के.प्र.अ. (प्रक्रिया) नियमावली के नियम 22 के अन्तर्गत निः शुल्क प्रति

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR.

Original Application Nos. 138,139,140 &150 /2005.
&
Misc. Application Nos.119,120,121, 122/2005

Date of decision : 9th.03.2007

Hon'ble Mr. Kuldip Singh, Vice Chairman.

Hon'ble Mr. Tarsem Lal, Administrative Member.

Rohit Dutt Pania, S/o late Shri Vishnu Dutt Paniya aged 39 years, resident of Kayasto Ki Ghati, Nav Chokla, Jodhpur. Post: The applicant is presently holding the post of Section Engineer(Works) in the office of Section Engineer (Works/P) Behind Sangi Petrol Pump, North Western Railway Jodhpur.

: applicant in O.A. No. 138/05

Vimal Mathur, S/o late Shri Kailash Narayan Mathur aged 39 years, resident of T.20, Railway quarter, Behind Sangi Petrol pump Jodhpur. Post: The applicant is presently holding the post of Section Engineer(Works) in the office of Section Engineer (Works)Land Divisional Rail Manager Office, North Western Railway Jodhpur.

: applicant in O.A. No. 139/05

Magan Lal Meena, S/o Shri Ram Kishan Meena aged 41 years, resident of E-52, Near Railway Station, Barmer. Post: The applicant is presently holding the post of Section Engineer(Works) in the office of Section Engineer (Works), North Western Railway Barmer.

: applicant in O.A. No. 140/05

Kailash Chand Meena, S/o Shri Kajodi Lal aged about 40 years, resident of Qr. No. E-14, Railway colony, Merta Road, Distt. Naguar Post: The applicant is presently holding the post of Section Engineer (Works) in the office of Section Engineer (Works) North Western Railway Merta Road Naguar.

: Applicant in O.A. No. 150/05.

Rep. By Mr. Kuldeep Mathur : Counsel for the applicants in O.A. Nos 138, 139 150 of 2005

Mr. Kuldeep Mathur proxy counsel for Mr. B.S. Kohinoor: Counsel for the applicant in O.A.No. 140/2005.

COMPARED & CHECKED

1/14

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VERSUS

1. The Union of India through the General Manager, North Western Railway, Jaipur.

2. The Divisional Rail Manager, North Western Railway, Jodhpur.

3. The Divisional Personnel Officer, North Western Railway, Jodhpur.

4. Shri M.K. Gupta, Chief Drafts Man, SSE, (Drawings) in the DRM Office, North Western Railway, Ajmer.

: Respondents.

Mr. Manoj Bhandari : Counsel for the respondents 1 to 3

Service of notice awaited on respondent No. 4

ORDER

Per Mr. Kuldip Singh, Vice Chairman.

In all these four applications, the applicants have common grievance, which had arisen because of rejection of their representation by a common order. Hence all these applications were heard together and are being disposed of by this common order.

2. The facts as alleged in brief by the applicants are that the applicants had been working as Inspector of Works, Gr.I at the relevant point of time. The respondents have issued a letter dated 17.10.96for holding a selection to the post of Section Engineer (Works) (Annex. A.2) vide which 7 vacancies were to be filled. All the four applicants have opted for the said selection.

3. As a result of the selection, all the applicants were placed in the panel (Annex. A/3) at Sl. Nos. 3 to 6. After this vide Annex. A/4 Kailash Chand Meena (Applicant in O.A No. 150/05) and Magan Lal Meena (Applicant in O.A. No. 140/05) were directed to be fitted against cadre

posts and the remaining two applicants S/Shri Rohit Paniya(Applicant in O.A. No. 138/05) and Vimal Mathur(Applicant in O.A. No. 139/05) were ordered to be fitted against work-charged post. However, this order was later clarified that Shri Kailash Chand Meena and Magan Lal Meena were also fitted against worked charged posts. All the applicants accepted and joined the work charged posts. However, on 26.02.99, the respondents issued an order reverting the applicants to the post of Inspect of Works, as the sanction period issued for the work charged post has expired. An order to that effect was issued vide Annex. A/5. The applicants protested against the same. On 13.04.99, another order was issued vide Annex. A/6, whereby they were again posted as Section Engineers. Out of these four applicants except Rohit Dutt Pania (Applicant in O.A. No. 138/2005), the other three applicants were posted against permanent posts, and the said Rohit Dutt Pania was posted against temporary post. A seniority list was issued vide Annex. A/7, wherein the names of the applicants were shown at Sl. Nos.365 to368 and the date of promotion of the applicants have been shown as 11.01.97.

4. However, vide letter dated 03.09.2003, another seniority list was issued wherein the names of the applicants have been downgraded and the seniority position of Kailash Chand Meena was shown at Sl. No. 380 whereas the other three applicants names were shown at Sl. Nos.599 to 601. In the said seniority list the dates of promotions of the other three applicants were shown as 13.04.99 and that of the Kailash Chand Meena was retained as 11.01.97. The applicants further alleged that number of persons who were selected for the post of Section Engineers after the applicants were selected have been shown as senior to them in the seniority list dated 03.09.2003. Thereafter one of the applicants Shri Rohit Dutt Pania, after issuance of the seniority list dated 03.09.2003, submitted a representation dated 3.10.2003 (Annex. A/9 in O.A. No.

138/05). In the said representation he raised a fundamental plea that candidates selected for appointment at an earlier selection shall be senior to those selected later irrespective of date of posting in terms of para 306 of IREM Vol. I. Hence the applicant requested the authorities to assign him seniority over those persons, who have been empanelled on the basis of subsequent selection. The applicants further alleges that during the pendency of the said representation, the respondents have issued a letter dated 06.12.2004, for holding selection to the post of Assistant Engineer- Group B (Regular –70% quota). The Senior Divisional Personnel Officer on 02.03.2005 issued another letter. The applicant Shri Rohit Dutt Pania immediately thereafter met the higher authorities for redressal of his grievances. Thereafter the Divisional Personnel Officer had written a letter on 15.03.2005 to respondent No. 1, wherein he had stated that applicants are entitled for seniority position assigned to them vide seniority list dated 20.06.2003 as per para 306 of IREM which clearly states that candidates selected for appointment at an earlier selection shall be senior to those selected latter irrespective of the dates of posting. However, the respondent No. 1 vide impugned letter dated 18.03.2005 informed that the seniority position assigned to Shri Rohit Dutt Pania cannot be changed since the same has been issued in consonance with RBE letter No. 146/2004. The applicants claim that the said letter has no application in the case of the applicants. Shri Rohit Dutt Pania further alleged that in the selection out of six persons four were posted against cadre posts and he and one another were given posting against work charged post. He further states that since his name appears in the panel dated 11.12.96 there is no reason to assign him seniority from a subsequent date. The learned counsel further submits that because of fortuitous reasons, the applicants have been reverted on 26.02.99 and the respondents were required to post them against cadre posts. The learned counsel further submitted that the reversion was

fortuitous and therefore the respondents are required to ignore this break and the applicants are continuing for the last about 8 years and though they were initially posted against work charged posts, yet the first seniority list should have prevailed. He also submitted the applicants were posted against work charged posts due to extraneous reasons. The learned counsel therefore prayed that the earlier seniority may be restored and the respondents should be directed to allow them to appear for selection to the post of Group B posts.

5. The respondents are contesting the O.A by filing a detailed reply. The respondents have stated that the OAs are liable to be dismissed on the ground that necessary parties who are likely to be affected have not been impleaded. Further the applicants have not challenged the policy decision dated 22.07.2004 (RBE No. 146/2004) and on that ground also the O.A cannot be sustained.

6. The respondents have further submitted that the selection was issued for 7 posts out of which 2 posts were cadre posts and 5 posts were work charged posts. It is further submitted that the applicants were communicated vide letter dated 10.01.97 (Annex. A/4) that they are being appointed against work charged posts of Section Engineer (Works) and the same was accepted by the applicants. Thus they were promoted against fortuitous vacancies and therefore they cannot now raise the contention regarding the assignment of seniority along with those posted against cadre posts. It is further stated that the selection was held against the posts and the work charged post was likely to be continued for long time the said work charge post was included while holding the selection to induct properly selected candidates. It is further submitted that on availability of permanent cadre post Shri Rohit Dutt Pania was regularized with effect from 13.04.99. It is further stated that

the inter se seniority was sent by Jodhpur office to the General Manager (Personnel) Northern Railway and on that basis appropriate order was passed in accordance with law on 03.09.2003 assigning the correct position of seniority and the seniority has to be assigned from the date of regular promotion and the fact remains that the applicant in O.A No. 138/05 stood reverted d for a period of 1 ½ months and that period cannot be counted for the purpose of seniority on the post of Section Engineer.

7. It is further stated that the inter se seniority list was prepared for the purpose of holding selection for the post of AEN on the basis from different seniority units and therefore the same cannot be termed as seniority list and the seniority cannot be assigned as per the inter se seniority list prepared at any stage. It is therefore submitted that the impugned order has been rightly issued to the applicants and the applicants cannot question the validity of the same.

8. We have heard the learned counsel for the parties and have gone through the records and pleadings very carefully. As far the objection of non joinder of necessary parties, the learned counsel for the applicants submitted the applicants have arrayed respondent No. 4, one of the persons likely to be affected in a representative capacity. So this objection cannot be sustained. In our view also since private respondent No. 4 has been added in a representative capacity, so the objection of the official respondents cannot be sustained. The questions that arise for determination in this case are (i) whether the selection was held for regular posts, if so, (ii) whether the applicants who had been promoted against work charged posts can be given seniority along with those persons who had been posted against cadre posts. The learned counsel appearing for the applicants has submitted that out of these persons who

have been selected 2 persons have been granted higher seniority because they were posted against regular cadre posts. The applicant Shri Rohit Dutt Pania has been posted against work charged post and even granted lower seniority. In between persons who had been shown as senior to the applicants came in the cadre by way of subsequent selection. As per para 306 of IREM vol. I, persons appointed later from subsequent selections cannot be given seniority higher than those persons who had been selected in an earlier selection.

9. In reply to this, the learned counsel appearing for the respondents submitted that as far as posting Section Engineers are concerned, the feeder category is from various groups and one of the groups is Inspector of Works, to which the applicants belong. The other feeder category candidates are also available for promotion to the post of Section Engineers and all those persons shown in the list belong to different services and different cadres. The learned counsel for the respondents further submitted that the applicants have failed to show that persons from the cadre of Inspector of works who have been selected in a subsequent selection have been assigned seniority above the applicants. The learned counsel for the applicants was unable to show any person belonging to Inspector of Works category selected in later selection have been shown as senior to the applicants. The two persons who have been appointed against regular cadre posts have been appointed against two regular vacancies which were available and others have been appointed against work charged posts. Hence we find that this contention of the learned counsel for the applicants have no basis. It is an admitted fact that no one from the cadre of Inspector of Works has been posted as Section Engineer as stated by the respondents and this version of the respondents had not been controverted by the applicants.

10. However, the learned counsel for the applicants has also raised another issue and submitted that the selection was proposed to be held for 7 posts and in this respect he had referred to letter dated 17.10.96 (Annex. A/2), vide which the respondents have proposed to hold selection for 7 posts out of which no post is reserved for any group and all the 7 posts are unreserved. However, it is not clear that whether all the 7 posts were available in the cadre itself or if any of the posts belong to work charged post. However, it has been clarified only during the arguments and in the counter affidavit that only two cadre posts are available and the work charged post likely to continue for long the same were included in the proposed selection and the number of vacancies were shown as 7 (seven).

11. Be that as it may, the learned counsel for the applicants relied on the following judgements in support of his contentions.

(i) **Baleshwar Dass and ors. Vs. State of U.P and ors.** (AIR 1981 SC 40).

In the above case the seniority of a member of a particular service was raised and a distinction was sought to be made on the basis of 'permanent appointee' ;'temporary appointee' and officiating appointee. The Apex Court, while commenting upon the Rules, have held that while rules regulating conditions of service are within the executive power of the State or its legislative power under Proviso to Art. 309, even so such rules have to be reasonable, fair and not grossly unjust if they are to survive the test of Articles 14 and 16. The Apex Court has also held that the point from which service has to be counted is the commencement of the officiating service of the Assistant Engineers who might not have secured permanent appointments in the beginning and in that sense may still be temporary, but who, for all other purposes, have been regularized and are fit to be absorbed into permanent posts as and when they are

vacant. Hence a direction was issued to prepare the seniority list in the light of the above principles. However, in these cases, the applicants have not challenged the rule and even have not assailed the reasonableness of the rules. Rather para 306 of IREM states persons selected for appointment later cannot gain seniority over the persons selected earlier irrespective of the date of posting except in the cases covered under para 305 of IREM Vol. I. Therefore, we have to hold that the applicants have failed to establish that persons selected from a subsequent selection were placed above them. Hence until and unless the applicants establish that any candidate selected in a subsequent selection from amongst the same feeder category has been placed above them, the applicants cannot succeed in these O.As.

2. The learned counsel for the applicants next relied on the observation of Apex Court as in the concept of permanent/temporary/officiating appointment. A candidate can be appointed as permanent or temporary or on officiating basis. But once the candidates were appointed on regular basis they became member of the service. The Hon'ble Apex Court in the above case held the normal rule consistent with equity is that officiating service, even before confirmation in service has relevancy to seniority if eventually no infirmities in the way of confirmation exists. It is further observed that we see nothing in the scheme of the Rules contrary to that principle. Therefore the point from which service has to be counted is the commencement of the officiating service of the Assistant Engineers who might not have secured permanent appointment in the beginning and in that sense may still be temporary, but who, for all other purposes, have been regularized and are fit to be absorbed into permanent posts and when they are vacant. But in this case, we find that the ratio is not applicable to these cases since right from the date of their appointment

they were posted against work charged post, which were not cadre posts. These posts are available so long as the work is available, which had been related to some project and so long as the project continues the posts will be available and after the completion of the projects the posts also vanishes. In this regard also, when the applicants were reverted vide letter dated 26.02.99, vide Annex. A/5 it was clearly mentioned in that order that on the abolition of work charged posts the applicants were reverted and they have been given cadre posts after a period of 1 ½ months, but that does not mean that while the applicants were working on the work charged posts were integrated into cadre being member of the service and working against cadre posts. They were lucky to get within a period of 1 ½ months the regular post and one may not get the regular post even after number of months. Hence we are of the view that the decision relied on by the learned counsel for the applicants is not much helpful to the applicants.

13. The learned counsel for the applicants also referred to a judgement of Hon'ble High Court of Rajasthan in the case of **R.S. Rawat vs. State of Rajasthan** [1993 (1) Western Law cases (Raj)-79], wherein the petitioner has been selected against a clear vacancy through a proper selection committee, who had been appointed on adhoc basis. The Court has held that there is no justification for restricting appointment as adhoc or upto limited period and the term adhoc written in the appointment order is invalid. This judgement is not of much help to the issue involved in the instant cases. The case of the respondents consistently is that only two cadre posts are available and the remaining posts are work charged posts and this is their consistent stand. As the applicants were not appointed initially against clear vacancies this judgement is not applicable to the facts of this case.

14. The other judgement cited by the learned counsel for the applicants in the case of **Syed Mansoor Ali vs. State of Rajasthan and anr** [RLR 1988 (2) 616] is also not applicable as it also deal with a similar issue as it was in the case of **Rawat** (supra).

15. In view of the foregoing discussion, we find no merit in these cases and the action of the respondents does not call for our interference. The O.As are therefore dismissed. In view of the fact that the O.As are dismissed nothing survives in the Misc. Applications seeking a direction to the respondents to allow them to appear in the viva voce. Accordingly they are dismissed. As the O.As are dismissed, the results of the applicants who appeared in the examination on the basis of interim orders granted by this Tribunal need not be acted upon.

sd-
(Tarsem Lal)
Administrative Member

sd-
(Kuldip Singh)
Vice Chairman.

Jsv.

CERTIFIED TRUE COPY
Dated ...12/3/02...

अनुभाग अधिकारी (न्यायिक)
Section Officer (Judl.)
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
जोधपुर न्यायपीठ, जोधपुर
Jodhpur Bench, Jodhpur.

Re copy of order
Vijay Gupta
12/3/07
for Mr. Manoj Bhandari

R/C

12/12/07

for Mr. Neeraj