

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 21 day of November, 2006

ORIGINAL APPLICATION No.02/2002

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)

HON'BLE MR. J.P.SHUKLA, MEMBER (ADMV.)

Brijesh Chand Saraswat,
s/o Shri Satish Chandra Saraswat,
r/o Bandikui, now a days pump driver
Loco Shed, Jaipur North Western
Railway, Jaipur Division,
Jaipur.

.. Applicant

(By Advocate: Shri S.K.Jain)

Versus

1. Union of India through
the General Manager (Establishment),
Head Office, Western Railway,
Churchgate, Mumbai.
2. Divisional Railway Manager,
Western Railway,
Jaipur Railway Division,
Jaipur.
3. Senior Divisional Mechanical Engineer (Estt.)
Western Railway,
Jaipur Railway Division,
Jaipur
4. Divisional Personnel Officer,
Western Railway,
Jaipur Railway Division,
Jaipur.
5. Bhanwar Lal Saini,
Diesel Assistant,
Loco Shed Bandikui
through Loco Foreman, Bandikui,
by

NWR, Bandikui.

6. General Manager,
North Western Railway,
Jaipur

.. Respondents

(By Advocate: Shri S.S.Hasan)

O R D E R

Per Hon'ble Mr. M.L.CHAUHAN

The applicant has filed this OA thereby praying for the following reliefs:-

- “i) That it is most respectfully prayed that the Hon'ble Tribunal may very kindly be pleased to call for the entire relevant records relating to this case, and examine it thoroughly in the interest of justice, equity and fairplay;
- ii) That on and after examining and perusal of the relevant record, the Hon'ble Tribunal may very kindly be pleased to order for the applicant's promotion to the post of Cleaner-Khallasi in the running job from the due date either in the year 1992-93 or later as and when his promotion to the said post became due. Alternatively, his case for his promotion to this post may very kindly be considered along with his colleague Shri Bhanwar Lal from the year in which his colleague was made and appointed as Clearner-Khallasi;
- iii) That secondly, after determining his due seniority in the cadre of Cleaner-Khallasi, his case for promotion to the post of Assistant Driver or Driver, as and when due, may also very kindly be considered according to giving due weight to his revised seniority in the cadre of Cleaner-Khallasi;
- iv) That thirdly, the Hon'ble Tribunal may very kindly be pleased to order for giving all consequential benefits in the matter of seniority, promotion, salary, pay etc. as has been given to one of his colleagues, Shri Bhanwar Lal without making any sort of discrimination etc. because both of them belong to the same service-cadre, pay-scale and also belonging to the same Head of the Department;
- v) That the applicant has been suffering from physical and mental harassment and agony since 1992 or so due to illegal, attitude of the respondents. The Hon'ble Tribunal may very kindly be pleased to order for award of damages to the tune of Rs. 10,000/- in view of the deliberate harassment;

- vi) That in the facts, situations and circumstances of the case, the applicant has no other alternative, efficacious and speedy remedy except to approach the Hon'ble Tribunal and invoke the jurisdiction, powers and authority of this Hon'ble Tribunal under Section 14 of the Central Administrative Tribunal Act, 1985;
- vii) That any other appropriate and suitable order or directions, which may be deemed fit and proper in the facts, situations and circumstances of the case, may also be passed in favour of the applicant and
- viii) That the application may very kindly be accepted and allowed with costs, damages etc.”

2. Briefly stated, facts of the case are that the applicant alongwith 29 others persons were initially appointed as temporary Kagmar-Coalman on 11th January, 1979 with equal status on the salary of Rs. 300/- p.m. and they were made permanent on the post of Coalman on 15.5.1989. It is further alleged that all his 29 junior Coalmen were promoted as Artisan Khallasi on 15.5.1989 but the applicant was not promoted. It is further stated that on submitting appeal to the Senior Divisional Mechanical Engineer, Jaipur, the applicant was also promoted as Artisan Khallasi on 12.6.1989. In sum and substance, the case of the applicant in this OA is that as per legal provisions of the railway service, if the Coalman belonging to the general category crosses the age limit of 30 years, he cannot be given the running job, and he will do the work of fitting and repairing work with no prospects of promotion on the higher posts of Assistant Driver/Driver etc. For the Coalman belonging to SC/ST category this age limit is 35 years. The grievance of the applicant is that one Shri Bhanwar Lal s/o Shri

Ram Narayan, Artisan Khallasi in Bandikui in the year 1992 has crossed the age of 35 years or so, as such, he could not have been given running job after making him Clearner-Khallasi w.e.f. 9.3.1992. Thus, the applicant has pleaded that it is the case of discrimination, inasmuch as, the applicant who is intermediate and much senior to Shri Bhanwar Lal and was below 30 years of age in the year 1992, yet he was not promoted as Cleaner-Khallasi in the running job whereas Shri Bhanwar Lal who had already crossed the age of 35 years was given the running job after making him Cleaner-Khallasi. As such, action of the respondents is arbitrary and violative of Articles 14, 16, 19 and 21 of the Constitution of India. It is under these circumstances that the applicant has prayed that the applicant be promoted as Clearner-Khallasi from the date of promotion of his junior Shri Bhanwar Lal with all consequential benefits. The applicant has further prayed that he may be given further promotion to the post of Assistant Driver from due date by revising the seniority in the cadre of Cleaner-Khallasi.

3. The applicant has also filed application for condonation of delay which was registered as Misc. Application No.1/2002. The reason given by the applicant for filing the application in the year 2001 is that the applicant has submitted several

representations from the year 1992 to 2001. It is further pleaded that besides this and in spite of his numerous personal visits repeated and continued written correspondence and verbal assurances given by the authority nothing was done in his case for appointing him as Cleaner Khallasi in the running job. It is further pleaded that all his representations and legal notices were kept in cold storage and thrown away in the dustbin for no valid purpose and reason, which has resulted in delay in filing the OA.

4. Notice of this OA and Misc. application was given to the respondents. By way of preliminary objections it is stated that the present application is barred by limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985 as the OA has been filed over a period of 10 years of his making representation in 1992. The respondents have categorically stated that no such representation was ever made or received by the respondents and the delay is deliberate and intentional, which does not deserve to be condoned. The second ground taken by the respondents is that one Shri Bhanwar Lal who was also Artisan Khallasi in Bandikui in 1992 like the applicant and has crossed the age limit of 30 years even then he was appointed as Cleaner Khallasi in running job and consequently he got promotion as Fireman-II and Diesel Assistant in the running job.

The applicant has not made Shri Bhanwar Lal as party, as such, this action cannot be challenged. Third objection taken by the respondents is that the applicant slept over the matter for the years together and then somebody's instigation rose to litigation claiming parity with Shri Bhanwar and whereas the applicant stands on different pedestal. In fact the applicant moved application for transfer from the post of Artisan Khallasi to the post of Mill Right Khallasi at bottom seniority and his application was accepted and accordingly the applicant vide office order dated 7.11.89 was transferred and placed at bottom seniority of Mill Right Khallasi. Thus, in the absence of vacancy and being lower in seniority order the applicant could not be given promotion. On the ground of parity with Shri Bhanwar Lal the present OA has no legs to stand and is liable to be dismissed.

5. On merits, it has been stated that no doubt Shri Bhanwar Lal has crossed the prescribed age but the Railway Board vide office letter dated 4.4.91 decided to grant relaxation in age limit equal to the period of working as second fireman and cleaner. Since Shri Bhanwar Lal had worked on the post of Cleaner and second fireman for 17 months consequently treating as a special case vide letter dated 9.3.92 he was promoted as Cleaner.

6. After filing of the reply, the applicant has filed application for amendment thereby impleading Shri Bhanwar Lal as respondent No.5 in the OA. Notice of this amended application was given to the newly added respondent. However, despite service, he has not chosen to appear in this case, as such, he was proceeded ex-parte and the matter was listed for hearing. It may also be stated that the applicant has also filed MA No.227/03 for summoning documents to show that Shri Bhanwar Lal has worked in running line for 17 months, as such relaxation was granted to him. The respondents have filed reply to this Misc. application. By way of preliminary submissions, it has been stated that Shri Bhanwar Lal was promoted as Fireman Gr.II on 10.8.93. He was further granted promotion as Diesel Assistant. The respondents have also placed on record copy of the order dated 10.8.93 as well as order dated 7.11.95 as Ann.R1 and R2. The respondents have further stated that the case of Shri Bhanwar Lal is all together different from the applicant who has been transferred from the post of Artisan Khallasi to Mill right Khallasi on his own request accepting bottom seniority.

7. We have heard the learned counsel for the parties.

8. We are of the view that the present OA is hopelessly time barred and as such no relief can be granted to the applicant. As already stated above, in sum and substance the case set up by the applicant is that he has been discriminated in the matter of promotion vis-à-vis Shri Bhanwar Lal who had been given promotion in running line while granting him age relaxation where the applicant was not considered for promotion. It is further pleaded by the applicant that he was senior to Shri Bhanwar Lal. From the material placed on record, it is also clear that Shri Bhanwar Lal was promoted on the post of Fireman Gr.II on 10.8.1993 (Ann.R1 with reply to MA No. 227/04) and he was further given promotion vide order dated 7.11.1995. It is also come on record that Shri Bhanwar Lal was given running job after making him Cleaner-Khallasi on 9.3.92. As such, cause of action in favour of the applicant has arisen in the year 1992 when Shri Bhanwar Lal was given running job after making him Cleaner-Khallasi w.e.f. 9.3.92 and thereafter on 10.8.93 whereby Shri Bhanwar Lal was promoted as Fireman Gr.II and further when he was promoted to the post of Diesel Assistant on 7.11.95. Thus, Shri Bhanwar Lal was not only given running job of Cleaner Khallasi in the year 1992 but he was further promoted as Foreman Gr.II in the year 1993 and Diesel Assistant in 1995. Thus, the applicant cannot be heard at this stage to say that he should be assigned seniority in

the running cadre especially when he was not given the running job by making him Cleaner-Khallasi. This all happened in the year 1992. Not only that, Shri Bhanwar Lal has been granted two promotions in that cadre. Admittedly, the applicant does not belong to the said cadre. Rather, from the material placed on record, it is clear that, no doubt, the applicant at initial stage was appointed as Artisan Khallasi like Shri Bhanwar Lal but he was transferred from the post of Artisan Khallasi to the post of Mill right Khallasi on his own request which request was accepted vide order dated 7.11.1989. Thus, the applicant cannot claim any parity with Shri Bhanwar Lal. The explanation given by the applicant that he was making representations to the authorities since 1992 till 2001 cannot be accepted as valid reason for not approaching the Tribunal within the period prescribed under Section 21 of the Administrative Tribunals Act.

9. At this stage, it will be useful to quota decision of the Apex Court in the case of Karnataka Power Corporation Ltd. Through its Chairman and Managing Director vs. Thangappan and anr., 2006 SCC (L&S) 791 where the Apex Court has held that mere making of representation to the authority concerned cannot justify a belated approach. It was further held that in an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to

assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in Durga Prashad vs. Chief Controller of Imports and Exports, AIR 1970 SC 769. Of course, the discretion has to be exercised judicially and reasonably. If the matter is viewed from the law laid down by the Apex Court, it is clear that the applicant has chosen to challenge after a lapse of more than 10 years and during this period the respondent No.5 has been granted two promotions. As such, granting relief to the applicant may affect other persons of running cadre appointed in the year 1992 and also earned promotion in the meanwhile, which may cause injustice to them while granting relief to the applicant.

10. That apart, even on merit, as already stated above, the case of the applicant is that he alongwith other 29 persons were initially appointed as Coalman/Kamgar with equal status on the salary of Rs. 300/- p.m. and they were made permanent on the post of Coalman on 15.5.1989. It is further pleaded that those 29 junior persons were promoted as Artisan Khallasi on 15.4.1989 whereas the applicant was promoted as Artisan Khallasi on 12.6.1989 when he represented against such promotion. Thus, it cannot be said that

the applicant is senior to the so called persons who were appointed as Coalman alongwith the applicant and were promoted as Artisan Khallasi prior to the applicant. Further, it has come on record that the applicant has moved an application for transfer from the post of Artisan Khallasi to the post of Mill Right Khallasi with bottom seniority and his application was accepted vide order dated 7.11.1989 and he was transferred and placed at bottom Seniority of Mill Right Khallasi. Thus, the applicant belongs to another cadre and is not similarly situated to Shri Bhanwar Lal and other persons who belong to the category of Artisan Khallasi. Thus, there is nothing on record to suggest that the applicant is senior to Shri Bhanwar Lal.

11. Besides this, as already stated above, Shri Bhanwar Lal was assigned running job after making him Cleaner Khallasi on 9.3.92. The applicant has not challenged the said action at the relevant time. Not only that, Shri Bhanwar Lal was promoted as Fireman Gr.II vide order dated 10.8.93 (Ann.R1). The applicant has also not challenged the said promotion of Shri Bhanwar Lal at that stage. Not only this, Shri Bhanwar Lal was further given promotion on 7.11.1995 at that stage also the applicant has not challenged the validity of the said order. Even at this stage the applicant without challenging the validity of these

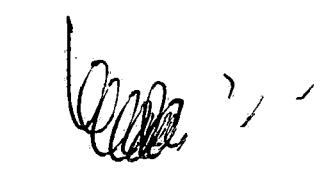
orders has prayed for assigning him seniority in running line for Cleaner and Second Fireman category when he has not been appointed in that cadre and which will prejudicially affect other persons who belong to Cleaner/Fireman Gr.II category who have been inducted in the year 1992 and by this time has also earned further promotion as Diesel Assistant. As such, even on this ground, no relief can be granted to the applicant which will adversely affect rights of other persons who have not been impleaded as party in this OA. Further, granting relief to the applicant will unsettle the settled position.

12. For the foregoing reasons, we are of the view that the present OA is bereft of merit, which is accordingly dismissed with no order as to costs.

13. In view of disposal of the OA, Misc. application for condonation of delay as well as Misc. application for summoning of documents is also dismissed.


(J.P. SHUKLA)

Administrative Member


(M.L. CHAUHAN)

Judicial Member

R/