

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 331/98 & 368/98

16.10.98
Date of Decision:

V.K.Sharma & Ors.

.. Applicant

Shri Suresh Kumar & Shri M.S.Ramamurthy Advocate for
Applicant

-versus-

Union of India & Ors.

... Respondent(s)

Shri V.S.Masurkar

.. Advocate for
Respondent(s)

CORAM:

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

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

- (1) To be referred to the Reporter or not ? *Y*
(2) Whether it needs to be circulated to *f*
other Benches of the Tribunal ?

D.S. Baweja
(D.S.BAWEJA)
MEMBER (A)

R.G. Vaidyanatha
(R.G.VAIDYANATHA)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NOs. 331/98 & 368/98

Presented this the 16th day of Oct 1998

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri D.S.Baweja, Member (A)

OA.NO.331/98

1. VimalKumar Sharma
2. K.R.Soman
3. A.Adimulam
4. Narayan Shetty
5. Ignatius Fernandes

Bill Issuers in Western
Railway Dining Car Unit,
Bombay Central, Mumbai.

By Advocate Shri Suresh Kumar

... Applicants

V/S.

1. Union of India through
The General Manager (E),
Western Railway,
Churchgate, Bombay.
2. Chief Commercial Manager,
(Catering), Western Railway,
Churchgate, Bombay.
3. Assistant Personnel Officer(C),
Western Railway, Churchgate,
Bombay.

By Advocate Shri V.S.Masurkar

... Respondents

OA.NO. 368/98

1. Venkatesh Udapa
2. P.J.Muthaiya
Bill Issuer,
Refreshment Room, Western Rly.,
Mumbai Central, Mumbai.

By Advocate Shri M.S.Ramamurthy

... Applicants

V/S.

1. Union of India through
The General Manager,
Western Railway, Churchgate,
Mumbai.
2. The Chief Catering Services Manager,
Western Railway, Churchgate,
Mumbai.
3. The Chief Personnel Officer,
Western Railway, Churchgate,
Mumbai.

By Advocate Shri V.S.Masurkar

... Respondents

O R D E R

(Per: Shri D.S.Baweja, Member (A))

Both the OAs. have been heard together and are being disposed of by a common order as the facts are identical and the same question of law is involved in both the OAs.

2. 15 applicants who were working as Bill Issuers in the Catering Department of Western Railway had filed 4 OAs.No. 909/88, 1234/93, 38/94, ^{and} 224/94 seeking regularisation of their promotion as Bill Issuers in Group 'C' while working as Cleaners in Group 'D' without undergoing the process of selection on the plea that they have been working on adhoc basis as Bill Issuers for several years. All the four OAs. were decided by a common order dated 29.10.1997 with the direction that applicants be given three more chances to appear for written tests for their regularisation for the post of Bill Issuer and till then they should not be reverted from the post of Bill Issuer. As per order dated 17.3.1998, the holding of the written suitability test for the 15 posts of Bill Issuer has been notified indicating the names of the candidates eligible to appear in the written test. The applications were earlier called from the eligible staff as per the Notification dated 20.1.1997. The names of the applicants in both the OAs. are not included in the list as per the order dated 17.3.1998. Being aggrieved by the same, the OA.NO.331/98 has been filed by ^{the} 5 applicants on 13.4.1998 and OA.NO. 368/98 by ^{the} 2 applicants on 24.4.1998. The applicants in

OA.NO. 331/98 are covered by the OAs.1234/93 & 38/94 and applicants in OA.NO. 368/98 are covered by OA.No. 224/94 and 909/88.

3. The reliefs sought in both the OAs. are as under :- OA.NO.331/98 :- (a) to direct the respondents that the applicants are required to be considered first for regularisation as per the direction in the order dated 29.10.1997, (b) to direct the respondents to give chance to the applicants to appear in the written test and no vacancy of the post of Bill Issuers could be filled up until and unless the present applicants are given chance to qualify the written test, (c) the respondents be directed to include the names of the applicants in the list of candidates called for the examination on 18.4.1998. OA.NO. 368/98 :- (a) to direct the respondents to allow the applicants to take the written suitability test for the post of Bill Issuers in the supplementary test proposed to be held with reference to the order dated 17.3.1998, (b) to issue directions to the respondents to permit the applicants to take the test for the post of Bill Issuers in preference to any other employees in other categories other than the applicants in terms of order dated 29.10.1997.

4. The main argument of the applicants in both the OAs. is that the respondents cannot conduct any examination for selection to the post of Bill Issuer till the applicants are given chance to appear in the examination in preference ^{per} as the order dated 29.10.1997. In view of this, the action of the respondents in holding of the examination for selection to the post of Bill Issuer as per the impugned order dated 17.3.1998 is illegal, arbitrary and tainted with malice.

5. The respondents have contested both the OAs, through the written reply. The contents of the written reply in both the OAs, are more or less the same. The respondents have submitted that the post of Bill Issuer is a non-selection post and is to be filled through the written suitability test. All the Group 'D' staff of the Catering Department below the grade of Rs.825-1200/2750-4400 having three years of regular service are eligible to apply. The candidates are ^{to be} called for suitability test on 1 : 1 basis based on the seniority among the applicants. It is also further contended that none of the applicants ^{dtd.20.1.97} have applied against the Notification although they were eligible to apply. Respondents have also stated that approximately there are 300 employees in different grades of Rs.825/- and below in the category of Head Waiter, Waiter ^{Assistant cook} and Cleaners who are eligible to apply and therefore the applicants cannot be called for selection in preference to them ignoring the seniority. The respondents have also taken a plea that the applicants have approached the Tribunal without making any representation to the department and therefore both the OAs, are premature.

6. The applicants have filed rejoinder reply in OA.No.331/98. However, no rejoinder reply has been filed in OA.NO.368/98.

7. In OA.NO. 331/98 as per the order dated 13.4.1998, an interim stay order was granted with the direction that the applicants shall be allowed to appear in the written test to be held on 18.4.1998 but the result of the applicants shall be kept in

①

sealed cover and shall not be published till further orders. However, no interim stay was granted in respect of OA.NO. 368/98.

8. Heard the arguments of Shri Suresh Kumar, learned counsel for the applicants in OA.NO.331/98 and Shri M.S.Ramamurthy, learned counsel for the applicants in OA.NO.368/98. Shri V.S.Masurkar argued on behalf of the respondents in both the OAs.

9. As indicated earlier, the applicants in both the OAs. had filed the original applications earlier seeking the relief of regularisation without undergoing the selection process as they had been working on ad hoc basis as Bill Issuers for several years. These OAs. were disposed of as per ^{the} order dated 29.10.1997 with the direction that applicants be given three more chances to appear in written test for regularisation on the post of Bill Issuer and till then they shall be not reverted from the post of Bill Issuer. As per the impugned order dated 17.3.1998, it is noted that the list of the staff eligible to be called for written suitability test for promotion as Bill Issuers has been notified based on the seniority of the candidates who have applied for selection against the Notification issued earlier on 20.1.1997. The names of the applicants are not included in the list of eligible candidates and this has given cause to the applicants to file present OAs. stating that applicants are entitled to be considered for written examination in preference to the ^{other} staff as per the order dated 29.10.1997. The respondents have put forward a defence stating that selection to the post of Bill Issuer is to be done as per the channel of promotion laid down, as per which the post of Bill Issuer is non selection and is to be filled up by seniority-

cum-fitness and all the staff of the catering department in the various categories of Head Waiter, Waiter, Assistant Cook and Cleaners below the grades of Rs.825-1200 with minimum regular service of three years are eligible. It is also stated that since the post is non-selection, the candidates are to be called for written suitability test as per seniority on 1:1 basis. It is also contended that none of the applicants have applied for the selection in pursuance of the Notification dated 20.1.1997 and in any case, the applicants being juniors will not come in the zone of consideration taking into account the number of vacancies to be filled up. The applicants, on the other hand, have contended that the respondents are barred from holding any selection to the post of Bill Issuer till such time the applicants are subjected to written test for regularisation as per the directions contained in the order dated 29.10.1997. After careful consideration of the rival contentions and the direction in the order dated 29.10.1997, we hold the view that the stand taken by the respondents is not tenable. Without going into the issue of validity of the avenue of promotion as laid down for selection to the post of Bill Issuer from the eligible categories, if the contention of the respondents is accepted, then the cleaners who are in the lowest grade, among the eligible categories in the various grades will not have any chance to come into the zone of consideration. In such an event, the order dated 29.10.97 cannot be implemented. On going through the order dated 29.10.1997, we find that the directions given are very specific. The applicants had filed the OAs. seeking relief

②

that they should be considered for regularisation as Bill Issuer without subjecting to the process of selection of written test in view of the fact that they have been working as Bill Issuers for several years. This plea of the applicants had not been accepted. However, the need for regularisation of the applicants in the post of Bill Issuer had been recognised but it was held that the applicants have to go through the process for selection for the same as per the rules laid down. Keeping this in view, the direction has been given in the order dated 29.10.97 to subject the applicants to written examination for regularisation giving them three chances in terms of judgement of the Full Bench in the case of "Jethanand and Ors. Vs. Union of India". This order clearly envisages that the applicants are to be subjected to written test for regularisation on the posts now occupied by them on adhoc basis and not to be considered for regularisation following the process of selection throwing open the vacancies occupied by the applicants as per the avenue of promotion and calling applicants from all the eligible staff. We are, therefore, in agreement with the contention of the applicants that they are required to be subjected to written test in preference to the others and after their regularisation only the selection is to be held to fill up the vacancies if any. It is noted that five applicants in OA.NO.331/98 have been already allowed to appear as per interim order in the written examination which had been held on 18.4.1998 and the results has not been declared.

10. Keeping the above deliberations in view, we are inclined to give a direction in this case for regularisation of the services of the applicants as Bill Issuers, subject to their passing the written examination or written test in three chances as per the direction of this Tribunal in the previous judgement in O.A.NO. 909/88 and connected cases. The order has become final and it is binding on the respondents. We cannot go into the question whether such a direction could have been given by the previous Bench as contended by the learned counsel for the respondents. Since we are giving these directions on the basis of peculiar facts and circumstances of the case and in view of the finality to the previous judgement, we hereby direct that the present order should not be quoted as a precedent in any other case.



11. Keeping in view the above facts, we deem it appropriate to dispose of both the OAs. with the following directions :-

- (a) The applicants in both the OAs. will be subjected to written examination for regularisation as per order dated 29.10.1997 in preference to the other eligible staff as per the avenue of promotion. Since the five applicants have already been subjected to written test as per the interim order in OA.NO.331/98, the other two applicants in OA.NO.368/98 will be subjected to a supplementary written test.
- (b) It is noted that out of the 15 applicants who had filed the earlier OAs., 7 have approached the Tribunal through the present two OAs. In order to avoid multiplicity of litigation, we provide that all the applicants in addition to the 7 applicants in the present two OAs. will be ^{also} subjected to the written test as directed to be held at (a) above.
- (c) No view is expressed with regard to seniority of the applicants and the issue is kept open.
- (d) The written test shall be completed within a period of four months from the date of receipt of the order.
- (e) The interim order dated 13.4.1998 shall stand vacated when ^{the} written test as directed is conducted to declare the result of the 5 applicants along with the others.
- (f) No order as to costs.

(D.S. BAWEJA)

MEMBER (A)

(R.G. VAIDYANATHA)

VICE CHAIRMAN