

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

(THIS THE 18th DAY OF May, 2012)

PRESENT:
HON'BLE MR. D.C.LAKHA, MEMBER-A

ORIGINAL APPLICATION NO. 290 OF 2006
(U/s, 19 Administrative Tribunal Act.1985)

Prakash Chand, aged about 47 years, s/o Shri Ram Nath R/o village, Sohalla P.O. Pratappura, Near Primary School, Agra Cantt. Agra.

2. Sansari Lal, aged about 48 years, s/o Shri Azab Singh R/o village, Sohalla P.O. Pratappura, Near Primary School, Agra Cantt. Agra.

3. Durga Prasad aged about 49 years, s/o Shri Thakur Das, R/o village, Sohalla P.O. Pratappura, Near Primary School, Agra Cantt. Agra.

.....Applicants

By Advocate: Shri Rakesh Verma

Versus

1. Union of India through General Manager, North Central Railway, Nawab Yusuf Road, Allahabad.
2. Divisional Railway Manager, North Central Railway, Jhansi Division, Jhansi.
3. Divisional Railway Manager, North Central Railway, Agra Division, Agra.
4. Senior Divisional Signal & Telecommunication Engineer, North Central Railway, Agra Division, Office of the Divisional Railway Manager, North Central Railway, Agra.

..... Respondents

By Advocate: Shri R. Dixit proxy counsel for Shri S.C. Tripathi respondent No. 3 & 4
Shri S.K. Srivastava for respondent 1 &2

(Reserved on 22.3.2012)
ORDER

(DELIVERED BY:- HON'BLE MR. D.C.LAKHA, MEMBER-A

The applicant has prayed for the relief to grant him the benefit as was provided for by the Hon'ble Tribunal in O.A. No. 913/97 "Tula Ram vs. Union of India and others". Another relief prayed for is that the respondent No.3 be directed to transfer back the applicants from Signal



and Telecommunication Department to the Commercial Department as Parcel Porter with original seniority.

2. As per the facts submitted in the O.A., all the three applicants were engaged in the respondents Department in the Commercial Wing as Casual Labour on 1.7.78, 23.7.78 and 1977 respectively. They were placed as MRCL Parcal Porters in the Commercial Department respectively w.e.f. 1.7.79, 29.10.81 and 1.4.78 and their services were regularized in the same department on 7.4.95, 2.2.95 and 7.4.95 respectively. Aalongwith 67 others persons, the applicants were declared surplus in the Commercial Department and without calling for any option from them i.e. the applicants, they were transferred and posted in the Carriage and Wagon Department and Signal and Telecommunication Department on administrative grounds as Khalsi in the Jhansi Division itself. Out of 70 persons including the applicants, the respondents passed order dated 15.9.99 for 35 people and on 16.9.99 for another 35 persons. Vide order dated 16.9.99, the persons declared surplus in the Commercial Department were transferred to S&T Department and among these 35 persons the applicants were also transferred. All these 3 applicants were among those 3 who were posted under Agra Depot which was under Jhansi Division before creation of new Zone called NCR Allahabad. After creation of new Zone on 1.4.2003, Jhansi Division was bifurcated in two divisions e.g. Agra and Jhansi Divisions, Agra being brought under the control of respondent No. 3. Till then i.e. 31.3.2003 Agra was part of Jhansi Division. As certain posts of Parcel Porters were still existing and juniors were retained, the applicants protested, but of no avail. So, the applicants had to join at the new place i.e. in Agra Cantt under the control of respondent No. 4 w.e.f. 3.5.2001. One Shri Tula Ram filed Original application being O.A. No. 913/97 "Tula Ram vs. Union of India and others" in the Tribunal when NCR was not

created seeking therein the relief for posting in the Commercial Department because the vacancy was available. The O.A. was contested by respondent no. 2 and after hearing, the O.A. was decided on merits with the direction to the respondent No. 2 to give an opportunity to the applicants of the aforesaid O.A. alongwith other similarly placed Casual Labours and substitutes, who were working in the Commercial Department and who have been regularized in the other Departments to seek transfer to Group D posts in the Commercial Department on the first available vacancy without affecting earlier seniority list of the Commercial Department and those who availed this opportunity, may be transferred to Commercial Department against existing and likely vacancy in future maintaining interse seniority. The order of the Tribunal dated 13.1.99 is at Annexure A-3. In compliance of this order of the Tribunal, objections were called by letter dated 12.8.2003 from the employees. Out of 70 persons who were earlier working in Commercial Department and were transferred to Signal and Telecom Department and Carriage and Wagon Department and 17 have been posted back in Commercial Department as Parcel Porter vide office order dated 29.11.2005 (Annexure A-5). The applicants of this O.A. also want to get the benefit of this order of the Tribunal. The contention of the applicant is that at the time of order of the Tribunal, other similarly placed persons have been posted back in the Commercial Department. The new Zone called N.C.R. was not in existence and so was the position of the Agra Division. When they came to know about the order in favour of a few persons, as per direction of the Tribunal in O.A. No. 913/97, they submitted the representations, one after the other including the representations through their Union also. (Copies of these representations are annexed as A-6, A-7 and A-8). Though in these representations, justification in favour of the applicant has been

emphasized stating that they are also similarly circumstanced persons as those 70 persons who have got the benefit of the order of the Tribunal. By joining in Agra in Signal and Telecom Department, they have become junior to the originally recruited staff in the Signal and Telecom side and since they have rendered major part of their service i.e. about 27 years in the Commercial Department, and they have also come to know that certain vacancies are existing in Commercial Department, so they may be posted back. But no order in favour of the applicants has been passed so far. Hence, this O.A.

3. On notice, Counter reply has been filed by the respondents. The facts about the applicants, including in total 70 Parcel/Goods Porters having been declared surplus in the surplus cadre and transfer to other departments; O.A. No. 913/97, Tula Ram Vs. Union of India and others decided on 13.1.1999 by the Tribunal and the creation of new Zone as N.C.R.. Allahabad and new Division Agra, have been accepted in the Counter reply. It is also denied that the case of some of the other 70 persons was considered pursuant to the decision of the Hon'ble Tribunal in O.A. No. 913/97, Tula Ram Vs. Union of India and others, and they have been posted back in Commercial Department. The plea taken in the C.A. is that as per order of the Tribunal, the exercise was to be done by the Jhansi Division and the order pertains to the panel of regularization dated 16.6.97. Accordingly the matter was considered by the Jhansi Division by calling options from the concerned staff and on consideration of the options, 17 persons were absorbed back in the Commercial Department by letter dated 29.11.2005. But at the time of this exercise by Jhansi Division, by virtue of a new Zone and new Division of N.C.R., Allahabad, a new Division called Agra Division came into existence w.e.f. 1.4.2003. So, it is not within the competence to consider the case of the applicant by Jhansi Division. This has been

stated in the Counter reply filed by respondent No.2. The point of limitation has also been taken as a ground, stating that if the benefit of the order of the Tribunal passed in O.A. No. 913/07 is to be claimed by the applicants, then the claim is time barred because the order of the Tribunal was passed on 19.1.99.

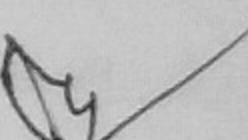
4. In the Counter reply filed by respondent No. 3 i.e on behalf of Agra Division, it has been stated that on creation of this new Division at Agra under the new Zone of N.C.R., Allahabad, the employees, by virtue of order dated 15.1.99 were received in this Division on "as is where is basis". The applicants including other officials were transferred from Commercial Department to Signal and Telecommunication Department vide letter of 15.9.99, because they were treated as surplus in the Commercial Department by Jhansi Division. But in the Agra Division, they were not found surplus in the Signal and Telecommunication Department and no vacancies are available in the Commercial Department. So, their claim is not at all valid and they cannot claim this plea as a matter of right in view of O.A. 913/97. Agra Division came into being by carving out the parts of adjoining erstwhile Divisions, viz. Jhansi Division, KTT Division, Allahabad Division and Izn. Division. Hence, interse seniority was finalized. In that situation, Agra Division is not in a position to disturb the seniority already finalized. In view of these circumstances, the claim of the applicants cannot be granted.

5. Rejoinder Affidavit is filed by the applicant, wherein the averments made in the OA. are repeated, adding the point that the respondent No.1 is the G.M., NCR and is over all incharge of Jhansi and Agra Divisions and accordingly, the respondent No.1 may be directed to issue suitable directions to Agra Division for consideration of the case of the applicants in view of the directions of the Tribunal in O.A. No. 913/97 (supra).

6. I have heard both the learned counsel and perused pleadings and the documents available. Both the learned counsel have taken the same pleas as they have taken in the averments and contentions in the O.A. and C.A. in support of their case. The relief claimed has emphatically been based on the order of the Tribunal in O.A. No. 913/97. The arguments on behalf of the applicant is that since taking in view the direction of the Tribunal, the respondent no. 2, on considering the case of other similarly placed persons, the case of the applicants may also be dealt with in the same manner by Agra Division. Though, Agra Division was not in existence at the time of order of the Tribunal in O.A. 913/97, yet the new Division inherited the assets and liabilities including the terms and conditions for the staff working under the Division. Had there been no new Division, the case of the applicants could have been considered by the Jhansi Division i.e. the respondent no.2 in the same manner as it has been done in the case of other 17 persons. Merely because a new Division came into existence, the right of the applicants was not suffered and should not be ignored. The respondents' counsel has taken the ground in his argument that by virtue of the new Division, called Agra Division and the applicants being posted under the administrative control of Agra Division the applicants do not have any right for their claim being considered in getting the posting back in the Commercial Department because in O.A. 913/97, only Jhansi Division was the respondent and being so, the case of the employees working under the respondents 2 were considered and suitable action was taken by passing the order. He has also taken the plea that the vacancies were/ are in the Commercial Department, are not available in the Agra Division. After creation of this Division, the interse seniority has already been fixed which need not be disturbed. The learned counsel has referred to the operative para of the said order of the Tribunal in O.A.

913/97 (supra) and has argued that in this order the applicant was not found entitled for the relief claimed. However, the respondents were directed to give an opportunity to the applicants alongwith other similarly placed casual labours who worked in the Commercial Department as and when vacancies arose.

7. I have given thoughtful consideration to the contentions of both the counsels, taken in support of their case and in view of the foregoing statement of facts and analysis, I tend to agree with the arguments on behalf of the respondents. There are no vacancies in the Commercial Department under the Agra Division, against which the applicants can be considered. Such matters cannot be kept open for all time to come for consideration. So, I do not find any merit in the case of the applicants. Hence the O.A. is dismissed. No costs.



Member (A)

s.a