

Reserved

(AP)

Central Administrative Tribunal, Allahabad.

Registration O.A.No.69 of 1987

K.R.Ahirwar ... Applicant

Vs.

1.Union of India  
2.General Manager,N.E.Railway... Respondents.

Connected with

Registration O.A.No.260 of 1989

K.R.Ahirwar ... Applicant

Vs.

1.Union of India,  
2.General Manager,  
N.E.Railway and  
3.K.B.lal ... Respondents.

Hon.G.S.Sharma, JM

Hon.K.L.J.Ramam, AM

(By Hon.G.S.Sharma, JM)

These are two Original Applications filed by the same person and as the fate of the second case depends on the fate of the first case, they were heard together and are proposed to be disposed of by this single order.

2. The undisputed facts of this case are that the Applicant had initially joined North Eastern Railway as a Guard and in 1977 he was promoted as Traffic Inspector (lower grade) and in 1982 he was promoted to the highest grade of Rs.840-1040 of the Traffic Inspector. On 11.5.1983, a notification was issued for filling up 6 posts of Asstt. Operating Superintendent (for short AOS) and Asstt. Traffic Officer (for short ATO)

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against 25% vacancies through Limited Departmental Competitive (for short LDC) Examination and the written test for the same was held on 2.7.1983 and 3.7.1983. The posts of AOS/ATO are safety category posts and under the instructions dated 14.2.80 of the Railway Board, a candidate appearing in the LDC Examination has to secure minimum 60% qualifying marks in each paper of the written examination as well as in the aggregate. The Applicant had appeared in the written test but he could not secure the minimum qualifying marks in the non-professional paper- Financial and Establishment Rules and Procedure- and as such, he was not called for interview held on 1.11.1983 and on the basis of the result of that examination a provisional panel of two general candidates- V.K.Jain and K.N.Prasad-was approved by the General Manager. The Applicant belongs to a Scheduled Caste and on 11.11.1983 he had made a representation to the Railway Board against his non-selection, which was sent by the Railway Board to the General Manager on 24.11.1983 for the needful. The General Manager, thereafter, applying circular letter dated 15.11.1983 of the Railway Board under which a lower limit of qualifying marks for the SC and ST candidates was set at 3/5th of the qualifying marks prescribed for general community candidates for selection in the non-safety posts, relaxed the qualifying marks for the Applicant and he was called in supplementary viva-voce test held for him on 12.1.1984 and the Applicant was provisionally empanelled on 19.1.1984 and posted as AOS(General) vide order dated 1.2.1984. The Applicant was called to appear in the EB test held on 2.4.1986 and on his passing the test he was allowed to cross the efficiency bar vide order dated 3.4.1986.

3. It appears that some persons brought the matter of relaxing the qualifying marks by the General Manager in the case of the Applicant to the notice of the Railway Board and a report from the General Manager was called for in that connection. After taking into consideration the necessary facts, the

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Railway Board advised the General Manager that no moderation was admissible in any type of selection to Gr.'B' posts and the application of lower limit of qualifying marks in the case of the Applicant was not correct and as a special case, he was allowed to continue purely on an adhoc basis in Gr.'B' service against the general quota of vacancies (not against 25% quota of LDC Examination) till the next normal selection/~~as~~ <sup>and,</sup> the Applicant was required to appear in the next normal selection with a clear direction that ~~as~~ his failure to get empanelled will result in the adhoc promotion being terminated. The Applicant was informed of this decision of the Railway Board by the General Manager vide his letter dated 14.3.1985, copy annexure RA-6 to the reply of the Respondents in the first case.

4. A written test for the post of AOS/ATO against 75% vacancies was notified to be held on 6.7.86/14.7.86. The Applicant did not appear in the test and had made detailed representation on 1.7.86 to the Railway Board to which he did not seem to have received any reply. Another supplementary written test was thereafter notified on 22.1.1987 and the Applicant was required to appear therein on 6.2.1987. The Applicant initially showed his inclination to appear in the said test and vide his application dated 4.2.1987, copy Annexure RA-2 to the reply in the first case, he requested the General Manager (P) to arrange pre-selection coaching but instead of appearing, he filed the first Petition on 30.1.1987 for setting aside the impugned order dated 22.1.1987 asking him to reappear in the written test with a direction to the Respondents not to ask him to appear in any written test or the selection process for class II post of AOS in future. The Applicant had also prayed for an interim relief to restrain the Respondents from holding the/written test on 6.2.1987, but <sup>supplementary,</sup> ~~the Tribunal~~ <sup>it</sup> had granted the limited relief ~~to the extent~~ that the result of the Applicant of the said written test shall not be announced.

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5. The Applicant, however, did not appear in the supplementary selection test held on 6.2.1987 for getting his regular promotion and as such, one K.B.Lal (Respondent no.3 in the second case) who was empanelled on the basis of this selection was appointed in place of the Applicant on 27.3.1989 and the Applicant was ordered to be reverted to ~~his~~ substantive post with immediate effect. The Applicant thereafter filed the second petition on 30.3.1989 for setting aside the impugned order dated 27.3.1989 of his reversion and for a direction to the Respondents for not interfering with his functioning as AOS (C) and prayed for maintaining the status quo. The interim relief was, however, refused after hearing the other party on 26.5.89 when it was found that his successor K.B.Lal had already taken over charge of his post.

6. The case of the Applicant is that he belongs to a Scheduled Caste and by applying the policy of relaxation in the case of SC/ST candidates, the General Manager, who was the appointing authority of class II posts, had given him the appointment as AOS on his being found suitable for the post and after his appointment as AOS on 1.2.1984, he had already worked satisfactorily on this post for a period of about 5 years and in the meantime, he had passed the efficiency bar test and he was duly allowed to cross the efficiency bar. ~~With~~ He placed his reliance on the decision dated 6.10.1986 of a Bench of this Tribunal in T.A.Nos.21 of 1986 and 22 of 1986 (M.A.A.Usmani Vs. Union of India in T.A. No. 21/86), copy annexure 8, and it has been contended on his behalf that the General Manager being the competent person for making his appointment as AOS the Railway Board could not interfere in the matter and he could neither be reverted from his post nor could be asked to reappear in any fresh selection.

7. Both the petitions have been contested on behalf of the Respondents and their defence in short is that the Applicant was depanelled by the Railway Board in 1985 and the decision of the Railway Board was communicated to him by the General Manager vide his letter dated 14.3.1985, his first petition is barred by limitation. It has been further alleged that the Applicant had accepted his reversion by showing his willingness to appear in the supplementary test on his requesting the General Manager (P) on 4.2.1987 for arranging pre-selection coaching for the selection and he is now estopped from challenging the same after a lapse of several years. The Applicant did not appear in the supplementary written test in accordance with the directions of the Railway Board and as such, he had no right to continue on the post of AOS on adhoc basis any more and he was rightly reverted to his substantive post and the decision in the case of M.A.A.Usmani (Supra) has no application to his case and in any case, the matter is still subjudiced before the Hon. Supreme Court and has not become final and no relief can be granted to the Applicant on its basis.

8. The Applicant has heavily relied on ~~the~~ decision of ~~the~~ Allahabad Bench of the Tribunal in two connected cases (T.A.Nos.21 and 22 of 1986) M.A.A.Usmani (Supra). Its copy is available as annexure 8. They were the cases of the employees of the North Eastern Railway who were selected along with some others for ~~the~~ Gr.'B' post of Asstt. Signal and Telecommunication Engineer in LDC Examination held in 1983. In that selection only one candidate had qualified in the written

test. All the Applicants had failed in the non-  
~~Professional &~~  
~~provisional~~ paper. That selection was also for  
a safety oriented post as is the case before us  
and the General Manager, N.E.Railway had relaxed  
the qualifying marks in the non-professional paper  
to the extent of 45 per cent in the case of general  
candidates and to the extent of 40 per cent in  
the case of SC/ST candidates and after such relaxat-  
-ion the Applicants in the said cases were empanelled  
and were given the appointments on 29.11.1983,  
2.12.1983 and 10.5.1984. The action of the General  
manager was, however, not approved by the ~~General~~  
~~Board~~  
~~Manager~~ as no moderation in qualifying standards  
was admissible in the case of safety oriented posts.  
Hoever, the promotees were allowed to continue  
on adhoc posts till next selection. Thus, in the  
circum-  
stance, the aforesaid two petitions were filed  
for quashing the order dated 5.9.1985 of the Rail-  
way Board cancelling the panel approved by the  
General Manager. The Bench before which the said  
cases came up for hearing was of the view that  
the General Manager of the Railways has wide powers.  
He is the authority who approves a Gr.B selection.  
He is responsible for the efficient and proper  
running of the railways and he being the man on  
the spot, his powers and decisions cannot be  
fettered in day to day working by the interference  
of the Railway Board. It was further observed  
that for all practical purposes, he works in an  
autonomous manner and he has to work within the  
guidelines and instructions available. The General  
Manager had taken the decision relaxing the quali-  
fying marks in the non-professional paper in full  
knowledge of the instructions of the Railway Board  
after seeing the poor result of the examination  
and the necessity of filling up the vacancies.

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The General Manager had used his discretion which was neither arbitrary nor capricious. The Bench further observed that there was no procedural irregularity committed by the Selection Board and as the Applicants have worked for sufficiently long period in their posts, their reversion will see them with evil consequences. The impugned order was accordingly quashed and the petitions were allowed.

9. In the cases before us, the Applicant had secured 60% marks in two professional papers and more than 60% marks in General Knowledge and in ~~this~~ <sup>now</sup> professional paper, he had secured 21.5% marks out of 50 marks. He had, thus, scored more than 40% marks even in this paper. He was promoted and posted as AOS vide order dated 1.2.1984. Thereafter he passed the efficiency bar test and was allowed to cross the efficiency bar vide order dated 3.4.86 and by the time he was asked to appear in the fresh test vide order dated 14.7.86, he had served on the promotion post for more than 2 years. In this way, the decision in the case of M.A.A.Usmani (Supra) applies to the case of the Applicants in all fours.

10. It has been contended on behalf of the Respondents that no moderation was possible in the case of the Applicant and by granting relaxation in the qualifying marks, he was wrongly empanelled by the General Manager and it being a safety oriented post, the Railway Board rightly depanelled the Applicant and as the SLP against the decision of the Tribunal in the case of M.A.A.Usmani (Supra) has been admitted by the Hon. Supreme Court, that

judgement is not final and this petition is barred by time. It is true that vide its order dated 12.9.88 the Hon. Supreme Court condoned the delay and granted the Special Leave to the Union of India to appeal against the decision dated 29.9.86 of the Allahabad Bench of the Tribunal in the said case but did not stay the operation of that order. On the other hand, it was ordered that the status quo will be maintained as is apparent from the copy of the order annexure 9 to the petition. Merely on the basis of the fact that an appeal is pending against the decision of the Tribunal in the said case, we cannot ignore the said decision. The position may be different when res judicata is set up by one party and the other party raises a plea that the decision in the earlier case is not final and is still sub judice. However, in the case of the decision of a High Court or a Tribunal, which has the effect of a precedent, the plea of the earlier decision being sub judice is not available. We are bound by the judicial discipline and ~~unless~~ <sup>so long as</sup> the decision of a Bench of ~~the~~ Tribunal is not set aside by a larger Bench or by the Hon. Supreme Court in appeal, no Bench can afford to ignore it. We are, therefore, bound to follow the principle of law laid down in the case of M.A.A. Usmani (Supra) that the General Manager who is the appointing authority of gr.'B' officers is competent to make the relaxation in qualifying marks after a due consideration of the material facts. In the present case, the Applicant was not only found suitable for empanelment after relaxation but he was also found fit to cross the efficiency bar after his promotion in the higher grade. We, therefore, find no reason to take a different view in the present case.

11. Now coming to the other pleas raised by the Respondents, we find that the Railway Board vide its letter

dated 21.2.1985 had ordered deletion of the name of the Applicant from the panel. This order was intimated to the Applicant on 14.3.85 vide annexure 6 to the reply in the second case. This fact has not been denied by the Applicant anywhere. After deletion of the name of the Applicant, he was served with the impugned order dated 22.1.1987, annexure 7 to the petition in the first case wherein it was stated that as a special case, it was decided to hold second supplementary test on 6.2.1987 and the Applicant and one other person were allowed to appear with a clear warning that no further written test was to be held for the selection of AOS/ATO. It is against this order the Applicant filed the first petition on 30.1.1987. The order dated 21.2.1985 of the Railway Board communicated to the Applicant on 14.3.1985 by the General Manager was thus not challenged before 30.1.1987. According to the provisions of S.21 of the Administrative Tribunals Act XIII of 1985, the Applicant should have challenged the same either by 13.3.86 i.e. within one year from the date of communication or by 30.4.86 i.e. <sup>within 6</sup> months from the date the Central Administrative Tribunal assumed jurisdiction over this dispute, <sup>which</sup> ever was later and the petition having been filed much thereafter is, thus, clearly ~~the special~~ barred by law of limitation prescribed under this Act.

There is no application for condonation of delay before us nor any such ground was made out before us at any stage. The petition is, therefore, bound to fail on this ground.

12. There is yet another ground which goes against the Applicant. After <sup>the</sup> deletion of the name of the Applicant from the panel the first written examination was notified to be held on 6.7.86 vide notice dated 20.5.86 annexure 8 to the reply in the second case. Even against this order, the Applicant did not approach the Tribunal. He had approached the Tribunal only after his receiving the second notice dated 21.1.1987 for the supplementary test to be held on 6.2.1987. After receiving this notice, the Appli-

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cant had requested the General Manage vide his letter dated 4.2.1987, copy annexure 7 to the reply in the second case, for arranging pre-selection coaching for a period of 20 working days for appearing in the supplementary test. The contention of the Respondents is that by writing this letter the Applicant accepted the orders of the Respondents and showed his willingness to appear in the supplementary test and he is now estopped from challenging the validity of the said orders. There may be some force in this contention but in view of the fact that before writing this letter on 4.2.1987, the Applicant had already filed his first petition on 30.1.1987, we are not inclined to take it seriously and it will not have any adverse effect on the case already filed before.

13. In the end, by way of abundant precaution we would like to make it clear that we are not dealing with the merits of the case of the Applicant as the fate of the S.L.P filed by the Union of India in the case of M.A.A.Usmani (Supa) will govern even this case on merits and as such, it is not necessary for us to go into the merits of the case in detail.

14. Regarding the second petition, we are of the view that no doubt, the order of reversion of the Applicant was passed on 27.3.1989 and the second petition was filed within time, the Applicant having ~~also~~ failed to challenge the order regarding the deletion of his name from the panel in time and he had <sup>also</sup> failed to appear in the special selection arranged for him, he was bound to be reverted and as such, on merits, his second petition is liable to fail.

15. In view of the above considerations, both the cases are hereby dismissed without any order as to costs.

*W.Dawani*

MEMBER (A)

Dated: 6 Nov 1989  
kkb

*S.Saravanan*

MEMBER (B)