

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

R.A. No.25 of 2003
IN
O.A. No.214 of 2002

Jaipur, this the 3rd day of November 2003

HON'BLE SHRI JUSTICE G.L. GUPTA, VICE CHAIRMAN
HON'BLE SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER

Maheesh Kumar Bunkar, aged 29 years,
son of Shri Sewa Ram Bunkar, resident of
C/o Fine Auto Electrical Works, Bus Stand,
Manoharpur, District - Jaipur-303004.Applicant

(By Advocate : Shri P.P. Mathur)

Versus

1. The Union of India through General Manager,
Western Railway, Churrrghgate,
Mumbai.
2. Chairman, Railway Recruitment Board,
Ajmer, Western Railway, Ajmer.
3. The Divisional Railway Manager,
Ratlam Division, Western Railway,
Ratlam.
4. The Divisional Railway Manager,
Western Railway,
Jaipur.
5. The Divisional Railway Manager,
Western Railway,
Kota.
6. The Divisional Railway Manager,
Western Railway,
Ajmer.Respondents

ORDER (BY CIRCULATION)

SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER :-

This Review Application has been filed by the
review applicant seeking review of the order dated
12.08.2003 in OA No.214/2002.

2. The applicant - Maheesh Kumar Bunkar had filed
OA 214/2002 seeking a direction to the respondents to
appoint the applicant on the post of Ticket Collector.

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The OA 214/2002 was disposed of by a common order along with OA 467/2001 on 12.08.2003. However, it is not known whether any of the nine applicants in other connected Original Application bearing OA 467/2001 have filed any Review Application against the common order dated 12.08.2003. However, the present Review Application is disposed of by this order.

3. In the OA, the grievance of the applicant was that though 17 persons had been declared successful as per communication dated 30.5.1997 for the post of Ticket Collector, only 11 persons had been given appointments till September, 2000. It was also claimed in the OA that vacancies were created after the preparation of the panel and the applicant could be appointed on those vacancies. Respondents had opposed the prayer of the applicants in those OAs and had stated that no persons junior in merit had been appointed in the division in which the applicant had sought to be appointed.

4. After hearing the arguments of both the sides, it was held by the Tribunal in the OA that no persons junior to the applicant had been appointed in the division concerned. Therefore, right of the applicant to get appointment can arise only when a person lower in merit was given appointment. It was also observed that the retirement age was raised by the Govt. from 58 years to 60 years. Therefore, sufficient number of vacancies were not available at the relevant time.

Umesh

This Tribunal further held that for giving appointment to the applicants in those OAs, new vacancies which occurred after issuance of the notification cannot be considered much less the post which may be created on the proposal sent by the Ajmer Office. After considering the factual and legal submissions of the parties, the OAs were held liable to be dismissed.

5. By this Review Application, mostly the facts in OA 467/2001, which was disposed of by the common order of 12.8.2003, have been stated. Basis of filing of this Review Application is stated to be that "certain facts, which were not considered by the Hon'ble Tribunal and also certain new facts have come to the knowledge of the applicants, which were not earlier in their knowledge and which are material to the merit of the case".

6. The first ground taken in the Review Application is that in OA 31/1987 filed by one Shri Yogendra Kumar Sharma, it was not pleaded by the respondents that the panel had expired. Jaipur Bench of this Tribunal in OA No.31/1987 by order dated 1.8.2000 (Annexure RA/2) had directed the respondents to "take interview of the applicant within one month from the date of receipt of a copy of this 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 Collector.". It is stated by the applicant in this Review Application that Yogender

Yogendra

Kumar Sharma could not be appointed. So these facts remained to be considered by the Bench.

7. Second ground taken by the applicant is that the respondents have not denied that against twelve existing vacancies, only eight candidates were given appointments whereas four posts were lying vacant. This aspect has not been considered by the Tribunal.

8. Other grounds taken by the review applicant include the following:-

(a) The contents of para 9 of the OA regarding assurance by higher authorities have not been taken into account by the Tribunal;

(b) Railway Board's circular provides that denial of appointment to the candidate in panel on the plea of revision in the vacancies is highly undesirable;

(c) All the vacancies were in Western Railway as per advertisement but this aspect has not been considered by the Tribunal;

(d) Some persons lower in merit have been given appointment in Bikaner Division whereas the applicant has been denied appointment. This Tribunal had wrongly relied on the facts that the panel had

C. N. Bagai

expired on 2.3.1998 as some persons were also appointed in September 2000; and

(e) Persons from other divisions were transferred in the division where the applicant could have been granted appointment. This resulted in reducing the vacancy position and this aspect has been ignored by the Tribunal.

9. We have gone through this Review Application carefully. We have also perused the materials available on record of OA as well as the Review Application. At the outset, it is seen that the applicant by this Review Application is making efforts as if he is re-arguing the case. The Hon'ble Supreme Court in the case of Subash Vs. State of Maharashtra and another, AIR 2002 SC 2637 have held that the scope of review under Section 22(3)(f) of the Administrative Tribunals Act, 1985 is limited to only plain and apparent errors and mistakes. It is not permissible to proceed to re-examine in a Review Application as if in an Original Application before the Tribunal.

10. Any contention, which was raised in the Original Application or at the time of arguments, if not decided in favour of the applicant is deemed to have been decided against him and if the applicant was not happy with the order of the Tribunal, he should have taken recourse to the legal remedy available to him and not by the present review application. May be

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that some decision given for not accepting the prayer of the applicant in the OA were erroneous as per the applicant. Even if any such erroneous order was passed, no review against such erroneous orders can be filed in view of the decision of the Apex Court in the case of Meera Bhanja Vs. Nirmala Kumari Choudhury (AIR 1995 SC 455). Besides most of the grounds raised for review have already been discussed in the order dated 12.8.2003. The other grounds are merely an attempt to re-argue the Original Application.

11. Before parting, it may be reiterated that even though certain grounds and facts might have been contained in the Original Application but if they were not argued, the same cannot be made the basis for review of the order. Therefore, we do not find any justification to interfere with the order of this Tribunal dated 12.8.2003. The present Review Application is, therefore, rejected at the circulation stage.

12. The applicant has also filed a misc. application bearing MA No.411/2003 seeking condonation of delay in filing the Review Application. This Review Application has been filed on 30.9.2003. The applicant has stated in the column against "Limitation" that the present review application is under the limitation period. However, in the misc. application for condonation of delay, a plea has been taken by the review applicant that "the applicant

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resides in a remote village and has to go outside for earning his livelihood, it took time in informing him about passing of the judgment and filing of the review application". However, no where, it has been mentioned as to on what date the order of this Tribunal was received and on what date the order of this Tribunal was communicated to the review applicant. It is also not mentioned whether the applicant was not available during that period. If the review application has been filed after the period of limitation and we do not find that the delay is on account of any fair and sufficient reasons, therefore, the review application is deserves to be dismissed on the ground of limitation itself. However, on merits also, we have rejected the review application.

13. In the result, this review application is rejected at the circulation stage both on the ground of lacking merits and having been filed beyond the period of limitation.

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(R.K. UPADHYAYA)
ADMINISTRATIVE MEMBER

OmS
(G.L. GUPTA)
VICE CHAIRMAN
3/11/03

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