

Open Court

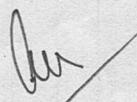
CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 364 of 2000

Friday, this the 24th day of October 2008

Hon'ble Mr. Justice A.K. Yog, Member (J)
Hon'ble Mr. K.S. Menon, Member (A)

1. Narendra Kumar Misra, aged about 40 years, son of Sri Jhamman Lal Misra, resident of 306, Nekpur, Ganesh Nagar, Bareilly.
2. Mohammad Haneef, aged about 40 years, son of Sri Hamid, resident of 731, Malukpur, Bareilly.
3. Nirdeo Yadav aged about 41 years, son of late Kama Yadav, resident of O H/9 C, Chaupala Railway Colony, Bareilly City.
4. Santosh Kumar Sharma, aged about 41 years, son of Sri Brij Lal Sharma, resident of Ravi Building, Defence Colony, Izzat Nagar, Bareilly.
5. Bhupendra Singh aged about 38 years, son of late Bahadur Singh, resident of 163, Sant Nagar, Izzat Nagar, Bareilly.
6. Ram Autar, aged about 42 years, son of Sri Ram Swaroop, resident of Basi Farm, Partapur Chaudhary, Izzat Nagar, Bareilly.
7. Lalta Prasad aged about 41 years, S/o late Kalyan Singh Yadav R/o Bhojipura in front of Railway Station, Bareilly.
8. Saeed Ahmad aged about 37 years, son of Sri Mohammad Ahmad, resident of 321, Sahu Kara near Kabristan, Puranpur, Pilibhit.
9. Mohammad Amin Khan, aged about 41 years, son of Mahboob Khan, resident of 404, Malukpur Bajdaran Gher Naseer Khan, Bareilly City.
10. Awadhesh Kumar Misra aged about 40 yrs., son of Sri Jagdish Chandra Misra, resident of 1, Kela Bagh near Sahukari Mathiya, District Bareilly.
11. Sipattar Singh aged about 42 years, S/o Sobaran Lal, resident of village Dohariya Pachdoora, Post Office Bhojipura, District Bareilly.



12. Ram Kumar aged about 38 years, son of Sri Hajari Lal, resident of village Mahlao, Post Office Izzat Nagar, District Bareilly.
13. Veer Bhan, aged about 37 years, son of Sri Inder Singh, resident of village Sah Alampur, Post Office Muzaffarpur Hiraundi, District Etah.
14. Sushil Chandra aged about 39 years, son of Sri Ram Prakash, resident of E/28D, Station Railway Colony, District Kasganj.

All (applicants No. 1 to 14) Engine Cleaners, Diesel-shed, Izzat Nagar Division, North Eastern Railway, Bareilly.

Applicants

By Advocate: Sri T.S. Pandey

Vs.

1. Union of India through its Ex-officio Secretary and Chairman, Railway Board, Rail Bhawan, New Delhi.
2. General Manager, North Eastern Railway, Gorakhpur.
3. Divisional Railway Manager, North Eastern Railway, Izzat Nagar Division, Bareilly.
4. Senior Divisional Personnel Officer, North Eastern Railway, Izzat Nagar Division, Bareilly.
5. Divisional Mechanical Engineer, North Eastern Railway, Izzat Nagar Division, Bareilly.

Respondents

By Advocate: Sri Prashant Mathur

O R D E R

Delivered by Justice A.K. Yog, J.M.

The applicants 14 in number have joined together to seek redressal of their grievance by filing single O.A. as admissible under Administrative Tribunals Act, 1985 (called the Act).

2. According to applicants, they were working on the post of Engine Cleaners in two different pay scales but they were said to be reverted back as Khalasi in pay scale of Rs.2550-3200/- . In pursuance to policy decision contained in Office Order No. 2253 dated 29.12.1999 issued by respondent No. 4/Senior Divisional Personnel Officer, N.E. Railway, Izzat Nagar Division, Bareilly. By means of present O.A., apart from



3

aforesaid Office Order, applicant seeks to challenge other Office Orders also.

3. Sri Prashant Mathur, Advocate/learned counsel appearing for the respondents submitted that controversy raised in present O.A. is identical and similar to the one which was raised in O.A. No. 132 of 2000 Kaptan Singh vs. Union of India and others. Learned counsel for the respondents further informed that said O.A. was disposed of finally by means of Order dated 03.10.2005 by two Members Bench of this Tribunal. For convenience we quote the relevant portion of said Order: -

“2. The applicants have prayed for quashing of office order dated 2252 and 2253 dated 29.12.1999 with a further order or direction to the respondents to post the applicants either on the post of Diesel Assistant or on the post of Fireman Grade I with attendant allowances etc. The applicant’s counsel submits that an identical issue was decided by this Tribunal vide order dated 7.4.2005 in OA 111/2000 a copy of which has been made available for perusal. On perusal of the said order it is observed that the very same order 2252 and 2253 dated 29.12.1999 were under challenge in the said OA and this Tribunal passed the following order: -

“11. In view of the above the OA succeeds. The respondents are directed to accommodate the applicants as Diesel Assistant either in their own Division or elsewhere. Their pay would be fixed notionally w.e.f. January, 2000 in the scale of pay of Rs.3050-4590 and actually from the date they assume duties as Diesel Assistant. Seniority in respect of the applicants in the grade of Diesel Assistant should be as worked out in the case of those who were transferred to Varanasi Division.

12. As regards payment of Running Allowance, the same would be applicable for those periods when they had actually run as held in the case of Dilbagh Singh (supra) and the extent of running allowance would be as applicable for Diesel Assistant albeit the applicant would have only worked as Khalassis. Needless to mention that in case the applicants had not performed duties of running staff from January, 2000 allowance.

13. The exercise involved in complying with this order shall be completed by the respondents within a period of six months from the date of receipt of copy of this order.”

3. The above order shall hold good in this case as well. The respondents are directed to afford the applicant in this OA the same benefit as available to in the applicants in OA 111/2000. Time calendared for completion of the exercise in compliance of this order is four months from the date of communication of this order. No costs.

*Sd./-
Member (A)*

*Sd./-
Member (J)”*

4. Aforequoted order of the Tribunal, as informed by Sri Prashant Mathur, was challenged by filing a Civil Misc. Writ Petition No. 15468 of 2006 before the High Court, Allahabad and the same has been

(Signature)

admitted and also an interim order passed. The Order dated 22.03.2006 of the High Court is being reproduced below: -

"Issue notice to the respondents returnable within six weeks.

Counter affidavit may be filed within four weeks. Rejoinder affidavit, if any, may be filed within two weeks thereafter.

List the matter after six weeks.

The learned Tribunal has issued a direction to the present petitioners to pass an order in a particular manner, which is not permissible in law. At the most the Tribunal could have asked the petitioners to consider the case in accordance with law. The operation of the impugned order dated 03.10.2005 shall remain stayed till further orders.

Sd/- Dr. B.S. Chauhan J.

Sd/-Dilip Gupta J.

22.3.2006"

5. Sri T.S. Pandey, Advocate concedes and does not dispute that present O.A. No. 364 of 2000 can be decided on same terms and conditions as contained in final order of the Tribunal dated 03.10.2005 in O.A. No. 132 of 2000 (quoted above). Sri T.S. Pandey, Advocate further submits that in view of High Court interim order dated 22.03.2006 applicants are satisfied if the Tribunal's Order dated 03.10.2005 in O.A. No. 132 of 2000 is being suitably modified to the extent that direction is given to departmental authorities to consider and decide the matter (instead of Tribunal itself directing the department).

6. To the above contention of learned counsel for applicant, Sri Prashant Mathur, Advocate submits that final order of the Tribunal dated 03.10.2005 having been stayed by the High Court vide Order dated 22.03.2006, the said order cannot be looked into or followed or utilized for any purpose whatsoever. He submits that present O.A. No. 364 of 2000 N.K. Mishra and others vs. Union of India and others should be kept in abeyance.

7. We are not in agreement with aforesaid contention of learned counsel for respondents. It is now well settled (and no argument/discussion is required on the issue) that final order dated 03.10.2005 passed by the Tribunal in O.A. No. 132 of 2000, even when its operation is stayed by an interim order of High Court, does not stand wiped off and cannot be ignored for all purposes. The interim order passed by the

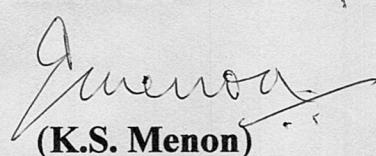
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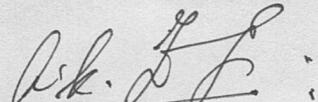
High Court in Writ Petition is relevant for purpose of considering the impact of Tribunal's final order dated 03.10.2005 vis-à-vis the parties in Writ Petition only. The Apex Court has, time and again, observed that in such situation High Court/Tribunal should not keep the matter pending and they should follow the Judgment unless otherwise directed by the higher court. This shall give an opportunity to the applicants (in present O.A. No. 364 of 2000) to join the proceeding in Writ Petition in case the respondents propose to challenge the Order of the Tribunal by filing a fresh Writ Petition, as otherwise they will be precluded from defending themselves in Writ filed in another case.

9. In view of above, we dispose of present O.A. No. 364 of 2000 on the same terms and conditions as contained in final order dated 03.10.2005 passed in O.A. No. 132 of 2000 Kaptan Singh vs. Union of India and others, subject to modification that applicants may approach the respondents for requisite consideration and direction for their accommodation, instead of ourselves directing for such exercise, within a period of four months from the date of communication of this order.

10. Accordingly we direct the applicants to file a certified copy of this Order alongwith O.A. and comprehensive additional representation, if so advise, before the Competent Authority of the respondents who shall decide the same, exercising its unfettered decision in accordance with law, by a reasoned and speaking order within 04 months from the date of receipt of a copy of this order. Decision taken shall be communicated to the applicants forthwith.



(K.S. Menon)
Member (A)



(Justice A.K. Yog)
Member (J)