

S/A

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application No. 243/2006

Date of decision: 12-8-2010

Hon'ble Mr. Justice Syed Md Mahfooz Alam, Judicial Member.

Hon'ble Mr. V. K.Kapoor, Administrative Member.

1. Mohit Sharma, S/o Shri Subhash Chandra Sharma, aged about 23 years, resident of -6/W/890 Kuri Bhagtasani Housing Board, Jodhpur. (Raj)
2. Vinod Kumar, S/o Shri Kapil Deo, aged about 33 years, resident of T-112 Old Loco Colony, Jodhpur (Raj)
3. Hanuman, S/o Shri Ladhu Ram, aged about 24 years, resident of Giriraj Colony, Chopasani road, Village and post Suthala, Jodhpur.
4. Deepak Mathur, S/o shri Shyam Babu Mathur, aged about 34 years, at present- C/o Dayanand Tiwari, Beldaron-ki-Gali, Bai Jee Ka Talab Jodhpur (Raj)
5. Gajendra Sharma, S/o late Shri Babulal Sharma, aged about 30 years, resident of 2/990 Kuri Bhagatasani Housing Board, Jodhpur (Raj).

: Applicants.

Rep. By Mr.J.K. Mishra & A.K. Kaushik :Counsel for the applicants.

Versus

1. Union of India through the General Manager, North Western Railway, Jaipur (Raj.)
2. Divisional Personnel Officer, North Western Railway, Jodhpur Division, Jodhpur (Raj).

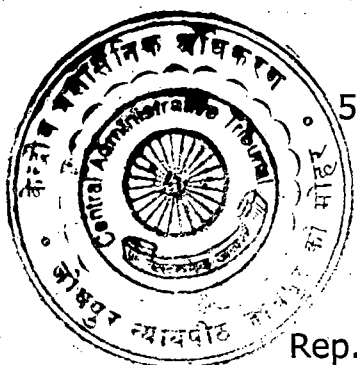
Rep. By Mr. C.S. Kotwani : Counsel for the respondents.

ORDER

Per Mr. Justice S.M. M. Alam, Judicial Member.

Applicants Mohit Sharma, Vinod Kumar, Hanuman, Deepak Mathur and Gajendra Sharma, have filed this Original Application seeking following reliefs:

- " i) That the applicants may be allowed to file this original application jointly.

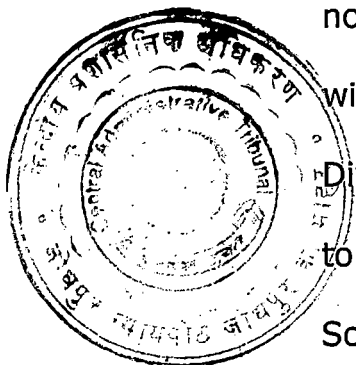


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- (ii) That the complete record of recruitment pertaining to 190 candidates approved by G.M. north Western Railway, for appointment as fresh face substitute in the year 2004 may be called for.
 - (iii) That the respondents may be directed to give appointment to the applicants as per their position/place in the approved panel with all consequential benefits.
 - (iv) Any other direction, or orders may be passed in favour of the applicants, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
 - (v) That the cost of this original application may be awarded to the applicants.

2. The brief facts of the case are as follows:

In the month of May 2004, the General Manager, North Western Railway invited applications for appointment of candidates as fresh substitute in Group D category. In compliance of the notification, all the applicants submitted their applications along with educational certificates. They were interviewed by the Divisional Personnel Officer and their applications were forwarded to the General Manager, North Western Railway for approval. Some candidates in the approved list were appointed. The applicants came to know that their names find place in the approved list of candidates for appointment and they were hoping that they would be given appointment to the post of Fresh Face Substitute on their turn. In July 2004, the applicants were informed that due to anonymous complaint made by some person, the entire record including the approved list were ceased by the Railway Vigilance department and hence no appointment could be given till the clearance is given by the Vigilance department. As no progress was made in the appointment, applicant No. 2 and some other candidates made an application under Right to Information Act ('RTI Act' for short), asking the authority to furnish



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information regarding their recruitment and appointment to the post of Fresh Face substitute. The Public Information Officer, vide his letter dated 29.06.2006 (Annex. A/2) along with the letter dated 27.01.2006 (Annex A/3) issued by the General Manager (P) North Western Railway, informed the applicant No. 2 about the details of recruitment and appointment for the post of Fresh Substitutes. It is stated that a list of 348 recruited candidates was attached to the above mentioned letter, according to which candidates upto 330 were Course Completed Apprentice and the remaining candidates were fresh hands and they were appointed as Fresh Face Substitute in Group D posts. It is further stated that a perusal of copy of appointment letter dated 26.09.2005 (Annex. A/4) issued by the General Manager (P) pertaining to one Shri Anil Kumar Panwar, whose name stood at Sl. No. 331 and another appointment letter dated 29.09.2004 (Annex. A/5) issued to one Shri Ajay Kumar Jaysawal, would go to show that some other persons whose names were not in the approved list were also appointed as Fresh Substitutes. It is further stated that there are number of Group 'D' posts in North Western Railway which are still lying vacant and the process of recruitment/appointment of fresh face substitute and their regularization is still continuing. But the appointment of applicants as Fresh Substitutes are being ignored on the ground that no clearance has been given by the Vigilance Department, whereas the fact is that the Vigilance Department has returned the complete record and the Vigilance Department has no role to play in the matter of recruitment/appointment. The fact is



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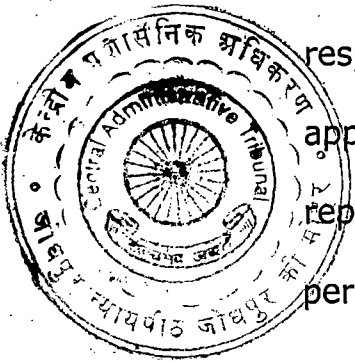
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that the competent authority is the first respondent, who has already approved the names of the applicants and the denial of the appointment to the applicants is arbitrary and malafide action of the respondents. The same is also discriminatory in view of the fact that some persons, whose names were not in the approved list, have been appointed as Fresh Face Substitute. On the above grounds the applicants have filed this application and have claimed for the grant of reliefs as mentioned above.

3. On filing of the application, notices were issued to the respondents and in compliance of the notice respondents made appearance through their lawyer and filed reply of the O.A. In the reply their case is that the applicants have claimed appointment as per their position in the approved panel, but as a matter of fact, no such panel as stated had been prepared by the respondent authority and as such the applicants cannot be given appointment as Fresh Face Substitute and so on this ground alone the application has to be dismissed.

4. The above averment of the respondents was refuted by the learned advocate of the applicant in the rejoinder.

5. We have heard the learned advocate of both sides and perused the application as well as the reply carefully. We have also gone through the annexures filed along with the O.A and rejoinder.



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6. During the course of the argument, it has been submitted by the learned advocate of the applicant that as per information supplied to applicant No. 2 by the respondents under RTI Act an approved panel of candidates for appointment to the post of Fresh Face Substitute was prepared and the names of the applicants figured in that list along with other candidates. He has also annexed the said approved list with his rejoinder as Annex A-7.

7. It appears from the perusal of the record and in view of the categorical statement made by the advocate of the applicants with regard to approved list as per Annex. A/7, the respondents, vide order dated 06.01.2010 passed in MA. No. 155/2009, were directed to produce the document in a sealed cover on the next date of hearing (i.e. on 23.02.2010.) and with reference to the above direction, the respondents have produced the approved list in a sealed cover vide letter dated 26.04.2010. On 04.08.2010, the sealed cover was opened in Court for perusal by both the lawyers as well as by the Court. After perusal of the said approved list, the learned advocate appearing for the respondents conceded that the names of the applicants find place in the approved list of selected candidates for the post of Fresh Face Substitutes.

8. We have also perused the said approved list and we are satisfied that the names of the applicants appeared in the approved list at Sl. Nos. 32,40,45,60 and 71 for recruitment/appointment to



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the post of Fresh Face Substitute. Thus we are of the view that the applicants have got a very good case in their favour and denial of appointment to the applicants on the said post is arbitrary and malafide on the part of respondents.

9. On the basis of above discussion, we find merit in this O.A and as such the O.A is hereby allowed. The respondents are directed to consider the case of the applicants for appointment to the post of Fresh Face Substitute as per the approved list prepared by the respondents. It is further observed that the entire exercise for recruitment/appointment to the post of Fresh Face substitute as per the approved list produced before this Court, shall be completed by the respondents within a period of three months from the date of receipt of a copy of this order. No order as to costs.


[V.K. Kapoor]
Administrative Member


[Justice S.M.M. Alam]
Judicial Member.

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