

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NOS 549/2000 & 631/2000

FFIDAY, THIS THE 2nd DAY OF AUGUST, 2002.

C O R A M

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. V. SACHIDANANDAN, JUDICIAL MEMBER

O.A. 549/2000

C.S. Prasanna Kumar S/o M/ Chellappan Pillai
Leave Reserve Ticket Collector
Southern Railway
Thiruvananthapuram.

Applicant

By Advocate Mr. P.K. Madhusoodhanan

Vs.

1. Senioir Divisional Personnel Officer
Southern Railway
Thiruvananthapuram.

2. Union of India represented by
its Secretary
Ministry of Railways
Rail Bhavan,
New Delhi.

3. G.K. Unnirajan
Leave Reserve Ticket Collector
Southern Railway
Thiruvananthapuram.

4. K. Harichand,
Leave Reserve Ticket Collector,
Southern Railway,
Thiruvananthapuram.

Respondents

By Advocate Smt. Sumathi Dandapani for R 1 & 2

O.A.631/2000

R. Ramachandran Pillai S/o K. Raghavan PIllai
Leave Reserave Ticket Collector Southern Railway,
Kollam.

Applicant

By Advocate Mr. P.K. Madhusoodhanan
Vs.

1. Senior Divisional Personnel Officer
Southern RAilway,
Thiruvananthapuram.

2. Union of India
represented by lk its General Manager,
Southern RAilway1,
Park Toiwn,
Chennai-3.

Respondents

By Advocate Smt. Sumathi Dandapani

These Applications having been heard on 2.7.2002 the Tribunal delivered the following on 2.8.2002.

ORDER

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

As the issue involved in both the Original Applications is the same, these two OAs were heard together and this common order will cover both these OAs.

2. Applicants in both these OAs are aggrieved by the denial of their request for seniority in the post of Ticket Collector by the first respondent.

3. The case of the applicant in O.A. 549/2000 in brief is as follows. He was promoted as Ticket Collector by A1 order dated 16.2.94 which was challenged by one Sri Chandramohan by filing O.A. NO. 8/95 in this Tribunal. This Tribunal by its order dated 28.9.96 set aside A1 holding that supplementary selection was ordered by an officer whose authority in that behalf was not disclosed, whose identify was not certain and that too after the process of selection had started. In RA No. 7/96 this Tribunal clarified that it quashed only the supplementary selection. When the third respondent initiated steps by letter No. V/P/ 531/III /TC /TNC/Vol. 5 dated 20.9.96 to fill up 34 vacancies of the years 1990-91 to 94-95 of Ticket Collector/Trains Clerk, applicant filed O.A. No. 1186/96. In that OA he sought to issue directions to the respondents to conduct selection for filling up the left behind vacancies of Ticket Collectors against 33 1/3% quota for the year 1989-90 xxxxxxxxxxxx before proceeding with the selection for the years 1990-91 to 1994-95 and to restrain them from their attempt to conduct selection for the said years and also to retain him as Ticket Collector till the fresh selection was over. This Tribunal by A2 order dated 4.11.96 disposed of the said OA 1186/96



recording the submissions made by the respondents that the three vacancies carried forward from the year 1989-90 were also included in the vacancies notified. Pursuant to A2, selection to the post of Ticket Collector/Train Clerks was conducted and the applicant was selected. The applicant was allowed to continue as Ticket Collector in pursuance of order No. V/P.531/III/TC/TNC/Misc. dated 3.1.97. He submitted A3 representation dated 2.2.99 to the first respondent requesting to grant him seniority from 20.4.94 as Ticket Collector as the earlier selection was quashed on technical grounds and as he was selected and appointed against the carried forward vacancies of the year 1989-90 and he was third in A-1 select list. He submitted that the third respondent was appointed as Traffic Porter on compassionate grounds on 11.11.80, promoted as Gatekeeper only on 11.1.94 and as Ticket Collector by A1. The 4th respondent was appointed as Traffic Porter on 12.12.84 on sports quota and promoted as Ticket Collector by A1. In A1 select list as well the applicant was senior to respondents 3 and 4. Therefore he claimed that on selection for the carried forward vacancies of 1989-90 of Ticket Collectors, the respondents ought to have granted seniority to him over respondents 3 and 4. Not getting any reply to A3 representation applicant submitted A4 representation dated 15.2.2000. Applicant received A5 reply dated 5.5.2000. Thereafter the officials of the Railway had taken speedy steps to grant promotion to the next higher posts of Travelling Ticket Examiner/Senior Ticket Collector to the applicant's juniors, respondents 3 & 4, without considering the applicant by Annexure A6 dated 16.5.2000. Assailing A5 and A6 as erroneous, arbitrary, illegal and discriminatory, applicant filed this O.A. seeking the following reliefs:



(a) set aside Annexure A-5 and A6 only in so far as it selected respondents 3 & 4, without considering the applicant for selection for promotion to the post of Travelling Ticket Examiner/Senior Ticket Collector

(b) issue necessary directions to the 1st respondent to consider the applicant for inclusion in the select list for promotion to the post of Travelling Ticket Examiner/Senior Ticket Collector in preference to respondents 3 and 4 granting him seniority in the post of Ticket Collector as in Annexure A1

(c) costs

and

(d) grant such other reliefs as this Hon'ble Tribunal deems fit and proper.

4. The Applicant in O.A. 631/2000 had volunteered in time for promotion to the post of Ticket Collector against 33 1/3% quota vacancies for the year 1989-90 in pursuance to the notification published by the respondents. When his name was not included by mistake/omission on the part of the Departmental officials under the 1st respondent the applicant submitted representation to the 1st respondent through proper channel requesting to allow him to appear for the selection. The 1st respondent allowed the applicant along with 54 others to write the written test as per his letter dated 20.12.93. On passing the written test as well as the viva voce, the 1st respondent placed the applicant in A-1 select panel dated 16.2.94. He was promoted as Ticket Collector on 20.4.94. Pursuant to the order of this Tribunal in O.A. No. 8/95 dated 29.2.96 and RA No. 7/96 in O.A. No. 8/95 the applicant's name was deleted along with two others. It was also stated therein that they would be allowed to attend the selection to be conducted for promotion to the three left behind vacancies which would be notified in due course. He filed O.A. 1182/96 seeking to issue necessary directions to the respondent to conduct selection for filling up the left behind vacancies of Ticket Collectors/Train Clerks of the year 1989-90 before proceeding with the selection for the



years 1990-91 to 1994-95 retaining him as Ticket Collector till the selection was over. By A2 common order along with O.A. No. 1186/96 dated 4.11.1996 the Tribunal disposed of the OAs. Pursuant to the notification dated 25.10.96 and A2 and A3 selection to the post of Ticket Collector/Train Clerk were conducted and the applicant was selected. The applicant was allowed to continue as Ticket Collector in pursuance of order dated 3.1.97. He submitted A-4 representation dated 28.7.97 to the 1st respondent through proper channel requesting to grant him due seniority from 20.4.94 as Ticket Collector as his selection in A1 was quashed on technical grounds and for no fault of his and as he was selected against the carried forward vacancies and appointed to the post of Ticket Collector. He submitted that in view of the pendency of O.A. No. 875/97 filed by Sri P.K. Sidharthan and P. Gopalan challenging the selection of the applicant and 22 others as Ticket Collector/Train Clerk he was told that his request for seniority would be considered later. He submitted A-5 representation dated 2.2.99 to the 1st respondent requesting to grant him due seniority. On dismissal of the O.A. 875/97 by order dated 12.1.2000, applicant submitted A6 representation dated 15.2.2000 to the 1st respondent to grant him seniority w.e.f. 20.4.94 in the post of Ticket Collector. He received A-6 reply stating that as his name had been removed from the select panel based on the direction of this Tribunal in O.A. 8/95 and RAs No. 7/96 and 10/96 and he was empaneled on 6.5.97 through fresh selection revision of seniority was not considered feasible. Alleging A-6 was opposed to law, erroneous and perverse and therefore illegal applicant filed this O.A. seeking the following reliefs:

- a) Set aside Annexure A-7

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b) Declare that the applicant is eligible to get seniority in the cadre of Ticket Collector/Train Clerk as if he is in the select panel at Annexure A-1

c) Issue necessary directions to the 1st respondent to grant seniority to the applicant in the cadre of Ticket Collector/Train Clerk as if he is in Annexure A1 select panel and grant all consequential benefits arising therefrom to him

d) Costs

and

e) grant such other reliefs as this Hon'ble Tribunal deems fit and proper.

5. Respondents filed similar reply statements in both OAs resisting the claims of the respective applicants. It was submitted that the prayer of the applicants for seniority on the basis of A1 was not maintainable since their inclusion in A1 was on the basis of supplementary selection and as per the orders of this Tribunal in O.A. No.8/95 and RA 7/96 in O.A. 8/95 the supplementary selection was set aside. The applicants were parties in these proceedings. Further the applicants had also filed RA 10/96 in OA 8/95 and the same was dismissed. According to the orders contained in RA 7/96 the names of the employees who came out successful through supplementary examination were deleted from Annexure A1 panel and were reverted to substantive grade in Group-D category as per letter No. V/P.535/III/LTC/TNC/Vol.VI dated 13.9.96. The applicant having not got those proceedings reversed and having not obtained any favourable decision in RA 7/96 in O.A. 8/95 the prayers sought for through this O.A. for seniority on the basis of A1 was barred by estoppel and constructive res judicata. As per R2 letter dated 6.12.96 the Chief Personnel Officer, Southern Railway Madras advised that the applicants may be allowed to continue as Ticket Collector purely on adhoc basis. It was further stated in the letter that in case the applicant was selected in the selection proposed, his services as Ticket Collector would be



regularised by virtue of his empanelment prospectively and in case if he was not qualified an order would be issued duly reverting him by posting regularly selected Ticket Collectors. His selection as Ticket Collector was by R-3 letter dated 6.5.97. Having not challenged the letter dated 6.5.97 his claim for seniority on the basis of A1 was untenable on the points of acquiescence and acceptance. Applicant had not impleaded all the persons who had been placed seniors to him in the category of Ticket Collector and who had been empaneled as per A1. Their seniority was likely to be affected in case the prayer herein was allowed. The OA was thus not proper on the point of non-joinder of necessary parties and accordingly deserved to be dismissed. The applicant's working as a Ticket Collector for the period from 20.4.94 to 6.5.97 was purely on adhoc basis only and that the same would not confer on him any claim for seniority. The applicant in O.A. 549/2000 had omitted to state the fact that he was allowed to take part in the selection through supplementary notification only. According to them the initial circular for promotion to the post of Ticket Collector/Trains Clerk was issued by Circular dated 27.7.92 and while the selection procedure were thus in progress certain employees complained that the circular dated 27.7.92 was not received in the stations in which they were working and as such they could not apply for the selection. The recognised Trade Unions also expressed the same views. Accordingly, it was decided as ordered by the Divisional Railway Manager, Trivandrum to give a fresh chance to those who lost chance to apply for the selection. Accordingly another call notice was issued on 3.12.93. The applicants and some others from whom no applications were received earlier, for the reasons best known to them, submitted their applications for the notification made on 3.12.93. The

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applicants could claim seniority only from the date they were absorbed on regular basis after empanelment. His placement in A-1 panel had been deleted as per R-4 letter dated 2.9.96. Accordingly the applicant could not seek grant of seniority on the basis of A1 as his name was deleted. He had been empanelled as per letter dated 6.5.97 and on this basis only he can get seniority. Respondents 3 and 4 were senior to the applicants as they were promoted on the strength of A1 whereas the applicants were promoted on the basis of order dated 6.5.97 and that their names were deleted and their working as Ticket Collector being purely on adhoc basis did not confer any right for seniority. The O.As. were devoid of any merit and were liable to be dismissed.

6. Applicants filed rejoinder in the respective OAs.

7. Heard learned counsel for the parties.

8. We have given careful consideration to the submissions made by the learned counsel for the parties and the rival pleadings and have also perused the documents brought on record.

9. From a perusal of the pleadings and the submissions of the learned counsel for the applicants we find that the applicants' names from A1 panel was deleted because of the order of this Tribunal in O.A. No. 8/95. We find from R1 order dated 11.4.96 in O.A. No. 8/95 that the applicants in these two OAs sought a review of the findings of this Tribunal made in para 10 in the said order that they were persons not prevented by sickness or by reasons beyond their control were not correct. This Tribunal while dismissing RA 10/96 held as follows:

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5. This application is by respondents 5 and 11 in OA 8/95. According to them, our finding in paragraph 10 that they were not persons who were prevented by sickness or by reasons beyond their control, is not correct. If it was not correct, they should have pointed out at the time when the oral judgment was dictated. Quite apart from that, as far as fifth respondent is concerned, we observed in para 10 of the order:

"5th respondent was not a person who was prevented by sickness or by reasons beyond his control. We say so, because what he states in R-II is that it was not convenient for him to attend the examination as he was to attend a union meeting."

When he had clearly said so, we do not have to go behind his own statement and discover a case for him. It was then argued that applicant should not challenge the process of selection as he had participated therein. The decision in Om Prakash Vs. Akhilesh Kumar AIR 1986 SC 1043 and Madan Lal & Ors Vs. State of Jammu & Kashmir and Ors, 1992 (2)SLR 209, were relied on. In para 13 of our order, we observed:

"Even so, applicant cannot challenge the selection according to 5th respondent, because he had submitted himself to the process of selection. The decision in Om Prakash Vs. Akhilesh Kumar AIR 1986 SC 1043 and Madan Lal & Ors Vs. State of Jammu & Kashmir and Ors., 1992(2) SLR 209 hold that after participating in a selection, a candidate cannot challenge the same. That is not the case here. At the time when applicant appeared for the examination on 27.11.93 (the date is not disputed), pursuant to the notification dated 24.8.92 the supplementary examination had not been contemplated or held. It was an illegality or taint that came into the picture long afterwards. Therefore, this rule cannot be held against the applicant."

We would also like to point out that a decision is not to be applied as an axiom in a book of Mathematics. Justice Holmes observed that:

"law cannot be dealt with as axioms in a book of mathematics". What the Supreme Court enunciated was the well known principle of estoppel to say that one cannot blow hot and cold at the same time and that having agreed to something, he cannot go back on it. We do not understand the decision as laying down anything else. The argument of review applicants is that at least at the stage of interview applicants should have known that the supplemental hands were also interviewed. We cannot presume such knowledge easily. Whether a person going for an interview had conscious knowledge of the facts relating to all the persons who are summoned for the interview, is a matter to be



established and not to be presumed. We find no error apparent on the face of the record warranting interference, much less an error apparent on the face of the record, in spite of the able arguments of Shri M.R. Rajendran Nair for review applicants.

10. Further we find from the order dated 29.2.1996 in OA No. 8/95 in para 8 and 13 this Tribunal held as follows:

"8. The Supreme Court also states that a decision should be predictable and based on principles. Here the principle is not disclosed, and guidelines are not available. Again the power has been exercised in a context where it cannot be exercised even according to para 16. Para 16 permits a supplementary examination except in cases where:

"volunteers are called to appear for the selection."

This is a case, where volunteers are called for the examination and on the plain language of the rule, this is not a case where a supplementary examination can be held. This is a case where one sees not the "Government of laws", but the "Government of men" with unknown identity and undisclosed authority.

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Even so, applicant cannot challenge the selection according to 5th respondent, because he had submitted himself to the process of selection. The decision in Om Prakash VS Akhilesh Kumar, AIR 1986 SLC 1043 and Madan Lal & Others Vs. State of Jammu & Kashmir and Ors, 1992(2) SLR 209, hold that after participating in a selection, a candidate cannot challenge the same. That is not the case here. At the time when applicant appeared for the examination on 27.11.93 (the date is not disputed), pursuant to the notification dated 24.8.92 the supplementary examination had not been contemplated or held. It was an illegality or taint that came into the picture long afterwards. Therefore, this rule cannot be held against the applicant.

From the above we find that this Tribunal had held that the supplementary selection held was illegal. When such is the case applicants' names were deleted from A1 pursuant to the decision of the Tribunal in O.A. 8/95. We also find that there is no dispute that three left over vacancies of 1989-90 had been carried forward to the year 1990-91 by the notification dated 25.10.96. It is pursuant to this



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selection that the applicants were permitted to appear in the said selection in which they got selected and were placed in R-3 panel xxxxx dated 6.5.97. As they were empaneled only on 6.5.97 we hold that they are entitled for seniority and other benefits pursuant to this selection only. Their request for seniority on the basis of their empanellment in A1 if acceded to would result in their getting the benefits of an action which was held as illegal by this Tribunal and the same has become final. Under the circumstances we hold the applicants' claim for seniority on the basis of their position in A1 panel is not tenable.

11. In the light of the above detailed analysis we do not find any merit in these two Original Applications and hold that these two Original Applications deserve to be dismissed.

12. Accordingly, we dismiss these two Original Applications with no order as to costs.

Dated the 2nd August, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER

kmn



G. RAMA KRISHNAN
ADMINISTRATIVE MEMBER

A3 True copy of the representation dated 28.7.97 submitted by the applicant to the first respondent.

A4 True copy of the representation dated 28.7.97 submitted by the applicant to the first respondent.

A5 True copy of representation dated 2.2.99 submitted by the applicant to the 1st respondent.

A6 True copy of the representation dated 15.2.2000 submitted by the applicant to the 1st respondent.

A7 True copy of letter No. V/P.612/III/TTE/TC/Vol.3 dated 5.5.2000 issued by the 1st respondent, SDPO, Trivandrum to the applicant.

A8 True copy of the representation dated 28.10.93 submitted by the applicant to the 1st respondent.

A9 True copy of the Memorandum No. V/P.111/Vol.3 dated 17.10.95 issued by the 1st applicant

Respondents' Annexures

R1 True copy of the Order dated 11.4.96 in RA 7/96 and OA 8/95

R2 True copy of d.o. letter No. P(S)443/III/TC Staff/Genl. Misc. dated 6.12.96 from the CPO, Southern Railway, Madras.

R3 True extract of letter NO. V/P 531/III/TC/TNC/Vol.5(1) dated 6.5.97 issued by the Sr DPO, Trivandrum

R4 True copy of letter No. V/P 531/III/TC/TNC/Misc dated 2.9.96 issued by the Sr. DPO, Trivandrum

R5 True copy of the memorandum No. V/P 531/III/TC/TNC/Misc dated 2.9.96 issued by the Sr. DPO, Southern Railway, Trivandrum