

08/190/01

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 168/2001, 174/2001, 190/2001
AND 244/2001

THIS THE 10TH DAY OF DECEMBER, 2001

CORAM: SHRI JUSTICE BIRENDRA DIKSHIT. VICE CHAIRMAN
SMT. SHANTA SHAstry. MEMBER (A)

O.A. NO. 168/2001

1. Mohamed Haroon Patel,
working as Head Travelling
Ticket Examiner (Hd.TTE),
under DTCI, Western Railway,
Grant Road, Mumbai-400 008. Applicant

By Advocate Shri M.S. Ramamurthy

Versus

1. Union of India
through the General manager,
Western Railway,
Churchgate, Mumbai-400 020.

2. Divisional Railway Manager (E),
Western Railway, Mumbai Central,
Mumbai-400 008.

3. Senior Divisional Commercial Manager,
Western Railway, Mumbai Central,
Mumbai-400 008. Respondents

By Advocate Shri R.K. Shetty

Versus

O.A. NO. 174/2001

1. Ramkaran Ramnikor Jaiswal,
presently working as Hd.TTE
under Dy. Chief Ticket
Inspector, Granat Road,
Western Railway, Mumbai.

2. Prabhakar Gopal Satam,
presently working as Hd.TTE
under Dy. Chief Ticket Inspector,
Grant Road, Western Railway,
Mumbai.

3. Tukaram K. Sonawane,
presently working as Hd. TTE
under Dy. Chief Ticket Inspector,
Grant Road, Western Railway,
Mumbai.

4. Gehran Daulat,
presently working as Hd. TTE
under Dy. Chief Ticket Inspector,
Grant Road, Western Railway,
Mumbai.

5. Ishwar Rama Bhande,
presently working as Hd. TTE
under Dy. Chief Ticket Inspector,
Grant Road, Western Railway,
Mumbai.

6. Sudhir Damodar Kshire,
presently working as Hd. TTE
under Dy. Chief Ticket Inspector,
Grant Road, Western Railway,
Mumbai.

7. Surendra R. Mishra,
presently working as Hd. TTE
under Dy. Chief Ticket Inspector,
Grant Road, Western Railway,
Mumbai.

8. Ramsharan B. Yadav
presently working as Hd. TTE
under Dy. Chief Ticket Inspector,
Grant Road, Western Railway,
Mumbai.

Applicants

By Advocate Shri M.S. Ramamurthy

Versus

1. Union of India
through the General manager,
Western Railway,
Churchgate, Mumbai-400 020.

2. Divisional Railway Manager (E),
Western Railway, Mumbai Central,
Mumbai-400 008.

3. Senior Divisional Commercial Manager,
Western Railway, Mumbai Central,
Mumbai-400 008.

Respondents

By Advocate Shri R.K. Shetty

O.A. NO.190/2001

1. R. Gopalakrishnan,
presently employed as Hd. TTE
scale Rs.5000-8000 under DCTI.

Grant Road, Western Railway,
with Headquarters at Churchgate,
Mumbai.

2. Raman Morar Patel,
presently employed as Hd. TC at
Santacruz, Western Railway,
scale Rs.5000-8000 with Station
Superintendent, Santacruz Station,
Mumbai. Applicants

By Advocate Shri M.S.Ramamurthy.

Versus

1. Union of India
through the General manager,
Western Railway,
Churchgate, Mumbai-400 020.

2. Divisional Railway Manager (E),
Western Railway, Mumbai Central,
Mumbai-400 008.

3. Senior Divisional Commercial Manager,
Western Railway, Mumbai Central,
Mumbai-400 008.

4. Shri Raju T,
Working as Head TTE, Churchgate,
Head Quarters, Western Railway,
and working under DCTI, Grant Road,
Western Railway, Mumbai-400 008.

5. Shri Prakash J. Gobji
Working as Head TTE, Churchgate,
Headquarter, Western Railway,
and working under DCTI, Grant Road,
Western Railway, Mumbai-400 008.

6. Shri Harishchandra R. Sharma
Working as Head TTE, Surat,
and working under CTI, Surat,
Western Railway, Gujarat. Respondents

By Advocate Shri R.K. Shetty for R1 to R3.

O.A. NO.244/2001

1. Krishna S. Patil,
presently working as Hd. TTE
under Dy. Chief Ticket Inspector,
Western Railway, Grant Road,
Mumbai.

2. Ali Mohammed Noor Mohammed
presently working as hd. TTE
under Dy. Chief Ticket Inspector,
Western Railway, Grant Road,
Mumbai.
3. Chandrakant V. Chauhan,
presently working as Hd. TIE
under Dy. Chief Ticket Inspector,
Western Railway, Grant Road,
Mumbai.
4. Rajpati Ramcharitra
presently working as Hd. TTE
under Dy. Chief Ticket Inspector,
Western Railway, Grant Road,
Mumbai.
5. Vishnu Karu,
presently working as Hd. TTE
under Dy. Chief Ticket Inspector,
Western Railway, Grant Road,
Mumbai.

..... Applicants

By Advocate Shri M.S. Ramamurthy

Versus

1. Union of India
through the General manager,
Western Railway,
Churchgate, Mumbai-400 020.
2. Divisional Railway Manager (E),
Western Railway, Mumbai Central,
Mumbai-400 008.
3. Senior Divisional Commercial Manager,
Western Railway, Mumbai Central,
Mumbai-400 008.

..... Respondents

By Advocate Shri R.R. Shetty.

O R D E R

Smt. Shanta Shastri. Member (A)

All these original applications have been filed
by similarly placed individuals. The points and
arguments raised and contested are identical and the

advocates are also the same. Since the issue involved is the same, we proceed to dispose of these OAs together by a combined order.

2. OA No.190/2001 is filed by Shri R.Gopalakrishnan and Shri Raman Morar Patel of Western Railway, OA 168/2001 is filed by one Shri Mohammed Haroon Patel, OA 174/2001 is filed by one Shri Ramkaran Ramnihar Jaiswal and seven others, OA 244/2001 is filed by one Krishna S. Patel and four others against their non selection for the post of Head Travelling Ticket Examiner/ Head Ticket Collector (Head TTE/ Head TC) in the selection panel published on 06.12.1999.

3. In short, in all these OAs what has been challenged is, the selection panel of 06.12.1999 and further order issued on 05.3.2001 reverting several seniors including the applicants from the post of Head TTE/Head TC to the post of Senior TTE/ Senior TC in the scale of Rs.4000-6000.

4. At the time these applications were made, according to the applicants, they have not received any copy of the reversion order and they have continued to work as Head TTE/ Head TC.

5. On prayer made for interim relief in these OAs, interim relief in terms of clause 9 (a) of the OAs was provided which was continued till the date of hearing.

6. We have heard Shri Ramamurthy for the applicants and Shri R.R. Shetty for the official respondents in all these OAs.

7. The brief facts as have been brought out in these OAs are that the applicants have been working as Head TTE/ Head TC continuously for more than five years on adhoc basis in the scale of Rs.5000-8000 and have been drawing their annual increments in the said scale.

8. A written test was held in July 1998 and December, 1998 for selection for promotion to the post of Head TTE/ Head TC in the scale of Rs.5000-8000. The result was announced on 17.02.1999. In all 221 employees qualified in the written test. In addition to these, names of 39 other persons were also notified, as employees, permitted to appear for viva voce test though they had not qualified in the written test by granting them notional seniority marks. The names of the applicant No.1 in OA 190/2001, applicants No.1 to 4 in OA No.174/2001 and applicant No.2 3 and 4 in OA No.244/2001 were included in the list of those who were found eligible for the viva voce test. Whereas the names of applicant in OA 168/2001 and applicant No.2 and OA 190/2001, applicant Nos. 5 to 8 in OA 174/2001 and applicant Nos. 1,2 and five in OA 244/2001 did not appear in the panel of those notified as being eligible for the viva voce test. Thereafter, the panel of

successful candidates after the viva voce test was held, was published on 06.12.1999, this was a provisional panel. Finally on 05.3.2001 the final panel was declared and the applicants in all these OAs were reverted to their original posts of Senior TTE/ Senior TC in the scale of Rs.4000-6000. According to the applicants, though the orders were reportedly carried out and complied with within two weeks, the applicants themselves have not been served with copy of the reversion order and they continued to work as Head TTE/ Head TC till the time of filing of these applications.

9. The main prayers made in all these OAs are as follows:

- (a) that the non-selection of the applicants in the selection held for the post of Hd. TTE/Hd. TC, panel whereof was published on 06.12.1999 (Ex. 'F' hereto), is improper, unreasonable, arbitrary and unfair and contrary to the Rules of the Railway Board and violative of Articles 14 and 16 of the Constitution of India;
- (b) that this Hon'ble Tribunal be pleased to hold and declare that the applicants are entitled to be regularised as Hd. TTE/Hd. TC on the basis of viva voce/ACRs, without being subjected to selection consisting of a written examination and a viva voce.
- (c) that it be declared that the written examination conducted in connection with the selection in question, on 18.7.1998 and 08.12.1998 is vitiated and rendered null and void and consequently the panel dated 06.12.1999 (Ex. 'F' hereto) is also vitiated and rendered bad in law.
- (d) that the respondents be permanently restrained from reverting the applicants from the post of Hd. TTE/Hd. TC to the post of Sr. TTE/Sr. TC.

- (e) that this Hon'ble Tribunal be pleased to direct the respondents to regularise the services of the applicants as Hd. TTE/Hd. TC scale Rs.5000-8000.
- (f) that the Hon'ble Tribunal be pleased to hold a fresh selection for promotion to the posts of Hd. TTE/Hd. TC according to the correct procedure and norms as laid down by the Railway Board.
- (g) that this Hon'ble Tribunal be pleased to direct the respondents to obtain the sanction of the Railway Board for regularisation of the senior adhoc promotees as Hd. TTE/Hd. TC on the basis of ACRs or *viva voce* because of the continuance of the adhoc arrangement beyond 5/3 1/2 years.
- (h) that this Hon'ble Tribunal be pleased to permit the applicants to file this application jointly as the cause of action is same for the applicants, the relief sought for are common to them and they have a common interest in the subject matter of this application.
- (i) that such other and further order or orders be passed as the nature and circumstances of the case may required.
- (j) that the costs of this application be provided for.

10. The applicants are aggrieved by the selection panel of 06.12.1999 and the reversion orders of 05.3.2001 on several grounds. According to the applicants since they had been working continuously for over 5/ 3 1/2 years in the selection posts, though on adhoc basis, they should have been regularised without being subjected to any further selection in terms of the orders issued from time to time by the Railway Board. lastly reiterated in the orders dated 18.12.2000. Adhoc promotions are not supposed to be carried out beyond six months. Also adhoc promotions beyond the period of four

months cannot be carried out without the prior personal approval of the Chief Personnel Officer. Having allowed the applicants to continue for more than five years, the applicants cannot now be reverted at this belated stage. The applicants have been performing satisfactorily. They were promoted against clear vacancies.

11. In the year 1996 a large number of employees who were working as Head TTE/ Head TC on adhoc basis had been called for written test and 216 employees had failed therein. However, the Railway Board intervened and ordered the regularisation of the senior employees. For that purpose 2% upgradation was granted on the ground that previous selection, prior to 1996 was in 1989 which was based only on viva voce. On this basis 152 senior employees who had otherwise been declared unqualified, have been regularised on the basis of the ACR keeping aside the written test and viva voce. The applicants' case being similar, they should not have been asked to appear in the written test or viva voce but should have been promoted on the basis of ACR and the performance. There were no disciplinary proceedings pending against the applicants. Therefore, the action of the respondents in reverting the applicants is not at all justified.

12. According to the applicants, several irregularities were committed in the selection process. The applicants submit that in the written test conducted

on 18.7.1998 and 08.12.1998, in the question paper there were no objective type questions contrary to the mandatory order of the Railway Board. The questions were difficult and were not justified considering that majority of the candidates were seniors from class IV cadre and only Matriculates. The evaluation of the answer papers appears to be carried out with a view to obliging certain individuals or interests. It is not clear whether an officer of the commercial department had set the question papers. The confidentiality of the answer papers also is not maintained.

13. All the vacancies from 1989 onwards were bunched together. It affects the fortunes of the senior employees as they are deprived of further chance of appearing in the written test. Selection should have been conducted every year, so that the applicants could have appeared in the test with lesser competition from juniors with further chance to appear in subsequent selection. The juniors have benefitted and the seniors have been victimised.

14. The further grievance made by the applicants is that a large number of SC/ST employees have been included in the panel in excess of the cadre strength and the number of posts already held by the employees belonging to SC/ST, was not taken into account, therefore, the panel is vitiated.

15. The learned counsel for the applicants submits that the Railway Board granted notional seniority marks to those who have failed in the written test to enable them to qualify for the viva voce test in terms of the Railway Board's letter dated 05.12.1984. However, these orders have been struck down by the judgment and order dated 14.8.1993 of the Jabalpur Bench of this Tribunal in OA No. 867/89. In that case also 34 persons were called for viva voce by granting them notional seniority marks though they had failed in the written examination.

16. The respondents have opposed the application and have taken the preliminary plea that the applicants have not made those employees who have been empanelled as parties to these OAs and therefore, all these OAs are liable for dismissal on the singular ground of non-joinder of parties. Further, the impugned panel for promotion to the post of Head TTE/ Head TC was published on 06.12.1999, whereas the applicants have approached only after March, 2001. The applications are, therefore, hit by limitation as they have not been made within the period of one year of the actual arising of the cause of action.

17. Apart from these technical pleadings, the respondents submit that only some of the applicants had passed the written test. The others did not make the grade and those who were allowed to appear in the viva

voce test did not clear the same and therefore, they could not be empanelled for the post of Head TTE/ Head TC.

18. The learned counsel for the respondents contends that the respondents have adhered to the prescribed rules in holding the selection. Just because in the past adhoc employees were regularised it does not mean that a wrong procedure, not provided for under the rules should be perpetuated. It is for the DPC to decide whether to hold written test and viva voce or whether to hold a viva voce or just go by the ACRs. The DPC decided to hold the written test and the viva voce test. There is nothing wrong in it. As the posts are required to be filled according to the recruitment rules merely because the applicants are working in the promotional post on adhoc basis does not confer any right on them to continue in the said post without succeeding in the selection and therefore, the applicants cannot be regularised merely because they are seniors and have been working on adhoc basis for more than five years.

19. The respondents state that even though the applicants have been working on adhoc basis in the higher post of Head TTE and Head TC the adhoc appointment had to come to an end when the regular candidates became available and therefore, the applicants have to be reverted.

20. In regard to the objective type questions, the learned counsel for the respondents argued that the expression/ word used in the provision under para 219 of the IREM "are objective type of questions may be set" and not shall be set. Therefore, it is discretionary and option is given to the department, it is not mandatory. Further, the applicants appeared in the written test without demur. They waited till the panel was declared and are raising the objection now regarding there being no objective type of question. Therefore, they are estopped from questioning this part of the selection. The judgment in the case of Madanlal Vs. State of J & K squarely applies in this case. They could have very well come immediately after writing the examination, but they chose to wait for the result of the final selection and have approached now. Moreover this provision applies only in case of selection for promotion to the highest grade promotion post in a category and that the highest grade promotion post in the present category is that of Chief Ticket Inspector and therefore, this particular rule cannot be said to be applicable in the present case. It is not that no objective type questions were asked at all. There were questions like "fill in the blanks". Further, an officer from the commercial department was associated with the setting up of the question paper.

21. The learned counsel for the respondents while admitting that bunching of vacancies was done by the respondents contended that there is no binding that the selection should be held every year.

22. On the point of selecting excess number of SC/ST employees, the respondents have asserted that they have gone strictly according to the quota meant for the SC/ST and rightly 33 SC/ST employees have been selected as there was a short-fall of 33 SC/ST employees. These posts were earmarked for SC/ST on the basis of the quota of SC/ST in terms of sanctioned posts and not based on vacancies. The total cadre strength is 279 and as against this, those in position were only 19 SC and 14 ST leading to a backlog of 23 + 1 for SC and 7 + 2 for the ST. Therefore, there has been no excess selection of SC/ST candidates.

22. In regard to the notional seniority marks, the respondents contend that notional seniority marks were given to all, though the benefit went only to those who have failed in the written test. There is no discrimination and even some of the applicants are benefitted by the grant of notional seniority marks. Even if one were to go by the fact that the Jabalpur Bench of the Tribunal had struck down the provisions of grant of notional seniority marks as provided in the circular of 05.12.1984 this particular part can be set aside as being not in consonance with the rules i.e.

for those who were allowed to appear in the *viva voce* test by granting notional seniority marks after they have failed in the written test, their selection can be set aside, but it need not vitiate the entire selection.

Reliance is placed on the judgment in the case of *Anamika Mishra Vs. UPSC* 1991 SCC (L&S) 461 - head note.

23. The respondents have further submitted that the applicants had not applied for condonation of delay and therefore, the bar of limitation cannot be waived. It has been so held in *Ramesh Chand Sharma etc. Vs. Udhampur Singh Kamal & Others* (2000 (2) SC 1989 that bar of limitation cannot be waived unless applied for with specific prayer and therefore on this ground itself these OAs deserve to be dismissed.

24. The learned counsel has again harped on the issue of non-joinder of parties. The applicants had not sought to implead those who have been empanelled. However, after the respondents have taken this plea in their written statement, the applicants in OA No.190/2001 sought to implead the parties on a representative basis. The applicants have claimed that they were not aware of the final promotion orders, therefore, they could not implead the employees from the select panel. The respondents have relied on the case of *Ramalingam Chettiar Vs. P.K. Pattabiraman & another* 2001 (2) SC 133. Head note No.(ii) in the judgment reads as follows: "Effect of substitution or adding new

plaintiff or defendant - Benefit of proviso to Section 21 - "When available - Court has to pass, after substitution impleadment, a separate/further order that suit as regards newly added defendant or plaintiff shall be instituted with effect from date suit was laid. Otherwise period of limitation so far as newly added/substituted part shall run from date of impleadment." Another judgment relied upon is that in the case of Arun Tewari & Others Vs. Zila Maansavi Shikshak Sangh & Others 1998 (2) SCC 332.

25. The learned counsel for the respondents is also placing reliance on All India SC & ST Employees Association Vs. A. Arthur Jeen 2001 (1) SCSLJ 345. In this, the view taken was the contention of the original applicants that since the names and particulars of the successful candidates included in the panel were not given they could not be made parties-Contention rejected because unsuccessful candidates had not made any effort to get the particulars of the successful candidates they ought to have impleaded some of the successful candidates in a representative capacity.

26. The learned counsel for the applicants while reiterating the earlier arguments has also referred to a number of judgments in support of the applicants' claim. The learned counsel has produced a copy of the judgment of this Tribunal in OA No.448/97 in the matter of Smt. U.P. Lad & another Vs. Central Railway and OA 537/97

delivered on 08.7.2001. The OAs were allowed. In the aforesaid cases also, the selection process was challenged on the ground of alleged procedural irregularities. Some of the irregularities pointed out were that objective type of questions were conspicuously omitted, no question on Rajbhasha was included, senior employees were not given notional seniority marks in terms of Railway Board's direction of 05.12.1984. Even those who had not completed two years as Head Clerk were allowed to appear in the written test/viva voce, the vacancies from 1991 for six years were pooled denying the seniors' chance for taking examination when they were eligible. Thus, some of the grounds taken in those OAs are the same grounds taken in the present OA. Also plea of non-joinder of necessary parties had been taken by the respondents therein. The Tribunal came to the conclusion that the vacancies had been bunched, whereas the vacancies had to be reckoned yearwise and the consideration zone worked out accordingly. It is on this ground that the OAs were allowed. According to the learned counsel when there are a number of flaws in a selection process the defence of Madanlal (supra) is not applicable. He refers to judgment in Raj Kumar & Ors Vs. Shakti Raj & Ors 1997 SCC(L&S) 1029 wherein the case of Madanlal was discussed.

27. We first deal with the plea of non-joinder of parties. As has already been pointed out the applicants filed MP for joining of necessary parties on

representative basis. Though the MP was not allowed, initially the applicants under wrong impression, carried out the amendments in the OAs and had already issued notices to necessary parties on a representative basis. In our view, therefore, since the notices have already been served, the MP needs to be deemed to have been allowed and the plea of non-joinder will not hold good now.

28. The respondents have raised the plea of limitation and delay. The applicants have not filed any application for condonation of delay. The applicants' contention is that the select panel of 06.12.1999 was only a provisional panel and the respondents had not acted on it for nearly 15 months. The promotion orders were issued only on 05.3.2001. The applicants have approached this Tribunal immediately thereafter on 15.3.2001. Therefore their application is very much within the prescribed period of limitation. Considering the above reasoning and the merit involved in the case we accept the same and inclined to condone the period of delay. The applicants have been visited with reversion on 05.3.2001 which is a new cause of action.

29. As regards the objective type of questions and the confidentiality of the answer papers. We do find that no objective type of questions were asked in the question paper in the written test. The respondents have pointed out that it was not mandatory to have asked

objective questions. In our considered view considering the spirit behind the guidelines, though there might not have been 50% questions of objective type, atleast some questions should have been there of objective type. However, the respondents have pointed out that these particular guidelines would apply only to the highest post in the category. We are inclined to accept this argument. The applicants have raised a point regarding confidentiality of the answer papers. However, no comments were made by the respondents on this point. The applicants have relied on another judgment of this Tribunal in OA No.19/99 decided on 30th October, 2001 in which the selection for the post of Chief Ticketing Clerks, Chief Luggage Clerks and Chief Goods Clerks was held to be illegal on the ground of granting of notional seniority marks as well as no confidentiality was maintained. The selection therein was held to be in contravention of Articles 14 and 16 of the Constitution solely on the ground of applying of letter dated 05.12.1984 regarding grant of notional seniority marks. This point is being discussed us later.

30. As regards the setting up of the question paper by an officer of the commercial department, the respondents have clearly stated that an officer of the commercial department was associated with the setting up of questions paper. We are inclined to accept the same.

31. As regards granting of notional seniority marks, the respondents were fully aware that notional seniority marks are not to be granted in view of the judgment of the Jabalpur Bench of this Tribunal in OA No. 876/89 and yet they have granted notional seniority marks. According to us, the contention of the respondents that no prejudice is caused, as such notional seniority marks were given to all seniors who had not qualified in the written test we cannot accept this plea. The judgment of the Jabalpur Bench of the Tribunal is binding. To this extent, we have to hold that the selection of those candidates who were selected on the basis of notional seniority marks for the viva voce test has to be treated as void. The selection panel needs to be quashed and set aside to that extent.

32. In regard to the bunching of the vacancies, it has been admitted by the respondents that the vacancies were pooled. There may be no objection to the pooling of the vacancies yet the select panel has to be prepared yearwise based on the vacancies pertaining to a particular year and it would change the zone of consideration. On this ground itself the selection is vitiated without examining any other question. This was the view taken by the Tribunal in OA Nos. 448/97 and 537/97 decided on 27.8.2001. We agree with the same. Therefore, on the ground of bunching of vacancies alone the selection process and the panel published on 06.3.1999 as well as the promotion orders dated 05.3.2001 need to be quashed and set aside.

33. In the facts and circumstances of the case

- (i) The selection of those who were allowed to appear in the viva voce test by granting notional seniority marks is set aside.
- (ii) The selection process and the panel of 06.5.1999 as well as the promotion orders dated 05.3.2001 are quashed and set aside.
- (iii) The respondents shall hold the selection process once again after identifying the vacancies and reckoning them yearwise and arriving at the consideration zones yearwise only from eligible candidates. Fresh promotion should be ordered thereafter from among selected candidates.

34. This shall be done within a period of three months from the date of receipt of a copy of this order. In the meantime those employees who are working on the basis of selection held, are allowed to work on adhoc basis till the fresh selection is conducted. OAs are allowed to that extent. No order as to costs.

(SMT. SHANTA SHAstry)
MEMBER (A)

(BIRENDRA DIKSHIT)
VICE CHAIRMAN.

Gajan

4/11/2001

2001 (en
Gajan on 16/8/01)

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