that initially a list of 54 written test ~~successful~~ candidates was declared and then list of additional 11 candidates was declared who had qualified the written test. Thus the selection process of the applicant creates doubt and deserves to be set aside. We have considered this aspect. The respondents in their reply to the rejoinder have stated that one question bearing 12 marks was left out from valuation and the candidates were awarded marks out of 88 marks instead of 100 marks and when this mistake came to the notice of the authorities, copies of all the participants were revalued and marks relating to left out question were given to each one of them and in that process 11 more candidates were found eligible to be called in viva-voce. In view of this, additional list of successful 11 candidates was declared. In our opinion, this does

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not affect the right of the applicant because they had not initially qualified the written test and even after awarding marks of the left out question of 12 marks were not found eligible to be called for interview. Therefore, applicants can not say that their rights were adversely affected by the action of the respondents.

10. We have also gone through 1978 WLN UC page 383, M.P. Agrawal vs. State of Rajasthan cited by the learned counsel for the applicant. But in our view, the ruling is distinguishable on facts. Therefore, the rule propounded therein can not be made applicable in the instant case and renders no help to the applicants.

11. Applicants who had participated in the written test held in pursuance of notifications have taken a chance for being successful in the examination. Therefore, on their remaining unsuccessful, they are estopped from challenging the process of examination. Applicants No. 2 and 3 of the OA No. 145/1998 who were given an opportunity to appear in examination but did not avail the same once because of their illness and second time on remaining on leave can not claim to be adversely affected. Eligible candidates can only be provided an opportunity to appear in the examination. They can not be forced to appear in the examination and if <sup>for</sup> one reason ~~asked~~ <sup>or the</sup> other <sup>opted</sup> they ~~ought~~ not to appear in the examination, it ~~was~~ <sup>L</sup> their own choice and they have to thank themselves for the consequences. Therefore, applicants No. 2 and 3 of OA No. 145/1998 are not entitled to any relief. The same thing can be said about applicants No. 4 and 5 who refused to appear in the written examination on the ground that they were given no time as per the rules but in our opinion, this excuse as advanced by the applicants No. 4 and 5 to the authorities is not available to them. In the OA they have specifically said that they were not provided an opportunity to appear in the examination by omitting their names in the eligibility list. When

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They were not provided an opportunity to appear in the examination

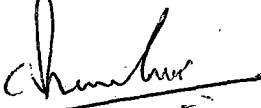
they were provided an opportunity, they did not avail it.

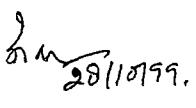
12. All these things probably must have been done by the applicants because by <sup>the</sup> orders of the Hon'ble High Court, their reversion to the substantive post of Class 'D' as per order dated 25.5.1998 is stayed and they are continuing on promotional post on adhoc basis. Therefore, applicants No. 2 to 5 are also not entitled to any relief.

13. In view of the above, we are of the opinion that applicants have no case and present applications deserve to be dismissed.

14. The OAs are, therefore, accordingly dismissed with costs which we quantify in each case at the rate of Rs. 1000/-.

The interim order granted in OA No. 145/1998 stands vacated.

  
(N.P. NAWANI)  
MEMBER (A)

  
(A.K. MISRA)  
MEMBER (J)