

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**



O.A. NO.316/2004
M.A. NO.268/2004

This the 21st day of September, 2005.

**HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)
HON'BLE SHRI SHANKER RAJU, MEMBER (J)**

Jagdish Prasad Pal S/O Ganga Ram,
Crane Slinger, under Senior Section
Engineer (Loco), Northern Railway,
Moradabad.

... Applicant

(By Shri G.D.Bhandari, Advocate)

Versus

1. Union of India through
General Manager,
Northern Railway,
Baroda House, New Delhi.
2. Divisional Railway Manager,
Northern Railway,
Moradabad.

... Respondents

(By Shri R.L.Dhawan, Advocate)

O R D E R

Hon'ble Shri V.K.Majotra, Vice-Chairman (A):

Earlier OA No.1854/1997 of applicant whereby he had challenged the punishment of removal from service by order dated 21.10.1994 was allowed on 10.5.2000 quashing the punishment of removal from service and with direction to respondents to reinstate applicant in service within a period of three months along with the benefit of 50% of back wages. This decision was carried to the Hon'ble High Court which disposed of the writ petition vide Annexure A-10 dated 7.2.2002 directing respondents in the OA to reinstate applicant in service, however, without back wages within a period of two weeks. Applicant has been reinstated in service vide Annexure A-1 dated 12.4.2002 in the post of substitute

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crane slinger in the pay scale of Rs.2550-3200 at the stage of Rs.2550/- per month.

2. It has been alleged on behalf of applicant that applicant had been working as substitute loco cleaner. He has been placed in a lower scale than the original scale of substitute loco cleaner without any benefit of his past service. This kind of reinstatement, according to applicant, amounts to fresh appointment. His representations in this regard have not been paid any heed. The learned counsel of applicant maintained that applicant had been subjected to a screening test for permanent absorption in the post of loco cleaner in the year 1989. His name was shown at Sl. No.89. However, because of the pending disciplinary proceedings his result was not declared. The learned counsel further contended that the steam sheds came to be abolished in phases when diesel and electric engines replaced the steam engines. Under the policy laid down by the Railway Board, i.e., Annexures A-9 dated 25.7.1994 it was ordered that firemen and cleaners becoming surplus should be imparted training of diesel assistants and should be utilized as diesel assistants to the drivers working in trains. Many similarly situate persons as the applicant were imparted training in phases and were re-deployed as diesel assistants, however, applicant has been discriminated against. The learned counsel contended that applicant ought to have been reinstated in view of the orders of the Tribunal in combination with those of the Hon'ble High court respectively giving benefit of the past service, and all other benefits excepting wages. However, respondents have provided applicant fresh appointment and not given him any benefit of the past service.

3. On the other hand, at the outset the learned counsel of respondents stated that this OA is barred by limitation and that applicant has not shown sufficient cause for condonation of delay.

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4. True that the cause of action for applicant had arisen on 12.4.2002 when he was appointed as substitute crane slinger. The learned counsel of applicant stated that the cause of action for applicant is recurring and thereafter a grave injustice has been done to applicant as he has not been reinstated on the post held by him at the relevant point of time. No doubt there has been delay in filing of the OA. The cause of action had arisen on 12.4.2002 while the OA was filed on 4.2.2004. However, there is substantial merit in the case as the Court orders do not seem to have been implemented in their true spirit. As such, the delay in filing of the OA is condoned.

5. The learned counsel of respondents stated that applicant had been working as a substitute loco cleaner. He was not eligible for screening for absorption on regular Group 'D' post. The candidates who were promoted to the post of diesel assistants were reinstated on the post of substitute loco cleaner but at the time when applicant was reinstated the cadre of loco cleaners was abolished. Therefore, applicant was reinstated in another cadre of substitute crane slinger against a vacant post. The learned counsel further stated that the High Court has not directed reinstatement of applicant with consequential benefits. As such, applicant could have been appointed afresh without the benefit of wages and past service. The learned counsel further relied on a decision dated 19.2.1998 in CP No.44/1998 – *Veer Pal Singh v S.P.Mehta & Anr.*, to the effect that since there was no vacancy in the post of loco cleaner which was held by the applicant, there was nothing wrong for the respondents to adjust him against another post.

6. We have considered the respective contentions of parties as also the material available on record.

7. It has been contended on behalf of applicant that applicant had been subjected to a screening test for permanent absorption in 1989 and he was placed at Sl. No.89. However, as he was involved in disciplinary proceedings, his result

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was not declared. In this regard, it has been stated on behalf of respondents that applicant was a substitute loco cleaner on the basis of casual labour card and was not eligible for screening for absorption on regular Group 'D' post. Respondents have not denied specifically that applicant was subjected to a screening test for permanent absorption in 1989 and was placed at Sl. No. 89, however, the result was not declared in view of the disciplinary proceedings against him. The orders in the disciplinary proceedings were quashed and set aside by the Tribunal (Annexure A-8) and respondents were directed to reinstate applicant in service. These orders were upheld by the Hon'ble High Court with a modification that applicant would not be entitled to any back wages. The punishment awarded to applicant in the disciplinary proceedings having been set aside by Courts, and respondents not having denied subjecting applicant to screening test and not declaring his result because of the pendency of disciplinary proceedings against him, their contention that applicant was not eligible for screening for absorption on regular Group 'D' post cannot be accepted. It has to be held, therefore, that applicant was eligible for screening for absorption on regular Group 'D' post. He was so screened and was placed at Sl. No. 89 in the panel. However, his result was not declared due to pendency of disciplinary proceedings against him.

8. Next, the learned counsel of applicant had stated that vide annexure A-9 dated 25.7.1994 firemen and cleaners were to be imparted training of diesel assistants and they were to be utilized as diesel assistants to the drivers working in trains. Similarly placed persons as applicant who were removed from service from the post of cleaner were imparted training and re-deployed as diesel assistants. The learned counsel of applicant in this behalf stated that at the time when applicant was reinstated, the cadre of loco cleaners was abolished and as such applicant was reinstated in another cadre of substitute crane slinger against a vacant post. Applicant having been screened for absorption on regular Group 'D' post ought to have been imparted diesel training and re-deployed as diesel

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assistant. This contention of applicant has not been adequately responded by respondents. They have re-deployed similarly situate persons as applicant after imparting them diesel training.

9. We do not agree with respondents that reinstatement in the case of applicant as he was a substitute loco cleaner would mean fresh appointment without benefit of any past service. Applicant had been screened for absorption in Group 'D' but in view of the disciplinary proceedings was not absorbed as such. In this backdrop it cannot be accepted that applicant would have continued as a substitute.

10. At this stage, basically in tune with the spirit of Court orders as also Annexure A-9 applicant should be imparted training of diesel assistant and his services should be utilized as diesel assistant to the drivers in the equivalent scale to the scale of loco cleaner. If this is absolutely impossible, applicant should be deployed on a post having an equivalent scale to that of diesel assistant, i.e., Rs.2750-3500 giving notional benefit of all his past service. The import of the aforesaid court decisions is that he must be given all consequential benefits excepting the arrears of pay. His pay should be notionally fixed in the pay scale of diesel assistants with actual benefits from the date of reinstatement.

11. The OA as such is allowed directing respondents to pass appropriate orders as per above directions within a period of two months from the date of communication of these orders.

S. Raju
(Shanker Raju)
Member (J)

V. K. Majotra
(V. K. Majotra)
Vice-Chairman (A)

21.9.05

/as/