

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. : 517/98 & 830/98.

Date of Decision: January 28, 1999

Sanjay Kirtikar & 31 Others Petitioner/s in both O.As.

Shri D. V. Gangal, Advocate for the
Petitioner/s.

v/s.

Union Of India & Another, Respondent/s

Shri V. D. Vadhavkar, Advocate for the
Respondent/s

CORAM:

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

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(1) To be referred to the Reporter or not? N^o
(2) Whether it needs to be circulated to N^o
other Benches of the Tribunal?

R. G. Vaidyanatha

(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GULESTAN BLDG. NO. 6, 4TH FLR, PRESCOT RD, FORT,

MUMBAI-400 001.

ORIGINAL APPLICATION NOS; 517/98 & 830/98.

DATED THE 28TH DAY OF JANUARY, 1999.

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

1. Shri Sanjay Kirtikar
2. Shri Sk. Gafur Sk. Rannu
3. Shri Nathumiya Manjur Patel
4. Shri Sk. Kalu Sk. Chand
5. Shri Dilip Vishram Chaudhari
6. Shri Jangulal P. Patil
7. Shri Laxman Ramnath
8. Shri Arun Babulal
9. Shri Raju Dula
10. Shri Sd. Najir Sd. Bashir
11. Shri Kailas Sitaram
12. Shri Arun Hansraj
13. Shri Ab. Habib Ab. Hafij
14. Shri Nathu Chindhu Chaudhari
15. Shri Chandrakant Baburao
16. Shri Subhan Ganga Gavli
17. Shri Nandu Gambir Singh
18. Shri Brijesh Kumar Singh
19. Shri Chandrakant Govind
20. Shri Dilip Narsingh
21. Shri Naim Ali
22. Shri Dilip Laxman
23. Shri Rajendra Ram Singh Thakur
24. Shri Chandrakant Narayan
25. Shri Amir Shah
26. Shri Sk. Babu Sk. Mohomed.
27. Shri Mohan Ramnath
28. Shri Garibdas Amirdas
29. Shri Vasantkumar Suklal
30. Shri Pavitra Rugdhar Gardia

... Applicants in
C/o. Shri Sanjay Kirtirao Kirtikar, OA-517/98.
Behind Nahata Bank,
Near Satara Bridge,
Bhusawal, Dist. Jalgaon.

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1. Shri Bharat Sajannath
2. Shri Pramod Rambhau ... Applicants in
By Advocate Shri D.V.Gangal. OA-830/98.

By Advocate Shri D.V.Gangal.

v/s.

1. The Union of India,
through The General Manager,
Central Railway,
Mumbai CST.
2. The Divisional Railway Manager,
Central Railway,
Bhusawal.

... Applicants in
OA-830/98.

By Advocate Shri V.D. Vadhavkar.

X O R D E R X

¶ Per Shri R.G.Vaidyanatha, Vice Chairman ¶

These are two applications filed by respective applicants for regularisations of their service in the Railways and for other reliefs. Respondents have filed reply opposing both the applications.

I have heard Learned Counsel appearing on both sides.

2. In both the cases, the learned counsel for applicants submitted that he is pressing the ~~OA~~ only for future regularisation of applicants as per Railway Board circular. For the purpose of this relief now ~~pressed~~ before me, the factual position is that the applicants in both the cases had worked as Casual Labourers in the Railways. Their services were terminated sometime in 1991 or 1992. But the applicants case is that since they had worked for some period as casual labours they are entitled to be absorbed as per Railway Boards circular from time to time. They have also relied on the order of this Tribunal in the previous case dated 31/10/95 in OA-801/92. It may be mentioned here that only applicants in OA-517/98 were the applicants in the previous OA. The other two applicants

in OA-830/98 were not parties to the previous OA.

3. The respondents in the reply have not disputed that the applicants had worked in Railways previously. There stand is that the applicants are not on roll as on today or as on the date of application and therefore the applicants are not entitled to be regularised. It is admitted that there are vacancies in the Department and certain steps were taken for direct recruitment and now it has been dropped. It is also stated, that now the new situation has arisen due to enhancement of age of Superanuation from 58years to 60years and therefore the review of vacancies has to be done by department. It is also stated that the review will show as to what would be existing number of vacancies and then department must take a decision to fill up certain posts bearing in mind the economy consideration, etc. The respondents have also stated that the applicants are not entitled to any retrospective regularisation and backwages.

4. In view of the submissions, at the bar, the only question for consideration is whether the applicants in both the OAs are entitled to regularisation as per scheme of Railways or not.

The latest circular dated 9/10/98 is at page-55 of paper-book, which says that Casual Labour borne on Casual labour live registers are entitled to be considered for regularisation depending on the number of days put in by them as casual labourers. Therefore, there cannot be any dispute that casual labours who had worked for certain period are entitled to be regularised as and when vacancy occurs and when they are to be filled up. We need not go into the details since in the previous OA No.801/92, in the order dated 31/10/95, we find that though the application came to be dismissed, the respondents made a statement which has been recorded at the end of para-3

(Signature)

that

"as and when the vacancy arises and when the applicants come within the zone of consideration in the seniority list, their services will be regularised subject to screening and other formalities that has to be carried out before regularisation."

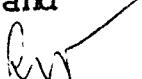
Therefore, the respondents themselves have admitted that the applicants in that case would be regularised subject to availability of vacancies and subject to screening, etc.

5. It may be noted that in previous OA there were 29 applicants but in the present two OAs, we are concerned with 32 persons. That three persons in the present OA were not parties in the previous OA.

As long as the names of the applicants appear in the casual labour live register, ^{they are} entitled to be considered for regularisation as per Railway Board scheme. Hence, we need not attach any importance to casual labour roll as on today which is pressed into service in the reply of the respondents. The only requirement is that the names of the applicants should find a place in the live register of casual labour. I do not want to give exact finding, but leave the matter to respondents to consider the ^{case} of applicants, if their names appear in the live register and according to seniority and the actual period they have worked.

6. Another submission ^{at} the bar is that they must review the actual number of vacancies and then administration must take a decision to fill up vacancies and then only the cases of the applicants can be considered.

On the other hand, the learned counsel for applicant submitted that the advertisement for direct recruitment did show the existence of the vacancies and



now that direct recruitment has been dropped, there is no difficulty to regularise all the applicants in the available vacancies. On this point, the well settled position is that even if there are vacancies a Court or Tribunal cannot give a command to the administration to fill up vacancies. Whether to fill up the vacancies or not is a policy decision of administration. But once they choose to fill up then naturally the right of the applicants comes into play.

7. As per the Railway Board circular, the respondents will have to hold a screening test to find out whether the applicants names appear in the live register and whether they ~~come~~ ^{come} in the zone of consideration.

Another submission ^{at} the bar was that the applicants had worked in the Commercial Department, and hence they should be considered for regularisation in the existing vacancies which are available in the Commercial Department and then if there are surplus number of applicants, then they should be considered for other departments.

8. The learned counsel for respondents submitted that ~~no~~ ^{no} direction can be given for regularisation in a particular department but the department would consider them as per rules. The learned counsel for applicant brought to my notice the Central Railway circular dated 1/10/96 which is at page-24 of the paper book. There also it is mentioned indicating that the candidates should be normally screened and regularised departmental wise. In case the number of candidates are in surplus they should be considered for regularisation in other departments.

9. In the light of the above discussion, I feel

[Signature]

that it is a fit case in which respondents should be directed to consider the case of the applicants for regularisation as per scheme of the Railways.

9. In the result, both the OAs are allowed as follows:-

1. The respondents should consider all the applicants in both the OAs for regularisation as per scheme of the Railways after checking their names in the live register and taking into consideration their seniority and then suitability and eligibility for the purpose of screening as per rules.
2. As and when the vacancies are to be filled up for Group 'D' posts in the Commercial Department, the names of the applicants after screening be considered and in case they are in surplus, for that department, then their names may be considered alongwith others for other departments.
3. In the first instance, the respondents may first undertake the work of screening for Commercial Department and complete it within Four months from the date of receipt of copy of this order. Then the administration may take up the work of filling up vacancies as and when there are vacancies and they decide to fill them.
4. In the circumstances, there will be no orders as to costs.

R.G. Vaidyanatha

(R.G. VAIDYANATHA)
VICE CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

1) REVIEW PETITION NO.13/99
IN
ORIGINAL APPLICATION NO.517/98
2) REVIEW PETITION NO.16/99
IN
ORIGINAL APPLICATION NO.830/98

TUESDAY , THIS THE 23rd DAY OF MARCH, 1999.

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

1. Union of India through
General Manager,
Central Railway,
Mumbai CST.
2. The Divisional Railway Manager,
Central Railway,
Bhusawal.

...Petitioner
(Original Respondents
in both the R.Ps)

V/s.

Shri Sanjay Kirtikar and 29 Ors.
Shri Bharat Sajannath & Anr.

...Respondents.
(Original Applicants
in OAs 517 & 830/98)

: ORDER ON REVIEW PETITION BY CIRCULATION :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

These are two Review Petitions filed by the original respondents in O.A.Nos. 517/98 and 830/98 for reviewing the common order dt. 28.1.1999 passed by me in OA Nos.517/98 and 830/98. I have perused the contents of the R.Ps and the entire case file of the both the O.As.

2. By order dt. 28.1.1999, this Tribunal has given certain directions to the respondents to consider the case of the applicants for screening for the purpose of regularisation and then applicants can be appointed and regularised

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as and when there are vacancies and the administration wants to fill those vacancies.

By way of these R.Ps., the petitioners (original respondents) want this Tribunal to review and recall the order dt. 28.1.1999 and then keep the O.As. for fresh final hearing and disposal. I have gone through the allegations in the R.Ps., but I do not find that any case is made out for reviewing the order dt. 28.1.1999.

3. I have considered the relevant rules and given certain directions. There is no apparent error on record. There is no allegation of discovery of any new material for the purpose of seeking review. No other sufficient grounds are urged for reviewing the order dt. 28.1.1999. Therefore, in my view, no grounds are made out within the meaning of Order 47 Rule 1 CPC to get the order dt. 28.1.1999 reviewed. If the Review Petitioners (original respondents) are aggrieved by the order dt. 28.1.1999, their remedy is elsewhere and not certainly by way of Review Petition. The scope of Review Petition is very limited and should conform to the requirements of Order 47 Rule 1 CPC. Hence, I find no merit in the R.P. The Review Petitioners have also filed M.Ps. 206/99 & 214/99 for condonation of delay in filing the Review Petitions. Since on merits, I find that no case is made out for granting review, the question of condonation of delay does not arise at all.

4. The review petitioners contention is that the Railway Administration has to take policy decision to fill up the post and then only screening will have to be done. In order to avoid further delay, a direction has been given so that the screening can be done and the list of eligible candidates can be prepared. As and when the administration decides to fill up the posts, these screened candidates can be posted there without any further delay. I have also observed in the original order that the names of all the applicants should be checked up in the Live Register of the Railway Administration and then it should be found whether they are eligible for regularisation or not as per the scheme of the Railway Board. Then, the list of eligible candidates among the applicants should be prepared. The question of giving postings

depends upon the decision of the administration to fill up the posts. Therefore, as and when the Railway administration decides to fill up certain posts, then they can make use of the select list and issue orders. Therefore, I do not find any merit in the Review Petition so as to recall the order passed on 28.01.1999.

4. In the result, both R.Ps.13/99 & 16/99 and M.Ps.206/99 & 214/99 filed by the Review Petitioners (original respondents) are rejected by this order on circulation.

R. G. Vaidyanatha
23/3/99
(R.G. VAIDYANATHA)
VICE-CHAIRMAN

B.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

C.P. 27/99 in

ORIGINAL APPLICATION NO:517/98

DATE OF DECISION: 4th feb, 2000

Shri Sanjay Kirtikar and 29 others. Applicant.

Shri D.V. Gangal Advocate for
Applicant.

Versus

Shri Shankaran, General Manager, Central Rly Respondents.
and another.

Shri V.D. Vadhavkar Advocate for
Respondents

CORAM

Hon'ble Shri B.N.Bahadur, Member(A)

Hon'ble Shri S.L.Jain, Member(J)

(1) To be referred to the Reporter or not? *yes*

(2) Whether it needs to be circulated to *no* other Benches of the Tribunal?

(3) Library.

yes

J.L.J.
(S.L. Jain)
Member(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

Copy. 27/99 in
ORIGINAL APPLICATION NO: 517/98

the 4th day of FEBRUARY 2000

CORAM: Hon'ble Shri B.N.Bahadur, Member(A)

Hon'ble Shri S.L.Jain, Member (J)

Sanjay Kirtikar and 29 others

...Applicant.

By Advocate Shri D.V.Gangal.

v/s

Shri Shankaran
General Manager,
Central Railway
Mumbai and another.

...Respondents

By Advocate Shri V.D.Vadhavkar.

O R D E R

{Per Shri S.L.Jain,Member (J) }

This is an application under Rule 4 of Central Administrative Tribunal (Contempt of Courts) Rules 1986 to hold and declare that the respondents have committed contempt and they should be punished accordingly.

The applicants filed the OA 517/98 which was decided by the Mumbai Bench vide common order dated 28.1.1999, alongwith OA 830/98, a review against the same was filed by the respondents which was also rejected. The order passed in the said OA is as under:

1. The respondents should consider all the applicants in both the OAs for regularisation as per scheme of the Railways after checking their names in the live

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Register and taking into consideration their seniority and then suitability and eligibility for for the purpose of screening as per rules.

2. As and when the vacancies are to be filled up for Group 'D' posts in the Commercial Department, the names of the applicants after screening be considered and in case they are in surplus, for their department then their names may be considered alongwith others for other departments.
3. In the first instance , the respondents may first undertake the work of screening for Commercial Department and complete it within Four months from the date of receipt of copy of this order. Then the administration may take up the work of filling up vacancies as and when there are vacancies and they decide to fill them.
4. In the circumstances, there will be no orders as to costs.
3. The applicants alleged that the period of four months as provided in the order has expired in May 1999 but the respondents failed to take any positive step in the direction of screening the applicants. The respondents do not want to implement the order of this Tribunal willfully and intentionally. Hence this petition.

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4. In reply the respondents stated that action to complete the preliminaries required for screening has already been initiated, a rough number of casual labourers in Live Register of all departments has been arrived in, which is around 10,000. It was alleged in reply to the OA that due to increase in age of retirement from 58 to 60 years with effect from May 1998, normal wastage due to superannuation will commence from May 2000, direction have been given to Divisional Commercial Manager to conduct review/need to fill them up bearing in mind economy consideration etc., pursuant to this, the position that emerges is that large number of posts in commercial department have been found to be surplus to the requirement based on quantum of work. So far 194 posts in Group 'D' in commercial department have identified as surplus and sanction to surrender 48 posts have been issued vide letter No. BSL. P. 123 Cadre Comml. part II dated 18.11.1999. A notification was issued on 20.5.1999 to all concerned on Bhusawal Division calling the working particulars of such Casual labours in Proforma prescribed by a target date 28.6.1999 and casual labours of all departments submitted their particulars out of which 1316 are on Live Register amongst which 169 belong to commercial department, amongst which 26 casual labours are the applicants. After scrutiny of all aspects, such as name in Live Register/Supplimentary Live Register, educational qualification, age limit bearing in mind relaxation etc. only 6 applicants are eligible for consideration of screening. For consideration of their seniority, the number of working days have also been worked out.

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5. Casual labour is needed in Engineering Department. Accordingly, call letters were issued to all 26 applicants and out of which six applicants (in OA 517/98) are screened which are as under:

1. Shri Sanjay Krishnarao Kirtikar
2. Shri Arun Babulal Pardseshi
3. Shri Deelip Vishram Chaudhary
4. Shri Nathoo Chindhu Chaudhary
5. Shri Arun Hsansraj Pagare
6. Shri Kailash Sitaram.

have been found eligible. As regards rest, advise has been sent to them in regard to their ineligibility.

6. The applicants filed the rejoinder affidavit and contended that the applicants are within the age limit on the date of their first appointment in the Railway as casual labourer and educationally qualified as required under the Rules then prevailing. The upper age limit is 33 years for General category, 36 years for OBC and 38 years for SC/ST as per letter of Railway Board dated 21.8.98, on the date of appointment for Group 'D' post educational qualification was 'able to read and write in vernacular' which the applicant possessed. They were within the age limit at the time of their termination of service in 1991. Their case for absorption was to be considered in the year 1997. Hence, the case of the applicants is prior to 4.12.1998, the result is that the instructions of Railway Board dated 4.12.1998 relating to 8th standard pass are not applicable. Only six

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applicants were called for screening and the remaining applicants were even not called for screening. The decision is taken administratively and not by screening committee, hence illegal. The instruction with regard to screening and empanelment are contained in Railway Boards letter dated 20.1.1989. The large number of casual labourers in MRCL have been appointed in the Railway Administration without any upper age limit and educational qualification. The fact of ineligibility is not mentioned in reply to the OA, hence such plea cannot be raised at this stage. The figure of 10,000 casual labourers waiting for absorption is false one. There is no excess man power in Commercial Department. Letter dated 18.11.1999 is deliberately prepared to sabotage the order of the Tribunal. Several juniors and unqualified candidates have been absorbed. Hence prayed for dismissal of the objection of the respondents.

7. On the commencement of the arguments the learned counsel for the respondents stated that age limit as per Railway Board circular is relaxed upto 40 years, 43 years and 45 years in case of general candidates, OBC candidates and SC/ST candidates respectively.

8. We have perused copy of letter dated 19.11.1999 rejecting the case of Amir Shah as over age. Shri Pramod Rambhav Bendre's case has been rejected as less educated and over age. We have carefully considered the Screening Committee's valuation and we

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are of the considered opinion that Amir Shah is more than 40 years of age as his date of birth is 1.6.1955. Shri Pramod Rambhau's date of birth is 14.11.1959 and VI standard havae been rightly rejected in screening.

9. The learned counsel for the applicant argued that there was no screening by the Screening Committee but only an administrative decision has been taken. We are not inclined to agree with the submission of the learned counsel for the applicant for the reason that the Committee was nominated the officials in view of the proposal submitted on 21.9.1999, 28.10.1999 and the Committee has screened all the applicants regarding their eligibility and those who were not found eligible were not called for further screening. In our considered view we do not find any fault, error or any illegality in constitution of the Committee and consideration of the applicants in screening.

10. The learned counsel for the applicant argued that when the applicants were recruited the educational qualification was "able to read and write in vernacular". By subsequent letter dated 4.12.1998 a qualification of VIIth standard is prescribed. Therefor the applicants cannot be screened in view of the subsequent qualification prescribed, as the applicants were possesing the requisite qualification when they were recruited which is " able to read and write in vernacular". He further contended that the said point of eligibility regarding exucational qualification was not raised by the respondents in

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the OA, therefore they are de-barred from taking the objection in the C.P. We have carefully perused the order of the Tribunal passed in the OAs and we are of the considered opinion that this was not agitated by any of the parties, the claim to be eligible in view of educational qualification or in-eligible in respect of the same. This is the only reason that the direction in the order are to be effect that taking into consideration their seniority and then suitability and eligibility for the purpose of screening is passed. Had this point been agitated in the earlier proceedings i.e. during the course of the dsecision of the OA a finding must have been recorded that particular applicant is possessing with the educational qualification required for and what is the educational qualification required for. The applicant's contention that educational qualification laid down in view of the order dated 4.12.1998 cannot be pressed for screening. We are of the considered opinion that the said opinion cannot be ^{adjud} agitated in the C.P. If the applicant have any grievance in this respect they are free to agigate the same inaccordance with law.

11. The learned counsel for the applicant has alleged that there is no excess man power in commercial department. We are not inclined to accept the said submission in view of the subsequent pleadings by the respondents.

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12. The applicants allegation that several juniors and non-qualified persons have been absorbed is a vague allegation without any foundation.

13. The contention of the learned counsel for the applicant that letter dated 18.11.1999 is deliberately prepared to sabotage the order of the Tribunal. If the applicant feels so the matter can not be decided in Contempt Petition and he is at liberty to agitate the matter in accordance with law.

14. The number of casual labourers waiting for absorption is not material for decision of the present contempt Petition. If the applicant feels that the respondents told lies they are at liberty to take recourse in accordance with law.

15. As only six applicants were called for screening and remaining applicants were not called for screening we do not find any substance in arriving to the said decision for the reason that they are first screened regarding eligibility and then not called for interview etc.

16. The date of termination of service of the applicants cannot be the criteria for coming to a conclusion that on the said date they were within the age limit. As stated above the age limit is more than what the applicant contended and keeping in view the said age limit eligibility of the applicants is considered.

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17. If the applicants are aggrieved by the decision of the respondents in respect of following the criteria for educational qualification in view of the order dated 4.12.1998, false statement of the respondents and sabotage of the order of the Tribunal in view of the letter dated 18.11.1999 they are at liberty to agitate the matter in accordance with law. On the said counts no wilfull contempt is made out.

18. C.P. 24/95 in OA 254/94 in view of the case of J.S.POarihar V/s Ganpat Duggar and others and V.Kanakarajan V/s General Manager S.E. Railway reported in 1996 SCC (L&S) 1422, JT 1996 (7) SC 517 respectively in which one of us (S.L.Jain) was a party to the order, following the said Apex Court authorities similar view was taken by this Bench. We are of the considered opinion that no willful Contempt has been made out. Hence the ¹⁶ applications are dismissed. Notice issued to the respondents are discharged. No order as to costs.

J.S.Jain
(S.L.Jain)
Member(J)

B.N.Bahadur
(B.N.Bahadur)
Member(A)