

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

DATE OF ORDER: 22.04.2004

OA No. 355/2002

Prakash Chand Saini son of Shri Prabhati Lal Saini, aged about 31 years, resident of Near Patela Hotel, Raj Bazar, Bandikui, District Dausa (Rajasthan).

Applicant

VERSUS

1. The Union of India through General Manager, Western Railway, Churchgate, Mumbai.

2. Chairman, Railway Recruitment Board, Ajmer, Western Railway, Ajmer.

Respondents

Mr. P.P. Mathur, Counsel for the applicant.

Mr. Tej Prakash Sharma, Counsel for the respondents.

CORAM:

Hon'ble Mr. M.L. Chauhan, Member (Judicial)

Hon'ble Mr. A.K. Bhandari, Member (Administrative)

ORDER

PER HON'BLE MR. M.L. CHAUHAN

The applicant has filed this OA thereby praying that the respondents may be directed to appoint the applicant on the post of Ticket Collector. The further prayer of the applicant is that the respondents may be directed to grant arrears of salary and other consequential benefits including pay fixation and seniority from the date the persons <sup>in merit</sup> lower to the applicant have been granted the benefit of appointment.

2. The facts of the case are that respondent No. 2 i.e. Chairman, Railway Recruitment Board, Ajmer, had issued notification/advertisement calling applications for various posts including Ticket Clerk. In these category of posts, appointments were to be given on the basis of merit cum preference. The applicant gave his preference to the post of Ticket Clerk. In the advertisement, <sup>47</sup> ~~47~~ vacancies ~~of~~ 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 applicant who belongs to the OBC category had applied for the post of Ticket Clerk pursuant to the aforesaid advertisement. He also appeared for the written examination held on 21.7.1996 and was declared successful. The applicant also cleared the typed test and was also declared successful in Interview and thereafter a panel of successful candidates was prepared on 16.1.97. The said panel was published vide communication dated 30.5.1997. In the said panel, the name of the applicant appeared at sl. No. 36. The grievance of the applicant is that though 17 persons were declared 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 applicant has not been given appointment. It is further stated that respondents are filling the post of 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 applicant. Vacancies have been created after the preparation of the panel and the applicant can be given appointment from 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 applicant has been 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 applicant could not be given appointment.

4. The applicant has not filed any rejoinder.

5. We have heard the learned counsel for the parties and have gone through the entire material placed on record. At the outset, it is stated that the matter in controversy is <sup>no longer</sup> res-integra and the same has been decided by two different judgements rendered by different Benches of this Tribunal. The first judgement rendered by this Tribunal is dated 12.8.2003 rendered in OA No. 467/2001 Anil Kumar Shama & Others vs. Union of India & Others and the second judgement is Anil Kumar Soni & Others vs. Union of India & Others in OA No. 364/2002 decided on 28.1.2004.

6. In the case of Anil Kumar Shama (Supra), there were in all nine applicants. The applicants at sl. nos. 1, 5 and 6 belong to OBC category. The name of these applicants find mentioned at sl. nos. 23, 22 and 27 respectively in the Panel list whereas the name of the present applicant find mentioned at sl. no. 36 of the Panel list (Annexure A/2). This Tribunal after considering the <sup>matter</sup> on merit declined the reliefs to all the applicant including applicants nos. 1, 5 and 6 who belong to OBC category. At this stage, it will be useful to quote Paras nos. 11 to 14 of the judgement, which will have bearing in this case.

"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 1998 SC 375, JAI Singh Dalas & Ors vs. State of Haryana & Anr. - 1993 SCC (L&S) 846, Rajasthan Public Service Commission v. Chanan Ram & Anr. 1998 SCC (L&S) 1075 and State of UP vs. D. Dastgiri - 2003 (3) Supreme 605

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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 when 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/1) 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 appointment because it is not established that any person lower in merit than the applicants in the panel has been given appointment."

Thus in view of the decision rendered by this Tribunal in Anil Kumar Sharma (supra), the present applicant who is admittedly low in merit than the applicants nos. 1, 5 and 6 as per the Panel (Annexure A/2) cannot claim that he be given appointment especially when the relief regarding the persons senior to him belonging to OBC have been declined.

7. That apart, Co-ordinate Bench in another OA No. 364/2002 Anil Kumar Soni vs. Union of India & Others (Supra) has also dismissed the OA filed ~~xxx~~ by the applicants therein on the ground of limitation as well as <sup>on</sup> merit. In the case Anil Kumar


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Soni (Supra), there were five applicants. The applicants nos. 1 and 5 belong to OBC category to which the present applicant belongs. The name of the applicant no. 1 find mentioned at sl. No. 24 of the Panel list whereas the name of the applicant No. 5 find mentioned at sl. No. 26. 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 <sup>with</sup> 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.

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

  
(A.K. BHANDARI)  
MEMBER (A)

  
(M.L. CHAUHAN)  
MEMBER (J)