

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of Decision : 26.04.2004

Original Application No.33/2003.

Amit Sharma son of Shri Naresh Chand Sharma, aged around 29 years, Resident of 302/24, Neti Niwas, Chand Bawdi, Keshar Gang, Ajmer, Rajasthan.

... Applicant.

v e r s u s

1. The Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Chairman, Railway Recruitment Board, Ajmer, Western
3. Chairman, Railway Board, Rail Bhawan, New Delhi.

... Respondents.

Mr. P. P. Mathur counsel for the applicant.
Mr. S. S. Hassan counsel for the respondents.

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Hon'ble Mr. M. L. Chauhan, Judicial Member.
Hon'ble Mr. A. K. Bhandari, Administrative Member.

: O R D E R (O R A L) :

The applicant has filed this Original Application 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 lower in merit 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 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 applicant who belongs to the General category had applied for the post of Ticket Clerk pursuant to the aforesaid advertisement. He also appeared for the written examination held on 21.07.1996 and was declared successful. The applicant also cleared the type test and was 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 the applicant appeared at Sl. No.4. 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 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 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 applicant could not be given appointment.

4. The applicant has filed rejoinder. In the rejoinder, it has been stated that one person namely Shri Yogendra Kumar Sharma has been given appointment vide Annexure A-8. It is further stated that the persons whose names find mention at Sl. NO.12, 31, 49, 47 & 52 in the panel dated 30.05.1997 were given appointment in the year 1999. At the outset, it may be

stated that the names of the persons mentioned by the applicant in Para 1 of the rejoinder and who were given appointment particularly in the year 1999 belongs to SC/ST categories. Admittedly, the applicant though senior in the panel dated 30.05.1997 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 applicant that the persons junior to him were given appointment deserve out right rejection. Similarly the applicant cannot draw any assistance from Annexure A-8 order dated 05.11.2001. 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 applicant in this case is seeking appointment on the basis of the panel dated 30.05.1997 (Annexure A-2) in which the name of Shri Yogendra Kumar Sharma could not find mention. As such no relief can be granted to the applicant, 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

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OA NO. 364/2002 decided on 28.01.2004.

5. 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 applicant find mentioned at Sl. No. 4 of the Panel list (Annexure A/2). This Tribunal after considering the matter on merit declined the reliefs to all the applicant including applicant Nos. 2 & 3 who belong to General category. At this stage, it will be useful to quote Paas 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 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. Dastgiri- 2003 (3) Supreme 605.

12. The respondents have given cogent reasons of not offering appointments to the applicants. It is sated 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

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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 panel has been given appointment.

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/2) 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.

6. 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:-


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"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."

7. Thus, in view of the law laid down by this Tribunal in OA NO.467/2001, Anil Kumar Sharma (supra) as well in OA Nos. 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)