

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH**

No. O.A. 350/396/2013

Date of order: 25.09.2019

**Present: HON'BLE SMT. MANJULA DAS, MEMBER (J)
NEKKHOMANG NEIHSIAL, MEMBER (A)**



1. Sushil Kumar Dey, Son of N.G. Dey
Aged about 43 years
Residing at 32, Workshop Road
Kanchrapara, 24 Parganas
Unemployed, Pin – 743145.
2. Krishna Kumar Sharma, Son of Kamal Sharma
Aged about 45 years
Residing at Rly. Quarters No. 863/C
Chaingate, P.O. – Kanchrapara
District – North 24 Parganas
Unemployed, Pin – 743145.

...Applicants

-Versus-

1. Union of India
Service through the General Manager
Eastern Railway, 17, N.S. Road
Kolkata – 700001.
2. The Chief Personnel Officer
Eastern Railway, Fairly Place
Kolkata – 700001.
3. The Chief Works Manager
Eastern Railway, Kanchrapara
Railway Workshop, North 24 Parganas
Pin – 743145.
4. The Workshop Personnel Officer
Eastern Railway, Kanchrapara
Railway Workshop, North 24 Parganas
Pin – 743145.

...Respondents

For the Applicants : Sri A. Chakraborty
For the Respondents : Sri S.K. Das

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ORDER (ORAL)**NEKKHOMANG NEIHSIAL, MEMBER (A):-**

The case was last heard on 25.09.2019. The O.A. has been allowed and detail reasons are being recorded now.

2. This is a second round of litigation. In the previous O.A. No. 21 of 2010, this Tribunal vide its order dated 21.09.2010, has observed and given directions as under:-



"5. It is contended by the Ld. Counsel that in 2006 when the applicant was screened and empanelled he was not over aged as according to this circular the upper age is 38 years but the respondents unnecessarily delayed the matter and in 2009 they have rejected his case on the ground of age bar as on 1.1.2009. She has, therefore, prayed for consideration of the case of the applicant favourably."

"8. In view of the above we set aside the order dated 24.11.2009 and remand back the case to the respondent No. 2 for reconsideration of the case of the applicants in the light of the RBE circular No. 57/2006, if necessary in consultation with the Rly. Board and to provide them appointment in Group D category within a period of 6 months from the date of communication of this order. No costs."

3. To enforce the order of this Tribunal, C.P. No. 103 of 2011 was filed by the applicants. The C.P. was dismissed on merit vide order dated 06.07.2012 but with a liberty to take appropriate steps in case the applicants are aggrieved. Pursuant to the order of this Tribunal dated

21.09.2010 in O.A. No. 21 of 2010, the respondent authorities passed a Speaking Order No. 83E/93DR/Gr.D/Pt.II dated 09.01.2012, rejecting the case of the applicants. Aggrieved with the said Speaking Order dated 09.01.2012, this O.A. has been filed by the applicants asking the following reliefs:-



- "8.(a) An order allowing the applicants to move this application jointly under Rule 4(5)(a) as they are similar circumstances persons and their grievances are same;
- (b) An order/direction may please be issued upon the respondent authority to cancel/withdraw the letter dated 9.1.2012 and to absorb the applicants in Gr. 'D' category as passed out act apprentices considering the real aspect of the matter they have completed NCVT in the year of 1997-2000.
- (c) A mandate please be given directing the respondent authorities to give regularization to the applicants according to seniority position though many juniors of the applicants were absorbed.
- (d) Any other order or orders, direction or directions as may be done deem fit and proper in the facts and circumstances of the case."

4. The respondent authorities filed their written statement/counter affidavit on 07.05.2014. They reiterated the same points as contained in their speaking order dated 09.01.2012.

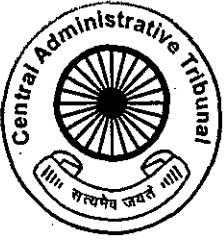
5. The applicants also filed their rejoinder on 21.08.2014 mentioning among others rejection of their C.P. No. 103 of 2011 allowing them to take appropriate step for

challenging the order of the respondent authorities on the basis of which the case of the applicants was dealt with.

6. The facts of the case is that the applicants have been asked to appear for Screening Test vide respondents' letter No., 83E/93 DR/Group-D dated 21.08.2001 and letter No. 83E/93 DR/ Group-D dated 23.10.2006. Subsequently they have been rejected for absorption into Group 'D' category as per Apprentice Act, due to over age as on 01.01.2009.




7. We have examined the case once again. We have also perused the papers and records submitted by both the parties. The main ground for rejection of the applicants' case by the respondents is that they are found to be over age as on 01.01.2009. They also stated that the currency of RBE Circular No. 57/2006 has since expired. In this connection, it is seen that the applicants have been initially invited to appear before the Screening Committee on 06.07.2001 vide letter No. 83E/93 DR/Group-D dated 21.08.2001 in 2001 and letter No. 83E/93 DR/ Group-D dated 23.10.2006 and 2006 respectively and subsequently rejected vide letter No. 83E/93DR/Gr.'D'/Pt.I dated 24.11.2009 on the ground of '**over age**' as on 01.01.2009. The respondent authorities have not justified as to why



there is delay of nearly 03 years from the date of initial calling letter of 2001 or 2006. They have also not elaborated or justified the sanctity of the date stipulated as 01.01.2009 because of which only these two (02) applicants have been rejected on the ground of being '**over age**'. It is a matter of general principle that the cut off date for considering the applicants' eligibility is indicated in the advertisement or calling letter. This has not been done by the respondent authorities. If the date of birth of the applicants is 24.01.1972 in respect of Sushil Kumar Dey (Applicant No. 1) and 16.09.1971 in respect of Krishna Kumar Sharma (Applicant No. 2), they would not have been over age as on 21.08.2001 or 23.10.2006, the year in which they have been called for Screening Test. Their case would be definitely covered by the RBE Circular No. 57/2006. Accordingly, the present two applicants are hereby declared that they are '**not over aged**' for the purpose of absorption in Group 'D' as per Apprentice Act. The respondent authorities are hereby directed to process the case of the applicants and offer them appointment for absorption as Group 'D' within a period of four months' from the date of receipt of this order.

8. O.A. stands allowed to the above extent. No order as to costs.


(NEKKHOMANG NEIHSIAL)
MEMBER (A)


(MANJULA DAS)
MEMBER (J)

