

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 19/1996
T.A. No.

199

DATE OF DECISION : 25.02.2000.

Tirkha Ram & Ors.

Petitioner(s)

Mr. J.K. Kaushik,

Advocate for the Petitioner (s)

Versus

Union of India & Ors.

Respondent(s)

Mr. R.K. Soni,

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. A.K. Misra, Judicial Member

The Hon'ble Mr. Gopal Singh, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? *NO*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *NO*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *NO*

Gopal Singh
(Gopal Singh)
Adm. Member

A.K. Misra
(A.K. Misra)
Judl. Member

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of order : 25.02.2000

O.A. No. 19/1996

1. Tirkha Ram son of Shri Banarasi Dass aged about 55 years resident of Railway Loco Colony, Qrtr. No. T/56-A, Churu, at present employed on the post of Passenger Driver (substantive post of Sr. Goods Driver) in the office of Loco Foreman, Loco Shed, Churu, Northern Railway.
2. Balbir Singh son of Shri Bhuru Singh aged about 53 years resident of vill. & Post Saranwas District Rewari (Haryana), at present employed on the post of Passenger Driver (substantive post of Sr. Goods Driver) in the office of Loco Foreman, Loco Shed, Rewari, Northern Railway.
3. Madan Lal son of Shri Nihal Chand Sharma aged about 57 years resident of H.No 4187 Mohulla Shukarpura Rewari, at present employed on the post of Sr. Goods Driver in the office of Loco Foreman, Sadulpur, Northern Railway, Distt. Churu.
4. Harbhajan Lal son of Shri Tej Pal, aged about 56 years resident of Bungla 70-B, Railway Colony, Rewari, at present employed on the post of Sr. Goods Driver, in the office of Loco Foreman, Loco Shed, Rewari.
5. Jagdish Prasad son of Shri Ram Charan aged about 53 years resident of H.No. DM 254 Ramsinghpura, Near Railway Colony, Rewari, at present employed on the post of Sr. Goods Driver in the office of Loco Foreman, Loco Shed, Delhi, Sarai Rohilla, Northern Railway.

... Applicants.

v e r s u s

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Personnel Officer, Northern Railway, Bikaner Division, Bikaner.
3. The Divisional Railway Manager, Bikaner Division, Bikaner.

... Respondents.

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Mr. J.K. Kaushik, Counsel for the applicants.

Mr. R.K. Soni, Counsel for the respondents.

CORAM:

Hon'ble Mr. A.K. Misra, Judicial Member.

Hon'ble Mr. Gopal Singh, Administrative Member.

ORDER

(Per Hon'ble Mr. Gopal Singh)

Applicants, abovenamed, have filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for a direction to the respondents to delete the names of the applicants from the impugned order dated 1.12.95 (Annexure A/1) and further to promote the applicants on the basis of their earlier selection dated 7.10.92 (Annexure A/2) without subjecting them to a fresh selection to the same post, with all consequential benefits.

2. Applicants' case is that all of them have passed in the selection test during the year 1992 for the post of Passenger Driver scale Rs. 1600-2660 and they were empanelled in the panel dated 7.10.92. The respondents vide their impugned letter dated 1.12.95 (Annexure A/1) had called all the applicants for appearing in a fresh selection for the post of Passenger Driver. The applicants have also claimed that they had already officiated on the post of Passenger Driver during the currency of panel and, therefore, they should not be subjected to a fresh selection, in terms of para 220 of Indian Railway Establishment Manual, Volume-I. Feeling aggrieved, the applicants have approached this Tribunal.

3. Notices were issued to the respondents and they have filed the reply. It is contended by the respondents that except applicant No. 1 (Tirkha Ram), no cause of action has arisen for remaining 4 applicants and the O.A. is premature. It is also submitted by the respondents that the applicants were utilised to work on passenger train in urgency. Since none of these 4 applicants were promoted to officiate as Passenger Driver during the currency of the panel, they were required to pass fresh selection for the post of Passenger Driver.

(Signature)

4. In this case, the allegation of the applicants is that they had officiated on the higher post during the currency of the panel. With a view to check the veracity of this allegation we had directed the learned counsel for the respondents to produce before us the Drivers' diary in respect of each applicant and also to let us know as to how their services were utilised in the disputed period. Alternatively, the learned counsel for the respondents was directed to produce the payment vouchers for the disputed period to show the payment of allowance/officiating allowance paid to the applicants, vide our order dated 3.9.98. On 8.12.98, the learned counsel for the respondents submitted a copy of letter dated 26.11.98 of the Loco Foreman, Churu, by which it is clear that the applicant No.1 (Tirkha Ram) was officiating on the post of Passenger Driver with effect from 1.3.93. No information in regard to other applicants has been furnished by the learned counsel for the respondents and he was repeatedly directed to produce the relevant documents so as to settle the controversy. In our order dated 16.9.99, learned counsel for the respondents undertook that in case the department fails to produce documents on the next date, he would argue the case. The case was listed 3 times thereafter, but the required documents could not be produced by the learned counsel for the respondents and the case was finally heard on 23.2.2000. In the absence of any documentary evidence to support the contention of the respondents that the applicants were not promoted to officiate on the post of Passenger Driver, the contention of the applicants that they had officiated on the post of Passenger Driver during the currency of the panel has to be upheld. The respondents have admitted that the applicant No. 1 (Tirkha Ram) had officiated on the post of Passenger Driver with effect from 1.3.93 (Annexure R/2).

5. In the light of above discussion, it would not be wrong to presume that other 4 applicants had also officiated on the post of Passenger Driver during the currency of the panel dated 7.10.92.

6. Para 220 of the Indian Railway Establishment Manual-Volume-I, provides as under :-

"Para 220- Currency of Panels:

(a) Panels drawn by the Selection Board and approved by the competent authority shall be current for two years from

Leopold J

the date of approval by the competent authority or till these are exhausted whichever is earlier.

(b) An employee who once officiates against a non-fortuitous vacancy in his turn on the panel whether against a leave arrangement, deputation or temporary transfer of another employee vacating the post, shall not be required to appear again for fresh selection.

(c) In case an employee lower in the panel has officiated whereas one higher in the panel has not officiated for reasons beyond the later's controlled such as sickness non-released by the administration on promotion, the latter employee will not be required to appear for fresh selection. If, however, the senior person does not officiate for reasons of his own, this implied that he has refused promotion. In that case, the next junior is the rightful person to be promoted and the employee who is deemed to have refused promotion under this sub-para will not be entitled to protection in such a case."

7. Since the contention of the applicants that they had officiated on the post of Passenger Driver during the currency of the panel has been upheld in our above discussion, therefore, they cannot be subjected to a fresh selection test for the post of Passenger Driver in terms of aforementioned provision and they would be entitled for promotion to the post of Passenger Driver on the basis of their earlier selection in 1992. Thus, the application has merit and deserves to be allowed.

8. The O.A. is accordingly allowed with a direction to the respondents not to put the applicants to a fresh selection test for the post of Passenger Driver and all the applicants should be promoted as Passenger Driver according to their position in the panel dated 7.10.92 (Annexure A/2), within a period of three months from the date of receipt of a copy of this order.

9. Parties are left to bear their own costs.

Gopal Singh
(GOPAL SINGH)
Adm. Member

25/2/2000
(A.K. MISRA)
Judl. Member

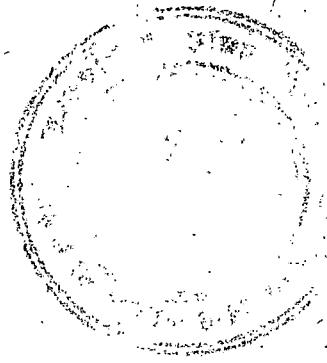
cvr.

Recd
Govt of India
2/3/2000

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2/3/2000

(For RUSMI)



Part II and III destroyed
in my presence on 26.9.06
under the supervision of
Section Officer (U) as per
order dated 23.8.06

Section officer (Record)

1st copy sent
by 2/3
Hon'ble Mr. (Rajesh)
member (R)
copy sent
by 2/3