

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

..... 1.6.2001

Date of Order : 5.2.2001

G.A.No. 442/1995 & M.A.No. 153/95 (CA No. 442/95)

1. Gajendra Shay S/o Shri Jai Shay aged about 39 years, R/o Jaipur, at present working as Coalman T/S in Jaipur Region, Western Railway, Jaipur, Near Railway Station, Jaipur.
2. Tulsidas S/o Shri Sheolal, aged about 36 years, R/o Jaipur, at present working as Coalman T/S in Jaipur Region, Western Railway, Jaipur Near Railway Station, Jaipur.
3. Suresh Chand R. S/o Shri Ram Sahai, aged about 36 years, R/o Jaipur, at present working as Coalman T/S in Jaipur Region, Western Railway, Jaipur, Near Railway Station, Jaipur.
4. Chhotey Lal S/o Shri Ramdhan aged around 39 years, R/o Jaipur, at present working as Coalman T/S in Jaipur Region, Western Railway, Jaipur Near Railway Station, Jaipur.

....Applicants.

VERSUS

1. Union of India, through
General Manager, Western Railway, Church Gate, Bombay.
2. Divisional Railway Manager, Jaipur Region, (DRM), Near Railway Station, Jaipur.
3. Divisional Mechanical Engineer (Western Railway), Loco Shed, Jaipur, Near Railway Station, Hasanpura.
4. Assistant Mechanical Engineer, Western Railway, Loco Shed, Hasanpura, Near Railway Station, Jaipur.

....Respondents.

.....

.2.

Mr. Rajendra Soni, Counsel for the applicants.
Mr. Manish Bhandari, Counsel for the respondents.

.....

CORAM :

Hon'ble Mr. Justice B.S.Raikote, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member

.....

PER HON'BLE MR.JUSTICE B.S.RAIKOTE :

This application is filed for quashing of the order dated 18.7.1994 and for a further direction to the respondents to give age relaxation to the applicants for their regularisation as Cleaner as on 1984 as it has been done in the case of Shri Bahadur Singh, Coalman vide order dated 13.8.1982 and in case of Shri Liyakat Ali and Shri Iqbal Mohammed, vide order dated 21.5.1993 and 2.4.1994 on the basis of the Railway Board's letter dated 4.4.1991.

2. The applicants contended that the applicants were appointed on daily wages basis as Coalmen in 1978, thereafter, they were granted temporary status as Coalmen in the year 1978. They stated that after regularisation of the persons as Coalman, such persons were required to be promoted on the post of Cleaner, if they were found suitable after screening and A/1 medical test without glasses. The respondents prepared a panel of the temporary status Coalmen on the basis of screening test up to December, 1983. Thereafter the respondents did not conduct any screening test in the year 1984 and conducted the screening test in the year 1985 and ~~after screening~~ declared the panel on 16.12.1985. On the basis of the said panel the applicants services were regularised on 21.3.1986. Since the respondents did not conduct the screening test in the year 1984, the applicants became overaged for the promotion to the post of Cleaner. Their representation to consider their cases for age relaxation was not considered. The applicants also

.3.

contended that in similar circumstances, age relaxation was given to one Shri Bahadur Singh, Coalman, vide order dated 13.8.1982. Likewise, age relaxation was given to Shri Liyakat Ali and Iqbal Mohammed, who were promoted vide order dated 21.5.1993 and 2.4.1994, on the basis of the Railway Board's letter dated 4.4.1991. But, the relaxation in the age was not given to the applicants. They have also stated that earlier applicants had filed O.A. No. 99,100,101 and 102 of 1989, before this Tribunal and this Tribunal vide a common judgement dated 18.4.1994, disposed of the said O.A.s directing the respondents to consider the case of the applicants for age relaxation keeping in view of the case of Shri Bahadur Singh, Coalman and also the Railway Board's letter dated 4.4.1991, provided the applicants fulfil, prescribed qualifications. Thereafter, the respondents passed the order dated 8.7.1994 vide Annex.A/2 by which their representation has been rejected illegally, therefore, this order Annex.A/2 may be quashed.

3. The respondents by filing reply, denied the case of the applicants. The respondents stated that applicants were appointed only as substitute Casual Labours in the year 1978. They have also stated that the promotion of the employees could be considered only after regularisation. As Coalman they were regularised only, w.e.f. 3.4.1986, therefore, considering the case of their promotion from Coalman to Cleaner in 1984 did not arise and their cases for promotion could be considered only after they were regularised in the feeding cadre. They have also stated that the case of Shri Bahadur Singh, Coalman, stood altogether on a different footing because his services were already regularised and he became eligible for promotion to the post of Cleaner in 1972-73 but he could not be given promotion due to the bar operating. As such, the age relaxation was given to the said employee. Further, in the case of Shri Liyakat Ali and Shri Iqbal Mohammed, the benefit to the said employees were provided in view of the Railway Board's Circular dated 4.4.1991 much after filing of the O.A. by the applicants on an earlier occasion. They stated that

.4.

applicants were not entitled for age relaxation, for the purpose of promotion as Cleaner, since they were not holding the post of Firemen Grade II as contemplated by the Railway Board's Circular dated 4.4.1991. Therefore, the applicants were not entitled for age relaxation in terms of the Railway Board's letter dated 4.4.1991. They have also stated that as per the directions issued by this Tribunal in earlier O.As vide order dated 18.4.1994 in O.A.Nos. 99/1989 and the batch, the representation filed by the applicants was considered and Annex.A/1 has been issued by the respondents. There is no illegality in Annex.A/1. Accordingly, they submitted that there are no merits in the application and the same is liable to be dismissed.

4. Heard and also perused the written arguments filed by the applicants.

5. From the pleadings and arguments on both sides, we find that certain facts are admitted. It is admitted that applicants were appointed in the year 1978 as Coalmen and thereafter they were given temporary status in the year 1978 itself. It is also not in dispute that applicants services were regularised as Coalmen after conducting a screening test on 21.3.1986. It is also admitted on both sides that for the purpose of promotion from Coalman to Cleaner a person should be less than 30 years of age. It is the grievance of the applicants that if the applicants services were to be regularised in the year 1984, they would have within age limit and they would have been promoted as Cleaners but their services were regularised only on 21.3.1986 by which date they became age barred and as such, the applicants lost their promotion from Coalmen to Cleaner only due to the failure on the part of the respondents in not conducting screening test in 1984 but they conducted the screening test only in 1985 and on that basis, the panel was prepared on 16.12.1995, their services were regularised as Coalmen on 21.3.1986. All this happened, according to the applicants, due to

inaction on the part of the respondents. It is also not in dispute that Shri Bahadur Singh was given age relaxation for his promotion from the post of Coalman to Cleaner in the year 1984. The contention of the applicants is that the same benefit should have been given to the applicants also, and in case of the applicants also the age should have been relaxed for their promotion from the post of Coalmen to the post of Cleaner after their regularisation on 21.3.1986.

6. On the basis of the admitted facts, we find that the applicants services as Coalmen, were regularised only in the year 1986 and it is thereafter they could claim for promotion to the post of Cleaner but unfortunately for them they became over-aged by the time their services were regularised in the year 1986. These things do happen in the life of anybody's service. As stated above that applicants were only Casual Labourers with temporary status till they were regularised in the year 1986 and till such regularisation, they were not entitled for promotion as Cleaners.

7. However, the contention of the applicants is that, such age relaxation was given to Shri Bahadur Singh in the year 1985 on the basis of the screening test held in the year 1985. The fact that Shri Bahadur Singh was senior to the applicants, is not disputed. In the impugned order, the respondents have clearly stated that the said Shri Bahadur Singh, was working as a Coalman from the year 1972 to 1977 and he was not promoted as Cleaner only due to the ban imposed by the Government during that period. From these facts, it is clear that the applicants cannot claim the benefit that was conferred on Shri Bahadur Singh. Shri Bahadur Singh, was appointed as Coalman in the year 1972 whereas, the applicants were appointed as Coalmen on casual basis only in the year 1978. By that time, Shri Bahadur Singh had completed eight years of service as Coalman when screening took place in the year 1985, and on completion of considerable services he had rendered as

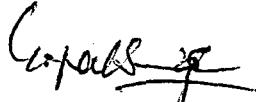
Coalman, the department thought of relaxing the age in his case. From these circumstances, it is clear that the applicants and Shri Bahadur Singh, do not belong to the same set of circumstances and they cannot claim the benefit that was accorded to Shri Bahadur Singh. From no stretch of imagination, the applicants' can be considered as the one belonging to the circumstances Shri Bahadur Singh belonged. Therefore, the applicants cannot complain of violation of Articles 14 and 16 of the Constitution of India which provide 'equality among equals', on the basis of the principle of reasonable classification.

8. Even the applicants also cannot rely upon the cases of Shri Liyakat Ali and Shri Iqbal Mohammed, since in their cases, age relaxation was granted only in the year 1994 as per the Railway Board's Circular dated 4.4.1991. From the reply, it is clear that the Railway Board issued the said Circular dated 4.4.1991, providing age relaxation to the certain persons working as Firemen employed in the running staff. The applicants do not belong to the running staff nor they were Firemen, therefore, *prima facie*, the said circular does not apply to the case of the applicants. Moreover, the said Railway Board's letter is dated 4.4.1991, whereas, applicants are claiming age relaxation as on 1984 and for the year 1984, the circular dated 4.4.1991 does not apply. Therefore, the applicants also cannot rely on the case of Shri Liyakat Ali and Shri Iqbal Mohammed, as stated by the respondents, both in the impugned order, as well as in the reply statement.

9. Before parting the case, we find that the applicants entire claim relates to the year 1984 contending that, if their services were to be regularised in the year 1984 after considering the screening test, they would have been eligible for the promotion to the post of Cleaner in the year 1984, but by the time, their services were regularised in the year 1986, their age was barred since they attained

the age of 30 years. From these facts, it is clear that applicants grievance or cause of action relates to the year 1984 and as such their grievance is barred by time. Under section 32 of the Administrative Tribunals Act, the person should approach the Tribunal within one year from the date the cause of action arose. In the instant case, applicants grievance or cause is relating to the year 1984 and as such their cause is hopelessly time barred. Even as on the date earlier OA's were filed in 1989, the cause was barred by time, therefore, there is neither equity nor the law, in favour of the applicants for granting the relief they have prayed for in this application. Accordingly, we pass the order as under :-

therefore,
"The OA & the MA, are dismissed but in the circumstances without costs."


(GOPAL SINGH)

Adm.Member


(B.S. RAIKOTE)
Vice Chairman

.....

mehta