

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Date of decision: 16th March, 2004

Review Application No.8/2004
(Original Application No.364/2002)

1. Anil Kumar Soni s/o Shri Raghuveer Soni by caste Sunar, r/o C/l, Soni Hospital, Machadi Chowk, Rajgarh, Alwar.
2. Roop Ram Meena s/o Shri Hari Ram Meena by caste Meena, r/o Village Achalpuri, Post Poonkher, Tehsil Alwar, District Alwar.
3. Rajesh Kumar s/o Shri Sita Ram Sharma r/o near Khadi Bhandari Ki Bagichi, Rajgarh, District Alwar.
4. Ram Raj Meena s/o Shri Bhura Ram Meena, by Caste Meena r/o Village and post Bhurthan, Tehsil Passi Via Manota, District Jaipur.
5. Bhawani Singh Gurjar s/o Shri Ram Swaroop Gurjar r/o C/o via post Ghanoli Koyla via Gangapur City, Sawai Madhopur.

.. Applicants

Versus

1. Union of India through Secretary, Ministry of Railways, New Delhi.
2. The Railway Recruitment Board, Ajmer through its Chairman.
3. General Manager, Western Railway,

60

: 2 :

Churchgate, Mumbai.

.. Respondents

Mr. Nand Kishore - counsel for the applicants.

O R D E R

BY CIRCULATION

The original applicants in O.A. No.364/2002 have filed this Review Application for reviewing the order dated 29.01.2004. The review is sought on the ground that the respondents are still operating the panel upto 11.8.2000 as per averments made in the reply affidavit. The second ground taken for reviewing the order is that vide letter dated 24.1.2001 (Ann.A6) 33 new posts were created and out of these posts, 21 posts were meant for direct recruitment. Out of 21 posts 7 posts were filled by transferring the employees from other divisions. Thus, there remain 14 vacancies and as such it was incumbent upon the respondents to offer appointment to the applicants. The applicants have also attached with the Review Application appointment letter dated 21.4.99 (Ann.RA/4) whereby candidates at Sl.Nos. 31, 39, 47 and 50 were given appointment as Ticket Collector. It is further averred that all these candidates were junior to the applicants in the order of merit of Railway Recruitment Board, Ajmer. It is therefore, contended that the the contention of the respondents that no person junior to the applicants has been given

12

: 3 :

appointment, is incorrect. According to the review applicants, the original application is neither barred by time nor the alleged expiry of the panel survives. There are ample vacancies to accommodate and give appointment to the applicants. It is on these grounds that the review applicants have sought review of the order dated 28.01.2004.

2. In order to decide the review application, it is necessary to recapitulate the relevant facts. Pursuant to the advertisement issued for various posts including the post of Ticket Collector which appeared in the Employment News No. 1/96 dated 17.3.96 (Ann.A1), the applicants submitted their applications and they were selected and vide letter dated 22.7.97 they were informed that their applications for appointment has been sent to the General Manager with the recommendation for appointment. It may be stated that indent for 47 posts was placed by the Railway Recruitment Board, Ajmer vide letter dated 11.9.95 for the purpose of recruitment to be made in Fatlam, Kota and Ajmer Divisions. Out of 46 candidates, 9 candidates as per merit were allotted to Ajmer Division. In the meanwhile, the Board, in May 1998, raised the retirement age from 58 years to 60 years, with the result no retirement took place and no vacancy occurred where these candidates could be appointed. The candidates allotted to Ajmer Division could not be appointed to Ajmer Division and returned the

46

RRB papers of the candidates to the Headquarters office informing that there are no vacancies of Ticket Collector in direct recruitment quota on account of retirement age extended from 58 years to 60 years and also on account of instructions issued by the Board for restructuring intake of staff in railway service. Aggrieved by the action of the respondents the review applicants have filed OA and this Tribunal vide order dated 28.1.2004 while relying on the judgment of the Apex Court in the cases of State of Orissa vs. Chandra Sekhar Mishra, 2003 SCC (L&S) 878 and Vinodan T.and ors. vs. University of Calicut and ors. 2002 (2) SC SLJ 98 ~~supra~~ held that the selected candidates do not have any right to appointment even if the vacancies exist. It is for the concerned authority to consider how many appointment should be made. However, selected candidates have the right to compel the authorities not to make appointment travelling outside the list and to make appointment strictly in accordance with the merit list. It was not a case of the applicants that appointment has been made by travelling outside the merit list nor was the case of the applicants that junior persons to them have been given appointment thereby ignoring their claim. On the contrary, the stand of the applicants was that they could not be appointed on account of non-availability of the vacancies and also on account of economy measures imposed. Atmittedly, the requisition was placed before the Railway Recruitment Board for 47 vacancies in the

96

: 5 :

year 1995 and the retirement age of Govt. employees was increased from 58 years to 60 years in the year 1998, as such when the requisition was placed before the Railway Recruitment Board in the year 1995 anticipating vacancies which may fall vacant on account of future retirement have been taken into consideration by the respective divisions, as such the explanation given by the respondents in not making appointment of the applicants to the post of Ticket Collector was well founded.

2.1 Apart from this, the Original Application was also dismissed on account of limitation.

3. According to us, the ground taken by the applicants in the review application for reviewing the order dated 28.1.2004 is wholly misconceived as they are seeking fresh hearing/arguments of the matter on merits, which is not permissible in view of the limited scope on which the review can be entertained. As already stated above, the review is sought on the ground that though the panel has been expired on 2.6.98 still the respondents have made appointment from the same panel on 8.11.2000 whereby persons shown at Sl.No. 7, 16 and 18 have been given appointment letter whereas the persons at Sl.No.17, 21 and 20 though belonging to OBC category were given appointment but they have not joined, as can be seen from letter dated 7.11.2000 (Ann.A12). Even if this contention of

40

the original applications/review applicants is accepted, admittedly, the persons who have been given appointment were senior to the applicants. As such the judgment cannot be said to be wrong on that account, as it has been categorically held in the judgment dated 28.1.04 that "it is not a case of the applicants that appointment has been made by travelling outside the merit list nor is the case of the applicants that junior persons to them have been given appointment thereby ignoring their claim. On the contrary, the stand of the applicants is that they could not be appointed on account of non-availability of the vacancies and also on account of economy measures imposed.....".

3.1 Similarly the contention of the review applicants that vide letter dated 24.1.2001 (Ann.A6) 33 posts of Ticket Collector were created, out of which 21 posts were meant for direct recruitment and 7 persons were appointed by way of transfer from other divisions, thus, 14 posts were still available with the department against which the applicants could have been accommodated, cannot be accepted, inasmuch as, the applicants have applied pursuant to the advertisement issued in 1996 and selection was made on the basis of such advertisement in the year 1997 which cannot be made operative for future vacancies which were created almost after 3 years and it is not legally permissible to make selection on the basis of old panel. Anyhow, this was not the case specifically set up by the

14

applicants in the OA that they should be appointed against the newly created posts. Rather, the case of the applicants in the OA is that the respondents are still making appointment even after the expiry of panel on 2.6.98. As such, the said panel is still in existence. In any case, this cannot form ground for reviewing the order. At the most, the judgment may be wrong on that account and for that purpose the remedy lies elsewhere and not by way of review application.

3.2 The third ground taken by the applicants that persons junior to the applicants have been given appointment as Ticket Collector, as such the stand taken by the respondents that no persons junior to the applicants have been given appointment as Ticket Collector, is factually incorrect and for that purpose the applicants have annexed appointment letter dated 21.4.99 of 4 persons with this Review application as Ann.RA/4. The appointment letter in favour of 4 persons who according to the applicants were shown at Sl.No.31,39,47 and 50 of the select list were issued ~~on 21.4.99~~ on 21.4.99. Admittedly, the OA was filed in 2002, as such it was incumbent upon the applicants to plead this fact in the OA and should have also annexed this appointment letter in the OA. The review applicants have not given any reason as to why this document was not annexed with the OA, as such it is not legally permissible to review the judgment on this account. Even otherwise also, we have perused the appointment letter annexed with

4

this review application. The persons so appointed vide letter dated 21.4.99 belongs to ST/SC categories. The OA has been filed by 5 applications. Out of 5 applicants, applicant Nos. 1, 3 and 5 belong to OBC category. Even as per own showing of the applicants, persons at Sl.Nos. 7, 16 and 18 of the merit list were given appointment on 8.11.2000 whereas persons at Sl.Nos. 17, 21 and 20 though given appointment vide letter dated 7.11.2000 (Ann.A12) had not joined. Admittedly, these persons are higher in merit than applicant Nos. 1, 3 and 5 whose names find mention in the select list Ann.RA/3 attached with the review application at Merit No. 24, 25 and 26. Thus the contention of the review applicants that the statement made by the respondents that no person junior to them has been appointed is factually wrong, cannot be accepted. Similarly, remaining two applicants viz. applicant Nos. 2 and 5 belong to ST category and their names find mention at Merit No.33 and 48 of the select list. The so called persons appointed vide letter dated 21.4.1999 (Ann.RA/4) which, according to the review applicants, were at Sl.No. 31, 39, 47 and 50 of the select list belong to ST/SC categories. Admittedly, out of 4 persons, 3 belong to SC category, as such even if the persons whose names find mention at Sl.No.31, 39, 47 and 50 were junior to the General/ST category were given appointment in the year 1999, that will not afford any cause to the present applicants, inasmuch as, none of the applicants belongs to SC category. Vide Ann.RA/4 only one

person Shri Ram Dayal Meena has been appointed from ST category. It is not the case of the applicants that the person so appointed vide aforesaid letter was below in the select list in ST category than applicant Nos. 2 and 4 whose names find mention at Sl.Nos. 38 and 48 of the merit list. Rather, the material placed on record show that one of the candidates at Sl.No. 31 was given appointment vide letter dated 21.4.99 which in all probabilities must be Shri Ram Dayal Meena who belongs to ST category. If it is so, then the contention of the review applicants that junior persons than the applicant Nos. 2 and 4 have been appointed, cannot be accepted as the name of the person so appointed find mention at Sl.No.31 whereas the name of the applicant Nos. 2 and 4 find mention at Sl.Nos. 38 and 48 respectively. In any case, it was for the applicants to annex this document in the OA so that the matter could have been dealt with specifically and this cannot be looked into at this stage and it will not amount error apparent on the face of record. Further, the appointment was made vide letter dated 21.4.99 whereas the OA was filed in the year 2002. Thus, the appointment made vide Ann.PA/4 was within the knowledge of the applicants and they did not choose to challenge the same. It is not the case of the applicants in the review application that this document was not within their knowledge or the same could not be produced by them when the matter was heard and decided by this Tribunal. Rather, the review

4

applicants have not given any reason why the said document was not annexed with the OA. As such the same cannot be looked into and considered in view of the limited scope on which the review application is maintainable. The respondents have given valid reasons as to why the applicants could not be appointed, as such the action of the respondents cannot be said to be arbitrary and this finding has been specifically recorded in the judgment dated 28.01.2004.

3.3 The another statement made by the review applicants in this application that the OA is neither time barred nor the alleged panel has expired, is also without any substance as the applicants have not shown as to how the OA was not time barred and as to how the panel was still subsisting and under what law the applicants could be adjusted against the vacancies which are created in future. Thus, the contention raised by the review applicants cannot form ground for reviewing the order dated 28.1.2004. The Apex Court in the case of Ajit Kumar Rath vs. State of Orissa, AIP 2000 SC 85 has held as under:-

"The power of review is the same as has been given to a court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on the discovery of new and important matter or evidence which, after the exercise

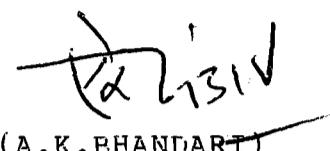
of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reasons. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier that is to say the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. It may be pointed out that the expression 'any other sufficient reason' used in Order 47 Rule 1 means a reason sufficient analogous to those specified in the Rule. Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47 would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment."

Admittedly, the applicants have not made out any case within the four corners of the principle as already stated above.

68

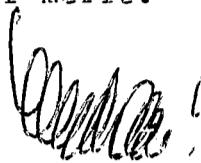
: 12 :

4. Accordingly, the present review application is dismissed being devoid of merit.



(A.K.BHANDARI)

Member (A)



(M.L.CHAUHAN)

Member (J)