

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 599 & 645 of 1989
T.A. No.

DATE OF DECISION 21-12-1990

<u>S Nagarajan</u>	Applicant (s) in OA-599/89
<u>P Suthan & 4 others -</u>	Applicants in OA-645/89
<u>Mr P Santhoshkumar</u>	Advocate for the Applicant (s) in both
Versus	the cases
<u>Union of India & 2 others</u>	Respondent (s) in both the cases
<u>Mr MC Cherian & Saramma</u>	Advocate for the Respondent (s)
Cherian	

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman

&

The Hon'ble Mr. AV Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *no*
2. To be referred to the Reporter or not? *no*
3. Whether their Lordships wish to see the fair copy of the Judgement? *no*
4. To be circulated to all Benches of the Tribunal? *no*

JUDGEMENT

(Mr AV Haridasan, Judicial Member)

Since common questions of law and facts are involved in these two cases, it is advantageous to dispose them of together.

2. The applicant in OA-599/89 and the 5 applicants in OA-645/89 who are Class IV employees in the Southern Railway are aggrieved by the order of the Senior Divisional Personnel Officer, Palghat dated 22.8.1989 refusing to reassess the vacancies ⁱⁿ the Clerical Cadre falling within 33 1/3% quota _{at} for promotion from Group 'D' which arose upto 1.4.1987 and to promote them to such posts, on the basis of their success

..2...

in the Departmental Qualifying Examination. The common facts of the cases as averred in the applications can be briefly stated as follows.

3. As per the existing rules and regulations, 33 1/3% of the posts of Office Clerks in the Southern Railway are to be filled up by promotion of Class IV employees with three years of regular service and who come out successful in the Qualifying Examination. These orders were introduced w.e.f. 1.10.1975. But the first selection for promotion of Class IV employees to the Clerical cadre was held only in 1980. This selection was towards the vacancies which arose after 1.10.1975 upto 1980. On the basis of the above selection, 42 persons were promoted to Class III posts by order No.J/P. 531/VIII/Vol.3 dated 18.6.1982 and 9.11.1982. If the vacancies upto 1980 were properly assessed, 1/3 quota for promotion from Class IV for the period from 1.10.1975 to 1980 would really exceed 42. The next selection was conducted in 1984 in which 62 persons appeared and 21 were selected and appointed. Thereafter, by order No.J/P.531/XII/Vol.3 dated 31.12.1986 respondents called for applications from Peons, Lascar etc. for promotion to the post of Office Clerks. The applicants in these two cases ~~were~~ also volunteered for the selection. The applicant in OA-599/89 was No.10 in the list of successful candidates in the written test and the applicants ^{1 to 5} in OA-645/89 were at Sl. No.9, 14, 13, 20 and 16 respectively. They appeared for the viva voce and have reliably understood that

they have been successful in that also. Out of the total number of 22 persons called for the viva voce, only 10 persons were appointed. During the period from 1980 to 1987 by retirement, death and other reasons, a total number of 232 vacancies arose in the Class III Clerical cadre. The break up figure of the vacancies which arose during the years is stated in the application and clearly detailed in Annexures-III to IX to both these applications. Out of these 232 posts, 77 representing 1/3 are to be filled up by promotion of the Class IV employees as per the existing rules. But the respondents have promoted only 21 persons in 1984 and 10 persons in 1987. If the unfilled vacancies for the period from 1975 to 1980 are carried forward, the number of vacancies would be much more. But without promoting the applicants and other persons who were successful in the selection and viva voce conducted in 1987, the respondents called for fresh applications for ~~the~~ selection to the post of Office Clerks on 2.2.1988 at Annexure-X. The applicants in OA-645/89 and others who had participated successfully in the selection process in the year 1987 and who were not promoted filed OAK-101/88 challenging the notification at Annexure-X. The respondents in that case admitted ⁱⁿ ~~their~~ counter affidavit that there had been some mistake in the assessment of vacancies. The application OAK-101/88 was disposed of directing the respondents to exclude the vacancies which arose prior to 1.4.1987 from the selection process initiated with Annexure-X and also to

fill up the vacancies which arose prior to 1.4.1987 from among the successful candidates in the selection held in 1987 by extending the panel dated 30.10.1987. The applicant in OA-599/89 and the applicants in OA-645/89 submitted representations claiming that they are entitled to be promoted towards the reassessed vacancies on the basis of their success in the examination and viva voce. But these representations were turned down by the order dated 22.8.1989, Annexure-VIII in both these cases stating that pursuant to the order in OAK-101/88, three persons have been promoted and there was no further vacancy. . Aggrieved by this, the applicants have filed these applications praying that the impugned orders may be quashed and the respondents be directed to reassess the vacancies from 1980-81 to 1986-87 falling to 33 1/3% quota for promotion from Class IV to Class III and to appoint the applicants to such posts on the basis of their success in the 1987 selection. It has been averred that the respondents are bound to fill ^{up} the 33 1/3% quota only by promoting Class IV employees who are successful in the Qualifying Examination and the refusal to do so is arbitrary, unjust and unsustainable.

4. The respondents in the reply statement filed in these applications have not controverted the averments that the applicants have passed in the written test and viva voce for promotion to the post of Office Clerks in Class III in the selection process completed in the year 1987. It has been contended that ^{as} this Tribunal has in OAK-101/88 ^{only} directed that

the applicants in that case should be considered for promotion to the vacancies covered by Annexure-^{A10}/ dated 2.2.1988 also to the extent it had included and taken into account the vacancies which arose prior to 1.4.1987 and ~~that~~ as all the other contentions regarding the number of vacancies which arose after 1975 have been rejected, the applicants are estopped and is barred by principles of resjudicata from raising all these claims in these applications. It has been further contended that as directed in the order of this Tribunal in OAK-101/88 the vacancies falling to the promotion quota have been reassessed and filled up by appointing 3 more persons ^{from} among those who participated the selection process in 1987 and that as there is no further vacancy the applicants are not entitled to the reliefs claimed. It has also been contended that the mere success of the applicants in the Qualifying Examination would not clothe them with any right to be promoted and that if their claims are allowed, it would adversely affect the ^{employees} Class III/ including direct recruits ^h and compassionate appointees and also those Class IV employees who have already responded to the Annexure-X notification and that therefore the application is devoid of any merit.

5. The applicants have filed rejoinders reiterating their claim that the vacancies which arose prior to 1.4.1987 have not been properly assessed and that the 33 1/3% quota earmarked for promotion of Class IV employees have not been filled up in the manner prescribed, that the decision in OAK-101/88 does not

operate as resjudicata in raising this plea ^{and} that they are entitled to be promoted to the posts falling to the promotion quota upto 1.4.1987 on the basis of their success in the Qualifying Examination.

6. We have heard the arguments of the learned counsel on either side and have also carefully perused the documents. The respondents have contended that though in OAK-101/88 the applicants therein contended that the assessment of vacancies from 1980 onwards was not correct, ^{and} that if correct assessment ^{had been} ~~was~~ made all the applicants in the O.A. and even far more number of Class IV employees should have been promoted to Class III posts, these contentions were not accepted and the Tribunal disposed of the application ~~by~~ directing that the applicants should be considered for promotion to the vacancies covered by Annexure-A10 dated 2.2.1988 also to the extent it had included the vacancies which arose prior to 1.4.1987. Therefore the respondents contend that the applicants are estopped from raising the question of reassessment of vacancies from the year 1980 onwards and that they are barred by ^{the} principles of resjudicata also. The legal bar of estoppel and resjudicata will not arise in the case of the applicant in OAK-599/89 because he was not a party to OAK-101/88. Since OAK-101/88 was filed challenging the notification dated 2.2.1988 at Annexure-A10 and for a direction to promote the applicants to Class III post though it was averred in the application that the assessment of vacancies from 1980 onwards

was not correct, there was no adjudication of the question whether how many vacancies arose after 1980 and how many vacancies fell to the quota of promotees. As it was admitted in the reply statement filed by the respondents therein that some vacancies of the previous year ^{were} ~~was~~ carried forward and included in the 12 vacancies for which the impugned notification was issued, this Bench held that this was wrong. It is worthwhile to extract the relevant portions of the judgement in OAK-101/88 which runs as follows:

".....However, for making further selection for which the impugned notice at Annexure-A10 has been issued, the respondents in their additional affidavit dated 19.8.1988 have indicated that the 12 vacancies for which the impugned notice dated 2.2.1988 was issued takes into account, the shortfalls if any in respect of previous years. If that be so, we are afraid this is wrong. The vacancies of 1985-87 for which the applicants had appeared cannot be carried forward for fresh selection for which the impugned notice has been issued. They (the vacancies of 1985-87) have to be filled up through the selection of 1987 in which according to the respondents themselves, the applicants have been successful but could not be included in the panel because of their lower seniority.

4. In the facts and circumstances, we allow the application in part to the extent of directing the respondents to exclude the vacancies which arose prior to 1.4.1987 for the selection for which notice was issued at Annexure A-10 dated 2.2.1988. These vacancies if any which arose prior to 1.4.1987, should be filled up out of the successful candidates in the selection held in 1987 by extending the panel dated 30.10.1987 at Annexure A-9."

The above extracted portion of the judgement in OAK-101/88 would make it clear that whether the assessment of vacancies from 1980 onwards had been properly done and whether the 33 1/3% quota for promotion had been correctly filled up by promoting the Class IV employees who have qualified in the selection examination has not been directly and actively considered and decided. As the prayer in the above application was ^{for} setting

aside the Annexure-A10 notification and ^{for} direction for promotion of the applicants as Office Clerks in Class III that application was allowed to the limited extent of excluding the vacancies which arose prior to 1.4.1987 from the selection contemplated by Annexure-A10 notification and it was directed that the vacancies which arose prior to 1.4.1987 should be filled up out of the successful candidates in the selection held in 1987. Though in the application OAK-101/88 it has averred that large number of vacancies were there to be earmarked towards the 33 1/3% quota for promotion as is evident from Annexure-XI, the Tribunal has not considered and decided the correctness of the assessment of the vacancies which arose from 1980 to 1987. It was also not necessary to do so as what was impugned in that application was Annexure-A10 notification. Therefore the decision in OAK-101/88 cannot operate as resjudicata even against the applicants in OA-645/89 from contending that if the total number of vacancies which arose between 1980 and 1987 is assessed, there will be a large number of vacancies sufficient to promote the applicants and similar persons who have been successful in the selection process. So that contention of the respondents has only to be rejected. It is not disputed that w.e.f. 1.10.1975, 33 1/3% of the vacancies in the posts of Office Clerks in Class III are to be filled by promotion of the successful candidates from Class IV in the Qualifying Examination. When a quota is prescribed for a particular class for promotion, the respondents

are bound to fill the vacancies falling within that quota only by promoting them. The applicants have in the applications and the Annexures-III to IX clearly given the statistics of the vacancies which arose from 1980 onwards. Going by these statistics it can be seen that quite a large number of vacancies falling within the 33 1/3% quota earmarked for promotion of Class IV employees have been left out without filling them ~~vacancies~~ by promotion of Class IV employees. In the reply statement the respondents have not ~~sought to~~ denied or disputed the correctness of ~~these~~ averments in the applications and the statements Annexure-III to IX regarding the occurrence of vacancies in the cadre of Office Clerks during the period from 1980 onwards. If the averment regarding the number of vacancies is not true, the respondents having ~~the~~ possession of all the records should have raised a contention that the averment is false and ^{should have} produced evidence to show that the vacancies as mentioned in the applications did not arise during the period in question. Therefore it has to be taken that the claim of the applicants that 77 vacancies arose ^{upto 1.4.1987} since 1980 / in the cadre of Office Clerks in Class III has to be accepted. Towards the vacancies which arose after 1980, 21 persons were promoted in the year 1984, 10 persons were promoted in 1987 and 3 persons have been subsequently promoted as per direction contained in the order in OAK-101/88. Therefore, there must be 43 vacancies which arose after 1980 yet to be filled by promotion of Class IV employees. The specific averment in

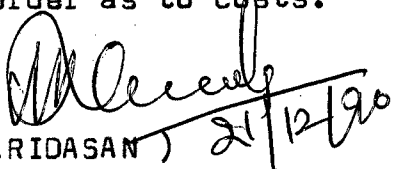
the applications that 42 persons promoted in the year 1982 were towards the 33 1/3% quota which arose between 1.10.1975 and 1980 has not been specifically disputed in the reply statement. Therefore it is obvious that the contention of the respondents that the 33 1/3% quota has already been exhausted cannot be accepted. The contention of the respondents that the notification dated 31.12.1986 at Annexure-R1(a) pursuant to which the applicants appeared for the qualifying test was only for 10 vacancies is incorrect because the number of vacancies was not specified as 10 in Annexure-R1(a). The first paragraph of Annexure-R1(a) runs as follows:

"It is proposed to held a written test/oral test shortly for promotion as Office Clerks in grade Rs.950-1500 from Class IV against 33.1/3% of vacancies. The exact time, date and Venue will be advised later. The written test is proposed to be held on Feb.March/87."

So the notification was for the purpose of making promotions all to the vacancies in the cadre of Office Clerks falling to the quota of 33 1/3% for vacancies. As we have found that there are much more vacancies than 10, the contention of the respondents that the applicants though became qualified in the test are not eligible to be promoted for want of vacancies has to be rejected. Since the averment that the applicants have passed the written test and viva voce conducted in 1987 has not been disputed and as the case of the applicants that there were more number of vacancies than to absorb all those who have passed the test have not been effectively controverted, we are of the view that the respondents are bound to promote the applicants to the Class III post on the basis of their

success in the Qualifying Examination. The contention of the respondents that the claims of the applicants for reassessment of the vacancies and promotion if allowed would adversely affect the direct recruitees and compassionate appointees as also the chance of promotion of those who have responded to Annexure-X notification is no valid answer for the legitimate claim of the applicants. When a quota is prescribed for promotion, the department cannot fill that vacancies by resorting to direct recruitment. Therefore the contention that the chances of direct recruitees would be affected adversely has no merit. Compassionate appointment can be made only towards the direct recruitment quota and not towards the quota reserved for promotion. Similarly, the chances of those who have responded to the Annexure-X notification also will not be affected because Annexure-X notification should relate to the vacancies which arose only after 1.4.1987. Hence there is absolutely no merit in any of the contentions raised by the respondents.

7. In the result, the applications OA-599/89 and OA-645/89 are allowed. The impugned order dated 22.8.1989 Annexure-X in these applications is quashed and the respondents are directed to promote the applicants to Class III posts within a period of two months from the date of communication of this order. There is no order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER


(SP MUKERJI)
VICE CHAIRMAN

21-12-1990

trs

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Placed below is a Review Petition filed by General Manager, S. Railway (Applicant/
Respondents in OA/TA No. 599/89) seeking a review of
the order dated 21-12-90 passed by this Tribunal in the
above noted case.

As per Rule 17(ii) and (iii), a review petition shall
ordinarily be heard by the same Bench which passed the Order
and unless ordered otherwise by the Bench concerned, a review
petition shall be disposed of by circulation where the Bench
may either dismiss the petition or direct notice to the issued
to the opposite party.

The Review petition is therefore, submitted for orders
of the Bench consisting of Hon'ble Shri SP. Mukherjee, V.C
" " A.V. Handasan, Member J-2.
which pronounced the Order sought to be reviewed.

PS to Hon'ble Member-J.2
Hon'ble Member (J-II) may kindly see

This R A, is by the same applicant as in
R A 15/91 for reviewing the order in OA 599/89
In R A 15/91, Review was sought of order in
OA 645/89. Both this application
were disposed off by a common order
for the very same reasons, as stated in
the order in OA 15/91. This R A also
does not deserve to be considered
I agree 22/4/91
Hon'ble V.C. 22/4

SPM & AVH

ORDER

This review application is by the same applicant in RA-15/91 for review of the order in OA-599/89. In RA-15/91, the review was sought of an order in OA-645/89. ^{Both} Though, the applications were disposed of by common order For the very same reasons as stated in our order in RA-15/91, this review application is also rejected.



(AV HARIDASAN)
JUDICIAL MEMBER

25/4/91


(SP MUKERJI)
VICE CHAIRMAN

25-4-1991

Pronounced in open court


25-4-91

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