

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 12-2-04

OA 123/2002

Suresh Chand Sharma, Sr.Goods Guard, Western Railway, Jaipur Division, Jaipur.

... Applicant

Versus

1. Union of India through General Manager, W/Rly, Churchgate, Mumbai.
2. Divisional Rly. Manager, W/Rly, Power House Road, Jaipur.
3. Sr.Divisional Operating Manager, DRM Office, W/Rly, Power House Road, Jaipur.
4. Faten Singh, Guard c/o Station Superintendent, Jaipur.
5. Subhash Chand Sharma, Passenger Guard c/o Station Superintendent, Jaipur.

... Respondents

CORAM:

HON'BLE MR.A.K.BHANDARI, ADMINISTRATIVE MEMBER

HON'BLE MR.BHARAT BHUSHAN, JUDICIAL MEMBER

For the Applicant ... Mr.Vinod Goyal, proxy counsel for
Mr.Virendra Lodha

For Respondents No.1to3 ... Mr.Madhukar Sharma, proxy counsel for
Mr.S.S.Hasan

For Respondent No.5 ... Mr.Nand Kishore

For Respondent No.4 ... None

ORDER

PER HON'BLE MR.A.K.BHANDARI

This OA is filed under Section 19 of the Administrative Tribunals Act, 1985 (for short, the Act) with following prayer :

"i) by an appropriate order or direction the Hon'ble Tribunal may kindly call for the entire record and after examination the same be pleased to declare the impugned panel dated 15.4.99 read with consequential order dated 27.1.2000 (Ann.A/1 & A/2) null and void and be quashed and set aside.

ii) by an appropriate order or direction, the official respondents be directed to prepare a final fresh panel for the purpose of selection on the post of Passenger Train Guard by taking into consideration for the vacancies which were available on the date of publication i.e. it was 28 in number against which treated 32 in general category, 4 for S.C. and 2 for S.T. and by treating the aforesaid figures taken into consideration the respondents be directed to prepare a fresh panel and thereupon make a selection on the post of Passenger Train Guard.

iii) by further appropriate order or direction, if any order



detrimental to the interest of the applicant is passed by the official respondents on the basis of the impugned panel dated 15.4.99 read with consequential order dated 27.1.2000, the same may kindly be taken on record and be quashed and set aside."

2. Facts of the case are that the applicant was initially appointed as Train Clerk through regular mode of recruitment in 1977 and came to be promoted on the post of Goods Guard in May, 1986. Thereafter he was further promoted to the post of Passenger Train Guard on 20.1.99 on ad hoc basis. On 29.5.2001 respondents issued a tentative seniority list of Guards working in Traffic Department of Jaipur Division, which was prepared in compliance of the judgement passed by Apex Court in the case of Ajit Singh-II v. State of Punjab & Ors., decided on 16.9.99, and certain other decisions of this Bench of the Tribunal in different OAs. Through this tentative seniority list objections were invited from all incumbents regarding placement of their seniority. Copy of this is placed at Ann.A/4. The applicant seeks to challenge his own placement in this seniority list below some other Guards who belong to reserve category on the basis of above judgement. He submitted a number of representations to higher authorities in this regard, the last of which is dated 28.3.2000 (Ann.A/6) but did not receive any reply from the respondents.

3. In para-5 of the OA reference to an earlier OA (No.260/2000) has been made, wherein the applicant although has not challenged the selection in question by wrongful determination of vacancies but has preferred claim for continuance on the post of Passenger Guard even though his name did not appear in the promotion list dated 27.1.2000 and direction to the respondents to continue to consider him on the basis of seniority and suitability and not on the basis of interview. This OA was, however, dismissed on 23.5.2001 because the applicant had failed in viva-voce test and the post of Passenger Train Guard being a safety category post is to be filled by way of selection. In the present OA it is contended by the applicant that the aforesaid judgement is of no significance in relation to the controversy raised in the present OA since at no given point of time the applicant had ever assailed the selection in question on the basis of wrongful determination of vacancies of post under reserved category. Therefore, the earlier judgement does not attract bar as res-judicata.

4. Detailed replies have been filed by the respondents, who have raised preliminary objections on the point of Limitation. It is stated that the OA is hopelessly barred by time as per provisions of Section-21 of the Act as the applicant has filed this OA against notification dated

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15.4.99 and panel dated 27.1.2000, on 6.3.2002. It is also averred that the applicant having participated in the examination and failed in the viva has no right to assail the selection which has already been finalised and operated upon. Thirdly, that res-judicata is also attracted on account of earlier OA No.260/2000, decided as dismissed on 23.5.2001. Picking up the arguments of the applicant about instant OA not hit by res-judicata, in para 4.5 of the OA, the respondents have drawn attention to the fact that the applicant has himself mentioned that he had filed OA 260/2000 in which he had not challenged the selection which he should have done. Due to this, now he cannot be permitted to challenge the same.

5. In the reply, respondents have also objected to concealment of certain informations by the applicant while filing the OA. It is stated that the applicant has concealed the information that there was further subsequent selection of Passenger Train Guard in the pay scale of Rs.5000-8000 vide DRM's letter No.ET/1025/34/Vol.I dated 4.12.2001, in which he appeared and passed the selection and his name has been placed at S.No.1 of the panel dated 22.2.2002. Photo-copy of this has been placed with reply as Ann.R-5.1. Hence this OA is likely to be dismissed as the applicant has not approached the Tribunal with clean hands.

6. In parawise reply in addition to the above objections the impugned seniority list has been justified on the basis of government instructions issued pursuant to judgement of the Supreme Court and amendment No.85 of the Constitution of India, directions about which have been issued by the Railway Board vide their Office Order dated 3.3.2002, which stipulates that seniority of SC & ST will be maintained in accordance with their promotion and not on the basis of base grade.

7. No rejoinder has been filed by the applicant even though he was given an opportunity for the same on 24.4.2003 and although the case has been listed eight times thereafter to say anything contrary to what has been stated in the replies of the official respondents and private respondent No.5 (respondent No.4 is not represented in the case).

8. Both the parties were heard at length. The learned counsel for the applicant reiterated the facts enumerated in the OA and harped upon his plea about wrong determination of vacancies in the impugned selection and wrong interpretation of Supreme Court's judgement in Ajit Singh-II v. State of Punjab & ors. but learned counsel for the official respondents as also learned counsel for respondent No.5, who has also submitted a detailed reply, vehemently pleaded that the OA needs to be dismissed on the basis of preliminary objection of limitation, res-judicata and also

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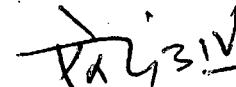
the fact that in the present OA facts about subsequent examination in which the applicant stood selected has been concealed while filing the OA. Learned counsel for respondent No.5 also attracted the law of estoppel due to the fact that objection about seniority has been raised after appearing and failing in the impugned selection notified vide Ann.A/1. Respondents No.5 has also referred to a case law of Supreme Court namely Pratap Singh v. High Court of Judicature, RLR 2001 (1) 577 to strengthen his pleading.

9. On the basis of above pleadings it is in the fitness of things to decide the matter on the basis of limitation without going into merits of the case (Udham Singh-Kamal v. State of Punjab - (1959) 8 SCC 304). The law regarding limitation is very clear and the present OA is barred by limitation because applicant has in para-3 of the OA given wrong declaration that his OA is within limitation prescribed in Section-21 of the Act but the same has been filed more than 18 months after the impugned orders Ann.A/1 & A/2, on 6.3.2002, as also he has not filed Misc. Application for condonation of delay. Had the applicant explained the reasons for delay in filing the OA, we would have considered the same. But in the absence of any sufficient cause, we are unable to condone the inordinate delay in filing the OA. Even contention regarding wrong determination of seniority based on decision in Ajit Singh-II, the respondents have stated that the list prepared on the basis of this case stands superceded by 35th Amendment of the Constitution.

10. In view of well established law regarding limitation discussed in a number of cases of the Supreme Court, it is not considered appropriate to go into merits of the OA. We cannot overlook the other preliminary objections of the respondents based on res-judicata, estoppel and concealment of facts by the applicant which weight with us while deciding the OA as dismissed. No order as to costs.


(BHARAT BHUSHAN)

MEMBER (J)


(A.K. BHANDARI)

MEMBER (A)