

Pratima A. Gharat,
Residing at Umelman Manicpur,
Gharat Ali H. No. 137,
Vasai Road (W).

Applicant in
O.A.No. 825/2001

(By Advocate Shri Ramesh Ramamurthy
alongwith Shri Sai Ramamurthy for
Applicants in O.A.No. 608/2001 to
611/2001.

By Advocate Shri G.S. Walia for
Applicants in O.A.No. 822/2001 to
825/2001).

VERSUS

1. Union of India through
The General Manager,
Western Railway,
Churchgate,
Mumbai - 400 020.
2. Chief Personnel Officer,
Western Railway,
Churchgate,
Mumbai - 400 020.
3. Chief Commercial Manager,
Western Railway,
Churchgate,
Mumbai - 400 020.
4. Divisional Railway Manager,
Mumbai Division,
Western Railway,
Mumbai Central,
Mumbai - 400 008.

(By Advocate Shri V.D. Vadhavkar in
O.A.No. 608/01 & 609/01.
By Advocate Shri A.K. Tripathi in
O.A.Nos. 610/01 & 611/01.
By Advocate Shri Suresh Kumar in
O.A.Nos. 822/01 to 825/01.)

O R D E R

PER : Shri B. N. Bahadur, Member (A).

We have heard the above eight O.As. together, in view of their similarity, and are disposing them of through this common order. In O.As. No. 608/2001 to 611/2001 we have heard Learned Counsel Shri Ramesh Ramamurthy who appeared with Shri Sai Ramamurthy, for the Applicants; Learned Counsel, Shri V.D.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 608/2001, 609/2001, 610/2001,
611/2001, 822/2001, 823/2002,
824/2002, and 825/2001.

Dated this _____ the 4th day of Feb., 2003.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).
Hon'ble Shri S. L. Jain, Member (J).

Ms. Anjana Toppo,
C/o. Late Sukra Toppo,
Village Namkum Patrotoli,
Post Namkum, Dist. Ranchi,
Jharkhand State,
Pin - 834 010.

Applicant in
O.A.No. 608/2001

Devendra Kumar
S/o. Shri Daulat Ram,
Village : Maharajsar,
Post : Borai,
Dist. Bharatpur,
Rajasthan - 321 001.

Applicant in
O.A.No. 609/2001

Shrikant Arjun Khedekar,
53/A, Walmiki Chawl,
Worli Koliwada, Pandharinath
Worlikar Chawl, Worli,
Mumbai - 400 025.

Applicant in
O.A.No. 610/2001

Shailendra Nath Arya,
C/o. Rajendranath Arya,
Quarter No. 350/A, Type IV,
DLW, Varanasi, Uttar Pradesh,
Pin - 221 004.

Applicant in
O.A.No. 611/2001

AnandKumar M. Mhatre,
Residing at At & Post -
Satpati, Tal. Palshar,
Dist. Thane - 401 405.

Applicant in
O.A.No. 822/2001

Sunil P. Kumbhar
Residing at Nazir Ahmed
Stov Wala Chawl,
Goundivli Govathan Azad Road,
Andheri (East)

Applicant in
O.A.No. 823/2001

Yogesh C. Choudhary,
Residing at Akton,
Post - Vasai, Tal. Vasai (W),
Dist. Thane - 401 201.

Applicant in
O.A.No. 824/2001

Vadhavkar, in O.As. No. 608/2001 and 609/2001 and Shri A. K. Tripathi, Learned Counsel in O.A. Nos. 610/2001 and 611/2001 for the Respondents. In the other four O.As. bearing No. 822/2001 to 825/2001 Shri G.S. Wallia, Learned Counsel, has been heard for Applicants and Shri Suresh Kumar, Learned Counsel for Respondents. For the sake of convenience, we take up the narrations in O.A. No. 608/2001.

2. The applicant states as follows :

The Railway Recruitment Board issued Employment Notice No. 2/95 for Non-Technical Popular Category (N.T.P.C. for short) for both, Western and Central Railways. A Written test was held on 23.06.1996 and the Applicant called for interview on 30.01.1997. On 31.03.1997 results were declared and Applicant was declared successful, amongst some 893 candidates. She claims that she was informed that she has been recommended for the post of Ticket Collector to the Chief Personnel Officer, Western Railway and was given an offer of appointment by the Divisional Railway Manager, Bombay Division as Ticket Collector on 23.03.1998. She is aggrieved that she is not appointed/taken on duty even though she had reported to Respondent No. 4, with original testimonials and has been repeatedly contacting the concerned authorities thereafter, for her medical examination and posting order. No reply to her representation has been provided. The contention of Applicant is that in Central Railway the appointees have been given posting orders, and even in Western Railway appointments in the other categories have been made. Applicant further states, through an amendment, that she had received a reply on 08.08.2001 rejecting her representation

(Annexure A-6), but no proper reasons have been disclosed for rejection of her application.

3. It is with these grievances that the Applicant had come up to this Tribunal, praying that it be held that Respondents are practising discrimination against the Applicant; and for a direction to Respondents to send her for medical examination and for providing her a posting. Through the amendments made in the O.A. the quashing and setting aside of reply dated 08.08.2001 has been prayed for, apart from the insertion of some facts, specially, regarding the aspect that some four Ex-Servicemen, who were placed in the same panel under letter dated 09.04.1997 were appointed in the year 2000 as Ticket Collectors in Rajkot and Bhavnagar Divisions. Certain names are cited. These have come by way of amendment, it must be reiterated.

4. A Written Statement has been filed by the Respondents, offering parawise remarks denying the claims of the Applicant. The salient stand/assertions made by Respondents are as follows:-

That the panel of Ticket Collectors was formed on 09.04.1997, and that the validity of this panel expired on 08.04.1998, hence the O.A. is time barred and suffers from delay and laches. The break up of 57 candidates was as follows viz., 24 General, 8 Schedule Caste, 6 Schedule Tribe, 14 O.B.C. and 5 Ex-Servicemen. These Ex-Servicemen were required for other Divisions. A panel of 63 names were recommended which included the name of the Applicant and the break up was as follows - 19 General, 8 S/C, 6 S/T, 20 O.B.C. and 10 Ex-Servicemen. 57

Candidates were allotted to Mumbai Central Division, viz. - 19 General, 8 S/C, 6 S/T, 20 O.B.C., 4 Ex-Servicemen, of which only 32 candidates could be appointed as there were no more vacancies. The expiry of the panel as per rule after one year is emphasised, and also the point that competent authority, namely - the General Manager did not consider it feasible to extend the life of the panel. Hence a reply has been provided to the Applicant, that she cannot be absorbed due to non-availability of vacancies. Certain reasons for these non-availability are cited, and the stand taken that there is no discrimination made.

5. A reply by amendment of Written Statement has also been made in response to the amendments made in the O.A. and the point is made that the method of recruitment of Ex-Servicemen is different from the rest and such selection is done by Railway Recruitment Board, Mumbai for the entire Western Railway, also that even though vacancies may exist now subsequently, the panel is no longer current.

6. Arguing the case on behalf of Applicants, Shri Ramesh Ramamurthy made the point that there was a discrepancy in the number of vacancies sought to be filled, the number of candidates provided category wise and the number that was actually filled. The reasons given by Respondents were two fold, in that, the validity of the panel had expired, and that there were no vacancies. Shri Ramesh contended that these reasons were wrong and that in the year 2000 four Ex-Servicemen were appointed. Why is it that the figure 57 was wrongly calculated? How was it that vacancies were assessed for S/T and now there is no vacancy for this category.

7. For the batch of O.A. bearing Nos. 822/01 to 825/01, where the basic issues are similar, the Learned Counsel for the Applicants in these cases, namely - Shri G.S. Walia, argued the case; he highlighted the facts that the vacancies pertained to 1995, the Applicants were successful, and offers of appointments were made. There were vacancies of both Railways (Central/Western) and 63 persons were found fit. It was argued by Shri Walia that the order of Western Railway dated 23.03.1991 (page 17 in O.A. No. 822/2001) was relevant and that sub-clause (27) was as good as an Order of Appointment, since it required applicants to sever earlier appointments; hence the Railway has no right not to appoint the applicants.

8. Learned Counsel, Shri Walia, argued that the offer made was binding and the Respondents could not resile from it. The ground of resiling, namely - expiry of panel was not valid since a clear offer had been made. Learned Counsel then argued on the figures, etc. and took the argument that once the panel was revived for some persons, namely - for appointment of the Ex-Servicemen, the panel stood revived for everybody. He cited case law in support of this argument.

9. Learned Counsel for Respondents Shri V.D. Vadhavkar, also argued the case at length, first making the point that the plea was not taken at the time of filing of the O.A. for the relief now being sought. He cited the case of 1999 (1) AI SLJ 1 .. (Dr. Anuradha Bodi & Others V/s. Municipal Corporation of Delhi & Others, in support of the plea that only such reliefs

first sought can be considered. He further relied on the case reported at 1999 (1) AI SLJ 41...H.P. State Electricity Board V/s. Shri K.R. Gulati and some other cases were also cited. Clearly asserting that the panel had a life of only one year, Shri Vadhavkar sought to take support of the case law in the matter of State of U.P. & Others V/s. Harish Chandra & others (reported at 1996 (2) SC SLJ 15). Thus, while on the one hand taking strenuous severe objections to the effect that the O.As. were hit by the law of limitations and suffered from delay and laches, it was asserted that even the representations were first made as late as in 2001, and there was no application for condonation of delay. Shri Vadhavkar then made the point that the Respondents were not bound to fill in all the 57 vacancies and there were no grounds of irregularities like a junior being appointed, etc. In the absence of such irregularities, there were no rights of the Applicants that were infringed. It was pointed out that Ex-Servicemen were selected only by Headquarters and no such appointments were made by Bombay Division. The Applicant had no locus standi in respect of any appointments made in Ajmer or Bhavnagar or other Division/s.

10. Arguing the case on behalf of the Respondents in the respective cases, Learned Counsel, Shri Suresh Kumar, first stated that there was no guarantee or commitment and even Railway Recruitment Board had initially stated that "appointments depends on vacancies". There was no order of appointment in respect of applicants. Only format of information was provided, and even there no guarantees were made. There was no judgement to show that Respondents could be compelled to appoint more people. There was no prejudice to any Applicant in terms of either a

junior being appointed or any discrimination. Learned Counsel then stated that the limitation started from the date of completion of medical examination i.e. 03.04.1998 whereas the representation was made only in 2001. Central Railway was not a party. Discussing the matter regarding Ex-Servicemen, it was argued that all Ex-Servicemen who were sent to Bombay Division were taken and discrimination could not be cited against people going to Gujarat, etc. as discrimination could occur only between similarly situated persons. The Respondents had failed to show vacancies at the relevant time. Shri Suresh Kumar sought to meet the ratios of case law cited and also made the point that Railway Recruitment Board has not been made a party. Even otherwise, he argued that the panel cannot be said to be revived even if some Ex-Servicemen were appointed outside Bombay Division.

11. Learned Counsel, Shri A. K. Tripathi, adopted the arguments taken by Learned Counsel, Shri Suresh Kumar and Shri V.D. Vadhavkar in respect of his cases.

12. We have seen all papers in the case before us and have carefully considered the arguments made by the Learned Counsel on all sides. The relevant case law cited has also been seen.

13. The first point that needs to be taken up relates to the alleged discrepancy in the figures of vacancies assessed, recommendations made and vacancies actually filled in. These figures were gone into at the time of arguments, with the assistance of Learned Counsel on respective sides and with the help of the papers, for production of which we gave adequate time

by adjourning the case on more than one occasion. We find that there is a difference in the assessment made in terms of vacancies category wise, the number recommended and the number actually appointed. However this, per se, will not provide any claim to the Applicants to term the selection as a bad selection. The test of prejudice will need to be applied carefully. It was not the case that a junior of any category was appointed leaving aside the senior. Technicalities will not help the Applicants' case. It is well settled that it is upto the Respondents to make changes in the number of vacancies and specially when in the beginning itself it had been stated that the vacancies were subject to availability, it will need to be shown by Applicants as to whether they were prejudiced if any relief on this count is to be provided. We have gone through the case papers carefully and the arguments made, and find no such infirmity. Hence, on this ground we cannot fault the Railway Administration.

14. We now come to the argument regarding the panel having been revived with the later appointment of Ex-Servicemen. Here also we provided opportunity to the Applicants to gather facts and, in fact, in the interest of justice, had provided for an amendment to be made wherever asked for to enable Applicants to put in facts and arguments on this point. We had allowed the M.Ps. made and the averments that were brought in thereby on this count and have perused. We also provided time to the Railway administration to respond to these. It must be stated that the allegation of re-opening of the panel were made only in regard appointment to category of Ex-Servicemen, for example, in the case of O.A.No. 608/01 being considered, some four names are provided, all are Ex-Servicemen, as listed in the Schedule at

page 40. These are available at Sl. No. 36, 48, 51 and 52 of the panel according to the Applicant. The stand taken by Respondents is that method of recruitment of Ex-Servicemen is totally different from that of the rest of the classification, in that, selection of Ex-Serviceman is done by Railway Recruitment Board for entire Western Railway. Such is not the case in case of other categories such as general categories, O.B.C., S.C. and S.T. Ex-Servicemen have been allotted to all Divisions of Western Railway, other than Bombay (Mumbai) Division.

15. Now, while the basic point is acceptable that if any re-opening of the panel is done after the date of its expiry, for some people the panel can be taken to be revived, the test of prejudice will definitely come in and this principle cannot operate in a vacuum. Here after carefully considering the facts and names in various cases, as brought in only by amendments, with the assistance of different Learned Counsel we could not come to any clear cut case of some senior among the applicants in the panel being superseded. The categories are important too. It is true that the appointments in the year 2000, etc. have been done only in respect of Ex-Servicemen and as is seen in the case of the Applicant in O.A. No. 608/01, the appointments are all outside Bombay Division and, in fact, outside Maharashtra, in areas of Rajkot and Bhavnagar. Now no position of any indiscrimination to the applicant could be brought out merely on appointments of Ex-Servicemen being made outside Mumbai Division. We could not come to any definite conclusion of any prejudice being cause to the Applicant. No relief in service law can be provided on the basis of doubts created.

16. As per settled law, we also accept the contentions of the Respondents that they are not duty bound to fill in the number of vacancies that they had initially anticipated to be filled in. Such kind of infirmity could occur only in case there is any violation in terms of juniors in the panel being appointed or some similar infirmity. Reliefs cannot be secured through judicial determination by the Applicants on the ground that the initial number of vacancies as anticipated have not been filled up totally. The argument made by Learned Counsel for Applicant in other cases that Government cannot resile from the position, is not acceptable and no such rights could be created. The argument that was made that applicants had acquired right as soon as they accepted offer of appointment is also not tenable in law.

17. The issues in all other seven O.As. before us are similar and hence they also would fail in view of the reasoning provided above. Since the cases have failed on merits, we have not examined the matter, on the grounds relating to limitation, delay and laches. In view of the above discussions all the eight O.As. are hereby dismissed, with no orders as to costs.

(S.L. JAIN)
MEMBER (J)

OS*

(B. N. BAHADUR)
MEMBER (A).