

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,
JAIPUR

OA No.393/2001 with MA No.301/2004..

Jaipur, this the 7th day of ^{January} 2005.

CORAM : Hon'ble Mr. M. L. Chauhan, Member (J).
Hon'ble Mr. A. K. Bhandari, Member (A).

1. Vishnu Shanker Sharma S/o Shri Kailash Chand Sharma, aged 34 years.
2. Rudra Dev Sharma S/o Shri Kailash Chand Sharma, aged 31 years.

R/o Mohalla Jati Ki Bagichi, Alwar now-a-days residents of Bandikui, C/o S. K. Jain Advocate, Nanaji Ka Bagh, Fateh Tiba Marg, M. D. Road, Jaipur.

... Applicants.

By : Shri S. K. Singh proxy for
Shri S. K. Jain counsel for applicants.

Vs.

1. Union of India through the General Manager, Western Railway, Church Gate, Mumbai-20.
2. General Manager (E), Western Railway, Church Gate, Mumbai-20.

... Respondents.

By : Shri Tej Prakash Sharma Advocate.

: O R D E R :

Per M. L. Chauhan, Judicial Member.

The applicants two in number have filed this OA thereby praying for the following reliefs :-

"(i) That by an appropriate order or direction, the respondents be ordered to give appointments to the applicants forthwith against the direct recruitment quota with all the consequential benefits of pay, allowances, seniority, etc. and also directed to post them at appropriate Divisions.

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(ii) Any other relief which this Hon'ble Tribunal deems fit may also be granted to the humble applicant, looking to the facts and circumstances of the present case."

2. Briefly stated, the facts of the case are that the Chairman, Railway Recruitment Board, Ajmer, has issued notification/advertisement calling applications for various posts namely, Ticket Collectors, Commercial Clerks, Accounts Clerks and Office Clerks. In these category of posts appointments were to be given on the basis of merit cum preference. The applicants have given their preferences to the post of Ticket Collector. In the advertisement 47 vacancies of Ticket Clerk were mentioned, out of them 11 vacancies were meant for General Category, 9 for SC, 8 for ST and 19 for OBC. The applicants who belongs to General category have applied for the post of Ticket Collectors pursuant to the aforesaid advertisement. They also appeared for the written examination held on 21.07.1996 and were declared successful. The applicants also cleared type test and were also declared successful in Interview and thereafter a panel of successful candidates was prepared on 16.01.1997. The said panel was published vide communication dated 30.05.1997. In the said panel, the name of applicant No.1 appeared at Sl. No.10 whereas the name of applicant No.2 appeared at Sl. No.5.

3. The grievance of the applicants in this OA is that though 17 persons were delcared successful for the post of Ticket Collector, only 11 persons have been given appointment. It is further stated that even appointment till September,2000 has been given but the applicants

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have not been given appointment. It is further stated that the respondents are filling the post meant for direct recruitment by promotion from amongst the various categories of the existing employees of the Railways and this will adversely affect the right of the applicants. Vacancies have been created after the preparation of the panel and the applicants could be given appointment without any difficulty.

4. In the counter, the respondents have come out with the case that no person, lower in merit to that of the applicants has been given appointment. It is further stated that the applicants belonging to General category and no person from that category has been given appointment. It is further stated that the vacancies were notified but because of raising of the retirement age from 58 years to 60 years, the employees did not retire and the applicants could not be given appointment.

5. The applicants have also filed additional affidavit in support of the OA. In the additional affidavit, it has been stated that one person namely Shri Yogendra Kumar Sharma has been given appointment. It is further stated that as per merit list dated 30.5.1997/3.6.1997 (Annexure A/8), the name of applicant No.1 appears at Sl. No.47 and that of applicant No.2 at 42 for the post of Ticket Collectors showing the merit to be No.10 and 5 respectively. Out of the above persons, all the candidates have been granted appointments from Sl. No.49 to 57 and 72. Out of the selection, the respondents have given appointment to one Deepak Kumar

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S/o Gopal Prasad vide the order dated 19.05.1998 (Annexure A/9). At the outset, it may be stated that the name of the persons mentioned by the applicants in Para 3 of the additional affidavit and who were given appointment particularly in the year 1999 belongs to SC/ST categories. Admittedly, the applicants though senior in the panel dated 30.5.1997/3.6.1997 belongs to General category. The respondents have categorically stated that no person junior to the applicant from General category has been given appointment. As such, this contention of the applicants that the persons junior to them were given appointment deserve out right rejection. Similarly the applicants cannot draw any assistance from the order dated 05.11.2001 (Annexure A/11). It may be stated that the case of Shri Yogendra Kumar Sharma is entirely different. In that case the applicant while presenting himself at Ajmer on 15.01.1997 for the purpose of interview and waited there till 5.00pm was not interviewed alongwith the other candidates. Consequently, the applicant filed OA before the Tribunal which was registered as OA No.31/1997 and this Tribunal while disposing of this OA directed respondent No.2 and 3 therein to take interview of the applicant within one month from the date of receipt of a copy of the order and after interview if the applicant is found suitable for the post of Ticket Collector, appointment order may be issued to him for the post of Ticket Clerk. Thus, Shri Yogendra Kumar Sharma was given appointment pursuant to the direction issued by this Tribunal in OA No.31/1997. The applicants in this case are seeking appointment on the basis of the panel dated 30.05.1997, in which the

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name of Shri Yogendra Kumar Sharma could not find mention. As such, no relief can be granted to the applicants, simply because this Tribunal has given direction for appointment to one Shri Yogendra Kumar Sharma entirely on different facts. According to us, the matter is squarely covered by the decision of this Bench in the case of Prakash Chand Saini vs. Union of India & Other decided on 22.04.2004, OA No.355/2002, which judgement is based on two earlier decisions rendered in OA NO.467/2001 Anil Kumar Sharma & Others vs. Union of India & Others and Anil Kumar Soni & Others vs. Union of India & Others in OA No. 364/2002 decided on 28.01.2004 and also the decision rendered by this Tribunal in the case of Amit Sharma vs. Union of India & Others, OA No.33/2003 decided on 26.04.2004.

6. In the case of Anil Kumar Sharma (supra) there were in all nine applicants. The applicants at Sl. Nos. 2 & 3 belong to general category. The name of these applicants find mentioned at Sl. Nos. 1 & 3 respectively in the Panel list whereas the name of the present applicants find mentioned at Sl. No.10 & 5 respectively of the Panel List (Annexure A/8). This Tribunal after considering the matter on merit declined the reliefs to all the applicant including applicant Nos. 2 & 3 who belongs to General category. At this stage, it will be useful to quote Para Nos. 11 and 14 of the judgement, which will have bearing in this case.

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"11. It is thus clear that no person junior to the applicants have been given appointment. The right of the applicants to get appointment could arise only when a person lower in merit was given appointment. Simply because the names of the applicants appeared in the panel of selected candidates, it did not give a right of appointment to the applicants. The legal position in this regard has been propounded in the various decisions of the Supreme Court. See ; Government of Orissa vs. Hariprasad Das & Ors. - AIR 1998 SC 375, JAI Singh Dalas & Ors. vs. State of Haryana & Anr.-1993 SCC (L&S) 846, Rajasthan Public Service Commission vs. Chanan Ram & Anr. 1998 SCC (L&S) 1075 and State of UP vs. D. Dastigiri- 2003 (3) Supreme 605.

12. The respondents have given cogent reasons of not offering appointments to the applicants. It is stated that when the vacancies were notified, the retirement age was 58 years and vacancies were likely to occur due to the retirement of persons, but as the retirement age was raised to 60 there were no retirement for two years and the vacancies were not available. It is not the case where the respondents have denied appointments to the applicants arbitrarily.

12.1 It is evident that anticipated vacancies were taken into consideration while notifying vacancies. It was natural that the respondents considered the vacancies which were likely to occur in the years to come due to retirement of the persons. When the retirement did not take place because of change of the rules of retirement, the respondents cannot be said to have denied appointment to the applicants arbitrarily.

13. For giving appointment to the applicants new vacancies which occurred after issuance of the notification cannot be considered, much less the posts, which may be created on the proposal sent by Ajmer Office. If new posts are created they will have to be notified and the applicants cannot claim appointment on that on the basis of their empanelment in 1996.

14. The life of the panel might have expired on 2.6.98, as stated in the letter dated 25.4.2002 (Ann. A/22) written by the General Manager. However, it is not denied that from the panel the appointments have been given in Ratlam Division till September, 2000. It has, therefore, to be presumed that the life of panel had been extended. Yet the applicants cannot succeed in claiming appointments because it is not established that any person lower in merit than the applicants in the

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panel has been given appointment."

7. Thus in view of the decision rendered by this Tribunal in Anil Kumar Sharma's case (supra), the present applicant who is admittedly low in merit than the applicants Nos.2&3 in that case as per the panel (Annexure A/8) cannot claim that he be given appointment especially when the relief regarding the persons senior to him belonging to general category have been declined. In fact no appointment from General category has been made on account of non availability of post. Further the relief was also declined to the applicant in the case of Amit sharma vs. Union of India & Ors., OA No.33/2003 decided by this Tribunal vide order dated 26.04.2004 who belongs to General category and whose name find mentioned at Sl. No.4 of the Merit list above the applicants in the present case.

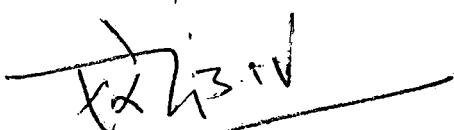
8. That apart, Co-ordinate Bench in another OA No.364/2002 Anil Kumar Soni vs. Union of India & Ors. (supra) has also dismissed the OA filed by the applicants therein on the ground of limitation as well as on merit. In the case of Anil Kumar Soni (supra) there were five applicants. While rejecting the case of the applicants, therein, this Tribunal held that no person junior to the applicants has been given appointment as Ticket Collector and declined to interfere in the matter and thereafter in Para No.4.2 has made the following observations :-

"4.2 The matter is also squarely covered by the decision of the Apex Court in the case of State of Orissa vs. Chandra Sekhar Mishra,

2003 Supreme Court Cases (L&S) 878, and also another decision of the Apex Court in the case of Vinodan T. and Others vs. University of Calicut and Ors. 2002 (2) SC SLJ 98. In the case of Vinodan T. (supra) the Apex Court has held that the selected candidates do not have any right to appointment even after 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 merit list. 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. Admittedly, the requisition was placed before the Railway Recruitment Board for 47 vacancies in the 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 is well founded."

9. Thus, in view of the law laid down by this Tribunal in OA No. 467/2001, Anil Kumar Sharma (supra), OA No. 364/2002, Anil Kumar Soni (supra) as well as in OA No. 33/2003, Amit Sharma (supra), the applicants are not entitled to any relief. Accordingly, the OA is dismissed with no order as to costs.

10. In view of the finding given by this Tribunal on the merit of this case, no order is required to be passed on Miscellaneous Application No. 301/2004 filed for condonation of delay, which shall stands disposed of accordingly.


(A. K. BHANDARI)
MEMBER (A)


(M. L. CHAUHAN)
MEMBER (J)