

# Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 684 of 1990

Date of Decision :

~~Ex. No.~~

Mr. G. Sreenivasulu and 7 others Petitioner.

Mr. P. Krishna Reddy, Advocate for the  
petitioner (s)

Versus

The Chief Operating Superintendent, S.C. Rly, Secunderabad and 3 others Respondent.

Mr. N.V. Ramana, SC for Railways Advocate for the  
Respondent (s)

CORAM :

THE HON'BLE MR. D. Surya Rao, Member (Judl.)

THE HON'BLE MR. R. Balasubramanian, Member (Admn.)

1. Whether Reporters of local papers may be allowed to see the Judgement ? No
2. To be referred to the Reporter or not ? No
3. Whether their Lordships wish to see the fair copy of the Judgment ? No
4. Whether it needs to be circulated to other Benches of the Tribunal ? No
5. Remarks of Vice Chairman on columns 1, 2, 4  
(To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

HDSR  
M(J)

HRBS  
M(A)

(83)

In THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:  
AT HYDERABAD

ORIGINAL APPLICATION NO.684 of 1990

DATE OF JUDGMENT: 5-12-1990

BETWEEN:

1. Mr. G.Sreenivasulu
2. Mr. G.Shanmugam
3. Mr. G.Rama Murthy Raju
4. Mr. T.R.Chalapathy
5. Mr. P.Venkataramana
6. Mr. P.Varada Rajulu
7. Mr. G.Subrahmanyam
8. Mr. K.Nagaraju .. Applicants

AND

1. The Chief Operating Superintendent,  
South Central Railway,  
Secunderabad.
2. The Senior Divisional Personnel Officer,  
South Central Railway,  
Guntakal, Anantapur District.
3. Mr. R.Krishnaiah, Cabin Man Gr.I,  
South Central Railway,  
Chittoor Railway Station.
4. Mr.V.T.Kulasekharan, Pointsman,  
Guntakal Railway Station,  
Guntakal. .. Respondents

FOR APPLICANTS: Mr. P.Krishna Reddy, Advocate

FOR RESPONDENTS: Mr. N.V.Ramana, SC for Railways

CORAM: Hon'ble Shri D.Surya Rao, Member (Judl.)

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

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JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE  
SHRI D.SURYA RAO, MEMBER (JUDL.)

The applicants herein have filed this application for a declaration that the order passed by this Tribunal in O.A.No.608 of 1989 dated 21.6.1990 is not binding upon them and to set-aside the consequential order issued by the 2nd respondent in Memo No.G/P.535/I/T/Vol.I dated 13.8.1990. The applicants herein who belong to the category of Pointsmen Grade-I had filed O.A.No.521 of 1986 alleging that 10% of the posts of Assistant Station Masters in the grade Rs.330-560 are reserved for promotion from the post of Grade-I Pointsmen/Cabinman/Leverman, that on 1.8.1984 the Railway administration of Guntakal Division called for volunteers to fill up these 10% posts, that certain qualifications were prescribed therein, that the applicants had appeared for the written test after volunteering, that a select list of 21 successful candidates was published, that they were also directed to appear for viva-voce test, that apart from the 21 candidates who had passed the written test one Mr. Muni Jayaram was also called for viva-voce test despite not passing the <sup>written</sup> test and that 14 persons were thereafter found suitable for the posts of Assistant Station Masters and included in the panel provisionally. Their grievance was that subsequently by an order dated 30.6.1984 the Senior Divisional Personnel Officer, Guntakal Division cancelled the panel of Assistant Station Masters earlier published on 5.9.1985. Subsequently, by an order dated 10.11.1986, the Senior Divisional Personnel Officer, Guntakal Division cancelled the entire selection. It was that order dated 10.11.1986 which was questioned as being illegal and without jurisdiction. <sup>in O.A.521/1986. A</sup> After issue of the letter dated 10.11.86,

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the Senior Divisional Personnel Officer further issued a letter dated 14.11.1986 calling for volunteers from Group 'D' staff Class-IV to fill up five posts of Assistant Station Masters. This order was also sought to be questioned in O.A.No.521 of 1986. After considering rival contentions and after perusing the records, the Tribunal by its order dated 25.1.1989 in O.A.No.521 of 1986 held that the impugned orders dated 10.11.86 and 14.11.1986 had been issued pursuant to a direction from the personnel branch of the South Central Railway, Secunderabad dated 6.8.1986. This Tribunal held that there were no orders of <sup>the</sup> competent authority for issue of the order dated 6.8.1986 and consequently the said letter dated 6.8.1986 which was the basis of the impugned orders was set-aside by holding that it would be open to the competent authority either to confirm the earlier selection held and the panel declared by the Divisional Personnel Officer, Guntakal by earlier Memo dated 5.9.1985 if the competent authority is of the opinion that the selection was properly notified and all eligible candidates had been given due opportunity. It was, <sup>also</sup> therefore, directed that if the competent authority was of the opinion that the entire selection process should be cancelled and fresh selections held in the manner directed by the proceedings dated 6.8.1986, he may do so himself duly considering <sup>the</sup> matter and giving reasons therefor. Consequent thereto, the competent authority viz., the Chief Operating Superintendent passed <sup>an</sup> the order dated 4.5.1989 that the panel published earlier dated 5.9.1985 should be allowed to stand. Thus the applicants herein got the benefit of inclusion in the panel of Assistant Station Masters prepared on 5.9.1985. They state that consequent thereto they were deputed for training during the

period 26.2.1990 to 9.8.1990, that they completed the training, that they were informed on 9.8.1990 that they had passed the training course, that they asked for posting orders as Asstt. Station Masters but to their surprise they were issued a memorandum dated 13.8.1990 by the second respondent directing them to report for duty in the lower posts of Pointsmen Gr.I, Levermen Gr.I and Cabinmen Gr.I. They were told that the order was passed in implementation of a judgment of the Tribunal in O.A.No.608 of 1989 dated 21.6.1990<sup>filed</sup> by the respondents 3 and 4 herein. The declaration now sought is that the order in O.A.No.608 of 1989 is not binding on the applicants herein.

2. It is now stated that in O.A.No.608/1989 the following contentions were raised:-

"In the application filed in O.A.No.608 of 1989 it was inter-alia contended that (a) panel which was set-aside was allowed to continue without giving any reasons (b) the proceedings dated 7.6.1989 were issued mechanically without applying their mind (c) instead of 5 vacancies, 7 vacancies were filled with non-matriculates (d) the viva-voce should be conducted only to verify the educational qualifications (e) candidates belonging to other than operating department were allowed to participate in selection and were selected, and (f) the applicants were wrongly omitted from being selected."

It is contended that none of these contentions were upheld and that the Tribunal in its order dated 21.4.1990 did not uphold any of these contentions and that on the other hand the Tribunal allowed the O.A., on the basis of a contention which was never pleaded viz., that the order dated 7.6.1989 confirming the panel dated 5.9.1985 was illegal since non-matriculates were not allowed to appear for the selections as per the

notification dated 1.8.1984. It is contended that even if there was a pleading to this effect, it could not have been entertained as neither of the applicants in O.A.No.608/1989 are non-matriculates, that they had appeared for the written and viva-voce examinations held pursuant to the notification dated 1.8.1984 and as such they are not aggrieved if non-matriculates were not permitted to appear for the examination. Finally, it is contended that the order in O.A.No.608/1989 is not binding on the applicants as they were not parties to the application.

3. We have heard Shri P.Krishna Reddy, learned counsel for the applicants and Shri N.V.Ramana, learned Standing counsel for the Railways on behalf of the respondents at the admission stage of the application. Shri N.V.Ramana who has taken notice on behalf of the respondents opposes the admission of the application as not maintainable. The short question that arises for determination is whether the applicants can file <sup>an R</sup> independent application for a declaration that the order of this Tribunal dated 21.6.1990 in O.A.No.608 of 1989 is not binding upon them or whether they should file a review application and seek review of the said order dated 21.6.1990. This question is covered by the Full Bench decision of the Central Administrative Tribunal, Bangalore Bench reported in 1987(3) SLR 792 (John Lucas and another Vs. Additional Chief Mechanical Engineer, South Central Railways and others). Both Shri Krishna Reddy and N.V.Ramana seek to rely upon this decision.

4. The Full Bench in the first instance held that it is open to a person who is not a party to the earlier proceedings to file an application for review. On the question whether a

person who is not party to an application should file a Original Application or file a Review Application, the Full Bench has held at Paras 5 and 11 as follows:-

"5. In our opinion, if a person is adversely affected by any order of the Tribunal, he is certainly an aggrieved party and the principles of natural justice dictate that such a person cannot be left without a remedy. No order of a court or Tribunal should be allowed to adversely affect the rights of a person who are not parties before it and if they do, such a person should not be left without any remedy and the Tribunal cannot be left powerless to undo the wrong done to him. Such an aggrieved person, in our view, may move the Tribunal on footing that he is bound by the judgment or order and, being aggrieved by the judgment or order may seek a review of that judgment or order as the case may be. The review petition may be entertained and heard after notice to all concerned and the judgment or order may be affirmed or set aside by way of review. In that event, he cannot have a grievance that he was not heard. Otherwise, the only alternative left to him would be to move the Tribunal for redressal of his grievance by way of an original application under Section 19 on the footing that since he was not a party to the earlier application, he is not bound by the judgment therein and his grievance must be adjudged on that footing. But in filing such an application, however, he cannot ask for setting aside the judgment of the Tribunal rendered on the earlier application which is binding and perhaps has become final so far as parties thereto are concerned. So far as the Tribunal is concerned, in considering his grievance would have to certainly take into account the judgment rendered in the earlier case as precedent. It may agree with the view taken in the earlier judgment or it may disagree. But even if it disagrees, it cannot set aside the earlier judgment; the earlier judgment would be final and binding as between the parties thereto. If the latter Bench, while examining the grievance of the applicant, does not find itself in agreement with the view taken in the earlier judgment, the latter Bench would have to refer the matter to a larger Bench and place the record before the Chairman for constituting a larger Bench so that there would be no conflict of opinion among two coordinate Benches. The larger Bench would then have to consider the correctness of the earlier judgment in disposing of this later application. Even then the larger Bench cannot set aside the earlier judgment against which no review petition is filed. It can only overrule the view taken in the earlier judgment and declare the law which would be binding on all the Benches of the Tribunal. This is totally different from saying that a person aggrieved by a judgment of the Tribunal on an earlier application can file a fresh application under Section 19 to set aside the earlier judgment. In our view a final order or judgment of the Tribunal may be set aside only by way of a petition for review of the earlier judgment or by seeking leave to file an appeal by special leave before the Supreme Court and by no other means."

"11. We accordingly hold that a person feeling himself aggrieved by any final judgment or order of the Tribunal is not entitled to file an original application under Section 19 to set aside the earlier judgment of the Tribunal, but may for the redressal of his grievance file a petition for review under clause (f) of sub-section (3) of Section 22 read with sub-section (1) of Section 22 of the Act. If such a petition is filed, the Tribunal will entertain the review petition, consider it and make such orders thereon as it may deem fit in the circumstances of that case."

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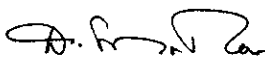
Applying the Full Bench decision, it would follow that the applicants herein have only to file a review application and not an Original Application. However, the question is whether the present application is to be dismissed or whether it can be converted into a review application. As had been ordered in the Full Bench, we are of the opinion that in the interest of justice, the applicants must be permitted to convert the present application into a review application. The Court fee of Rs.50/- paid for the present application shall be refunded since no such fee is payable on a review petition. We would accordingly admit the review application and direct issue of notice to the other contesting respondents. The learned counsel for the applicants, Shri Krishna Reddy submits that he would file a fresh review application to be substituted for the Original Application in the format prescribed for a review application. He is permitted to do so.

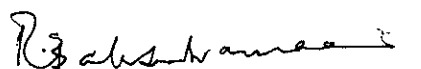
5. Shri Krishna Reddy also submits that the Miscellaneous Application No.886/1990 filed in O.A.No.684/1990 may be treated as Miscellensous Application in the review petition. He is permitted to do so. Shri Krishna Reddy submits that in terms of the prayer in M.A.No.886/1990, further selections, pursuant to the proceedings of the Senior Divisional Personnel Officer, Guntakal dated 2.11.1990 may be stayed. These proceedings have been issued consequent to the allowing of the Original Application No.608 of 1989. We see no reason to stay those selections. The selections may go on but the results will not be announced till the disposal of the review application. Shri Krishna Reddy also prays that this Tribunal, by way of interim orders, may direct the respondents 1 and 2 to give postings to the applicants as Assistant Station Masters immediately. He had made such a prayer in O.A.No.684 of 1990. Since the O.A. has been converted

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into a review application and since the review application has been admitted, it follows that the order dated 21.6.1990 passed in O.A.No.608 of 1989 should not be further implemented insofar as the applicants are concerned. The applicants have been selected by a due process of selection which no doubt is being assailed in O.A.No.608 of 1989. But till the review petition is disposed of, it cannot be assumed that the O.A.No. 608 of 1989 will be allowed. We are of the opinion that the interest of justice would be met if the applicants are given posting orders as Assistant Station Masters since they have completed their training. Any such posting, however, would be subject to the result of the review application in O.A.No.608 of 1989. Post the review application after return of notices <sup>to</sup> from the respondents 3 and 4 and for their counter as well as that the of respondents 1 and 2, after four weeks before the Registrar. After the counters are filed, the review application may be listed in January 1991.

  
(D.SURYA RAO)  
Member(Judl.)

  
(R.BALASUBRAMANIAN)  
Member (Admn.)

Dated: 5<sup>th</sup> December, 1990.

  
Deputy Registrar(Judl)

- To
1. The Chief Operating Superintendent,  
S.C.Rly, Secunderabad.
  2. The Senior Divisional Personnel Officer, S.C.Rly, Guntakal,  
Anantapur Dist.
  3. Mr.R.Krishnaiah, Cabin Man Gr.I, S.C.Rly, Chittoor Rly, Station.
  4. Mr.v.T.Kulasekharan, Pointsman, Guntakal Rly, Station, Guntakal.
  5. One ~~spare~~ copy.- to Mr.F.Krishna Reddy, Advocate  
3-5-899, Himayatnagar, Hyderabad.
  6. One copy to Mr.N.v.Ramana, SC for Rlys, CAT.Hyd.Bench.
  7. One spare copy.
- pvm