

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 12.06.03

1. OA 467/2001

1. Anil Kumar Sharma s/o Shri Bhim Raj Sharma r/o 461/21, Nai Basti, Bhajan Ganj, Ajmer.
2. Vinod Kumar Singh s/o Late Shri Navdeshwar Singh r/o Village & Post Madvar, via Narhi (Chandi), District Bhojpura.
3. Vinod Kumar Parashar s/o Shri Ram Bharose Parashar r/o 5/574, Lodhi Colony, New Delhi.
4. Ajay Gautam s/o Shri B.P.Sharma r/o 17, Shiva Nagar, Chatri Road, Shivpuri, M.P.
5. Jugal Kishore Gehlot s/o Shri Prathu Dayal Gehlot, r/o 637/28, Singer Chavri, Ajmer.
6. Satya Narain Morya s/o Shri Jagdish Narain Morya r/o 605/28, Bhajan Ganj, Tanaji Nagar, Street No.1, Ajmer.
7. Ashok Kumar Verma s/o Shri Vishnu Dayal Singh r/o Village & Post Sadisipur, Police Station, Bihata, District Patna, Bihar.
8. Guru Prasad Tanwar s/o Shri Mool Chand Tanwar r/o Bhojpura Kalan, via Jobner, District Jaipur.
9. Yatish Kumar Parihar s/o Shri Budha Singh r/o C/o Rupendra Kumar, 750/26, Bhagwan Ganj, Ajmer.

... Applicant

Versus

1. Union of India through General Manager, W/Rly, Churchgate, Mumbai.
2. Chairman, Railway Recruitment Board, W/Rly, Ajmer.
3. Divisional Rly Manager, Ratlam Division, W/Rly, Ratlam.
4. Divisional Rly Manager, W/Rly, Jaipur.
5. Divisional Rly Manager, W/Rly, Kota.
6. Divisional Rly Manager, W/Rly, Ajmer.

... Respondents

For the Applicants

... Mr.P.P.Mathur

For Respondents No.1to5

... Mr.S.S.Hasan

For Respondent No.6

... Mr.R.G.Gupta

2. OA 214/2002

Maheesh Kumar Bunkar s/o Shri Sewa Ram Bunkar r/o C/o Fine Auto Electrical Works, Bus Stand, Manoharpur, District Jaipur.

... Applicant

Versus

1. Union of India through General Manager, W/Rly, Churchgate, Mumbai.
2. Chairman, Railway Recruitment Board, W/Rly, Ajmer.
3. Divisional Rly Manager, Ratlam Division, W/Rly, Ratlam.
4. Divisional Rly Manager, W/Rly, Jaipur.
5. Divisional Rly Manager, W/Rly, Kota.
6. Divisional Rly Manager, W/Rly, Ajmer.

... Respondents

For the Applicant ... Mr.P.P.Mathur
For Respondents No.1to3 ... Mr.S.S.Hasan
For Respondent No.5 ... Mr.T.P.Sharma
For Respondent No.6 ... Mr.R.G.Gupta

CORAM:

HON'BLE MR.JUSTICE G.L.GUPTA, VICE CHAIRMAN
HON'BLE MR.R.K.UPADHYAYA, MEMBER (A)

O R D E R

PER MR.JUSTICE G.L.GUPTA

In both the aforesaid OAs identical questions of law and facts are involved. Therefore, they have been heard together and are being disposed of by this common order. The applicants in both the cases are aggrieved by the delay in their appointment on the post of Ticket Collector.

2. The facts of the cases are these. Respondent No.2 i.e. Chairman, Railway Recruitment Board, Ajmer, had issued notification/advertisement No.1/96 calling applications for filling the posts of Ticket Collectors. 47 vacancies of Ticket Collector were disclosed in the advertisement. Out of them, 11 vacancies were meant for the general category, 9 for SC, 8 for ST and 10 for other backward classes. The applicants also applied for the post. They appeared in the written test held on 21.7.96 and were declared successful. Then they were called for main written examination held on 23.12.96 & 24.12.96. The applicants cleared the type test also, which was held on 30.1.97 & 16.1.97. They were also declared successful in the interview and thereafter a panel of successful candidates was prepared on 16.1.97. The said panel was published vide communication dated 30.5.97. In the said panel the name of the applicants of both the cases appeared.

2.1 The grievance of the applicants is that though 17 persons had been declared successful in the communication dated 30.5.97 for the posts of Ticket Collector, yet only 11 persons have been given appointment, even till September, 2000, but the applicants have not been given appointment. It is stated that the respondents are filling the posts meant for direct recruitment by promotion from amongst the various categories of the existing employees of the Railway and this will adversely affect the rights of the applicants. It is further stated that vacancies have been created after the preparation of the panel and the applicants can be given appointment on those vacancies without any difficulty.

3. In the counter the respondents have come out with the case that no person, lower in merit to that of the applicants, has been appointed in the division allotted to the applicants. 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.

4. Respondent No.6 in separate reply has also opposed the claim of the applicants.

5. In the rejoinder, the applicants' stand is that there is short-fall of staff in the Commercial Department in Ajmer Division of the Western Railway and that vide communication dated 11.6.2002 a proposal has been sent to the Headquarters for creation of 67 new posts of Ticket Collector. It is further stated that the respondents have given appointment to 8 candidates only out of the panel and 4 posts are still lying vacant. It is also stated that the applicants may be given appointment anywhere in the Railway if the vacancies notified for a particular division are not available.

6. We have heard the learned counsel for the parties and perused the documents placed on record.

7. The contention of Mr.Mathur, learned counsel for the applicants, was that the panel has been kept alive till 2000 as appointments were made from the said panel even in September, 2000 and, therefore, the applicants, who had higher position in the merit list, had a right of appointment. It was pointed out that the Ajmer Office has written to the Headquarters for creation of the new posts. It was also pointed out at times the Railway had offered appointment to the person in the Railway, different than one, for which he was selected.

8. On the other hand, the learned counsel for the respondents contended that the life of the panel had already expired on 2.6.95 and, therefore, the applicants cannot claim appointment. His further contention was that mere selection did not confer a right for appointment on the applicants. He denied that there were vacancies available during the life time of the panel.

9. We have considered the above contentions. It is now admitted position of the parties that the applicants of both the OAs had participated in the selection process held pursuant to the advertisement No.1/96 and they had been declared successful. The panel (Ann.A/3) shows that the applicants had been selected for the posts of Ticket Collector. Their names find place in the panel at S.No.1,3,8,22,23,27,33,41,42 & 44. Applicants Vinod Kumar Singh, Vinod Kumar Parashar and Ajay Gautam are general category candidates. Applicants Anil Kumar Sharma, Jugal Kishore Gahlot, Satya Narain Morya and Ashok Kumar Verma fall in the OBC category. The remaining applicants i.e. Guru Prasad Tanwar, Yatish Kumar Parihar and Mahesh Kumar Bunkar belong to the Scheduled Caste category.

10. At para-7 of the OA it is averred that many persons, who were lower in merit, have been appointed ignoring the claim of the applicants. During the course of arguments, the learned counsel for the applicants was not in a position to name a single person who was lower in merit than the applicants and was given appointment. At para-5 of the OA the names of the persons who have been selected and given appointment are stated. They are 11 in number. The merit position of all these persons cannot be said to be below the merit position of the applicants.

10.1 It is seen that out of 11 persons none belonged to the general category. Therefore, it cannot be found that any person lower in merit than the applicants No.1,3 & 8, who are general category candidates, has been given appointment ignoring the claim of the applicants Vinod Kumar Singh, Vinod Kumar Parashar and Ajay Gautam.

10.2 So also, from the OBC category candidates, the candidates whose names appeared at merit position No.7 & 14 to 21 have been given appointment. The merit position of the OBC candidates of the applicants starts from S.No.22. They are at Nos.22,23,27 & 33. It is manifest that no person, in the OBC category lower in merit than the applicants, has been given appointment.

10.3 The same is true for the Scheduled Caste candidates. The

appointment has been given to the persons whose merit position was at Nos.13,14,15 & 37. The applicants, who are before us, were placed at merit Nos.41,42 & 44. It is evident that no person lower in merit than the applicants in the SC category has been given appointment.

11. It is thus clear that no person junior to the applicants has 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 v. Haraprasad Das & Ors. - AIR 1993 SC 375, Jai Singh Das & Ors. v. State of Haryana & Anr. - 1993 SCC (L&S) 846, Rajasthan Public Service Commission v. Chanan Ram & Anr. - 1993 SCC (L&S) 1075, and State of U.P. v. D.Dastgiri - 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 the vacancies were likely to occur due to the retirement of persons, but as the retirement age was raised to 60 there were no retirements 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 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 panel has been given appointment.

15. It may be that the highest authority in the Railway offered appointment to a person in the Central Railway that he had been selected for Western Railway [case of Hari Prakash (Ann.A/18)] but that does not give a right of appointment to the applicants when it has not been established that any person lower in merit than that of the applicants has been given appointment.

16. Our attention was drawn to the notification No.1/2002 (Ann.A/17) in which more than 150 vacancies for the post of Ticket Collector have been notified. It was contended that the applicants may be given appointment against those vacancies. This notification was issued by the Railway Recruitment Board for the posts available in Central Railway. The applicants could apply for these posts but they cannot claim appointment on the basis of their empanelment (Ann.A/3).

17. Mr.Mathur has submitted copies of some judgements of this Tribunal. They are :

- a) Nanak Singh v. Union of India & Ors., OA 77/95, decided on 12.3.98 by this Bench,
- b) Ramesh Dayma v. Union of India & Ors., OA 2138/2001, decided on 19.9.2002 by the Principal Bench,
- c) Ramji Lal Meena v. Union of India & Ors., OA 593/2001, decided by this Bench on 2.7.2002, and
- d) S.S.Kalsy v. Union of India & Anr., OA 290/98, decided by this Bench on 2.5.2002.

17.1 We have gone through the decisions. None of the above cases assist the applicants in any manner. The case at (a) related to re-engagement of a casual labour on the ground that persons junior to him had been re-engaged. In the case at (b) it was admitted position that persons lower in merit had been given appointment in another division, which is not the position in the instant case. The case at (c) was decided almost on the admitted position that a vacancy was available in Ajmer Division and if one person had not been transferred to Jaipur Division, the vacancy was available for the applicant therein. The case at (d) was with regard to promotion of a junior person ignoring the claim of the applicant. As

already stated, there is hardly any case which helps the applicants.

18. Keeping in view the legal position that mere empanelment does not confer a right of appointment on a candidate, and that it is not established that any person lower in merit than that of the applicants in the panel (Ann.A/3) has been given appointment and also that vacancies are not available on which the applicants can be appointed, the instant applications are liable to be dismissed.

19. Both the OAs are dismissed with no order as to costs. The MAs filed on 7.7.2003 stand disposed of.

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(R.K.UPADHYAYA)

MEMBER (A)

Sel
(G.L.GUPTA)

VICE CHAIRMAN

TRUE COPY ATTESTED

DR
Section Officer (Judicial)
Central Administrative Tribunal
Jaipur Bench, JAIPUR

DR