

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BE
AT HYDERABAD

O.A. 118 of 1993

Between

M.Rajagopal Rao & Others

... Applicant.

AND

Union of India rep. by
Secretary, Railway Board
and others

... Respondents

REJOINDER TO THE COUNTER FILED BY RESPONDENTS

1. I M.Rajagopal Rao S/o M.Ranganatha Rao, Age 40 years, working as Head Travelling Ticket Examiner (Hyd.) (M.G) Division, South Central Railway, Secunderabad do hereby solemnly affirm and state as under:-

2. I am one of the applicants in O.A 118/93 and I am well acquainted with the facts of the case. I am filing this rejoinder on my behalf and on behalf of the other applicants duly authorised to do so. We have gone through the reply affidavit filed by the Assistant Personnel Officer on behalf of the respondents. It is submitted that the respondents in the O.A. are Secretary Railway Board, New Delhi, Divisional Railway Manager, South Central Railway, Secunderabad and the Chief Personnel Officer, South Central Railway, Secunderabad. It is strange that the Assistant Personnel Officer who is not one of the Official respondents has filed the reply and none of the respondents have cared to file the reply affidavit inspite of having been made respondents in the O.A. The Secretary Railway Board, The Chief Personnel Officer, Secunderabad who are respondents for issuing instructions to the DRM regarding the non-selection the private respondents have not denied the allegations.

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made in the O.A. In the O.A we prayed for the quashing of the Sr. DPOs Hyderabad letter No. Y/P 605/Tkct/Chg/ Selection/HTC/HTTE dated 23/30-9-92 revising our seniority without notice and the Divisional Railway Manager's Hyderabad letter dated 7-12-92 rejecting our representation.

3. We filed a representation on 14-10-1992 to the Divisional Railway Manager against the impugned order wherein we stated that the revision of seniority unilaterally is arbitrary, illegal and un-constitutional and that:-

i) The date of entry into the cadre on regular basis is the criteria for determining the seniority as per rules.

ii) The post of Conductor was an ex-cadre post which was operated by posting senior most TTEs. The post of conductor has not been included in the avenue chart published by Railway Board and the avenue of promotion for the ticket checking staff is given as ticket examiner in grade 1200-2040, HTC/HTTE/Conductors in grade 1400-2300, TTI in grade 1600-2660 and then CTI in grade 2000-3200. Under the note it is clearly mentioned that the post of conductor in grade 1400-2300 even though classified as non-selection should be filled by persons duly selected either for posting as HTC or HTTE.

4. The Railway Board in their letter E (NG) I/ 84/PM-3-15 dated 31-1-86 mentioned that keeping in view the need to man the posts by smart persons as a lot of public contact involving human touch and tact is required for this cadre of staff, it has been decided that the post of conductor in grade 425-640 may be filled in by the staff who have cleared the selection for promotion to the grade of Rs. 425-640 and the same

instructions have also been reiterated by the Chief Personnel Officer vide his letter No. P(C)521/PC dated 20-10-1989.

5. It is now well established that the post of conductor has to be filled by the positive act of selection and only those who have been found successful in the selection are entitled to be posted as conductors/HTCs/HTTEs. Pursuant to the said policy of filling up of the vacancies of the Conductors/HTCs/HTTEs an alert notice was issued on 27-7-89 and a selection was held in which 12 candidates were empanelled and all the applicants were included in the panel.

6. Pursuant to the said empanelment posting orders were issued on 7-1-91 in which it was clearly mentioned in para No. 5 that Serial Numbers 1 to 12 were not empanelled for the post of HTC/HTTE were permitted to continue in grade 1400-2300 purely on ad hoc basis and it was also made clear to them that ad hoc continuance in the grade of 1400-2300 does not confer on them ^{any} ~~in~~ prescriptive right for continuance or seniority. In view of the facts mentioned above it is not understood how our seniority in grade 1400-2300 can be revised without any notice. In the letter dated 23/30-9-92 it is mentioned that "Staff who were holding the post of conductors by suitability test as on 20-10-89 in scale 1400-2300, the date of effect of the revised procedure introducing selection should be merged with cadre of HTC/HTTE for subjecting them for any selection. It is also mentioned that they are deemed to have been qualified ^{for} in the selection".

7. It is respectfully submitted that the private respondents were included in the alert notice dated 26-6-89 for formation of panel of HTTE/HTC for 15 vacancies by selection and in the said alert notice 50 candidates were included. In the written and viva-voce tests that were held all of them have failed and they have not been empanelled. The private respondents at no time objected to the holding of selection and they have appeared in the selection but failed. Having failed, they have no right to be empanelled under the clause of deemed to have been passed. The action of the respondents is highly arbitrary, violative of articles 14 and 16 of the constitution. The letter dated 2-12-92 by the Divisional Railway Manager, Hyderabad does not reflect the various contentions raised by us in our representation. In the counter filed by the respondents APO it is stated that we have not exhausted alternative remedy is factually incorrect.

8. It is submitted that the cadre of conductor guards has been abolished and it is merged with the HTC/HTTE in 1400-2300. The erst-while conductor guards who were working as such were absorbed in their parent cadres from which they were drawn to work as conductor guards. The conductor guards who are working in Vijayawada division were absorbed in the operating branch after subjecting them to selection and training and they were absorbed as station masters/TIs and there was only one candidate Sri M. Appala Swamy who was originally a ticket collector was taken in the ticket checking branch and finally retired as DCS at Secunderabad.

9. The averment made in para 6 of the counter stating "that they are deemed to have become HTC/HTTE is not correct. When selection has been prescribed for

the post and the administration cannot declare failed candidates as having been selected and if becomes a mockery of the selection process. If they wanted to arbitrarily promote them contrary to establishment *panel* rules they should not have been subjected to selection and before selection absorbed them as HTC/HTTE. Having conducted a selection and when the respondents have failed, rehabilitating them in the selection posts is nothing but a clear case of favouritism which attracts the provision of article 16 of the constitution.

10. In para No. 7 it is stated that records are not available regarding absorption of the previous conductor guards in their parent categories. This is nothing but suppression of facts.

11. A copy of the judgment of O.A 294/90 delivered by this Hon'ble Tribunal has been enclosed to the counter. This case relates to 5 applicants who were working as conductors in the South Central Railway, Secunderabad Division. They filed a O.A. challenging the letter dated 8-3-90 of the Divisional Railway Manager wherein they were asked to appear for the selection of the post of HTTE. The Railway Board in its letters dated 31-1-86 and 13-7-87 decided to treat the post of conductor guard in the scale of Rs. 425-640 also as a selection post and the said decision was communicated to the General Managers of Railways.

12. It is submitted that the post of conductor guard was an ex-cadre post previously and staff were posted to work as such from the parent departments and ex-cadre post does not come under the cadre post and as such staff working in the ex-cadre post revert back to the parent cadre on completion of their tenure or on abolition of the post to which they were drafted to work. On reversion to the parent cadre they will not have any right to be counted the period of service rendered in the ex-cadre post. Consequently they cannot claim any regularisation

without being selected as per rules. The applicants who have been empanelled have a vested right over the respondents to be absorbed against the vacancies of HTTE/HTC as per their empanelment. The failed candidates could only be accommodated below them if the administration chooses to waive the condition of selection in respect of them. The action of the respondents in treating them as deemed to have passed is arbitrary and contrary to their own policy regarding selection.

13. The respondents letter clearly states that the private respondents will continue to function as ad hoc conductor guards and they are not entitled for continuance or seniority. It is clear proof that they are not entitled to seniority notwithstanding the fact that the condition for qualifying in the written test/Viva voce for empanelment has been waived in their case. As it is established that conductor guards post ^{or} ex-cadre post, they cannot claim seniority over the applicants simply because they ~~have~~ worked on ad hoc basis and ad hoc service unless followed by regularisation as per rules will not give them seniority.

14. This Hon'ble Tribunal by its order dated 2-4-91 passed the following order "They will continue in the said post till they pass the qualifying test prescribed for HTCs and when they qualify they would join the main stream for promotion to the post of CTI, in other words the applicants should be continued as conductor guards but they will not be eligible for promotion to the post of Chief Ticket Examiners unless they pass the necessary qualification that prescribed for HTCs and get selected. So far as the applicants are concerned the conductor guards post will be treated as if it is ex-cadre post to which they were promoted, ~~but~~ but

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they entitling them ^{to} for further promotions in the panel to the post of CTE unless they qualify in the selection process. Accordingly the following directions are issued:

- (i) The order dated 8-3-90 declaring them as ad-hoc HTTEs as set aside.
- (ii) The applicants will be continued as conductor guards non-selection.
- (iii) They will not be entitled promotion to the post of Chief Travelling Ticket Inspector, unless they qualify in the selection test to the post of CTIs etc.

15. In para No.5 it is stated that CORs have been regularised from the dates they joined as CORs and they have a right to interfere with the applicants who were empanelled later. When the post of CORs are ex-cadre and that post is not cadre post existing the question of their merger in the grade of HTTE from the date of their appointment does not arise. They can continue as conductor guards till such time they get qualified for regularisation in the cadre of HTC/HTTEs. The fact remains that they failed in the examination and were not empanelled. In the letter given to them it was clearly mentioned that they would continue as ad hoc HTTEs and as such the empanelled candidates get a right to seniority and as per the select panel they have to rank senior over the ad-hoc HTTEs, who were regularised as an act of grace by the administration even though they failed. It has to be understood that till such time they are regularised their status is ex-cadre conductor, and they cannot be straightaway absorbed as HTTEs which is a selection post without fulfilling the conditions of the selection.

16. In para 6 it is stated that the conductors are deemed to have become HTC/HTTE from the date they entered as CORs. This averment is most fallacious and does not stand to reason and principle of law. In para 8 it is stated that the CORs have been brought under the purview of a positive act of a selection from 20-10-89 and such of those who were holding the post of COR prior to 20-10-89 have been regularised as such without subjecting them for selection. It is clearly an afterthought to justify the course of the illegal action of the respondents. This stand is most untenable. In para 11 it is stated that even though

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Filed by

G.V. Subba Rao, Advocate.