

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1683/2002

New Delhi, this the 27th day of June, 2003

Hon'ble Mr.Justice V.S.Agarwal, Chairman
Hon'ble Shri Govindan S.Tampi, Member (A)

1. Shri Mahipal Singh,
S/O Shri Ram Prasad,
R/O Chidiya Toli,
Linepar, Moradabad.

2. Shri Dharam Pal Singh,
S/O Shri Ram Prasad,
R/O Chidiya Toli,
Linepar, Moradabad.

(Both are working as Diesel Assistant)

..Applicants

(By Advocate: Shri K.K.Patel)

VERSUS

Union of India through:

1. General Manager,
Northern Railway,
Headquater Office,
Baroda House, New Delhi.

2. Divisional Railway Manager,
Northern Railway, Moradabad.

..Respondents

(By Advocate: Shri R.P.Aggawal)

O R D E R

Shri Govindan S.Tampi:

Denial of appropriate seniority granted to similarly situated colleagues is the grievance of the two applicants - Mahipal Singh and Dharam Pal singh- in this O.A.

2. S/Shri K.K.Patel and R.P.Aggarwal appeared for the applicant and the respondents respectively to tender oral submissions.

3. Brief facts, emerging from the pleadings are that both the applicants, originally engaged under Permanent Way Inspector (PWI) Shafipur in 1978 continued to work in

different spells between 1978 and 1983 as casual labourers and substitutes. Following the screening held on 31.8.1980, ^{of 1981} they were placed in the select panel at S1.Nos. 180 & 209 whereafter they were absorbed as regular Loco Cleaners in the scale of pay of Rs.750-940/-. Five years after their original engagement, when their periods of engagement were taken up for verification, certain documents were not traced in the office of the respondents. Despite the report given by the Welfare Inspector that the applicants were working during the period they were claiming, their services were terminated in 1984 for no fault of theirs. One of the similarly discharged loco cleaners - Mithlesh Kumar Singh - approached Allahabad High Court by way of a writ petition, which was transferred as TA-62/88 before the Central Administrative Tribunal and the termination order was quashed on 10.8.1992 for violation of the principles of natural justice with liberty to the respondents to conduct necessary enquiry and take action in accordance with law. In the meanwhile, the applicants were also re-engaged on 22.3.1988 as Loco Cleaners provisionally subject to verification of their working days. Though screening tests were conducted during 1985, 1987 and 1989, the applicants were not called, despite which their names were placed in the panel of 1989 at Serial Nos. 3 and 4, as declared on 9.3.1994. Enquiry proceedings initiated against the applicants on 9.3.1994 ended in their acquittal on 5.2.1997. Colleagues of the applicants, who had approached the Tribunal, were granted seniority from 1981 with consequential benefits, which was denied to the applicants, though they were also similarly placed. Applicants' repeated early representations did not yield any result and

the final representation was rejected by the impugned order dated 31.5.2001 holding that the benefits arising from the decision of the Allahabad Bench of the Tribunal in TA-62/88 cannot be extended to them, ² them, as they were not parties in the TA before the Allahabad Bench of the Tribunal. Hence this OA.

4. Grounds raised in this OA are that:-

i) being identically placed as those who approached the Allahabad Bench of the Tribunal they should have been treated similarly.

ii) the applicants' re-engagement on 22.3.1988 was also provisional subject to the decision of the Tribunal and verification of the period of work and the same had gone in their favour;

iii) the applicants' case is squarely covered by the decision of the Hon'ble Supreme Court in the case of Inder Pal Yadav Vs. Union of India & Ors. [1985 (2) SLR 248]; and

iv) denial of their claim was illegal, discriminatory and violative of the Constitutional provisions of articles 14 and 16.

5. Strongly rebutting the submissions made by the applicants it is indicated by the respondents that while it was true that the two applicants were duly empanelled ^{in 1981} and placed at Sl.Nos 180 and 209 respectively following the screening done in August 1980, the same was subject to

verification of the working days. As it was found that the applicants had forged their record of working days their names were excluded from the panel and they were discharged from service on 16.7.1984, along with nine others. Following the challenge made by one Shri Mithleesh Kumar Singh to the above TA-62/1988, the individuals concerned were considered for provisional re engagement subject to the decision in the OA/TA and the verification of the period subsequent to the decision of the Tribunal on 10.8.1992, Enquiry was conducted by the Welfare Inspector who found that the record of working days of the applicants in that OA was genuine and they were granted their original seniority. However, as far as the present applicants were concerned, it was found that they were not parties in the OA and that record of their service was forged. They were not, therefore, called for screening in 1985 and 1987. However, on the basis of Railway Board's instructions No.E (NG)II/96/CL/61 dated 11.12.1996, which modified the screening procedure the applicants' cases were also re-considered, and after deleting the forged period and on the basis of the screening done on 27.1.1997, the applicants were included in the panel for 1989. They have thus been granted the benefits they were correctly entitled to and they cannot ask for or be granted anything further. Respondents plead that the applicants representation had been rejected correctly as having no merits as their record of working periods was forged, unlike in the case of the applicants in TA-62/1988. OA was also hit by limitation, as the cause of action, if any had arisen in February 1997 and the applicants' representation dated 20.3.1997, not having been replied in time, they should have moved the Tribunal as it is settled law that repeated representation did not cure

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the defect of limitation. ^{As the} _{Applicants} working period was not correctly reckoned following the screening in 1980, the applicants were empanelled at S1.Nos 180 and 209 but the same was subject to the verification of the record of working period. The above provisional placement in the panel did not give them any vested right. The applicants' engagement period before 1978 was found to be forged and therefore, after due verification, the applicants' services were discharged in 1984. That was a correct decision. The applicants cannot claim the benefit of the decision in TA 62/88 filed by Mithlesh Kumar Singh, as they were not parties in the said TA and as their position was different from the applicants in that TA. The applicants' case being different and having been hit by limitation, they cannot succeed in this OA, keeping in view the decisions of the Hon'ble Apex Court in Bhoop Singh Vs. Union of India [JT 1992 (3) SCC 322], State of Karnataka Vs. S.M.Kotrayya [1996 SCC (L&S) 1488] and S.S.Rathore Vs. State of M.P. [1989 (4) SCC 582], according to Shri R.P. Aggarwal, learned counsel for respondents.

6. During the oral submissions learned counsel for both sides reiterated their respective pleas. ^{While} _{which} Shri K.K.Patel pleaded that the applicants have been illegally divested of their rights, Shri R.P. Aggarwal argued that the respondents had acted correctly and that the applicants did not have any claim in law.

7. The rival contentions have been carefully deliberated upon. While the applicants feel that they have been discriminated against by not having been assigned the seniority due to them, like their colleagues similarly

placed, the respondents are convinced that the applicants' case is both hit by limitation and lacks in merit. Applicants whose services were dispensed with on the alleged ground that the record of working days produced by them was incorrect and forged and who were re-engaged provisionally subject to the decisions of the Tribunal in TA-62/88, filed by Mithlesh Kumar Singh, an identically placed individual as well as re-verification of the record of working period, are aggrieved that their seniority from 1981, when they were originally empanelled, had been denied and they have been assigned seniority from 1989 while the applicants in TA-62/88, who were similarly placed colleagues, have been given the seniority from 1989. It is not denied that the applicants are similarly placed as the applicants in TA-62/88, inasmuch as all of them had been screened together and appointed as Loco Cleaners in 1981, but were disengaged in 1984 on the alleged ground that there occurred certain irregularities in the record of their period of engagement.

8. Respondents have contested the OA on the preliminary ground of limitation. According to them, the cause of action for the applicants, if any, arose in 1997, when their names were interpolated in the panel of 1989 and, therefore, they should have approached the Tribunal immediately thereafter, especially as their first representation of March, 1997 did not meet any result. They had failed to do so and thus forfeited their rights. Shri Aggarwal, appearing for the respondents pointed out that the repeated representations did not cure the defect the limitation, in support of which he had relied upon a few decisions of the Hon'ble Supreme Court. The fact, however, is that this objection has no merit. What is being

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challenged in the instant OA is the order dated 31.5.2001 passed by the Divisional Railway Manager, Northern Railway, Moradabad issued to both the applicants whereunder their claims for seniority has been rejected. The same is reproduced as below:-

"In your above referred application it is to inform that your name was placed on the panel of cleaner formed in 1981. Which was circulated vide this office letter No.727E/EP/Cleaner/ Screening/81 dated 15/10/81, at item No.180 in which declared fit. Subject to verification of D.O.B. from original matriculation certificate and working days from 15/6/78 to 14/7/78. During the course of enquiry you failed to submit your casual labour card/sold proof of your working days under PWI/SFPR. As such your name was deleted from the panel alongwith 9 other candidates under this office letter No.727E/EP/Cleaner/Screening/81 dated 16/7/84. The competent authority considered you alongwith 3 other candidates for the engagement as substitutes cleaner provisionally, subject to conditions that if at a subsequent date it was found that the working days were false or they were ineligible on the basis of decision of court case pending in High Court/ Allahabad or otherwise you are liable to be discharged. You were engaged as substitutes cleaner and posted under LF/MB. After fitness of medical & psychological test) vide office letter No. 727E/EP/Cleaner dated 22/3/88.

The screening of substitutes cleaners was conducted in the year of 1989 and due to court case pending in High Court/ Allahabad you were not called for the said screening.

As per Rly. Bd's instruction dated 11/12/96 to regularisation of working casual labour/substitutes by the scrutiny of records only. In your case date of re-engagement after 1/8/78 post facto approval was obtained from the DRM and papers scrutiny were conducted by the screening of records by the committee on 27/1/97 and your name was interpolated in the panel formed in 1989 & result declared on 9/3/94 at S.No.3 above the

name of Shri Dharam Pal Singh vide office letter No.727E/EP-I/Cleaner/ Screening dated 5/2/97.

Since you were not a party in the Court case CAT/AID of TA 62 of 1988 which was decided on 10/8/92, your case not be offered benefits of court case. As such your claim is not acceded to."

9. Perusal of the above makes it clear that the only reason for not extending the benefits of the decision of the Allahabad Bench of the Tribunal in TA-62/88 to the applicants is that they were not parties in the said case. No reference whatsoever is made in the letter to the earlier representations filed by the applicants or their disposal. The impugned order which is the reply to applicants' letter dated 8.3.2001 is of 31.5.2001 and that being the case, the OA filed on 4.6.2002 cannot be described as having been hit by limitation. Moreover, the impugned order makes it very clear that the case of the applicants were also under examination throughout with reference to TA-62/88 pending before the Allahabad Bench of the Tribunal. In fact, the letter states that "if at a subsequent date it was found that the working days were false or they were ineligible on the basis of decision of court case pending in High Court/ Allahabad or otherwise you are liable to be discharged", meaning thereby the fate of the applicants was inextricably connected with the fate of the case pending before the Allahabad Bench. Naturally, the decision emerging in the case pending at Allahabad was applicable in applicants' case as well. That being the case, the denial of the ^{benefits of the same decision} _{same} would mean clear violation of Articles 14 & 16 of the Constitution and, therefore, the genuine grievance of the applicants cannot be denied redressal. More so, as the impugned order

challenged in this OA is of 31.5.2001 and the OA has been filed just in time. The plea of limitation would not, therefore, stand.

10. On merits, as pointed out above, the applicants' case was linked with the decision of the Tribunal in TA-62/88 filed by Mithlesh Kumar Wingh, as the present applicants, like those in TA-62/88, were persons who were originally screened and appointed as Loco Cleaners but were disengaged in 1984 on the alleged ground that their record of working days was not correct. Following the decision of the Tribunal and subsequent verification conducted by the Welfare Inspector, the applicants' case also was found to be genuine but they have been placed in the panel of 1989, while others have been assigned their original seniority of 1981. This is clearly discriminatory. In their counter affidavit, the respondents have pointed out that in the case of the applicants in TA-62/88 whose cases were subjected to verification by the Welfare Inspector, Moradabad, the records were found to be genuine and as such they were granted the seniority, but that in the present applicants, their records relating to the period prior to 1978 were found forged and, therefore, they could not be given the seniority from 1981. This aspect in fact did not form part of the impugned order dated 31.5.2001. Even otherwise, this averment of the respondents is totally incorrect. Relevant portion of letter dated 5.2.1997 issued by Divisional Railway Manager's Office reads as below:-

"निम्नलिखित लोको क्लीनर जिनके विरुद्ध विचाराधीन मानक फार्म_5 में ल गाये गये आरोपों से मुक्त होने व अन्य प्रशासनिक निर्णय के आधार पर"

Evidently, therefore, the applicants have also been exonerated from the charge of forging the documents. It is really surprising that in spite of the letter issued by the respondents themselves exonerating the applicants from the charge of forging the records, the respondents take a plea that applicants' case was being denied on account of their having forged the documents with regard to their previous record relating to service prior to 1978. Even otherwise, the applicants themselves have not claimed that they were working before June, 1978. In the above circumstances, it is clear that neither on the aspect of limitation nor on the merits, the applicants could have been denied the benefit of the results of the decision of the Allahabad Bench of the Tribunal in TA-62/88 granted the applicants therein. As Hon'ble Apex Court has held in the case of Inder Pal Yadav & others Vs. Union of India & others [1985 (2) SLR 248] that the benefit of a point of law settled in a case would have to be extended to all those similarly placed and the Government does not have to wait for all the individuals approached the Court individually. It would, therefore, follow that the benefit of the screening test, which the applicants have cleared in 1981, leading to their empanelment at S1.Nos. 181 and 209 in the select panel of 19.10.1981 cannot be wished away and that their empanelment in 1989 cannot be sustained. The applicants would be entitled for being assigned their proper seniority from 1981. Denying the above would be injustice, which cannot be permitted in law.

11. In the above view of the matter, the OA succeeds and is accordingly allowed. The respondents are directed to

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grant the benefit of seniority to both the applicants from 1981 when they were empanelled on the basis of the screening test of 1980, as has been granted to Shri Mithlesh Kumar Singh and others who were applicants in TA-62/88, decided by the Allahabad Bench of the Tribunal. The applicants shall be, on such placement, entitled to all consequential benefits. No costs.

(Govindan S. Tampi)
Member (A)

santosh-sunil/

V.S. Aggarwal

(V.S. Aggarwal)
Chairman