

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

M.P. 436/95 in O.A. 38/94
M.P. 459/95 in O.A. 1234/93
O.A. 244/94

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

V.K.Sharma & 3 Ors. .. Applicant
Vs.
Union of India & Ors. .. Respondents
Vs.
Gulab H. Premanna .. Petitioner

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

Ignatious Fernandes & Ors. .. Applicants
Vs.
Union of India & Ors. .. Respondents
Vs.
Gulab H. Premanna .. Petitioner

O.A. 244/94

Venkatesh Udapa .. Applicant
Vs.
Union of India & Ors. .. Respondents

CORAM : Hon'ble Shri.B.S.Hegde, Member (J)
Hon'ble Shri.M.R.Kolhatkar, Member (A)

TRIBUNAL'S ORDER

2-12-95

Heard Shri.M.S.Ramamurthy, Counsel for the applicants, Shri. G.S.Walia, Counsel for the Intervenor and Shri.N.K.Srinivasan, Counsel for the respondents.

2. All these three cases were heard together on the point of impleading affected parties as respondents and therefore they are being disposed of by a common order with supplementary order where necessary.

M.P. 436/95

3. The Petitioner in M.P. 436/95 is working as a Waiter under Chief Catering Inspector, Western Railway. The petitioner states that Class IV employees working in the Catering Department with 3 years of regular service are entitled for promotion to the post of Bill Issuer in the Scale of Rs.825-1200 and the petitioner being entitled for promotion of Bill Issuer, applied pursuant to notification dated 22-12-1993. He appeared for the written test alongwith others and he passed the said test and the result was declared by office order dated 14-12-1994 in which the petitioner appears at Serial No. 5. The Petitioner submits that the applicants in O.A. 38/94 and O.A. 1234/93 obtained an order on 17-1-1994 that they should not be reverted from the post of Bill Issuer. According to the petitioner, since the applicants have not qualified in the examination, there is no valid ground for the interim order to continue ~~that will~~ ~~since~~ there is a regular panel available in which the petitioner has been selected. The Petitioner states that he is not a party to the O.A and the interim order in the O.A is prejudicial to him. He has therefore prayed in the first instance to add the petitioner as a party respondent to the O.A. 38/94 and in the second instance to vacate the Interim Relief passed by the Tribunal.

4. In order to appreciate the prayer in the M.P, it is necessary to refer to certain facts.

The Interim Relief on 17.1.1994 was granted at the admission stage, without hearing the ^{opposed} respondents. The interim relief was confirmed on 4-2-1994 after hearing the respondents. On that day, there was also an M.P 93/94 filed by Arunkumar Jain to be made a party on the ground that the petitioner was a confirmed Waiter and employed as Bill Issuer and was senior to the applicants. It was stated that the interim relief has prejudicially affected the petitioner and many other senior employees and if the O.A is subsequently allowed, it would adversely affect the promotion of the petitioner as Bill Issuer. The Tribunal, however, rejected the M.P on the ground that the question of seniority has not been raised in the present petition and therefore the question regarding who should be preferred in the feeder cadre would not be an issue in this petition and as such no case for intervention has been made out. Subsequently, the applicants filed M.P. 596/94 stating that a notification dated 23.12.93 was issued by Railway administration calling for application to be selected to fill-up six posts of Bill Issuer. For several reasons given in that M.P, the applicants prayed that the respondents should be restrained from proceeding with the written test and also for amendment to the O.A according to the schedule enclosed with that M.P. The Tribunal in its order dated 24.6.94 rejected the prayer for staying the examination. The Tribunal directed that the examination will be held and results published subject to the contentions raised by the applicants in the present case. Consequently, the respondents railway administration filed M.P. 37/95 for vacating the interim relief on the ground that the results of the examination

has since been notified and that none of the four applicants has responded to the notification dated 23.12.93. Even in the earlier test, the applicants have not been selected and that the interim relief precludes the respondents from posting the regularly selected candidates against the vacancies for which suitability test was conducted. No orders on M.P. 37/95 of the respondent railway administration have so far been passed. Subsequently, however, M.P. 436/95 from the petitioner for joining as a party has been received which is now under our consideration.

5. We decided to consider the M.P. 436/95 of the petitioner for joining as a party in the first instance because the petitioner has also claimed relief of vacating the interim order which relief has been claimed by the respondent railway administration also. It is just and proper that the claim for joining as party is decided earlier so that in case the petition for joining as party is allowed, we have the benefit of hearing the affected parties as well as the railway administration before deciding on the continuance or otherwise of the interim relief.

6. The applicants have resisted the M.P. 436/95 from the petitioner for joining a party. It is contended that the petition is vexatious. The mere fact that the petitioner being included in the panel does not give him a right to be appointed. The main relief claimed in the O.A is for regularisation of the services of the applicants as Bill Issuer on the basis of their screening only in view of their having continuously worked as Bill Issuers from 1977-79 onwards. The Petitioner's selection and empanelment do not have any nexus with the claims made by the

applicants. Moreover, a similar M.P namely M.P. 93/94 from Arunkumar Jain, one of the persons on the panel was rejected by the Tribunal.

7. We have considered the matter. At the time Arunkumar Jain's petition was rejected, the results of written suitability test had not been published. The claim was made by Arunkumar Jain solely on the basis of a general claim of seniority over the applicants. It was in ~~these~~ ^{the} circumstances, the M.P came to be rejected. However, the nexus between the reliefs claimed by the applicants and between the test held in terms of notification dated 23.12.93 and the results announced by the panel dt.14.12.94 is clear from the fact that the applicants were impelled to file the M.P to stay the examination. In our view therefore, the rejection of M.P.93/94 does not stand in the way of our entertaining the present M.P.

8. The counsel for the petitioner has pointed-out that the question regarding striking-out and adding of parties is covered in Order 1, Rule 10, in particular sub-rule 2 of Code of Civil Procedure, 1908. The same may be reproduced below :

"The Court may at any stage of the proceedings either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out and that the name of any person who ought to have been joined, whether as plaintiff or defendant or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added. "

9. According to him, the petitioner is ^a necessary ~~to be a~~ party because his interests are vitally affected.

He is in the panel and he has not been posted only because of the grant of interim relief. The applicant has asked for additional reliefs in (q) and (r) relating to the written test of 25.6.1994 and the results of the written test. This itself shows the nexus between the original reliefs claimed by the applicant and the test in which he has been empanelled. In this connection, he has also referred to the Full Bench judgment in T.S.Gopi and Ors. Vs. Deputy Collector of Custom & Ors. (Full Bench Judgments ^{Vol 1} of Central Administrative Tribunals (1986-1989) page 341 of Bahri Brothers) where the Full Bench of the Tribunal under the chairmanship of Mr.Justice Amitav Banerji referred to the test laid down by the Hon'ble Supreme Court in Udit Narain Singh v. Board of Revenue (AIR 1973 SC 786) that a necessary party is one without whom no order can be made effectively, and in case necessary party or parties have not been added, an M.P may be filed to implead the necessary parties. The second principle is that all parties who are beneficiaries in the impugned order must be impleaded as in case the said order is set-aside or quashed, the beneficiary will be affected.

10. The learned counsel for the petitioner has also referred to the order of this Tribunal in O.A. 186/95 (A. Paniadimai & Anr. Vs. Union of India & Ors.) in which the panel referred to above was specifically impugned and the M.P 489/95 urging impleadment of Shri.Arunkumar Jain and Shri.Gulab H. Premana , who were on the panel, as necessary parties, was allowed.

11. The counsel for the original applicant however urges that as the O.A is essentially for regularisation in a matter which goes back to 1977-79 and relies on

the ratio of Sankarsan Das v Union of India,
(1991 (17) ATC - 95) according to which no right
accrues to a person merely because he happens to
be on the panel.

11. We have considered the matter in its historical perspective. We note that the claim of the applicant goes back to T.A. 508/87 which was disposed of by this Tribunal by its order dated 28-8-90. In that T.A., respondents were given liberty to hold a written test for the purposes of promotion to the post of Bill Issuer in accordance with the scheme contained in the letter of General Manager dated 16.2.89. The contention of the applicant that the test of 16.2.89 was not held in terms of the directions in T.A. 508/87, that is a matter on merits. Respondents have filed certain annexures which are required to be gone into to consider the validity of the test. The applicant in fact seeks to claim seniority in terms of judgment of Jabalpur Bench of this Tribunal in T.A. 123/86. The fact remains, however, that there is a nexus between the scheme dated 16.2.89 and the notification dt. 23.12.93 and the test conducted in terms of that notification. Without going ⁱⁿ to the merits of the case therefore, we are satisfied that the petitioner in the M.P is a necessary party in the present O.A and his petition to be joined as a party is required to be allowed. Accordingly, we allow M.P. 436/95 and direct the original applicant to amend the Original Application and to give a copy of the amended O.A to the original respondents as well as to the Petitioner who is to be joined as Respondent No. 6. This should be done immediately on receipt of this order. The

original respondent is at liberty to file amended Written Statement forthwith. The new Respondent No. 6 may file his Written Statement within a fortnight of receipt of copy of amended O.A. M.P.37/95 of the (official respondents alongwith the prayer of the petitioner for vacation of the interim relief will be considered on the next date of hearing. Put-up as already directed, on 05/09/1995.)

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

12. The learned counsel for the applicant has contended that this case has facts ^{dis} similar to that of O.A. 38/94 in as much as although there is an M.P for joining as a party, there has been no amendment to the O.A in which the claim of cancellation of the notification holding the test and the declaration of the result is added as additional relief. In our view, considering the test of adding as ^a necessary party to which we have referred to earlier, these technicalities cannot stand in the way of impleadment of the petitioner for joining as a party. We allow the M.P with the directions as are made in the M.P 436/95 in O.A. 38/94 mutatis mutandis. Put-up the case on 05/09/1995 for further hearing.

O.A. 244/94

13. In this O.A., there is no Miscellaneous Petition of any affected party for joining as a party. The question of disposal of any M.P does not arise, therefore. The case, however, stands linked alongwith other cases and may be put-up for orders on 05/09/1995.

M.R.Kolhatkar
(M.R.KOLHATKAR)

MEMBER (A)

B.S.Hegde
(B.S. HEGDE)
MEMBER (J)

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 :

1. 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

already on adhoc promotion, this Tribunal directed that they should be given three chances for appearing in the written test for their regularisation and till then, they should not be reverted.

3. Now, in the review petitions the applicants are again canvassing the same question that they need not appear for the written test and they are entitled to be confirmed or regularised in the post on the basis of their regular service for the past so many years. In our view, no new point is made out. There is no apparent error on record. The Tribunal has considered this point and rejected the same. We cannot sit in appeal over the correctness of the decision of the previous Division Bench. If the applicants are aggrieved by the order of the Tribunal, their remedy is elsewhere and not by way of review petition. Hence, we do not find any merit in the review petitions.

4. In the result, both the review petitions are rejected. No costs.

(D. S. Baveja)
Member (A).

(R. G. Vaidyanatha)
Vice-Chairman.

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dt. 4/1/98
order/Judgement despatched
to Airtel, Assistant (s)
on 12/12/98
3
21/12
O/C Filed on 04/12/98