

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

May kindly see
Depos. 12/1/03

O.A. No. 204 & 593/2000
T.A. No.

199

File On

DATE OF DECISION _____

Mohammed Nasir → (OA 204/2000) Petitioner
Kamal Singh → (OA 593/2000)
~~Union of India & Ors~~ Advocate for the Petitioner (s)
Shri P.V. Calla & Shri C.B. Sharma
Versus
Union of India & Ors. Respondent
Shri S.S. Hasan Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr.

JUSTICE G.L. GUPTA, VICE CHAIRMAN

The Hon'ble Mr.

A.P. NAGRATH, ADM. MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✓

(A.P. NAGRATH)
MEMBER (A)

(G.L. GUPTA)
VICE CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

* * *

Date of Decision: 24.02.03

1. OA 204/2000

Mohammed Nasir, Fireman-II O/o Loco Foreman, W/Rly, Jaipur.

... Applicant

Versus

1. Union of India through General Manager, W/Rly, Churchgate, Mumbai.
2. Divisional Rly Manager, W/Rly, Jaipur Division, Jaipur.
3. Sr.Divisional Mechanical Engineer (E), W/Rly, Jaipur.

... Respondents

For the Applicant

... Mr.P.V.Calla

For the Respondents

... Mr.S.S.Hasan

2. OA 593/2000

Kamal Singh, Fireman-II Lobby Supervisor (Crew Controller) Mathura Junction undcer W/Rly, Jaipur Division, Jaipur.

... Applicant

Versus

1. Union of India through General Manager, W/Rly, Churchgate, Mumbai.
2. Divisional Rly Manager, W/Rly, Jaipur Division, Jaipur.

... Respondents

For the Applicant

... Mr.C.B.Sharma

For the Respondents

... Mr.S.S.Hasan

CORAM:

HON'BLE MR.JUSTICE G.L.GUPTA, VICE CHAIRMAN

HON'BLE MR.A.P.NAGRATH, ADM. MEMBER

O R D E R

PER MR.A.P.NAGRATH

The facts and controversy involved in both these OAs has arisen out of similar circumstances and the cause of action in both the matters is same, therefore, these are being decided by this common order.

2. The facts in the background, which are not in dispute, are as follows. Applicant Kamal Singh was initially engaged as a Subsitute Coalman in the year 1969 and applicant Mohammed Nasir was engaged as Substitute Coalman in the year 1964. They both participated in the screening in the year 1972 for their regular absorption in Group-D, but failed. Consequently, they were discharged from service. They were again called for screening in 1978 and were placed in the panel datted 21.1.78 for appointment in Group-D. In pursuance of the said panel, they were appointed as Coalmen vide order dated 14.7.78 and they were granted

seniority from the date of their initial appointment. Subsequently, in 1978 itself, they were brought on the post of Cleaner. By order dated 18.10.85 they came to be promoted as Fireman-II. Later, by letter dated 6.11.86, they were ordered to be reverted as Coalmen because of amendments made in their seniority position. They filed a case in the court of Assistant Labour Commissioner, who stayed the orders of their reversion. On 30.12.86, by taking note of the fact that currency of the orders of Assistant Labour Commissioner was over, the respondents decided to implement the orders of their reversion. Both the applicants moved the matter before this Tribunal by filing OA 349/92 (by Mohammed Nasir) and OA 640/92 (by Kamal Singh). These came to be decided on 25.3.94 and 24.3.94 respectively, by passing identical orders. In the interregnum, both the applicants had continued to work as Fireman-II by virtue of interim orders of the Tribunal. Subsequently, on 12.5.95, a show-cause notice was served on the applicants and they were also granted personal hearing on 3.12.96. By order dated 5.8.99 (Ann.A/1) they have now been ordered to be reverted from the post of Fireman-II and on reversion Kamal Singh has been posted as Callboy-cum-Boxboy in the pay scale of Rs.2610-3540 in Loco, Bandikui, and Mohammed Nasir has been posted as Callboy-cum-Boxboy in the pay scale of Rs.2550-3200 in Loco, Bandikui. By filing these OAs, this order dated 5.8.99 has been brought under challenge.

3. In reply to these OAs, the respondents have stated that when the applicants were placed on the panel in the year 1978, they were assigned wrong positions of seniority by taking into account the previous service rendered by them, though the same was not admissible under the Rules. When the matter was taken up by one of the recognised unions, the whole issue was examined and the orders in rectification were issued in respect of seniority of the applicants vide order No.E/M/1160/HQ/PNM/15/85 dated 16.10.86. In view of this changed seniority position, the respondents contend that the applicants were not due for their promotion to the post of Fireman-II at the relevant point of time and were ordered to be reverted. Since this Bench of the Tribunal had held that the reversion was without hearing the applicants, that order was quashed. By virtue of the Tribunal's order, the applicants had continued on the post of Fireman-II. It has been stated that the show-cause notice was issued to the applicants on 12.5.95 and after considering their reply and after giving them personal hearing the impugned order has been passed. The competent authority had also considered the possibility of granting relaxation in the qualifications but had decided not to do that. Thus, the applicants cannot claim to be promoted to the post of Fireman-II or Diesel Assistant as the minimum educational qualification for the post is 8th Class pass,

whereas the applicants do not possess this qualification.

4. Since it was not clear from the reply of the respondents in the two cases whether denial for considering the applicants on the post of Fireman-II was on account of their being over-aged or under-qualified, the respondents were directed to clarify the position. They have filed a supplementary affidavit and it has been clarified that the competent authority had passed the order on 5.8.99 after deciding not to grant the relaxation in educational qualification. It has been mentioned in the affidavit that the required educational qualification for the post of Fireman in scale Rs.210-270 is 8th Class pass, whereas the applicants do not possess this qualification.

5. The matter was argued at considerable length by the learned counsel Shri P.V.Calla on behalf of Mohammed Nasir and the learned counsel Shri C.B.Sharma on behalf of Kamal Singh. Shri C.B.Sharma, learned counsel for applicant Kamal Singh fully endorsed the stand taken by Shri Calla in support of the relief claimed by both the applicants.

6. Shri Calla very emphatically assailed the impugned order on the ground that the respondents were not permitted to reopen the case of the applicants and revert them when the matter had been finally settled by this Tribunal in two OAs filed by the applicants in the year 1995. By referring to the decision dated 25.3.94 (Ann.A/6 in Mohammed Nasir's case) the learned counsel submitted that the Tribunal had set aside the orders and no opportunity had been granted to the respondents to reopen the matter by serving a show-cause notice and then reverting the applicants. Both the learned counsel on behalf of the applicants forcefully pleaded that the applicants were promoted to the post of Fireman-II on regular basis wayback in 1985 and it would not be just and proper to revert them 14 years later merely on the ground that they did not possess required qualifications. In support of their argument, a reliance was placed on the decision in the case of Buddhi Nath Chaudhary & Ors. v. Abahi Kumar & Ors., 2001 SCC (L&S) 589, wherein the Apex Court had granted relief to the appellants on the ground of equitable consideration as the appointed candidates were in employment for over a decade. It was held that they would have acquired requisite experience even though it could be lacking at the time of recruitment.

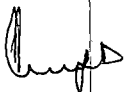
7. The learned counsel for the respondents, Shri S.S.Hasan, drew our attention to the fact that the seniority of the applicants had been redetermined wayback in 1986 and revised position was assigned to them

vide order dated 16.10.86. Further order of their reversion passed on 6.11.86, reverting them from the post of Fireman-II, was only a consequence of the change in their seniority. However, the applicants continued on the post of Fireman only in pursuance of, first, the order of Assistant Labour Commissioner and then of this Tribunal. In view of the fact that the Tribunal had set aside the order of reversion dated 6.11.86 for the reason that the same had been issued without giving show-cause notice to the applicants, the respondents have now followed the required legal procedure. Due show-cause notice was served on the applicants on 12.5.95 and they were given an opportunity of hearing and then only they have been ordered to be reverted to the post which they would have held as per the corrected seniority arising out of letter dated 16.10.86. The learned counsel urged that there is no ground for granting any relief to the applicants as they had not cared to challenge the amendment in their seniority, as ordered vide letter dated 16.10.86. He also submitted that they have no case for being continued on the post of Fireman-II or Diesel Assistant (in the case of Mohammed Nasir) as these posts require 8th Class pass as qualification. These two applicants do not possess this qualification and they have no claim to these posts. They have been put in their own cadre of Callboy-cum-Boxboy as per their own seniority position. He strongly urged that there was no merit in the cases and the OAs are liable to be dismissed. The learned counsel also made available to us the service record of both the applicants.

8. Having gone through all the facts brought on record and also produced before us, very carefully, and having given a very careful consideration to the arguments led by the learned counsel on behalf of the parties, we find that the order of reversion dated 6.11.86 had only arisen as a consequence of the change in the seniority position of the applicants. This change was notified vide order dated 16.10.86. We have seen copy of this order. It cannot be the case of the applicants that they were not aware of this order. As a matter of fact, the order dated 6.11.86 also makes a reference to this letter of 16.10.86 and has in fact been issued only in context of that letter. It is undisputed fact that this order dated 16.10.86 was never challenged by the applicants. Obviously, the consequence of this change in seniority would follow. The respondents found at that point of time that because of the changed seniority the applicants were not eligible to be promoted to the post of Fireman-II and that is why they ordered their reversion. It is worth noting that they were promoted only in October, 1985 and the order of reversion was issued in October, 1986. Beyond that date they have been continued only by virtue of orders of the court. By Tribunal's order of

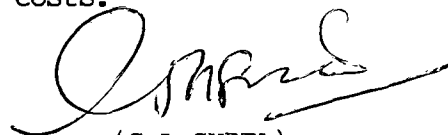
March, 1994, their orders of reversion had been set aside in the circumstances that the reversion was ordered without giving a show-cause notice. Later, the respondents gave a show-cause notice and also an opportunity of personal hearing to the applicants. No objection was raised to this action of the respondents by the applicants at that time. Even otherwise, having perused the order dated 25.3.94, we do not see any infirmity in the action of the respondents of serving a show-cause notice to the applicants and then ordering their reversion. A reading of the Tribunal's order dated 25.3.94 makes it abundantly clear that the order was passed in the circumstances given in para-3 of that order, where it was observed that the principles of natural justice, which involve giving an opportunity of hearing before reversion, have not been observed. What the respondents have done later, is observing those principles and taking a decision after giving opportunity to the applicants. In view of the changed seniority position and in view of the fact that there is a requirement of qualification for the purpose of promotion to the post of Fireman-II or Diesel Assistant, which the applicants do not possess, we do not find any merit in the cases of the applicants. The decision in the case of Budhi Nath Chaudhary, relied upon by the applicants, is of no avail to them as that was the order passed by the Hon'ble Supreme Court in the context of facts and circumstances of that case and did not lay down any proposition of law.

9. The applicants have failed to make out a case for any intervention on our part. There is no merit in these two OAs and the same are dismissed. However, there shall be no order as to costs.



(A.P.NAGRATH)

MEMBER (A)



(G.L.GUPTA)

VICE CHAIRMAN