

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH**

Jaipur, this the 29th day of March, 2010

Review Application No. 01/2010
[In Misc. Application No. 46/2010]
[In Original Application No.551/2009]

1. Inder Kumar Meena s/o Shri Ranjeet Meena, presently posted as Assistant Loco Pilot, Bandikui, r/o Kala Dhariyon Ki Dhani, Post Jetusal, Via Reengus, District Sikar.
2. Ram Niwas Meena s/o Shri Ram Narain Meena, presently posted as Assistant Loco Pilot, Bandikui r/o Vinakak Nagar, Plot No.7, Agra Road, Jaipur.
3. Mukesh Kumar s/o Bholu Ram, presently posted as Assistant Loco Pilot, Bandikui, r/o Ghram Vas, Village and post Guda, Asitwapura, Tehsil Baswa, District Dausa.
4. Mukesh Kumar Yogi s/o Shri Chittermal, presently posted as Assistant Loco Pilot, Phulera, r/o Plot No.67, Veer Hanuman Ji Ka Rasta, Kailash Vihar, Chomu, District Jaipur.

.. Applicants

(By Advocate: Shri Nand Kishore)

Versus

1. Union of India
through its Ministry of Railways,
Rail Bhawan,
New Delhi.
2. General Manager,
North Western Railway, Jaipur
3. Divisional Railway Manager,
North Western Railway,
Jaipur
4. Senior Divisional Personal Officer,
North Western Railway, Jaipur
O/o Divisional Railway Manager,

North Western Railway,
Jaipur

5. Senior Divisional Mechanical Engineer (P),
O/o DRM, North Western Railway,
Jaipur.

.. Respondents

(By Advocate:)

O R D E R (By circulation)

This Review Application has been filed by the applicants for reviewing the order dated 23.2.2010 passed in MA No.46/2010 in OA No.551/2009. For the purpose of deciding this Review Application few facts may be noticed. The applicants have filed OA No.551/2009 raising grievance regarding the order dated 2.12.2009 and 8.12.2009 whereby the respondents have revised the seniority of the applicants and placed them junior. These orders were passed in supersession of the earlier order dated 18.11.2009 whereby the applicants were shown senior in the cadre of Assistant Loco Pilot. It may be stated that the respondents have conducted a selection for the post of Assistant Loco Pilot against the ranker quota pertaining to Jaipur Division. Pursuant to such selection, certain persons including the applicants were selected and were sent for training. Subsequently, the applicants were granted appointment in Jaipur Division as per order dated 18.11.2009. It is however not disputed that the applicants joined at Bandikui and Phulera of Jaipur Division. Subsequently vide impugned order, they were shown below in the seniority list so prepared and were transferred to Bikaner Division.

Such transfer was necessitated because of the fact that the respondents have temporarily transferred 31 posts of Assistant Loco pilot to Bikaner Division temporarily. Being aggrieved by such action of the respondents, the applicants filed OA. As can be seen from the grievance raised by the applicants in the OA, the applicants have challenged the impugned order whereby their seniority position has been lowered as the seniority has not been correctly prepared. However, the applicants have not made any grievance regarding their transfer to Bikaner Division. At this stage, we wish to reproduce para-1 of the OA which deal with particulars of order against which the application is made and thus reads:-

"1. Subject in brief for which this application is preferred

The applicants are aggrieved by the orders dated 2.12.2009 and 8.12.2009 whereby the respondents have revised the seniority of the applicants placing them junior while giving appointments/posting on the post of Assistant Loco Pilot in Bikaner Division of North West Railway despite the fact that all the applicants are entitled to be treated as senior as per their performance in the training/examination conducted by the respondents on the basis of which the applicants were posted vide order dated 18.11.2009 in Jaipur Division. The photocopies of the orders dated 2.12.2009 and 8.12.2009 are filed herewith and marked as ANNEXURE-A/1 and A/2 respectively. Since the respondents have already passed the orders no fruitful purpose would be served by submitting any representation in this regard."

2. In the relief clause the applicants have prayed for quashing the impugned order dated 2.12.2009 and 8.12.2009 with further prayer that the respondents may be directed to restore seniority of the applicants as determined vide order dated 18.11.2009 and also restore their posting in respective places. Thus, grievance of the applicants in the OA was regarding their seniority position and the

issue regarding transfer of the applicants pursuant to the impugned order was not specifically raised and pleaded. When the matter was listed on 15.12.2009, this Tribunal granted stay regarding transfer of the applicants on the basis of the similar order passed in other case. As can be seen from order dated 15.12.2009, the said order was passed on the premise that the applicants were selected against the vacancy of Assistant Loco Pilot in Jaipur Division whereas they did not join duty in Jaipur division and worked for sometime, as such it was not permissible for the respondents to transfer such persons to Bikaner Division. Since the applicants already joined at Bandikui and Phulera of Jaipur Division and they were not straightway asked to report in Bikaner Division, this Tribunal vacated the stay order vide order dated 12.1.2010 thereby specifically observing that since the dispute is regarding seniority position, as such, the ex-parte stay granted on 15.12.2009 and continued on 7.1.2010 is vacated. However, the OA was finally disposed of by this Tribunal in the light of the judgment rendered by this Tribunal in OA No.573/2009, Durga Lal Meena vs. Union of India and ors. decided on 29.1.2010 operative portion of which thus reads:

"We have heard the learned counsel for the parties and have gone through the material placed on record. Since the matter pertains to interpretation of rules, and instructions issued by the Railway Board, as such without going into merit of the case whether the seniority for the purpose of transfer has to be maintained as per the panel position or as per the merit obtained during the course of training, we are of the view that ends of justice will be met if the direction is given to the General Manager to take conscious decision in the matter. Accordingly, the present OA shall be treated as representation on behalf of the applicant and the General Manager is directed to consider the same and pass reasoned and speaking order. Till such decision is taken, the

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respondents are directed to maintain status quo qua the applicants as of today. Needless to add that in case the applicants are aggrieved by the order to be taken by the General Manager, it will be open for them to file substantive OA."

3. It may be stated that in the case of Durga Lal Meena vs. Union of India decided on 29.1.2010 this Tribunal has directed the respondents to treat the present OA as representation on behalf of the applicants and the General Manager was directed to consider the case and pass reasoned and speaking order. The issue which the respondents were required to decide was whether seniority for the purpose of transfer has to be maintained as per the panel position or as per merit obtained during the course of training. It may be stated that in OA No.573/09, the applicants therein have challenged validity of the order dated 8.12.2009 so far as their transfer from Jaipur Division is concerned and specific prayer was also made that the transfer and posting order dated 8.12.2009 may be quashed besides the grievance regarding seniority, whereas in the OA filed by the present Review Applicant the issue regarding validity of the order dated 8.12.2009 was not challenged on the ground of transfer and posting but the validity of the said order was challenged on the ground that in the earlier order dated 8.11.2009, they have been assigned higher seniority whereas vide impugned order dated 2.12.2009 and 8.12.2009 they have been shown lower in the seniority list. Thus, in OA No.573/2009, the respondents were required to decide the issue regarding transfer and posting of the applicants based on seniority either to be determined on the basis of the panel position or on the basis of the merit obtained during the

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course of training whereas in the case of the review applicants the representation has to be decided whether the seniority position of the applicants could have been lowered down by superseding order dated 18.11.2009. Since in OA No.573/2009 the issue of transfer was involved, this Tribunal has directed the respondents to maintain status-quo qua the applicant as on that date. Since no specific direction was given in the case of the review applicants in OA No.551/2009 while disposing of the OA, an application was moved for clarification of the order dated 8.2.2010. The said MA was disposed of by this Tribunal on 23.2.2010 thereby stating that in the OA filed by the applicants there was no dispute regarding transfer of the applicants, as such, it was not necessary for the Tribunal to grant status-quo while disposing of the OA. Further, this Tribunal has also vacated the stay order granted to the review applicants and, as such, it was not permissible to grant stay to the applicants against while disposing of the OA. It is these orders on which review is sought by the applicants. In the Review Application, the applicants while reproducing para 8 of the relief clause and para-9 of the interim relief clause have contended that the issue regarding transfer was raised by the applicants in the OA and findings recorded by this Tribunal in the MA that issue regarding transfer was not raised is factually incorrect and as such, there is error apparent on the face of the record which is to be rectified by way of reviewing the order.

4. At the outset, it may be observed that such contention raised by the applicants is wholly misconceived. As can be seen from

para-1 of the OA, which has been reproduced in earlier part of the OA i.e. particulars of the orders against which the application is made was regarding order dated 2.12.2008 and 8.12.2009 on the ground that the respondents have revised the seniority of the applicants placing them junior and they are entitled to be treated as senior as per the order dated 18.11.2009. Based on these averments, the applicant in para-8 have specifically prayed for quashing of these orders and restoration of seniority as per order dated 18.11.2009. Thus, contention of the applicants that issue of transfer was also raised in the earlier OA is wholly misconceived and without any substance.

5. No doubt, in the interim relief clause, the applicants have prayed that operation of the impugned orders dated 2.12.2009 and 8.12.2009 be stayed and the applicants be allowed to continue on the post of Assistant Loco Pilot in Bandikui and Phulera of Jaipur Division as per order dated 18.11.2009, such interim relief was ancillary to the main relief and it cannot be read de hors the main relief prayed in the OA. If this interim relief is considered in the light of the relief sought by the applicants in the OA what the applicants have prayed by way of interim relief was that till the issue of seniority as raised by the applicants in the earlier OA is not decided, they may be allowed to continue on the post of Assistant Loco Pilot as per the order dated 18.11.2009. Certainly on the basis of the aforesaid averments/pleadings made in the OA, it cannot be said that the applicants have also raised the issue of transfer and the interim prayer was also made in that context. Thus, the contention

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made by the applicants in the Review Application that in the OA validity of the order dated 2.12.2009 and 8.12.2009 was also challenged on the ground that such transfer and posting could not have been made is wholly misconceived and without any substance. The validity of these orders was challenged on the basis of seniority as determined vide order dated 18.11.2009 and not on the basis of posting and transfer. It is settled position that issue raised in a case is only required to be considered and when issue has neither been raised by the applicant nor such issue has been put to the respondents, the court cannot on its own determine the issue.

6. Thus, the applicants have not made out a case for reviewing the judgment. Accordingly, the Review Application is dismissed by circulation.


(B.L. KHATRI)

Admv. Member

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(M.L. CHAUHAN)

Judl. Member