

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

27

ORDER SHEET

ORDERS OF THE TRIBUNAL

30.09.2011

OA No. 266/2007

Mr. Nand Kishore, Counsel for applicant.
Mr. Anupam Agarwal, Counsel for respondents.

Learned counsel for the respondents has placed a copy of the judgment of Jabalpur Bench of the Tribunal, which has been upheld by the Hon'ble High Court. The copy of the said judgment has also been provided to the learned counsel for the applicant, who wants to study the same.

Put for hearing on 18.10.2011.

IR to continue till the next date of hearing.

Anil Kumar

(Anil Kumar)
Member (A)

K.S. Rathore

(Justice K.S.Rathore)
Member (J)

ahq

18/10/2011 [OA No. 266/07]

Mr. Nand Kishore, Counsel for applicant.
Mr. Anupam Agarwal, Counsel for respondents.

Heard.

The O.A. is disposed of by a separate order on the separate sheets for the reasons recorded therein.

Anil Kumar
[Anil Kumar]
Member (A)

K.S. Rathore
[Justice K.S.Rathore]
Member (J)

[Signature]

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 18th day of October, 2011

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

OA No. 266/2007

1. Om Prakash Valecha s/o Shri Kishan Chand, working as Head T.T.E., North Western Railway, Ajmer r/o 22/108, Nawab Ka Bera, Thathera Chowk, Ajmer.
2. Kapil Muni Dadhich s/o Shri Ganpat Dadhich, working as Head T.T.E., North Western Railway, Ajmer r/o 147, B.K.Kail Nagar, Ajmer.
3. Vivek Kulshrestha s/o Shri P.K.Kulshrestha, Head T.T.E. North Western Railway, Ajmer r/o 672M/28, Fifth Street Bihari Garh, Ajmer.
4. Manohar Dewani s/o Late Shri Laxman Das working as Head T.T.E., North Western Railway, r/o 22/172, Diggi Chowk, Chowk, Ajmer.

... Applicants

(By Advocate : Shri Nand Kishore)

Versus

1. Union of India through General Manager,
North Western Railway,
Hasanpura Road, Jaipur.
2. Divisional Railway Manager,
North Western Railway, Ajmer.

... Respondents

(By Advocate : Shri Anupam Agarwal)

OA No. 268/2007

1. Om Prakash Valecha s/o Shri Kishan Chand, working as Head T.T.E., North Western Railway, Ajmer r/o 22/108, Nawab Ka Bera, Thathera Chowk, Ajmer.
2. Kapil Muni Dadhich s/o Shri Ganpat Dadhich, working as Head T.T.E., North Western Railway, Ajmer r/o 147, B.K.Kail Nagar, Ajmer.
3. Vivek Kulshrestha s/o Shri P.K.Kulshrestha Head T.T.E. North Western Railway, Ajmer r/o 672M/28, Fifth Street Bihari Garh, Ajmer.
4. Manohar Dewani s/o Late Shri Laxman Das working as Head T.T.E., North Western Railway, r/o 22/172, Diggi Chowk, Chowk, Ajmer.

... Applicants

(By Advocate : Shri Nand Kishore)

Versus

1. Union of India
through General Manager,
North Western Railway,
Hasanpura Road, Jaipur.
2. Divisional Railway Manager,
North Western Railway,
Ajmer.

... Respondents

(By Advocate : Shri Anupam Agarwal)

ORDER (ORAL)

Both the OAs involving similar question of facts and law are being decided by this common order.



2. Brief facts of the case are that the applicants were appointed in the Railways after due selection by the Railway Recruitment Board, Ajmer in the year 1988 and posted in Ratlam Division and thereafter they were promoted to Traveling Ticket Examiner (T.T.E) and further to Head T.T.E. in the year 1994.

3. Vide order dated 10.6.2003, the applicants were transferred from Ratlam Division to Ajmer Division alongwith posts and they were posted in Ajmer Division on 17.6.2003. Thereafter, the respondents published seniority list on 30.3.2004 in which name of the applicants appear at Sl.No. 48, 49, 50 and 51.

4. The controversy arose when another list was published on 17.4.2007 (Ann.A/1) wherein names of the applicants do not find place. Therefore on 23.4.2007 (Ann.A/9), the applicants represented against the action taken by the respondents. Since no decision has been taken on the representation filed by the applicants, the applicants preferred the aforesaid OAs claiming that the respondents letter 17.4.2007 (Ann.A/1 in OA No.266/2007) and letter dated 19.6.2007 (Ann.A/1 in OA No.268/2007) be declared invalid, arbitrary and null and void. Further prayed that respondents may be directed to include their names in the suitability list-cum-selection as was notified vide their letter dated 13.4.2007



and they may be permitted to appear in the suitability test for preparing the select list and may be further promoted in the scale of Rs. 5500-9000 on the basis of their seniority. The applicants also prayed that service record and seniority list issued by the respondents vide letter dated 30.3.2004 may not be disturbed and same is required to be maintained.

5. The main challenge to the impugned action of the respondents is on the ground that they have completed more than 12 years of service in the scale of Rs. 5000-8000 and acquired right for further promotion on the basis of their seniority and service record as they were regularly posted in the scale of Rs. 5000-8000 and have been working without any interruption.

6. Also challenged the action of the respondents on the ground that Ratlam Division has transferred the applicants with posts to Ajmer Division vide letter dated 10.6.2003 and respondents have also issued their posting vide letter dated 17.6.2003 and posted the applicants as Head T.T.E. scale Rs. 5000-8000 at Ajmer Division.

7. Further, the respondents have included their names in the seniority list notified by respondent No.2 vide their letter dated 30.3.2004 and removal of their names from the proposed select list is uncalled for, unwarranted and arbitrary and the same is required to be quashed and set aside.



8. It is also submitted by the learned counsel appearing for the applicants that S/Shri Prem Singh Nagoria and Hari Kishan Borasi have filed OA No.642/96 before the Jabalpur Bench of this Tribunal but the applicants were not impleaded as party, as such, the same is not binding in view of the Supreme Court decision in the case of K.H.Siraz vs. High Court of Kerala, reported in AISLJ 2007 (!) 164 and, more particularly, referred to para 55, which reads as under:-

"55. The writ petitions have also to fall on the ground of absence of necessary parties in the party array. Though the appellants/petitioners contend that they are only challenging the list of limited extent, acceptance of their contention will result in a total re-arrangement of the select list. The candidates will be displaced from their present ranks, besides some of them may also be out of the select list of 70. It was, therefore, imperative that all the candidates in the select list should have been impleaded as parties to the writ petitions as otherwise they will be affected without being heard. Publication in the newspaper does not cure this defect. There are only a specified definite number of candidates who had to be impleaded namely, 70. It is not as if there are a large unspecified number of people to be affected. In such cases, resort can not be made to Rule 148 of the Kerala High Court Rules. That Rule can be applied only when very large number of candidates are involved and it may be not able to pin point those



candidates with details. In our view, the writ petition have to fail for non-joinder of necessary parties also."

After referring the aforesaid judgment, the applicants alternatively prayed that they are ready to appear to qualify the selection if the respondents hold the same.

9. Per contra, the learned counsel appearing for the respondents has submitted that the controversy involved in these OAs is squarely covered by the judgment of the Jabalpur Bench of this Tribunal which has been upheld by the Hon'ble Madhya Pradesh High Court and copy of the said judgment has also been provided to the learned counsel appearing for the applicants to study the same, and today when the matter came for final disposal, the learned counsel appearing for the applicants submits that the controversy involved in the present OA is not covered by the judgment rendered by the Jabalpur Bench of this Tribunal as has been upheld by the Madhya Pradesh High Court.

10. The learned counsel appearing for the respondents has submitted that the controversy involved in these OAs is squarely covered by the judgment rendered by the Jabalpur Bench of this Tribunal and further submits that letter dated 17.4.2007 (Ann.A/1) was issued in pursuance and in terms of letter dated 24.8.2006 (Ann.A/8) of the Divisional Railway



Manager, Ratlam which in turn was issued as per the order dated 7.5.2002 of the Jabalpur Bench of this Tribunal passed in OA No.642/1996 wherein the list issued on 1.8.1995 and the promotions made afterwards based on it were to be kept provisional. As the applicants were not regularized in the scale of Rs. 5000-8000, hence their names were deleted from the eligibility list dated 13.4.2007 vide letter dated 17.4.2007.

11. It is further submitted that the applicants were selected and placed on the panel of Head T.T.E. in the scale of Rs. 5000-8000 by the Ratlam Division in 1995 but the said selection has now been quashed by the CAT-Jabalpur Bench and the judgment of the CAT-Jabalpur Bench has been upheld by the Madhya Pradesh High Court. The learned counsel referred to the judgment of the CAT-Jabalpur Bench and the judgment of the Hon'ble Madhya Pradesh High Court Bench at Indore as well as the decision passed by the CAT-Jabalpur Bench in Review Petition and reiterated that the controversy involved in these OAs is squarely covered by these judgments.

12. Having heard the rival submissions of the respective parties and upon careful perusal of the material available on record and the judgments relied upon by the respondents passed by the CAT-Jabalpur Bench in OA No.642/1996 and upon careful perusal of the judgment of the CAT-Jabalpur Bench it reveals that the select list of Head T.C. dated 1.9.95



and select list of Head T.C. dated 1.9.95 and select list of Head CBC and CLC dated 6.7.95 were quashed and the respondents were directed to prepare fresh selection list of Head Ticket Collector, CBC and CLC in accordance with rules within three months by holding the written test followed by viva-voce and the applicants and similarly placed persons were to be allowed to take part in the fresh process and both the OAs were accordingly allowed.

13. The order passed by the CAT-Jabalpur Bench was assailed by the Union of India before the Division Bench of the Madhya Pradesh High Court Bench at Indore in Writ Petition No. 1732/2002. The Hon'ble High Court on critical examination of the impugned order observed as under:-

"6. On critical examination of the impugned order, we find force in the arguments advance by learned counsel for petitioners. The aforesaid three grounds, which should have been considered by the Tribunal in the impugned order i.e. to say [i] with regard to the orders, circulars and documents filed in these Original Applications, have not at all been considered; [ii] the law of estoppel has also not been discussed at all and [iii] non joinder of necessary parties to the Original Application has not been dealt with in correct perspective.

7. These were the valuable defences of the petitioners. At least, same should have been considered. Then and only then the Original Applications filed by the



respondents, herein, should have been decided on merits.

Thus, according to us, Tribunal has committed an error in deciding the matter without taking into consideration the valuable defences raised by the petitioners, herein.

9. Learned counsel for petitioners submitted that in the light of these observations, it is a fit case, where the matter deserves to be remanded to the Tribunal back for reconsideration. However, we are not satisfied that matter deserves to be remanded. Instead better remedy for the petitioners would be to file an application for review of the said order within a period of two months hereof in accordance with law. However, it is made clear that on such review being filed, the same shall not be dismissed on account of limitation, as the matters had been pending in this court and petitioners had been prosecuting the same with due diligence. Thus on filing of review application, it is expected of the Tribunal to reconsider the matter keeping in mind the aforesaid factors and then, to decide it in accordance with provisions of law."

14. In view of the directions issued by the Madhya Pradesh High Court, the Union of India preferred a Review Application No. 32/2004 in OA No.642/1996 which has been rejected vide order dated 29th July, 2004. Another writ petition No.5929/2006 was filed before the Madhya Pradesh High Court and the same has been decided on 12th January, 2007 as the OA filed by the petitioners was pending before this Tribunal and



therefore, the High Court was inclined to decide the petition on merit of the case and direction was issued this Tribunal to decide the OA as far as possible within a period of four months from the date of passing of the order and till disposal of the OA, parties were directed to maintain status-quo with regard to the subject matter of dispute.

15. In view of the direction issued by the Madhya Pradesh High Court, OA Nos. 611 and 613 of 2006 were decided vide order dated 30th November, 2007 and Jabalpur Bench of this Tribunal while deciding these OAs observed as under:-

"5. We find that the selection process of 1995 was cancelled by this Tribunal vide order dated 10.7.1996 passed in OA No. 116/1995 (annexure R/-1) and the said order was followed by this Tribunal in OA No.629/1996 and OA No.642/1996. The order passed in OA No.116/95 was challenged by other employees by filing RA No. 109/96 and OA 131/1998, which were also dismissed. In OA 131/1998, the Tribunal vide order dated 16.2.2004 has clearly held that "the Tribunal has rightly held in OA No.116/95 dated 10.07.1996 and RA No.109/96 dated 1.1.1997 that when the respondents have complied with the directions of this Tribunal, the question of setting aside the order dated 10.7.1996 passed in OA 116/95 does not arise. The applicants have no locus standi to continue on ad hoc basis as Chief Clerk and Assistant Engineer, as prayed for in the OA". The relevant paragraph 12 of the said order is reproduced below:



"12. After observing that the respondents have committed a mistake in the selection process, this Tribunal allowed OA no.116/95 and directed the official respondents to prepare a fresh select list of Chief Clerks within a period of three months after holding written test and viva-voce test. The applicants and similarly placed persons shall be allowed to take part in the fresh selection. In the fresh selection, opportunities were allowed to the applicants and similarly placed persons including respondents nos 4 and 5 in this O.A. and the select list has been prepared. It is pertinent to mention here that the applicants have failed in the fresh selection. Since they have not challenged the said selection process, they have no locus standi to question the orders of this Tribunal passed in OA No.116/95. Since they have already filed RA No.109/96 which was dismissed on 1.1.1997, the relief in this OA is hit by the principles of res-judicate. Hence, this OA is not maintainable in respect of challenging the order of this tribunal passed on 10.7.1996 in OA No.116/95."

We also find that this controversy was also agitated by filing writ petitions before the Hon'ble High Court of Madhya Pradesh at Indore which were ultimately rejected vide order at annexure A-5. The respondents have also stated in their written submissions dated 15.10.2007 that series of litigation between the department and employees commenced but in view of the fact that order of the OA 115/95 (Om Prakash vs UOI) reached finality the W.Ps were dismissed as would be



clear from the order passed in WP No.1117/05 and 1118/05, an extract of which is reproduced below:

"Since one of the similarly situated employees of the petitioner has been granted benefit of the order, passed by Tribunal, we see no reason by the present respondents, who are now similarly situated should be deprived of the same."

In view of the above discussion and settled legal position and in terms of Hon'ble High Court's decision we find that though the present selection process was started after a decade, but since the order of this Tribunal in the case of Om Prakash (supra) had attained finality, the respondents are bound to comply with the directions given in the said OA and, therefore, we do not find any irregularity or illegality in the action taken by the respondents.

6. As regards the contention of the applicants that they were not parties to the earlier OAs, we find that the issue in this regard has already been settled by the apex court in 1997 SCC (L&S) 1520 wherein their lordships have held that non-party to a decision adversely affected may file an application for review in case if they are aggrieved. Thus, the applicants at this belated stage can not take such a ground to challenge the action of the respondents."

16. The CAT-Jabalpur Bench has already dealt with the aspect which the applicants allege in the these OAs that the applicants were not parties to the earlier OAs by observing that this issue has already been settled by the Apex Court in



1997 SCC (L&S) 1520 wherein their Lordships have held that non-party to a decision adversely affected may file an application for review in case they are aggrieved. Thus, the applicant therein at the belated stage could not have taken such a ground to challenge the action of the respondents. The ratio decided by Hon'ble Apex Court in the above referred case is also applicable to the facts and circumstances of the present case and now the applicants cannot take such a ground to challenge the action of the respondents at this belated stage.

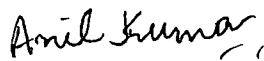
17. Further, since the selection process of 1995 was cancelled by this Tribunal vide order dated 10.7.1996 passed in OA No.116/1995 which order has been followed by the CAT-Jabalpur Bench in OA No.642/1996 and 629/1996. The order passed in OA No.116/95 was challenged by the other employees by filing RA No.109/96 and OA No. 131/1998, which were also dismissed and in OA No.131/1998, the Tribunal vide order dated 16.2.2004 has clearly held that "the Tribunal has rightly held in OA No.116/95 dated 10.07.1996 and RA No.109/96 dated 1.1.1997 that when the respondents have complied with the directions of this Tribunal, the question of setting aside the order dated 10.07.1996 passed in OA 116/95 does not arise." The applicants in the instant case also have no locus standi to challenge the action of the respondents



which is admittedly pursuant to the direction in the writ petition filed before the Hon'ble Madhya Pradesh High Court and CAT-Jabalpur Bench, and covers the present controversy.

18. Resultantly, both the OAs being bereft of merit fails and are hereby dismissed with no order as to costs.

19. Interim direction already issued in these OAs shall stand vacated.



(ANIL KUMAR)
Admv. Member



(JUSTICE K.S.RATHORE)
Judl. Member

R/