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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1507/2003 &
MA No.1604/2003

New Delhi, this the 12th day of September, 2003.

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri S.K. Naik, Member(A)

Mr. N. Parthasarathy
Member (Finance)
Telecom Commission
Government of India
Department of Telecommunication
Sanchar Bhawan
20, Ashok Road
New Delhi-110 001.

.. Applicant

(Shri Jayant Das, Sr.Counsel with
Shri C.Hari Shankar, Advocate)

versus

1. Union of India
Through the Secretary
Ministry of Railways
Rail Bhawan
New Delhi-110 001.
2. Railway Board
Through the Chairman
Rail Bhawan
New Delhi-110 001.
3. Mrs. V. Viswanathan
Financial Commissioner
Ministry of Railways
Rail Bhawan
New Delhi-110 001.
4. The Cabinet Secretariat
Through the Cabinet Secretary
Rashtrapati Bhawan
New Delhi.

.... Respondents

(By Shri Raju Ramachandran, A.S.G. with
Shri H.K.Gangwani and Shri Brajesh Kumar,
Advocates)

ORDER

Justice V.S. Aggarwal

Applicant (Shri N. Parthasarathy) assails the
appointment of respondent No.3 (Mrs.V. Viswanathan) as

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Financial Commissioner in Railway Board in preference to him with a direction that he should be appointed as Financial Commissioner and extended all the perquisites and benefits available to a Member of the Railway Board. He also seeks a direction that he should be considered for appointment as Chairman of the Railway Board.

2. Some of the relevant facts are that the applicant joined the Indian Railway Accounts Service in the year 1966. He earned his promotions on time and he was appointed as Additional Member (Budget) and Additional Member (Finance) in the Railway Board. On 1.3.2002, the applicant was posted as ex-officio Secretary to the Government of India, as Member (Finance), Telecom Commission, Department of Telecommunications. On 1.11.2002 with the retirement of Mr.S.Murali, a vacancy of Financial Commissioner arose in the Ministry of Railways. The applicant is the senior-most Indian Railway Accounts Service officer, but his claim has been ignored. Respondent No.3 who is two years junior to the applicant had been appointed. Even his representation on that count had been rejected. Hence the present application.

3. The application has been contested by the respondents. The contention of the applicant that respondent No.3 was not eligible to be considered has been repudiated. It is pointed that the preceding grade of Financial Commissioner is the post of Adviser

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(Finance), Railway Board. The respondent No.3 had been appointed as Additional Member (Budget), Railway Board in August 2002 and Additional Secretary level officer in June 1998. She was having more than 2 years' service left when the post of Financial Commissioner fell vacant. She had fulfilled both the conditions and was, therefore, appointed as Financial Commissioner.

4. The respondents plead that the applicant's name was considered. He was not found suitable for the post of General Manager (Open Line) which is pre-requisite for appointment as Member, Railway Board. He was neither eligible for the post of Chairman, Railway Board nor he has any cause of action for the relief. The incumbent of the post of Chairman, Railway Board, by the very nature of the duties and responsibilities needs to have extensive experience and knowledge of all aspects of open line Railway working which is acquired by working in technical and managerial posts in the field. The area of work and experience of Financial Commissioner is limited to financial discipline only. That is why the preceding grade for Financial Commissioner is kept as Adviser (Finance) and not as General Manager (Open Line). The respondents further plead that while the Chairman, Railway Board is the ex-officio Principal Secretary to the Government of India in the Ministry of Railways, the Financial Commissioner and other Members are ex-officio Secretaries to the Government of India in the Ministry of Railways. The post of Financial Commissioner is the ^{one of} _A



topmost post in the Railways. The applicant while working as Additional Member Finance in the Railways had applied for empanelment to the Secretary level post in the Government of India under the Central Staffing Scheme under the Department of Personnel and Training. He was empanelled and offered appointment as Member (Finance) ex-officio Secretary to the Government of India in the Telecom Commission. He joined on the said post on 1.3.2002. The vacancy in the post of Financial Commissioner arose on superannuation of Shri S.Murali. The post of Financial Commissioner is in the same grade as that of the applicant. The applicant's claim was considered for appointment to the post of Financial Commissioner along with others. The Government approved the appointment of Smt.Viswanathan who fulfilled both the eligibility conditions as mentioned in the Government of India Resolution, while the applicant did not fulfil the condition of having 2 years tenure left on the date of occurrence of the vacancy. Thus, it was pointed that the claim of the applicant is without merit.

5. Before proceeding further, some of the admitted facts can conveniently be delineated because the same would make the position clear. On 28.02.2002, the applicant's name was approved by the Appointments Committee of the Cabinet as Member (Finance), Telecom Commission. The order reads:-

" Dated 28.02.2002

The Appointments Committee of the Cabinet has



approved the appointment of Shri N. Parthasarthy, IRAS as Member (Finance), Telecom Commission, vice Shri R. Ramanathan.

Sd/-
(Chitra Chopra)
Secretary
Appointments Committee of the Cabinet"

Thereafter, the post of Financial Commissioner in the Ministry of Railways had fallen vacant and an order was issued on 12.11.2001 appointing respondent No.3 as Financial Commissioner and ex-officio Secretary to the Government of India. The said order reads:-

"The President is pleased to approve of the appointment of Shri V. Viswanathan, IRAS, Additional Member (Finance), Railway Board as Financial Commissioner, Railways, and ex-officio Secretary to the Government of India until further orders.

Sd/-
(R.R. Jaruhar)
Secretary, Railway Board "

The applicant had represented against the appointment of respondent No.3 and for him to be so appointed. The representation was rejected vide order dated 27.3.2003 which reads:-

"Sir,

Various representations received from you on the above subject have been examined.

2. Appointments to the post of Members of Railway Board including Financial Commissioner/Railways are governed by Resolution No. ERB-1/87/11/I dated 16.02.1987 and made after approval by the Government at the highest level. The names of senior IRAS officers including that of yours were duly considered and after having taken all relevant aspects into account



Smt. V. Vishwanathan, IRAS, was appointed to the post of Financial Commissioner/Railways on 12.11.2002.

3. As regards the travel entitlements, claimed by you, it is mentioned that as per extant rules facilities available to a Member, Railway Board can be given only to those who have held that position and cannot be extended to others.

Thanking You,

Yours faithfully

Sd/-

(R.R. Jaruhar)
Secretary, Railway Board."

It is also not being disputed at either end that the Ministry of Railways had passed a Resolution which is dated 16.2.1987 and reviewed the policy for appointment to the posts of Member, Railway Board and ex-officio Secretaries to the Government of India besides the Financial Commissioner. It provides that normally the person concerned should have the service of two years or more from the date of occurrence of the vacancy and should have worked for a period of one year in the grade preceding to that of the Financial Commissioner. The relevant part of the Resolution is:-

"The Government of India have reviewed the policy of appointment to the posts of Members, Railway Board and ex-officio Secretaries to Government of India, Financial Commissioner, Railways and ex-officio Secretary to Government of India and Chairman, Railway Board & ex-officio Principal Secretary to Government of India, from the point of view of avoiding unduly short tenures and thus in the interests of smooth and efficient running of the Railway system. The Government have accordingly decided that the following tenure linked norms may be followed while filling up of these posts:-

(i) Officers to be considered for the posts of

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Members of the Railway Board (including Financial Commissioner, Railways)

(a) should normally have a balance tenure of service of two years or more from the date of occurrence of the vacancy; and (b) should normally have worked for a period of one year in the grade preceding that of Member, Railway Board/Financial Commissioner, Railways.

Note: In the context of the above, the preceding grade for Members of the Railway Board (other than Financial Commissioner, Railways) would be that of General Manager (Open Line) on the Railways and for the post of Financial Commissioner, Railways, the preceding grade would be the post of Adviser (Finance), Railway Board, in grade of Rs.3,000/- per month (fixed) or any other post in the Government of India at this level or higher.

(ii) The officers to be considered for the post of Chairman, Railway Board, should normally have minimum tenure of two years as Member, Railway Board, and/or Chairman, Railway Board including at least one year as Chairman, Railway Board."

It is on these admitted facts that the learned counsel for the applicant has contended that applicant's claim has been wrongly ignored.

6. Our attention was drawn to the fact that the claim of the applicant had been ignored because when the post of Financial Commissioner fell vacant, he did not have two years of service to his credit. We have already referred to above, the Resolution of the Ministry of Railways dated 16.2.1987. Perusal of it clearly shows that it only used the expression "normally" have a balance of tenure of service of two years. The expression "normally" itself indicates that it is not a fetter on the powers of the concerned authority to consider other persons. By the very Dictionary meaning

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"normally" indicates not something to be done to which a deviation cannot be effected. In fact, it was pointed on behalf of the applicant that it was not in controversy that this had been the instruction which was observed more in breach than followed. He had drawn our attention to the various appointments that were made as Financial Commissioner from the year 1991 to indicate that except in one case, in all other cases, the Financial Commissioner had a tenure of less than two years. It reads:-

"No. S/Shri	Name	From	To	Period
1.	N.Radhakrishnan	22.02.1991	31.03.1992	13 months
2.	C.S.Anand	01.04.1992	31.07.1993	16 months
3.	Hasan Iqbal	12.08.1993	31.07.1994	12 months
4.	V.Sivakumaran	23.08.1995	31.08.1997	24 months
5.	P.V.Vasudevan	01.09.1997	30.09.2000	13+24 months
6.	N.P.Srivastava	01.10.2000	31.01.2001	04 months
7.	P.Rajagopalan	01.02.2001	31.07.2001	06 months
8.	S.Murali	01.08.2001	31.10.2002	15 months"

7. The position in law is settled. A person, in terms of Article 14 read with Article 16, does not have a right to be appointed, but has a right to be considered. In the case of **Krishan Chander Nayar v. The Chairman, Central Tractor Organisation and Others**, AIR 1962 SC 602, a ban was imposed against the employment of certain person under the Government. The Supreme Court held that it was arbitrary and held further:-

"But an arbitrary imposition of a ban against the employment of a certain person under the

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Government would certainly amount to denial of right of equal opportunity of employment, guaranteed under Art.16(1) of the Constitution. In the instant case, the affidavit filed on behalf of the respondents does not indicate the nature of the ban, and whatever may have been the nature of the ban, there does not appear to have been any proceeding taken against the petitioner giving him the opportunity of showing cause against the action proposed to be taken against him. We are, therefore, not in a position to say that the reason for the ban, whatever its nature, had a just relation to the question of his suitability for employment or appointment under the Government"

In other words, if the applicant has not been considered, he certainly can have a grievance in this regard. Similarly, in the case of **Km. Neelima Mishra v. Dr. Harinder Kaur Paintal and Others**, AIR 1990 SC 1402, the right to be considered in public employment had been emphatically recognised in terms of Articles 14 and 16 of the Constitution holding:-

"26. In matters relating to public employment whether by promotion or direct recruitment, only requirement to be complied with is the mandate of Arts.14 and 16 of the Constitution. There shall be equality of opportunity and no discrimination only on ground of religion, race, caste, sex, descent, place of birth or residence or any of them. The eligible candidate has a right to have his case considered in accordance with law. In the instant case, that requirement has been complied with by the Selection Committee. There is no further right with the candidates to make representation to the Executive Council and much less to the Chancellor."

Identical was the view expressed by the Apex Court in the case of **Shankarsan Dash v. Union of India**, (1991) 3 SCC 47. In other words, one can conveniently state that Article 14 recognises equality before law. Articles 15

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and 16 are the facets of the general doctrine of equality enshrined in Article 14 of the Constitution. Article 16 provides that all citizens shall have equality of opportunity in matters relating to public employment or appointment to any post in the State. It prohibits discrimination. The words "discrimination" may not occur in Article 14, but it finds a prominent place in Articles 15 and 16 of the Constitution. The expression as per Oxford Dictionary means "to make an adverse distinction with regard to: to distinguish unfavourably from others". It is in this back-drop that one has to see as to whether, as has been pointed in the order rejecting the representation of the applicant he was considered and not found suitable.

8. The respondents have unhesitatingly made available, the files of the Ministry. The applicant's name was mentioned in the note that was submitted to the Cabinet Secretary. In the note of the Railway Ministry, though the name of the applicant had been mentioned but has been sidelined on the ground that he had been working as Member (Finance) Telecom Commission and ex-officio Secretary to the Government of India. In the later note, while respondent No.3 was appointed, it had been recorded that the Ministry of Railways has stated that Shri N. Parthasarathy, the seniormost officer, is already working as Member (Finance), Telecom Commission in the pay scale of Rs.26000/- and therefore has not been considered for this post. The Ministry of Railways had also stated that the

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exclusion of a seniormost officer in such a situation is not without a precedent. It further records that Shri N. Parathasarathy does not appear to have indicated any interest in this post nor has he made any representation in this regard. We do not deem it necessary to record the rest of the same. It clearly shows that the name of the applicant in fact has not been considered but ignored simply on the ground that he did not have two years of service at his disposal at the relevant time. The earlier lines clearly show that in fact, the name of the applicant had been stated not to have been specifically considered for the post. In other words, right of the public servant for being considered for the post was deprived and thus he has a cause.

9. On behalf of the respondents, in that event it was contended that in the absence of mala fide and it being not strictly a promotion based on such a right should not be recognised. It only has a semblance of right. No prejudice is caused to the applicant who is holding the post of the rank of the Secretary to the Government of India in the same scale and, therefore, this Tribunal could not exercise writ jurisdiction.

10. During the submissions, it was pointed that a retired Member of the Railway Board gets golden passes which is a perk attached to that post. It permits certain extra travelling facilities even after

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superannuation. If the applicant retires from his present post, he will not have that advantage. Therefore, to state that the posts are equivalent would not be correct.

11. Otherwise also, we do not have the least hesitation in rejecting the said submission eloquently put forward for the reasons that we have already reproduced above, the order rejecting the representation of the applicant. It was rejected on the premise that the applicant's name was considered and not found suitable. We know from a decision of the Apex Court in the case of **Mohinder Singh Gill and Another v. The Chief Election Commissioner, New Delhi and Others**, AIR 1978 SC 851 that:-

"The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out."

When such is the position, to add to what has been recorded in writing would be improper. These pleas, therefore, being extraneous to the order that had been passed must fail. In the present case, the applicant was within the zone of consideration. We have already pointed that there is difference in the perks attached. The applicant had shown keen interest to be considered for the post and once a wrong has been done to a person,

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it cannot be perpetuated.

12. So far as the post of Chairman, Railway Board is concerned, during the submissions, the applicant's learned counsel himself conceded that in case the applicant is appointed as Financial Commissioner only in that event, he may, if so advised take necessary steps and as for the present subject to what we have recorded above, he would not press for the said post.

13. For these reasons, we hold that the applicant had been deprived of his right to be considered for the post of Financial Commissioner as referred to above.

14. MA No.1604/2003 has been filed by the applicant restraining the respondents from proceeding against him on basis of the Memorandum dated 28.7.2003 proposing to take action under Rule 11 of the Railway Servants (Discipline & Appeal) Rules, 1968. The Misc.Application claims a relief which is extraneous to the main relief in the Original Application and, therefore, the applicant, if so advised, may take an independent action and no further direction on such an application is required to be passed.

15. For these reasons, we dispose of the present application with the following directions:-

(a) the appointment of respondent No.3 as Financial

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Commissioner is quashed;

- (b) in order to ensure that the Government machinery does not stop functioning because the Financial Commissioner is said to have been discharging important functions, we direct that respondent No.3 may continue on the said post for a period of one month subject to the final decision in this regard;
- (c) the claim of the applicant and others should be re-considered in accordance with law. The claim should be considered from the date the post fell vacant i.e. 1.11.2002;
- (d) the confidential dossiers of the applicant should be considered only as available on 1.11.2002. A decision in this regard should be taken within a period of one month from today; and
- (e) so far as the post of Chairman, Railway Board is concerned, no opinion as for the present is expressed keeping in view what was stated at the Bar and noted in paragraph 12 above.

Parties are left to bear their own costs.

Naik

(S.K.Naik)
Member (A)

/sns/

Aggarwal
(V.S. Aggarwal)
Chairman