

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/154/2017

Order reserved on 26.08.2020

DATE OF ORDER: 02.09.2020

CORAM

**HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER
HON'BLE MRS. HINA P. SHAH, JUDICIAL MEMBER**

1. Balram Meena S/o Late Shri Ramkaran Meena, age 43 years, R/o plot no. 23, Meena Colony, outside Gangapole gate, Jaipur.
2. Hansraj Meena S/o Late Shri Ranjeet Singh Meena, age 35 years, R/o Village Inderpura, post & Tehsil Devli, District Tonk, presently residing at C/o Shri Chatermal Meena, plot no. B-21, Bal Nagar (B), Kartarpura, Jaipur.

Both are working as Salesman (Temporary) in North Western Railway Consumer Co-operative Society Ltd., Jaipur.

....Applicants

Shri Krishna Sharma, counsel for applicants (through Video Conference).

VERSUS

1. Union of India through General Manager, North Western Railway, Head Quarter Office, Jawahar Circle, Jaipur.
2. Divisional Railway Manager, Divisional Office, NWR, Jaipur.
3. Senior D.P.O., DRM Office, NWR, Jaipur.

....Respondents

Shri Y.K. Sharma, counsel for respondents (through Video Conference).

ORDER

Per: Hina P. Shah, Judicial Member

The applicants have filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985 seeking for the following reliefs:

- "i) That the respondents be directed to consider the applicants for providing for absorption / recruitment on Group-D category taking into consideration of services rendered by the applicants and further orders issued by Railway Board from the suitable date with all consequential benefits.
- ii) That the respondents be further directed to take action as per Railway Board orders dated 11.06.1997 Annexure-A/2, 30.05.2000 Annexure-A/3 & 13.01.2006 Annexure-A/4 and absorbed / recruit applicants will all consequential benefits.
- iii) Any other appropriate remedy / direction which this Hon'ble CAT find just and proper may kindly be awarded to the applicant."

2. The brief facts of the case, as stated by the applicants, are that the applicant No. 1 was initially appointed as Salesman (Temporary) in Western Railway Consumers Co-operative Society Ltd. Jaipur vide order dated 28.06.2002 and applicant No. 2 vide order dated 21.12.2004 and since then the applicants are continuously working. The applicants come under quasi Administrative Offices / Organizations as per

letter / circular issued by RBE No. 80/97 dated 11.06.1997 (Annexure A/2). As per RBE No. 103/2000 dated 30.05.2000, there were instructions issued for absorption of such workers those are on roll continuously for a period of at least three years as on 10.06.1997. Thereafter, as per Railway Board letter dated 13.01.2006 (Annexure A/4), there were instructions issued for absorption of staff working in quasi Administrative Offices / Organization to Group "D" posts. On this issue there were several orders passed in favour of similarly placed persons like the present applicants by Madras Bench as well as Hyderabad Bench of this Tribunal, which was confirmed upto the Hon'ble Supreme Court. Since both the applicants fulfil the requisite conditions and, therefore, are eligible for their absorption in Group "D" category. Since they are eligible in all respects, they have written several letters to the respondents-authorities for their consideration. They are working since last 15 years in quasi Administrative Office / Organization and as per the policy of Railway Board, they are entitled for absorption. As the respondents have not considered them, they were compelled to send legal notice dated 28.11.2016 (Annexure A/1). As the action of respondents is arbitrary, illegal and unjustified, they

are compelled to file the present Original Application praying for directions to the respondents for their absorption in Group "D" category.

3. The respondents, after issue of notices, have filed their reply. The respondents state that Railway Board Circular dated 21.12.2006 (Annexure R/1) provides that those who have fulfilled required conditions for the requisite qualification on cut-off date i.e. 30.05.2000 would be eligible for absorption in Group "D" on the Railway / PUs. Since the applicants were appointed after the aforesaid cut-off date, it is not possible to consider them for absorption in Group "D" category. It is further stated that earlier a letter dated 03.02.2006 (Annexure R/2) was received for regularization of both of the applicants but the same was replied vide letter dated 24.02.2006 (Annexure R/3) that the absorption of the applicants cannot be done. It is further stated by the respondents that they have not received notice dated 28.11.2016 (Annexure A/1). It was further stated in the letter dated 24.02.2006 that there were certain conditions pertaining to absorption of the applicants as per Headquarters letter dated 20.06.2001, which were not fulfilled by the applicants and, therefore, they could not be appointed in Group

“D” post. It was further clarified that the cut-off date was changed from 10.06.1997 to 30.05.2000 but all other conditions for eligibility remained the same as per the letter dated 21.12.2006 (Annexure R/1) issued by the Railway Board. It is further submitted that RBE No. 103/2000 (Annexure A/3) clearly mentioned that the Railways may consider absorption of only those staff of Quasi Administrative Offices / Organizations, who were on roll continuously for a period of at least three years as on 10.06.1997 and are still on roll, subject to fulfilment of prescribed educational qualifications required for recruitment on Group “D” posts. Therefore, since the applicants do not fulfil the required conditions, they are not eligible for absorption on Group “D” posts. Since the applicants were appointed in the year 2002 and 2004, respectively, as per Annexure A/8, which is much later than the prescribed cut-off date i.e. 30.05.2000 and also since the applicants were not on roll on 30.05.2000, therefore, they are not eligible for recruitment on Group “D” posts. Therefore, in view of the above facts and circumstances, the present Original Application deserves to be dismissed.

4. The applicants have filed a rejoinder denying the submissions of the respondents and further stated that the Railway Board had issued circular dated 11.06.1997 and 30.05.2000 and, thereafter, the Railway Board has not issued any circular / order for absorption of staff working in quasi-administrative offices / organizations in Group "D" in the Railways. Even after making several requests / representations through Union President of the NWR Employees Consumer Co-operative Society Ltd., as the applicants are not absorbed in Group "D" posts, therefore, the applicants have filed the present Original Application as they deprived their legitimate right for absorption in the Railway, which clearly shows the malafide intentions and willful negligence of the respondents to deprive them of their said rights. In the present case, the respondents had initially given the cut-off date as 11.06.1997 but thereafter changed the said cut-off date to 30.05.2000. Therefore, the applicants pray that they cannot be deprived of their legitimate claim for absorption without their fault and, therefore, they pray that they may be absorbed in Group "D" category from a suitable date with all consequential benefits.

5. Heard learned counsels for the parties through Video Conference and perused material available on record.

6. It is the claim of applicants that the action of the respondents in not absorbing / recruiting them on Group "D" posts is arbitrary, illegal and against the provisions of Articles 14 and 16 of the Constitution of India. The applicants state that the Railway Board since 1973 issued orders / circulars for absorption in the year 2000 and, thereafter, in the year 2006 issued guidelines and as per the said guidelines, they are entitled for absorption. It is also made clear that as per their age and qualifications, the applicants should have been absorbed but the respondents without any basis have kept the matter pending and have, till date, not considered their cases. The respondents have considered cases of Shri Rakesh Kumar and Shri Om Prakash for absorption, who were other co-workers, but have failed to absorb the present applicants and, therefore, such action of the respondents shows a case of discrimination. Thus, the applicants state that in view of several judgments, the respondents are required to recruit / absorb them in Group "D" posts.

7. On the other hand, the respondents have stated that the Railway Board circular dated 21.12.2006 clearly provides that those who have fulfilled all the required conditions and are possessing requisite qualification on the cut-off date i.e. 30.05.2000, would be eligible for absorption in Group "D" posts on the Railways / PUs. As it is clear that the applicants were appointed in 2002 and 2004, respectively, which is much later than the cut-off date 30.05.2000 and also as the present applicants were not on roll on 30.05.2000, the action of the respondents is just and proper.

8. The question, which requires consideration in the present matter, is whether the applicants are entitled for absorption / recruitment on Group "D" posts in the Railways. It is clear from Annexure A-8 letter dated 24.11.2014 that the present applicants were appointed on 16.04.2002 and 01.12.2004 as Senior Salesman and Junior Salesman, respectively, in North Western Railways Employees Consumers Co-operative Society Limited, Jaipur. As per Railway Board's circular dated 21.12.2006 (Annexure R/1) those persons working in quasi-administrative offices/organization, who have fulfilled all the required conditions and possess the

requisite qualifications as on the cut off date i.e. 30.05.2000, would be eligible for absorption on Group 'D' posts in the Railways/PUs. It is also clear that the North Western Railways Employees Consumers Co-operative Society Limited, Jaipur vide its letter dated 03.02.2006 (Annexure R/2) made a recommendation for absorption of the applicants as per their qualifications in the services of the Railways. The same was considered and replied vide letter dated 24.02.2006 (Annexure R/3) that there were certain conditions to absorb the applicants as per Headquarters letter dated 20.06.2001, which were not fulfilled by the applicants and, therefore, they cannot be appointed in Group 'D' category. It is also clear that subsequently the cut off date was changed from 10.06.1997 to 30.05.2000 but all other conditions for eligibility remained the same. Also as far as Annexure A/3 (RBE No. 103/2000 dated 30.05.2000) relied by the applicants is considered, it was made clear that as a one time relaxation, the Railways may consider absorption of only those staff of quasi-administrative offices / organizations who were on roll continuously for a period of at least three years as on 10.06.1997, and are still on roll, subject to fulfilment of prescribed educational qualification required for recruitment to

Group D posts. It is clear that both the applicants do not fulfil the conditions as mentioned, neither in Railway Board's circular dated 30.05.2000 (Annexure A/3) nor in the Railway Board's letter dated 21.12.2006 (Annexure R/1). The applicants were appointed in Western Railway (now NWR) Employees Consumers Co-operative Society Ltd., Jaipur only in 2002 and 2004, respectively, which are after the cut off date i.e. 30.05.2000 and, therefore, it is very clear that it is not possible to consider the cases of the applicants for their absorption in Group 'D' category in the Railways. So far as the judgment/order relied by the applicants is concerned, it was pertaining to the question as to whether the employees working in the Railway Employees Co-operative Stores are to be treated as railway employees and whether they are entitled to the payment of salaries, which are being paid to the employees under the Railway Establishment. In the present matter, this is not the issue but the issue is pertaining to absorption of the employees working in North Western Railway Employees Consumers Co-operative Society Ltd. as per provisions of Railway Board circulars / letters, in which the cut off date and certain other conditions for eligibility are prescribed. Since it is clear that the

applicants as on the cut off date i.e. 30.05.2000 are not fulfilling the conditions for eligibility as required, the action of respondents in not absorbing them on Group 'D' posts in the Railways is just and proper.

9. Accordingly, in view of the observations made above, the present Original Application is dismissed with no order as to costs.

(HINA P. SHAH)
JUDICIAL MEMBER

(DINESH SHARMA)
ADMINISTRATIVE MEMBER

Kumawat