

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.746/97

Dated this, the 18th day of December, 2001.

Shri A.M.Johnson
(Applicant by Shri G.S.Walia, Advocate)

... Applicant

Versus

UOI & Ors.

...

Respondents

(Respondents by Shri A.L.Kastury, Advocate)

CORAM:

HON'BLE SHRI S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE SHRI S.L.JAIN, MEMBER (J)

- (1) To be referred to the Reporter or not? *No*
- (2) Whether it needs to be circulated to other Benches of the Tribunal? *No*
- (3) Library. *Yes*


(S.R.Adige)
Vice Chairman (A)

ej*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

Original Application No.746/1997

Dated this , the 18 th day of December, 2001.

CORAM: HON'BLE SHRI S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE SHRI S.L.JAIN, MEMBER (J)

1. Shri A.M.Johnson
Working as Sr. T.T.E.
at Churchgate,
Western Railway,
Mumbai 400 020.

2. Shri J.O. Gandhi,
working as Sr.T.C..
at Bombay Central,
Western Railway,
Mumbai 400 008.

3. Raju Babu Singh
Working as Sr. T.T.E.
at Churchgate,
Western Railway,
Mumbai 400 020.

4. Dhruvkumar Singh
working as Sr. T.C..
at Bombay Central
Western Railway
Mumbai 400 008.

C/o G.S.Walia,
Advocate High Court,
Industrial Traders Bldg.
Opp. Mah. Stae Co-op Bank,
Nagindas Master Road,
Fort,
Mumbai 400 023.

.... Applicants

(Applicants by Shri G.S.Walia, Advocate)

vs..

1. Union of India, through
The General Manager,
Western Railway,
Head Quarters Office
Churchgate,
Mumbai 400 020.

2. Divisional Railway Manager,
Mumbai Division,
Western Railway,
Mumbai Central,
Mumbai 400 008.

..2/-

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3. Sr. Divisional Commercial
Manager,
Mumbai Division,
Western Railway,
Mumbai Central,
Mumbai 400 008.

... Respondents

(Respondents by Shri A.L.Kasturey, Advocate)

O R D E R

[Per: S.R.Adige, Vice Chairman (A)]:

The applicant impugnes respondent's letter dated 20.5.1997, (Exh.'A') cancelling the selection process for empanelment as Head T.C./Head T.T.E. -- Rs.1400 -- 2300/- vide letter dated 23.8.1996 (Exh.3) and seeks a direction to respondents to hold interview/viva voce, on the basis of the written test, as per aforesaid letter dated 23.8.1996, and to draw up a panel accordingly with consequential benefits.

2. Heard both sides.

3. Admittedly, a selection process, was initiated to form a panel of employees for promotion to the post of Head T.C. vide notification dated 29.12.1995. The selection process was to consist of written test and interview. Written test was held on 13.4.1996 and 15.6.1996, the result of which were announced vide aforesaid letter dated 23.8.1996 and candidates advised to keep themselves ready for viva voce.

4. As per materials on record after declaration of the written test results, both the trade unions viz. WRU and WRMS represented that the positive action of selection was not required for filling up the aforesaid posts and as there was an element of upgradation of posts in the aforesaid scale of Rs.1400 -- 2300/- these posts were required to be filled up through modified selection procedure, (instead of through

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..3/-

the written test and viva voce) as per Railway ^{Board} Circular dated 27.1.1993 (Exh.1).

5. Accepting this position, respondents by impugned order dated 20.5.1997, cancelled the result of the written test, announced vide letter dated 23.8.1996, and the vacancies have been filled up through modified selection process after scrutinising service records and CRs, vide respondent's order dated 23.5.1997, in terms of Circular dated 27.1.1993.

6. At the outset, we notice that applicant have not challenged the aforesaid order dated 23.5.1997, issued barely 3 days after the impugned letter dated 20.5.1997, by which several persons have been promoted to the Grade of Head T.C. in terms of respondent's circular dated 27.1.1993, ^{have} Nor ~~are~~ the persons, so promoted, been impleaded as parties in the O.A. although they have been functioning on the promoted posts for over 4 1/2 years, and valuable rights have accrued to them.

7. Applicant's counsel has contended that it was not necessary to implead the persons promoted by the aforesaid order dated 23.5.1997, and their non impleadment is not fatal to the O.A. In this connection, reliance is placed on Karnataka High Court judgements dated 12.1.1979 *Vishwanatha N vs. State of Karnataka & Ors* [1979 (3) SLR 670].

8. In *Prabhod Verma vs. State of UP* [AIR 1985 (SC) 167], the Hon'ble Supreme Court has held that a High Court ought not to hear and dispose of a Writ Petition under Article 226 without the persons who would be vitally affected by its judgement being before ^{it} it as respondents, or atleast some of them being before it as respondents in a representative capacity, if their number is

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too large to join them as respondents individually, and, if the Petitioners refused to so join them, the High Court ought to dismiss the Petition for non joinder of necessary parties.

9. Clearly in the present case, the persons who have been promoted by the order dated 23.5.1997, issued barely 3 days after the issue of the impugned order dated 20.5.1997 would be vitally affected if the O.A. was⁴ allowed and the impugned order dated 20.5.1997 set aside. Even if it be assumed that the candidates mentioned in order dated 23.5.1997 are not necessary parties, till such time as the aforesaid order dated 23.5.1997 is also impugned and struck down, mere quashing of the impugned order dated 20.5.1997 would itself not suffice, but as noticed above, the order dated 23.5.1997, has not even been challenged in the present O.A.

10. Coming to the merits of the claims contained in O.A., we note that by Railway Board's directive dated 27.1.1993 (Ex. R.1), that the procedure for the selections were modified,^{7 7} ~~and~~ ~~the~~ such^{that} written test and viva voce were dispensed with, and the vacancies were to be filled on scrutiny of service records and CRs. alone.

11. In this connection, the aforesaid Circular dated 27.1.1993 lays down that the restructuring of the Cadre would be with reference to the sanctioned cadre strength on 1.3.1993, but vacancies arising from 2.3.1993 onwards would be filled by the normal selection procedure. Respondents in their reply have pointed out that it was^{the} resultant vacancies consequent to the restructuring of the sanctioned cadre strength as on 1.3.1993 which were being filled up, and as there was an element of

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upgradation involved, respondents in consultation with the Railway Board filled up the vacancies through modified selection procedure vide order dated 23.5.1997.

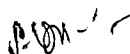
12. These assertions of respondents in their reply have not been denied in any rejoinder filed by applicant and therefore, remained unchallenged.

13. Shri Walia referred to Railway Board's letter dated 18.3.1993, which, while replying to certain queries regarding correct implementation on cadre restructuring on Railway Board's letter dated 27.1.1993, has laid down that in cases percentages have been reduced in lower grade, and no new posts became available as a result of restructuring, but existing vacancies are available as on 1.3.1993, such vacancies should not be filled up, by the modified selection procedure. However, in Railway Board's subsequent letter dated 13.1.1997 (Exh. R.II) they themselves have clarified that modified procedure should be applied for posts in the grade of Rs.1400 -- 2300/- arising out of restructuring, irrespective of whether there is a reduction, in the percentage distribution or not. In this connection, the cadre of ticket checking staff, as cited as an example by the Western Railway has been referred to. There is no doubt that the posts of Head T.C./Head T.T.E. are in the scale of Rs.1400 -Rs.2300/-.

14. In the light of the foregoing discussions, and particularly having regard to the fact that impugned order dated 20.5.1997, has been superseded by respondents by order dated 23.5.1997, by which several persons, have been promoted on the

...6/-

basis of the modified selection procedure, and the aforesaid order dated 23.5.1997 has not been challenged, the O.A. warrants no interference and the same is dismissed. No costs.


(S.L.Jain)
Member (J)


(S.R. Adige)
Vice Chairman (A)

sj*