

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

M.P.436/95 & M.P.37/95 in O.A.38/94.

V.K.Sharma & 3 Ors. ... Applicants

V/s.

Western Railway & 4 Ors. ... Respondents

M.P.459/95 & M.P.36/95 in O.A.1234/93.

I.Fernandes ... Applicant

V/s.

Western Railway & 4 Ors. ... Respondents

M.P.38/95 in O.A.244/94.

Venkatesh Udapa ... Applicant

V/s.

Western Railway & 3 Ors. ... Respondents.

CORAM: Hon'ble Shri B.S.Hegde, Member (J).

Hon'ble Shri M.R.Kolhatkar, Member (A).

APPEARANCE:

Shri M.S.Ramamurthy, Counsel
for Applicants.

Shri N.K.Srinivasan, Counsel
for Respondents.

Shri G.S.Walia, Counsel
for Intervenors.

TRIBUNAL'S ORDER:

DATED : 25.9.95

X Per Shri B.S.Hegde, Member (J) X

Heard Shri M.S.Ramamurthy for Applicant,

Shri N.K.Srinivasan, for Respondents and Shri G.S.Walia,
for Intervenors.

All these MPs were heard together and they
are being disposed of by common order.

Shri G.S.Walia's clients have been allowed to be
impleaded as necessary parties, while seeking
intervention, he also sought for vacation of Interim
Order passed by Tribunal dated 17/1/94. It may be

recalled that though the Interim order was passed by Tribunal on 17/1/94, the official respondents have filed an MP for vacation of Interim Order on 9/1/95 after a lapse of one year. In order to proceed with the prayer in MPs, it is necessary to refer to certain basic facts. It is true that the Interim Order dt. 17.1.94 was granted at the admission stage without hearing the Official respondents and the affected parties. However, the Interim Relief was later confirmed on 4/2/94 after hearing the respondents. On that day there was also an MP filed by Shri Arun Kumar Jain, MP-93/94 to be impleaded as a party respondent on the ground that the petitioner was selected as a Bill Issuer and was senior to the applicants, whereby the Interim Relief granted by Tribunal prejudicially affected the petitioners interest if the OA is subsequently allowed, it would affect the promotion of petitioner as Bill Issuer. The Tribunal rejected the MP on the ground that the issue of seniority has not been raised in the present petition and therefore the question of who should be preferred in the feeder cadre would not be the issue in this petition. Accordingly, MP was rejected. Thereafter, the applicants filed an MP-596/94 stating that notification dt. 23.12.93 was issued by the Railway Administration calling for applications for a selection to be held to fill up six posts of Bill Issuers. The applicants prayed that the respondents be restrained from proceeding with the written test and also for amendment to the OA. The Tribunal's order dt. 24/6/94 rejected the prayer for staying the examination, however it directed that the examination be held and the results published subject to the contention raised by applicants in the present case. Consequently, the official respondents filed MP-37/95 for vacating

Interim Order, that the result of the examination had since been notified and none of the applicants had responded to the notification dtd. 23.12.93. The applicants have not been selected. Therefore, the respondents filed MP-37/95 for vacating Interim Order passed ex-parte on 17/1/94 for posting the selected candidates against the vacancies for which written selection was conducted. No orders on the said MP have been passed, in the meanwhile, the intervenors filed MP-436/95 pleading to join as party and for vacation of the Interim Order.

2. Though the said applicants opposed the intervenors as party respondents. However, after considering the various contentions of the parties, we allowed him to be impleaded as a party respondent vide our order dated 17/8/95. The main contention of the Learned Counsel for the applicant in this case is that prior to 1989, the procedure for regularisation was by screening only. After 1989, the test came into being. The applicants have claimed seniority on the basis of the judgement of the Jabalpur Bench of Tribunal in TA 123/86. The only difference between the petitioners before the Jabalpur Bench and here is that in the case of petitioners before Jabalpur Bench, the adhoc order of appointment was available whereas in this case, no such order exists. However, they were allowed to work since 1979 onwards on the basis of stay order of High Court, Bombay.

3. We notice that the claim of the applicant goes back to TA-508/87 which was disposed of by this Tribunal's order dated 28.8.90. In that Transfer Application, the respondents were given liberty to hold a written test for the purpose of promotion to the post of Bill Issuer in accordance to the scheme

contained in the letter of General Manager dated 16.2.89. The contention of the applicant is that the written test in terms of the direction of Tribunal in TA-508/87 have not been held and the stay granted by High Court on 5/3/84 continued till the disposal of OA on 28.8.90. Therefore holding a test, i.e. on 30.6.90 prior to Courts order was found to be illegal, not in accordance with the direction of this Tribunal nor in terms of Railway Board's circular dt. 16.2.89. Secondly, in so far as the reversion order dt. 8/3/91 is concerned, the said order is illegal as the same is given with retrospective date w.e.f. 26.11.90, though it was issued on 8.3.91., such reversion order is bad in law. Thirdly, prior to holding of the exam, though they have taken the consent of the applicants, whether this consent would tantamount to holding the exam pursuant to the judgement of this Tribunal. Therefore, the reversion order passed by respondents is found to be not justified on the ground that the reversion order could not be passed as the exam held was not in pursuance of the Courts order and that they conducted the exam while the stay order was in operation against them. Unless and until the stay order is vacated or modified, the question of conducting exam and filling up the existing vacancies did not arise. Further, inspite of the reversion order, they have been allowed to work as 'Bill Issuer' and continued to utilise their services as Bill Issuer. As stated earlier, the Official respondents have filed their MP for vacating Interim Order after a lapse of one year, in the meanwhile the private respondents i.e. the intervenors filed their application on vacating the Interim order 26/6/95.

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4. Further contention of the Applicant's Counsel is that the written test should have been open to all who are otherwise eligible to be considered and holding the written exam is not permissible when the stay is operating and no vacancy existed at the relevant time. Rightly or wrongly the said vacancies were occupied by the present applicants. Further out of 5 selected candidates, only one person applied for vacating stay though the Interim Order was given in favour of applicants on 17/1/94, thereafter, after issue of notice to Railways, the Tribunal confirmed the Interim Order vide its order dt. 4/2/94. Therefore, the Learned Counsel for applicant contends that no change has taken place since the passing of the Interim Order, hence there is no need to vacate the Interim Order passed after hearing the Parties against non-existent vacancies. Further it is contented as against the official respondents that when there were no posts existing and the stay was operating against them, in the first place they should have got the stay order modified, which they did not case to do.

5. On the other hand the Learned Counsel for Intervenor, Shri Walia contends that the applicants were party to the petition vide Transfer Application dt. 28/8/90. After disposal of the TA-508/87, written test was held, the applicants appeared for the test but did not succeed. Having not passed the test, the respondents passed the reversion order dt. 8/3/91 and therefore, though the reversion order was passed in 1991, till 1993 applicants did not challenge the reversion and in this case no application was received at any point of time and they have only been allowed to continue on the basis of the Court's Interim Order. Subsequently, second selection examination was held on 23/12/93. Shri Fernandes did not apply for the selection, all others appeared but failed. Though

they filed a stay petition against the notification dt. 23.12.93, it was rejected on 26.4.94, and thereafter in accordance with the merits of the candidates, selection was made and panel was created for those who passed in the examination on 14.12.94.

6. Further contention was that when the Interim Orders were passed, required test was not held, hence the Court allowed them to continue, but once the test was held and regularly selected persons were available, there was no reason to continue the Interim Order. In support of his contention, he cited Full Bench decision in S.G.Gautam V/s. Union of India and Piara Singh's case, [1982 SCC L&F' 25] wherein it was held that a person who has so far not qualified in the selection test and is holding the promotional post on adhoc basis, he should be given several chances to qualify in the selection test but if after repeated chances given to him he fails, there can be no other alternative but to revert him. The Cardinal Principle is that he must have qualified in the selection test to become suitable for the post. However, the Learned Counsel for the applicant urged that both the cases do not apply to the facts of this case.

7. Learned Counsel for Intervenors further contended that even assuming that the 1990 exam was held to be bad and not in accordance with the Tribunal's direction, however, since the applicants have given their consent for the aforesaid test they could not now state that the exam is not in pursuance of the Tribunal's order. Since the Interim Orders passed had not been in the interest of the present petitioner, therefore, they have been impleaded as the necessary party as they have been selected in the panel, hence the Interim Order should be vacated and the applicants

should be considered for appointment.

8. The Tribunal while allowing the MP-436/95, directed the Original Applicant to amend the application and to give a copy of amended OA to respondents as well as the petitioners who had joined as Respondent-6. Liberty was given to respondent-6 to file written statement to amended OA forthwith, and the matter was placed for considering the vacation of Interim Order and orders on 5/9/95.

9. We have heard the arguments of both the Counsel and considered the rival contentions of the parties. As stated earlier, Interim Relief was granted initially on 17/1/94, at the admission stage itself without hearing the official respondents which was later confirmed on 4/2/94 after hearing the respondents. Thereafter, the Tribunal had directed the matter to be placed before Registrar for completion of pleadings and then it was remitted to sine die list. They have also passed specific order that the applicants should not be reverted below the post of Bill Issuers till the disposal of application. They have passed that order and after considering contention of the parties, the Interim order was made absolute on 4.2.94. Therefore, it is not open to other co-ordinate Bench to review and revise the stay order on the basis of belated MPs filed by official respondents as well as by Intervenor and we find no justification in vacating the Interim Order at this stage since Tribunal has already directed that all these matters will be heard alongwith OA-909/88 since similar issue is involved in that case.

10. The main contention of the Intervenor is that since they have been duly selected and their names have been kept in panel and the applicants have not succeeded in the said written test, thereby they should

be given appointment. In our view even the candidate included in the merit list has no indefeasible right to appointment even if vacancy exists; that depends on the merits of such case, which we are not considering at this stage. Admittedly, though the Reversion order was passed by respondents, it had not been given effect to and the applicants have been allowed to work in the capacity of 'Bill Issuer' right from 1979 onwards in the absence of any vacancy existing and on account of stay order of the Court/Tribunal, unless the stay is vacated/modified, before conducting exam, such exam is subject to scrutiny of the Court/Tribunal.

11. In the light of the above, the admitted facts are that the Tribunal in its order dated 28/8/90 directed the respondents not to demote the applicants from the post of 'Bill Issuer' and allowed them to conduct the test as they deemed fit. Though the respondents have conducted the test prior to the Tribunal's Order, the same was published after Tribunal's decision, they passed the Reversion Order dated 8/3/91 for those who have not passed the written test, however, the applicants were not reverted but were allowed to continue on the ground that the written test was not held pursuant to the directions of the Tribunal, and they have filed present OA and obtained ex-parte Interim Stay on 17/1/94 which was later confirmed after hearing both the sides on 4/2/94. Despite same the respondents did not care to vacate the Stay given by the Tribunal in Jan.95 after a lapse of one year., however without vacating the stay order, conducted the written test on 23/12/94, without vacating the stay order. Therefore the applicants contended that there is no vacancy exist, all the existing vacancies have been filled by applicants, the exam conducted by respondents is not in accordance with the scheme and therefore

the same was challenged. It is not the contention of the respondents that they have conducted the written test for the future vacancies, but indisputably for the existing vacancies. The Private respondents has impleaded as a party respondent recently and also filed an application for vacating the stay, because he was the selected candidate and should be given an appointment on that basis. Though the applicants appeared for the test, they did not pass the exam.

12. For the reasons cited above and in the circumstances, we have considered both the MPs, however, since the Interim Stay has been granted as back as 17/1/94 and later confirmed by Tribunal on 4/2/94, thus the question of vacating the Interim Stay at this stage does not arise. Accordingly, we see no merit in MPs and the same are dismissed. All these cases may be listed alongwith OA-909/88 in its turn.

(M.R. KOLHATKAR)
MEMBER (A)

(B.S. HEGDE)
MEMBER (J)

abp.

Copy to:-

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| Mr. V.K. Sharma & Drs. | (O.A. No. 38/94), |
| Mr. I. Fernandez | (O.A. No. 1234/93), |
| Mr. V. Udapa | (O.A. No. 244/94), |
| C/O. Mr. M.S. Ramamuthy, Adv. | |
| 2. Mr. N.K. Srinivasan, Adv. | |
| for Respondents. | |
| 3. Mr. G.S. Walia, Adv. | |
| for Intervenours. | |

SECTION OFFICER.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

REVIEW PETITION NO.: 07/98 IN O.A. No. 1234/93 AND
18/98 IN O.A. No. 38/94.

Dated this Friday, the 4th day of December, 1998.

CORAM : Hon'ble Shri Justice R. G. Vaidyanatha,
Vice-Chairman.

Hon'ble Shri D.S. Baweja, Member (A).

Ignatius Fernandes .. Petitioner in R.P. No. 07/98

Vimal K. Sharma & 3 Others .. Petitioners in R.P. No. 18/98.

Versus

Union Of India & Others .. Respondents.

: OPEN COURT ORDER :

PER.: SHRI R. G. Vaidyanatha, Vice-Chairman

These are two review petitions filed by the original applicants for reviewing the order passed by the Division Bench of this Tribunal dated 29.10.1997 in O.A. Nos. 909/88, 1234/93, 38/94 and 244/94. We have heard Mr. Suresh Kumar, the Learned Counsel for the Petitioners and Shri V.S. Masurkar, the Learned Counsel for the Respondents.

2. As could be seen from the judgement of the Tribunal, the main point canvassed by the applicants was that, they need not appear for any test and they should be confirmed without undergoing any selection process. The Tribunal rejected that argument by referring to some decisions on that point. However, to safeguard the interest of the applicants who were