

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA),
Indira Nagar,
Bangalore-560038.

Dated: 8.9.87

APPLICATION NOs. 102, 115 to 128,
661 to 667/87(F)

Applicant(s)

Respondent(s)

K.G. John and 21 Ors

Vs

Divl. Mechanical Engineer,
Bangalore Divn and 2 Ors

To

1. K.G. John)
2. Appaji Chetty)
3. K.R. Venkatesh,)
4. A. Sundaram)
5. Krishnaiah)
6. P.N. Vijaya Babu)
7. Mahadevaiah)
8. K. Rama Chandra)
9. B.H. Mohammed Ismail)
10. Devarajaiah)
11. K. Ramiah)
12. R. Mannar)
13. C.J. Luis)
14. A. Subramanian)
15. K. Nara-simha Murthy)

Sl. No. 1 to 15 :-

Train Examiner, S. Railways,
SBC, Bangalore.

16. B.N. Gopalakrishna Swamy)
17. Shanmugham)
18. S. Ebenezer Rathnam)
19. H.R. Mahadevan)
20. Rama-swamy)
21. Anje Naik)
22. Balasubramanyam)

Sl. No. 16 to 22 :-

Head Train Examiners ,
S. Railway,
Bangalore Divn.,
Bangalore.

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~~Filed~~ Copies to: - A. Nos 661 to 667/87(F)

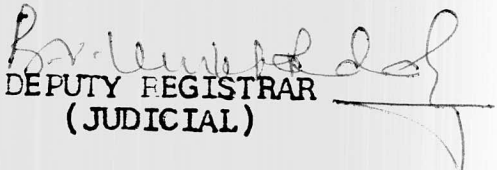
-: 2 :-

23. Shri M.R. Achar, Advocate,
No. 1074 & 1075,
Banashankari Ist Sta-ge,
Sreenivasa Nagar, II P-hase,
Bangalore.
24. Divisional Mechanical Engineer, Railways,
Bangalore Divn.,
Bangalore.
25. Divisional Personnel Officer, Railways,
Bangalore Divn.,
Bangalore.
26. Divisional Railway Manager, Railways,
Bangalore Division,
Bangalore.
27. Shri M. Sreerangaiah, Advocate,
SP Building,
No. 10, Cubbonpet Road,
Bangalore-2.

Subject:- SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER
passed by this Tribunal in the above said a pplication
on 4.8.87.

encl : as stated


DEPUTY REGISTRAR
(JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

DATED THIS THE 4TH DAY OF AUGUST, 1987

Present: Hon'ble Shri Justice K.S. Puttaswamy, Vice-Chairman
and
Hon'ble Shri L.H.A. Rego, Member (A)

APPLICATION NOS. 102, 115 to 128, 661 to 667/87

1. K.G. John,
S/o K.T. George,
aged 58 years. Applicant in
A. No.102/87.
2. Appaji Chetty,
S/o Muniswami,
aged about 54 years. Applicant in
A. No.115/87.
3. K.R. Venkatesh,
S/o K.S. Ramaswamy,
aged about 49 years. Applicant in
A. No.116/87.
4. A. Sundaram,
S/o Armugam,
aged about 41 years. Applicant in
A. No.117/87.
5. Krishnaiah,
S/o Bojjaiah,
aged about 44 years. Applicant in
A. No.118/87.
6. P.N. Vijaya Babu,
S/o P.T. Narayana Swamy,
aged about 35 years. Applicant in
A. No.119/87.
7. Mahadevaiah,
S/o Madaiah,
aged about 49 years. Applicant in
A. No.120/87.
8. K. Rama Chandra,
S/o Shankaran,
aged about 37 years. Applicant in
A. No.121/87.
9. B.H. Mohammed Ismail,
S/o. Mohammed Hussain,
aged about 48 years. Applicant in
A. No.122/87.
10. Devarajaiah,
S/o H.B. Anantharajiah,
aged about 51 years. Applicant in
A. No.123/87.
11. K. Ramaiah,
S/o Kadarappa, Applicant in
A. No.124/87.



12. R. Mannar,
S/o V. Ranganathan,
aged about 38 years. Applicant in
A. No.125/87.
13. C.J. Luis,
S/o C. Raju,
aged about 43 years. Applicant in
A. No.126/87.
14. A. Subramanian,
S/o K. Annu,
aged about 43 years. Applicant in
A. No.127/87.
15. K. Narasimha Murthy,
S/o Krishna Murthy,
aged about 49 years. Applicant in
A. No.128/87.
16. B.N. Gopalakrishna Swamy
..... Applicant in
A. No.661/87.
17. Shanmugham
..... Applicant in
A. No.662/87.
18. S. Ebenezer Rathnam
..... Applicant in
A. No.663/87.
19. H.R. Mahadevan
..... Applicant in
A. No.664/87.
20. Ramaswamy
..... Applicant in
A. No.665/87.
21. Anje Naik
..... Applicant in
A. No.666/87.
22. Balasubramanyam
..... Applicant in
A. No. 667/87.

(Shri M.R. Achar, Advocate)

(Applicants from Sl No.1 to 15
are working as Train Examiners
at Bangalore)

(Applicants from Sl. No.16 to 22
are working as Head Train Examiners,
Bangalore Division, Bangalore).

v.

1. Divisional Mechanical Engineer,
Bangalore Division,
Bangalore.

Divisional Personnel Officer,
Bangalore Division,
Bangalore.

Divisional Railway Manager,
Bangalore Division,
Bangalore.

(Shri M. Sreerangaiah, Advocate)

Respondent 1 in
A.Nos.102,115-128
of 1987

Respondent 2, 3 in A.No.
102,115-128/87

Respondent 1 and 2 in
A.No.661 to 667/87



These applications having come up for hearing to-day, Vice-Chairman made the following:

O R D E R

As the questions that arise for determination in these cases are common, we propose to dispose of them by a common order.

2. At the material time, the applicants were working as Artisans. On different dates, the applicants appeared for a written and viva-voce tests prescribed to the posts of Train Examiners ('TEs') and were successful in them. Thereafter, the applicants were deputed for training in the System Technical School, Bangalore ('School') for the period stipulated thereto by the rules and orders then in force, where also they were successful. In due course, the applicants were thereafter promoted as TEs on ad hoc basis, on different dates. Applicants in Application Nos. 661 to 667/87, have also been further promoted as Head Ticket Examiners (HTEs) on an ad hoc basis on different dates. The applicants are holding the promoted posts from the dates they were promoted.

3. In Office Order No.B/P.608/V/C&J/TXRs, dated 5-6-1987 (Annexure-G, in Application Nos.661 to 667 of 1987), the Divisional Personnel Officer, Bangalore Division ('DPO') had called upon the applicants and others, with whom we are not concerned, to appear for a written test to be held



on 20.6.1937 for regular selection to the posts of TEs to the 40% quota from among the serving Artisans. In these applications made under Section 19 of the Administrative Tribunals Act, 1985 ('Act'), the applicants have challenged the same on diverse grounds.

4. The examination scheduled on 20.6.1937 was not held on that day or thereafter also.

5. Among others, the applicants have urged that since they had passed the written and viva-voce tests and the examination at the School, they were not required to pass that very examination over again and that in any event, they cannot be compelled to appear for the examination against their will.

6. In their reply filed to Application Nos. 102, 115 to 123/87, adopted as their reply in other cases, the respondents have pleaded that the very initial selection of the applicants for training to the School was contrary to the rules and orders in force and their initial selection and their success at the School does not confer on them any indefeasible right for regular selection to the posts of TEs.

7. Shri M. Raghavendrachar, learned Counsel for the applicants, contends that all his clients who had been regularly and properly selected for training on holding written and viva-voce tests and being successful at the

School, and then promoted to the posts of TEs and HTEs respectively on an ad hoc basis, cannot be compelled to appear for that very examination even for making regular selections to the posts of TEs.

8. Shri M. Sreerangaiah, learned Counsel for the respondents, contends that the applicants who had not passed the initial written and viva-voce tests, were merely screened and deputed for training, where they have been, of course, successful and that since their very initial selection was contrary to the Rules and Orders then in force, they were bound to appear for the examination for making regular selections to the posts of TEs.

9. On the nature of initial selections for training at the School, there is controversy between the parties. But, on the applicants successfully completing the training at the school, which is even more important and essential, there is no controversy between the parties. The Railway administration does not dispute that all the applicants had successfully completed their training at the School and were successful in the examination held at the School on the completion of their training and that thereafter all of them had been promoted as TEs on an ad hoc basis on different dates and they have been discharging their duties in those posts from the dates they were so promoted. ^{The} Railway administration does not also dispute that the applicants in Application Nos. 661 to 667/87 have been further promoted as HTEs on an ad hoc basis on different dates.



10. The training at the School does not precede the written and viva voce tests if any, to be held for persons to be deputed for training. The training at the School follows the written and viva voce tests and was the last and the final part of a person selected for the same. The written and viva voce tests precedes the training at the School.

11. In their reply, the respondents while seeking to defend the order of the DPC, had stated thus:

" The ad hoc promotees who have successfully undergone training at the System Technical School, Bangalore, will not be required to undergo the same training again in the System Technical School, Bangalore, if they are selected in the selection for regular promotion."

From this, it is clear that the Railway administration was satisfied with the training of the applicants at the School and will not insist on the same, if they are successful in the written and viva voce tests to be held for the purpose.

12. When the applicants had successfully completed the training at the School, we must necessarily hold that they had been properly selected in the written and viva voce tests that preceded the same. The principles of presumptions and regularity and official proceedings only lead us to hold that the applicants had been properly selected in the



initial tests, if any, held in accordance with the Rules, orders and instructions that were then in force. We cannot, at this stage, on any principle or authority, hold that the very initial selection of the applicants which is a condition precedent for deputing them for training at the School, was not done in accordance with the Rules or was held in defiance of the rules and orders that were then in force. We cannot, at this stage, investigate into all that happened before the applicants were deputed for training and hold that their initial selection was in any way bad or was violative of any rule or order in force, as presumed or held by the Railway administration. In these circumstances, we hold that the initial selections of the applicants for training was valid and unexceptionable.

13. No authority can **compel** a person to appear for an examination. An authority can and should only give an opportunity to appear for an examination. When such an opportunity is given by the authority, then it is for that person to decide to take that examination or not. When a person who is given an opportunity does not appear for an examination, he exposes himself to the consequences that ensue from such failure. But that can hardly be a ground for the DPO to **compel** the applicants to appear for initial written test as directed by him. On this view also, the direction of the DPO to the applicants to appear for the examination which is illegal, cannot be sustained.



14. We have earlier held that all the applicants have successfully completed their training and have been promoted to one or the other posts on an ad hoc basis. On the nature of promotions and the relative seniority claimed in these cases, Shri Achar, in our opinion, very rightly, does not press them. We therefore decline to examine them and leave them open.

15. In the light of our above discussion, we quash the Order No.B/P.608/V/C&W/TXRs, dated 5.6.1987 of the Divisional Personnel Officer, Bangalore Division, as against the applicants only and not against others.

16. Applications are disposed of in the above terms. But, in the circumstances of the cases, we direct the parties to bear their own costs.



Sd/-
vice-Chairman
4/5/87

Member (A)

Dms/Mrv.

- True Copy -

R. V. Chand H. Rao
DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE