

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD.

R.P.No.1/91

Date of Judgment 25.7.1991.

in  
O.A.No.608/89.

C.S.Khaja Mohinuddin .. Petitioner/Applicant

Vs.

1. The Chief Operating  
Superintendent,  
South Central Railway,  
Rail Nilayam,  
Secunderabad.

2. The Senior Divisional  
Personnel Officer,  
South Central Railway,  
Guntakal.

.. Respondents/Respondents

3. R.Krishnaiah

4. V.T.Kulasekharan

.. Respondents/Applicants

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Counsel for the Applicant : Shri P.Krishna Reddy

Counsel for the Respondents : Shri N.V.Ramana, SC for Railways

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CORAM:

Hon'ble Shri J.Narasimha Murthy : Member(Judl)

Hon'ble Shri R.Balasubramanian : Member(Admn)

[ Order of the Division Bench delivered by Hon'ble Shri  
R.Balasubramanian, Member(Admn) ]

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This application is filed by Shri C.S.Khaja Mohinuddin  
under Rule 17 of the Central Administrative Tribunal (Procedure)  
Rules, 1987 against the Chief Operating Superintendent, South  
Central Railway, Rail Nilayam, Secunderabad (R1), the Senior  
Divisional Personnel Officer, South Central Railway, Guntakal  
(R2), Shri R.Krishnaiah (R3) and Shri V.T.Kulasekharan (R4).

The applicant has also filed 2 M.As.

(1) M.A.No.51/91. In this petition he seeks permission to file the review petition in O.A.No.608/89. Though he was not a party in O.A.No.608/89, since he is affected he is permitted to file the review petition.

(2) M.A.No.52/91. In this petition he wants the delay of 160 days in filing the review petition to be condoned. He was earlier a beneficiary in O.A.No.521/86. Later, 8 applicants, who were aggrieved with certain actions of the respondents, filed O.A.No.684/90 which was converted into a review petition by an order dated 5.12.90 of this Tribunal. The applicant herein now wants to file a review petition on the same lines as the 8 applicants in O.A.No.684/90 which was converted into a review petition. In its decision dated 17.3.89 in R.A.No.60/88 in T.A.No.47/85 (Nandlal Nichani & others Vs. Union of India) the Full Bench of this Tribunal sitting at Delhi had decided that the Tribunal has the power to condone delays in filing of review applications where sufficient cause is made out to the satisfaction of the Bench. We are satisfied that there is sufficient cause for delay and therefore condone the delay in filing the review application.

2. The applicant in this review petition was also an applicant in O.A.No.521/86. Pursuant to the decision in O.A.No.521/86 the Railway authorities revalidated the select list of 5.9.85 which contained the name of the applicant. He was sent for training and on completion of training when he was awaiting posting he was disappointed to hear from the Railway authorities that pursuant to the

decision in O.A.No.608/89 he could not now get the promotion. He is, therefore, approaching us for a review of the judgment in O.A.No.608/89 which comes in the way of his promotion. His prayer in short is that the order passed in O.A.No.608/89 *should* *not* be applied to him and all orders issued as a consequence of such a direction and adverse to him should be quashed. He has raised several grounds on which he seeks a review. The main ones are covered below:

Ground No.1 The list dated 5.9.85 which contained his name was upheld by a memorandum dated 7.6.89 issued pursuant to the judgment dated 25.1.89 in O.A.No.521/86. He contends that a list upheld <sup>by the competent authority</sup> in the light of the decision in O.A.No.521/86 cannot be overruled by a subsequent decision in O.A.No.608/89. This contention is not correct. In O.A.No.521/86 the order of the Railways cancelling the select list of 5.9.85 containing the name of the applicant was set aside not on the merits of the case but on the ground that such a cancellation was not ordered by the competent authority viz: the Chief Operating Superintendent. The Tribunal therefore held that it would be open to the competent authority (Chief Operating Superintendent to confirm the earlier selection held i.e., panel dated 5.9.85 if he was of the opinion that the selection was properly notified and all eligible candidates had been given due opportunity. On the other hand, if he was of the opinion that the entire selection process should be cancelled and fresh selection held in the manner directed by the proceedings of 6.10.88, he was to do so after duly considering the matter and giving reasons thereof. This order in O.A.No.521/86 required the Chief Operating

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Superintendent to examine the whole question and then decide the issue. The order dated 7.6.89 which was issued by the Divisional Personnel Officer, Guntakal with the authority of the competent authority simply states that in accordance with the directions issued on 25.1.89 by this Tribunal in O.A.No.521/86 it had been decided by the competent authority on 4.5.89 that the panel issued on 5.9.85 containing 14 names including that of the applicant herein should be allowed to stand. In the same order it had also been indicated that the panel which was allowed to stand was only provisional and would be current for a period of one year upto 3.5.90 subject to three conditions one of which was that the panel was subject to the result of the writ petitions and appeals pending in various courts. Thus, the action taken by the respondents in pursuance of the decision in O.A.No.521/86 was subject to other court decisions, like *W.A.608/89*.

Ground No.2 The applicant herein contends that since he was not impleaded in O.A.No.608/89, the orders thereof do not bind him. While admitting O.A.No.608/89, the respondents were directed to give a suitable indication to those <sup>promoted from</sup> ~~in~~ the list of 7.6.89 to enable them to implead themselves as party respondents if they so desired. Somehow this was not done. Even otherwise, when <sup>a whole</sup> ~~an~~ examination or test is held irregular and cancelled, it is not necessary to implead all those affected.

Ground No.3 The applicant points out that the judgment in O.A.No.608/89 had proceeded on the assumption that injustice had been done to non-matriculates and that where only 5 posts were reserved for the non-matriculates, 7 non-matriculates were selected as ASMs. It is also pointed out that the applicants

in O.A.No.608/89 (R3 and R4 in this review petition) are estopped from questioning the selection panel since both of them are matriculates who appeared and failed in the selection. It is not a question of vacancies or the number selected. The impropriety <sup>in</sup> of the selection was that an opportunity to appear for the pre-1.10.84 vacancies was not given to all eligible non-matriculates. The educational requirement indicated in the notification was matric. If some non-matrics had appeared for the examination it was only on their own initiative and not by a design on the part of the respondents. The opportunity denied to the other non-matrics cannot be covered by such contentions as some non-matrics having made it to the select list.

Ground No.4 The applicants herein contend that since they had successfully completed the training the Railway administration is bound to give them posting orders. This contention is also not correct. In the order of 7.6.89 issued before deputing them for training it had been clearly indicated to them that the select list was only provisional subject to the outcome of the cases pending in the court. In this background, a training order is not an appointment order and no right accrues to the applicant.

3. There was a hearing in this Review Petition. The learned counsel for the applicant Shri P.Krishna Reddy pointed out <sup>that</sup> while the decision in O.A.No.608/89 was intended to protect the legitimate interests of non-matrics there never <sup>even</sup> was a murmur from their side. He pointed out that in this entire episode, the non-matrics had <sup>never</sup> ~~not~~ agitated. Yes. We do not find any move

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To

1. The Chief Operating Superintendent  
South Central Railway, Railnilayam, Secunderabad.
2. The Sr. Divisional Personnel Officer,  
South Central Railway, Guntakal, Anantapur Dist.
3. One copy to Mr.P.Krishna Reddy, Advocate, CAT.Hyd.Bench.
4. One copy to Mr.N.V.Ramana, SC for Rlys, CAT.Hyd.Bench.
5. One copy to Hon'ble Mr.J.Narasimha Murty, Member(J)CAT.Hyd.
6. One spare copy.

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from them. The notification for the test required matrices only to respond. Yet, some resourceful non-matrices took a chance and applied and a few of them made it to the select list too. If there were any aggrieved with the conducting of the test it should be those non-matrices who did not apply. They kept quiet. On the other hand, <sup>a matrix</sup> ~~two persons~~ ~~one of them a~~ ~~matrix and the other a graduate~~ (applicants in O.A.No.608/89) complained in <sup>his</sup> ~~the~~ letter dated 15.10.85 to the Chief Vigilance Officer not on this aspect with which <sup>he was</sup> ~~they were~~ not concerned but on some other allegation. It was this point that Shri P.Krishna Reddy repeatedly and forcefully stressed. While on the other grounds raised in the Review Petition, a review is not called for, this point now focussed upon by Shri P.Krishna Reddy cannot be overlooked. The aggrieved persons, if any, had been keeping quiet, perhaps in the smug feeling that they had already got more than their share. Besides, holding a test as directed in the judgment in O.A.No.608/89 at this stage to correct a mistake committed long ago will give rise to a new crop of problems. This, in our reconsideration of the case, is not required.

4. On a careful review in the light of the above, we cancel the order contained in the judgment dated 27.6.90 in O.A.No.608/89. The respondents are directed to cancel all the orders issued as a consequence to the orders contained in the judgment in O.A.No.608/89.

( J.Narasimha Murthy )  
Member(Judl).

( R.Balasubramanian )  
Member(Admn).

Dated 25<sup>th</sup> July 91

Deputy Registrar 30/7/91