

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 8 of 1995

Thursday, this the 29th day of February, 1996

CORAM:

HON'BLE MR JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN
HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

P.P. Chandra Mohan,
S/o KP Damodaran Nair,
Traffic Porter, Southern Railway,
Ernakulam Marshalling Yard,
residing at Ernakulam.

.. Applicant

By Advocate Mr. TC Govindaswamy

Versus

1. Union of India through
the General Manager,
Southern Railway,
Park Town PO, Madras-3
2. Divisional Personnel Officer,
Southern Railway,
Trivandrum Division, Trivandrum.
3. K. Ajayakumar,
Ticket Collector,
Southern Railway, Quilon.
4. K.K. Prakasan,
Ticket Collector,
Southern Railway, Alwaye.
5. C.S. Prasannakumar,
Ticket Collector,
Southern Railway, Ernakulam.
6. G.K. Unni Rajan,
Ticket Collector,
Southern Railway,
Trivandrum Centre, Trivandrum.
7. K. Hari Chand,
Ticket Collector,
Southern Railway,
Trivandrum Centre, Trivandrum.
8. P. Vijayakumar,
Ticket Collector,
Southern Railway,
Ernakulam Town, Ernakulam.
9. M.M. Balan,
Ticket Collector,
Southern Railway, Alwaye.

10. T.V. Kunhiraman,
Ticket Collector,
Southern Railway,
Ernakulam Town, Ernakulam.
11. R. Ramachandran Pillai,
Ticket Collector,
Southern Railway, Quilon.
12. M. Jalaludeen,
Ticket Collector,
Southern Railway,
Nagercoil Junction, Nagercoil.
13. K. Mohanan,
Ticket Collector,
Southern Railway, Trichur. Respondents

By Advocates Mr. Thomas Mathew Nellimoottil (R1-2) and
Mr. PK Madhusoodhanan (R.3,4,5,7-13)

The application having been heard on 29th February, 1996,
the Tribunal on the same day delivered the following:

O R D E R

CHETTUR SANKARAN NAIR(J), VICE CHAIRMAN:

Applicant a Traffic Porter, challenges the selection made to the posts of Ticket Collectors/Train Clerks in the 1/3rd quota earmarked for Group 'D' officials. The short question for consideration is, whether the process of selection was vitiated by arbitrariness and unguided discretion.

2. By A4 notification dated 24.8.92 applications were invited for filling up of the posts in question. The last date for receipt of applications was 28.9.92. By A5 the dates for written examination were notified as 27.11.93, 28.11.93, 4.12.93, and 11.12.93 for those who could not appear on the three earlier dates. Having four tests on four different days, possibly by setting different question papers for different candidates in the same group, itself looks somewhat unusual. Be that as it may, that was done.

3. After the selection process commenced, by A6 dated 3.12.93 (by then written examinations had taken place on two

dates) the Divisional Personnel Officer (who has admittedly no power to do so) decided to afford one more chance for certain candidates to take the examination. 15.1.94 was fixed as the date of examination. Allegation of applicant is that this was done to suit the convenience of some union activists. We may notice that the decision evidenced in A6 dated 3.12.93 was taken immediately after a letter (R-II) from 5th respondent dated 30.11.93. Though the name of the 5th respondent was not among the candidates who were permitted to take the examination on 15.1.94, he was allowed to write the examination, states Counsel for Railways.

4. The results were published and respondents 3 to 13 were selected (including 5th respondent who is alleged to be the guiding spirit behind the whole enterprise). This selection is challenged. The first ground of challenge is that the Divisional Railway Manager acted entirely without jurisdiction in notifying another date for the examination, not originally contemplated. According to learned Counsel for applicant, this is the height of arbitrariness. According to him, there is no power whatsoever in the Divisional Railway Manager to hold an additional examination or examination on an additional date after the examination has started. In answer, learned Counsel for the Railways and party respondents would submit that paragraph 16 of A13 permits such a course. Paragraph 16 reads:

"Supplementary Selections: Normally this should be avoided as far as possible. No supplementary selections are permitted in the case of selections for ex-cadre posts and in the case of selection posts where volunteers are called to appear for the selection. In the case of normal selections for cadre posts, only one supplementary selection can be conducted when it is

established that some staff could not attend the same due to circumstances beyond their control like sickness etc. and it should be done with the approval of the competent authority ...".

(Emphasis supplied)

5. This is the refuge and shelter, under which the Divisional Railway Manager has acted. According to learned Counsel for applicant, arbitrariness is writ large not only in the exercises, but in Rule 16 because, it commits almost everything to the will of an unascertained authority described as "competent authority". While we examine this issue, we will remind ourselves of the law in this regard laid down by a Constitution Bench of the Supreme Court in Jaisinghani Vs. Union of India, AIR 1967 SC 1427. It reads:

"absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable. If a decision is taken without any principle or without any rule, it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. It must be governed by rule, not by humour: it must not be arbitrary, vague, and fanciful".

6. We have examined the facts of the case with very great anxiety. We are constrained to hold that almost everything that is forbidden by the Supreme Court, has been practised by

the authorities. The rule permits:

"the competent authority to hold supplementary examinations", though this has to be avoided.

7. In the case on hand, it is not known and it is not disclosed who the competent authority is. The fountain head of power, is as mysterious as his identity. The position is that an unascertained undisclosed authority, can exercise arbitrary powers without guidelines, while the Supreme Court states that:

"absence of arbitrary power is the first essential of the rule of law".

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.

9. It was then argued by Counsel for applicant that the whole exercise was to suit certain union office bearers including 5th respondent. The circumstances pointed out to support these contentions are, that a decision was taken to hold a supplementary examination within three days of the 5th respondent desiring such an examination. He wrote on 30.11.93

by R-II and the decision was taken by A6 to hold an examination on 3.12.93. This unusual haste, looks unusual indeed, because the time between the original notification and the examination was about 15 months, while the time lag between R-II and A6 is only 3 days. Again even under A13 rules, the supplementary examination is intended for those who cannot appear for the regular examination, due to "circumstances beyond their control like sickness etc.".

10. 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. Again, his name does not figure in the list of candidates permitted to appear at the examination on 15.1.94 in A7.

11. It is difficult to think that all these are a matter of coincidence. However, our decision need not be based on this. As we have already pointed out the exercise is arbitrary:

- (a) because the competent authority is undefined;
- (b) because his source of power is not disclosed;
- (c) because no guidelines are prescribed, and
- (d) because everything is left free to be done arbitrarily, and 'etc.' being handy.

12. As we noticed, arbitrariness is the antithesis of the rule of law. Holding an examination to suit somebody's convenience, looks unusual. Examinations are not rare events. Several examinations are held by Universities, Education Boards, Public Service Commission, Staff Selection Commission and so on. One never finds a provision to relax the prescriptions, to suit

somebody's convenience. Whether the beneficiary is an individual or a group, the vast scope for arbitrariness available, vitiates the whole process.

13. 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.

14. It was also argued by learned Counsel for 5th respondent that the application is liable to be dismissed for non-joinder of parties. He submits that all the 61 persons who appeared at the examination should have been impleaded. No decision can go against those who have not been selected and all those who have been selected are before us.

15. In the facts and circumstances, we hold that the supplementary selection was ordered by an officer whose authority in that behalf is not disclosed, and whose identity is not certain, that too, after the process of selection started. The selection evidenced by A9 is quashed. The competent authority (whose identity has to be ascertained) will hold an examination

consistent with what the Supreme Court has laid down, namely certainty of rules, certainty of procedure and predictability of the course of events.

16. Application is allowed. Parties will suffer their costs.

Dated the 29th February, 1996


P.V. Venkatakrishnan

P.V. VENKATAKRISHNAN
ADMINISTRATIVE MEMBER


Chettur Sankaran Nair

CHETTUR SANKARAN NAIR(J)
VICE CHAIRMAN

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List of Annexures

1. Annexure A4: A true copy of the letter No.V/P 531/III/
Vol.4 dated:24-8-92 issued by the 2nd respondent.
2. Annexure A5: A true copy of the order bearing No.V/P/531/
III/Vol.4 dated 18/11/93 issued by the 2nd
respondent.
3. Annexure A6: A true copy of the Order bearing No.V/P/531/
III/Vol 4 dt: 3/12/93 issued by the 2nd
respondent.
4. Annexure A7: A true copy of the letter No.V/P/531/III/Vol.4
dated 29/12/93 issued by the 2nd respondent.
5. Annexure A9: A true copy of the panel bearing No.V/P 531/III/4
dated 16/2/94 issued by the 2nd respondent
6. Annexure A13: A true copy of the personnel Branch Circular
No.99/86, published in Southern Railway
Fortnightly Gazette.
7. Annexure R II: True copy of the letter dated 30/11/93 of
the fifth respondent.