

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, 'GULESTAN' BUILDING No.6  
PREScot ROAD, MUMBAI 400001

OA 24/1994

COMBINED ORDER IN O.A.Nos. 909/88; 1234/93; 38/94; 244/94

DATED : THIS 29th DAY OF OCTOBER, 1997

O.A.No. 909/88:

1. Ramesh C. Gaikwad
2. Bashir Hussain Malik
3. R V Prabhu
4. B J Muthaiya
5. Arunkumar S. Jain
6. Hiralal Modi
7. Khalil
8. Chandan Singh
9. P L Agarwal

O.A.No. 909/88  
Applicants in  
O.A.No. 909/88

O.A.No. 1234/93:

Ignatius Fernandes  
Room No.1, 2nd road,  
Churchpakkadi  
Sahar Village  
Mumbai 400099

..Applicant in  
O.A.No. 1234/93

O.A.No. 38/94:

1. Vimalkumar Sharma  
2. Narayan Shetty  
3. K R Soman  
4. A. Adimulam  
Bill Issuers in Western Railway  
Dining Car Unit, Bombay Central  
Mumbai 400008

..Applicants in  
O.A. No. 38/94

O.A.No. 244/94:

Venkatesh Udapa  
Bill Issuer in Western Railway  
Restaurant, Bombay Central,  
Bombay 400008  
R/a. 104/7  
Western Railway Quarters  
Matunga Road (E)  
Mumbai 400019

(By Adv. Mr. M S Ramamurthy)

..Applicant in  
O.A.No. 244/94

V/s.

1. Union of India  
through the General Manager  
Western Railway  
Mumbai 400020

2. Chief Commercial Superintendent  
(Catering), Western Railway,  
Churchgate, Mumbai 400020
3. Assistant Personnel Officer(C),  
Western Railway, Churchgate,  
Mumbai 400020
4. Chief Catering Inspector(CCTR)  
Dining Car Unit  
Western Railway  
Bombay Central  
Bombay 400008
5. Assistant Commercial Manager(M)  
Catering; Western Railway;  
Bomay Central; mumbai 400008  
(By Adv. Mr. N K Srinivasan) .. Respondents  
(Adv. Mr. G S Walia) .. Intervenors

ORDER

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[Per: M R Kolhatkar, Member(A)]

1. As all these four O.As. have identical facts and raise common issues, they are being disposed of by a common judgment. The facts in O.A.No. 38/94 are taken as illustrative and the orders are to be read mutatis mutandis in relation to other O.As.

We have heard the learned counsel for the Applicants and respondents as well as for the intervenors, who supported the case of the respondents, and prayed for dismissal of the O.A. on the ground of Resjudicata, estoppel and case law.

2. The present O.A. has a long history of litigation. The matter relates to regularisation of Western Railway employees who were originally recruited as cleaners

(Rs.750-940) and who had admittedly attained temporary status on different dates between 1977 and 1978. According to the applicants, they have been officiating as Bill Issuers (Rs.825-1200) continuously from 1977 - 79 and they are entitled to be regularised as Bill Issuers after completion of two years of service as per the judgement of Jabalpur Bench of the Tribunal dated 9.10.1986 in O.A.No.122/86 J.N. MISHRA Vs. UNION OF INDIA. The operative portion of the judgment so far as it relates to Bill Issuers was as below:

"a) The list of personnel regularised as Bill Issuers should be reviewed. The cut off date of 9.7.1973 arrived at on the basis of an understanding between the Management and the Trade Union is quashed. All persons who had put in a satisfactory service of 2 years, subject to holding the requisite qualifications, including the petitioner should be absorbed in that post with effect from the date of initial appointment as Bill Issuers and seniority list of Bill Issuers re-arranged accordingly with reference to that date."

3. According to the applicants, they ought to have been regularised after completion of two years of service in terms of J N MISHRA's judgment. The respondents counsel relies on the General Manager's Scheme dated 16.2.1989 (Exhibit E to M.P.No.596/94). According to this scheme the vacancies of Bill Issuers are to be filled by all Class IV staff of Catering Department below the grade Rs.825-1200 (RP) having put in three years service on the

basis of seniority-cum-suitability by inviting applications. The suitability will be judged by way of a written test. The applicants challenge the scheme because it is against para 188 of Indian Railway Establishment Manual (IREM) according to which lower grades in Group "C" like Junior Clerks, Material Checkers, etc., in scales such as Rs.825-1200 should be wholly filled by promotion from Group D railway servants who have put in 5 years' service. The General Manager's Scheme however refers to 3 years of service. The contention of the applicants is that the General Manager cannot formulate a Scheme involving reduction of length of service (5 years to 3 years) prescribed by the Railway Board and, therefore, this scheme of General Manager (Western Railway) is illegal.

4. The contention of the Respondents however is that the Jabalpur judgment does not apply to the applicants. The Jabalpur judgement related to ad hoc promotee Bill Issuers who were continuously working for two years or more. The Jabalpur judgment envisages that such ad hoc promotees should be regularised after two years of service. Since the applicants were never promoted to the post of Bill Issuers, even on ad hoc basis, and that basically they being Cleaners deployed as Bill Issuers due to absenteeism of regular Bill issuers etc., the question of applicability of Jabalpur judgement does not

arise in the present cases. In any case, Applicants did not challenge the seniority list issued in terms of Jabalpur judgment. We are inclined to accept the contention of the respondents. Regarding the applicants' contention that the General Manager's Scheme dated 16.2.89 being illegal for violation of para 188 of IREM, the respondents have stated that para 188 of IREM is in regard to Ministerial staff like, junior clerk, material checker etc., and not for the post of Bill Issuers which is a non-ministerial post. We are inclined to accept the contention of the respondents and we are of the view that the scheme of General Manager dated 16.2.1989 can not be termed as illegal.

5. We next come to the judgement of this Tribunal in T.A.No. 508/87 decided on 28.8.1990 to which Applicants were parties. In this judgment the following directions were given:

" (i) These applicants shall be given the difference of pay between that of the Cleaner and Bill Issuer from 15.11.84 treating them as having officiated in the post of Bill Issuer.

(ii) The written test for the purpose of promotion to the post of Bill Issuer in accordance with the scheme contained in the letter of the General Manager dated 16.02.1989 (Exhibit R-1) shall be conducted expeditiously and such of the applicants who so desire shall be permitted to take the same."

In relation to this judgment, the contention of the applicants is, firstly, that there is judicial

determination that the applicants were officiating as Bill Issuers at least from 15.11.1984 and while no doubt, the Tribunal had directed written test for promotion in terms of General Manager's Scheme dated 16.2.1989, the test which was actually held was not in terms of the direction because the same was held prior to the date of the judgment viz., 23.6.90 and 21.8.90 though the results were announced subsequently viz., on 21.9.90. It is not disputed that the applicants had failed in that test.

6. Respondents have contended that the applicants in any case, had by letter at Exhibit R-3 (dated NIL but prior to the date of judgment) have communicated that they have no objection to appear for the written suitability test for promotion to the post of Bill Issuers if they were called. Therefore, the applicants are estopped from challenging the validity of the test or from contending that the test was not in accordance with the judgement of the Tribunal.

7. The directions of the Tribunal in T.A.No.508/87 are to be read in the context of the judgment as a whole. The directions are contained in para 6. In para 5, the Tribunal refers to the fact that the channel of promotion has been revised in consultation with the recognised Trade Unions and at present, all the Class IV employees of the Catering Department working in the grade below

Rs.825-1200 having three years of service are eligible to appear for the written test to ascertain the suitability for promotion to the post of Bill Issuers. The direction states that the test should be conducted expeditiously and such of the applicants as are desirous should be permitted to take the test. In view of this background it is difficult for us to hold that the test which was held in July-August 1990 was not in accordance with the Tribunal's direction. No doubt the test was held prior to the pronouncement of the judgment. But considering the observations of the Tribunal in para 5 it cannot be said that the test was against the spirit of the judgment of the Tribunal. Therefore, the test has to be considered <sup>held</sup> as/in consonance with the Tribunal's judgment.

8. The applicants have amended the O.A. to challenge the nature of the test and for this purpose they have cited criticism of the test by the Western Railway Mazdoor Union. According to us, this challenge to the test on the ground of criticism by the Union cannot be sustained. In our view the assessment of suitability of candidates by administering requisite tests is a management function and the Railway Administration is expected to know the expected level of competence of their employees, the expected competence and skills in relation to the job and the type of test which should be administered <sup>to</sup> them. At the same time, we have no doubt

that the Railway Administration would keep in view the nature of the job for which the test is being held viz., Bill Issuers and the nature of skill required for the job such as Literacy, numeracy and general knowledge for the job required.

9. Applicants have contended that the respondents have not assessed the number of vacancies properly; on the one hand there is under estimate as the restructuring of the cadre brought about in 1994 is not taken into account and, on the other hand, there is over estimate inasmuch as posts held by the applicants were also being shown as vacancies, though the applicants have been holding the posts since 1984 and even earlier. Respondents have contended that as a result of restructuring order of the Railway Board dated 27.1.93, the percentage of posts of Bill Issuers has got reduced from 66-2/3% to 55% i.e., from 22 posts to 18 posts. So far as the assessment of number of vacancies and inclusion of the posts held by the applicants are concerned, it is contended by the respondents that the applicants are only officiating in the posts and not having been regularly selected for the post of Bill Issuers have to appear for the selection test and the posts held by them are required to be included in the number of vacancies. We are inclined to accept the contention of the respondents.

10. The main prayer of the applicants is to treat applicants as having been promoted as Bill Issuers from 1977-79 in accordance with the judgement of the Jabalpur Bench. In view of our discussions above, this prayer of the applicants cannot be allowed.

11. The next prayer is that the purported reversion of the applicants to the post of Cleaner vide Memorandum dated 8.3.1991 be declared as bad in law. We need not go into this aspect because there is no dispute that the applicants have been continuously working as Bill Issuers since 1984 and have not been reverted till the date of passing of the interim relief on 17.11.1994 when the Tribunal by its interim order had directed the respondents that the applicants should not be reduced below the post of Bill Issuers. This prayer, therefore, has become infructuous.

12. The next prayer is that the Tribunal may direct regularisation of the applicants when they have been working for more than 13 years on the same position. Learned counsel for the intervenors however, has invited our attention to the judgment of the Allahabad Bench of Tribunal in O.A.No.19/1994 and other O.As. decided on 3.4.1997 in RAM NARESH & ORS Vs. UNION OF INDIA & ORS., 1997(2) ATJ 240. That was a case in which a similar prayer was made for regularisation of Group D employees who had officiated for a long time in Group C post. The

learned Allahabad Bench of the Tribunal had relied on Supreme Court judgment in UNION OF INDIA & ORS. Vs. MOTI LAL & ORS., 1996(33) ATC 304. They had observed that the employees who had worked for a long period do not get any right for regularisation.

13. The last material prayer of the applicants is that the applicant should have been offered a minimum of three chances for passing any test for regularisation and till then, the applicants should not be reverted to lower rank. It appears to us that this prayer of the applicants is required to be considered in the context of Full Bench decision in JETHA ANAND & ORS. Vs. UNION OF INDIA & ORS, p.353 OF FULL BENCH JUDGEMENTS OF C.A.T. 1986-89, BAHARI BROTHERS. It was held therein that services of an employee cannot be regularised in the promotional post but he will be entitled to be given further opportunity to appear in the selection test. In para 56 of the judgment it is stated that employee should be given several chances to qualify in the selection test and if even after repeated chances given to him he fails, there would 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. In terms of the ratio in JETHA NAND's case we direct the respondents that the applicants should be given three further opportunities for appearing in the written test for the post of Bill Issuers *subject to observations in para 8 super*

14. In the result all the four O.As. are disposed of with the limited relief that the applicants be given three more chances to appear for written tests for their regularisation and till then they should not be reverted from the post of Bill Issuers. No order as to costs.

(M.R.Kothakar)

Member(A)

(B S Hegde)

Member(J)

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