

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Dated of order: 4.09.2003

OA No.466/2000

Abdul Hafiz s/o Shri Abdul Sattar aged about 29 years, r/o
New Loco, Hasan Pura-A, Near Shiv General Store, Jaipur.

.. Applicant

Versus

1. The Union of India through the General Manager,
Western Railway, Churchgate, Mumbai.
2. The Railway Board through Director
(Establishment), Rail Bhawan, New Delhi.
3. The Divisional Railway Manager, Western Railway,
Jaipur Division, Jaipur.

.. Respondents

Mr. P.V.Calla - counsel for the applicant.

Mr. R.G.Gupta, counsel for the respondents.

CORAM:

HON'BLE MR. S.K.AGRAWAL, MEMBER (ADMINISTRATIVE).

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

O R D E R

PER HON'BLE MR. M.L.CHAUHAN

The applicant alongwith others were engaged as Casual Workers to perform the work of loading/unloading of coal from the railway wagons under the control of Mechanical Department in Jaipur Division. The work of loading/unloading of coal was performed at the Loco Shed and the applicant and others worked on various dates from 1988 to 1992. While the applicant and others were performing the work of loading/unloading of coal, in all 32 candidates preferred an OA before the Principal Bench of the Central Administrative Tribunal, New Delhi for

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seeking direction to the railway administration to make them regular in suitable Group-D posts. The Principal Bench while relying on the decision of the Jodhpur Bench in OA No.581/88, Om Prakash and ors vs. Union of India and ors, decided on 21.1.1992, directed the railway administration to consider suitability of the applicants and other similarly situated workers on the basis of their respective length of service and other relevant criteria and accommodate them as casual labour wherever vacancies exist in accordance with the scheme under preparation. Copy of the judgment passed by the Principal Bench in OA No.2685/91 has been annexed as Ann.A/1A. On the basis of the aforesaid judgment, the railway administration prepared a list of the candidates found eligible for appointment in Group-D post as per their working days. A copy of the said letter dated 10.12.1992 containing names of 16 candidates has been annexed as Ann.A2. From the perusal of the said annexure, it is apparent that the applicant's name appears at Sl.No.7 as he had completed 194 days. In the said list, name of one Shri Ram Swaroop s/o Shri Ram Prasad appears at Sl.No.8 who had completed 190 days whereas name of Shri Raj Kumar appears at Sl.No.10 who had completed 166 days. When no order in favour of the applicant was issued despite preparation of the aforesaid list, some of the applicants, who were party in the earlier OA including the applicant, approached the Principal Bench by way of filing an OA which was registered as OA No.1670/97, Ram Swaroop and ors. vs. Union of India and ors. The said OA was decided on 8.12.98 with a direction to the respondents to continue their efforts to engage the applicants as per their seniority in any of the division of the Western Railway. In the said OA

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the present applicant was also one of the applicants, i.e. applicant No.4. Copy of the said judgment has been annexed with this OA as Ann.A3. Further case of the applicant is that after the decision of the aforesaid OA, the applicant submitted a representation dated 17.12.98 to respondent No.3, Divisional Railway Manager, Western Railway, Jaipur alongwith a copy of the judgment dated 8.12.98 and prayed that he is willing to work in any of the Division of the Western Railway zone. It is further pleaded that Jaipur officers sent a letter dated 25.6.97 to the applicant conveying that at Jaipur Division already a large number of surplus persons are available which could not be absorbed so far. It was further conveyed that in near future there is no possibility of engaging the applicant as most of the Loco Sheds have already been abolished. Through the said letter the applicant was asked to submit an application giving particulars in case he is willing to work in any department or any division. In compliance of the said letter, the applicant submitted an application dated 17.12.98 whereby showing his willingness to work at any of the division. Copy of the said letter has been placed on record as Ann.A4. The grievance of the applicant is that though he was waiting for appointment, the railway administration issued the impugned order dated 4.8.2000 (Ann.A1) thereby appointing S/Shri Ram Swaroop Bairwa and Lallu Lal Jogi. These two persons were engaged alongwith the applicant and their names find mention in the letter dated 10.12.92 at Sl.No. 6 and 8 whereas the name of the applicant is at Sl.No.7. The applicant has further alleged that the railway department is also going to engage one Shri Raj Kumar who is junior to the applicant and whose name appears at Sl.No.10 in the eligibility list of the

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candidates. According to the applicant, as a matter of fact, he being senior to these persons has a preferential right of appointment and has further alleged that in case of appointment order in favour of Shri Raj Kumar is issued the applicant will suffer an irreparable loss as junior to him would be appointed. It is further alleged that the appointment of these two junior persons has been made at the behest of All India SC/ST Association, an unrecognised trade union, whereby the legitimate case of the applicant being senior to these two persons has been ignored. On the basis of these facts, the applicant has filed this OA thereby praying that direction may be given to the respondents to consider the candidature of the applicant for appointment to any post of Group-D and appoint the applicant from the date his junior was so appointed.

2. Notices of this application were given to the respondents. The respondents have filed reply. In the reply the only stand taken by the respondents is that S/Shri Ram Swaroop Bairwa and Lallu Lal Jogi were appointed with the sanction of the General Manager as fresh face substitute and not from amongst the coal loaders/unloaders. The General Manager has powers to appoint any candidate as fresh face substitute. The applicant has no case to contest against the said appointees as he has not impleaded them as party to the the present O.A. Regarding appointment of Shri Raj Kumar, it is stated that the applicant is pleading a case of hypothesis and letter dated 10.12.92 nowhere mentioned that names of such coal unloaders will be taken according to seniority. The instructions issued vide letter dated 31.8.92 were to the effect that engagement will be given

only in Engineering Department subject to vacancy. Those who appeared in the test of cleaners diesel shed examination were given appointment.

3. The applicant has filed rejoinder. Alongwith the rejoinder, he has annexed copy of letter dated 4.1.2002 whereby Shri Raj Kumar Meena was given appointment as fresh face substitute.

4. We have heard the learned counsel for the parties and gone through the material placed on record.

4.1 The grievance of the applicant is that despite the specific directions given by the Principal Bench in the case of the applicant and other persons that the respondents will continue their efforts to engage the applicant as per their seniority and in any of the Division of the Western Railway, the respondents have not adhered to the said directions and given appointment to junior persons to the applicant on the ~~filed~~^{eliminary} pretext that they were appointed as fresh face substitute and they were not taken from amongst the coal loader/unloaders. The learned counsel for the applicant argued that such action on the part of the railway authorities is violative of Articles 14 and 16 of the Constitution of India and the applicant has been given discriminatory treatment in the matter of re-engagement.

4.2 We have given due consideration to the submissions made by the learned counsel for the applicant and we are of the view that there is substance in the submissions made by the learned counsel for the applicant. As already stated above, the Principal Bench in OA No. 2685/91, Mohan Lal and 31 others vs. Union of India and

ors. in para 4 has specifically held that the applicants who have worked for a fairly long period on a piece-rate basis should be considered for continued engagement as casual labours wherever vacancies exist. For this purpose, the category of labour engaged on piece-rate basis should be treated as separate category specially when the respondents have decided to ban engagement of such a labour in the future. The respondents should consider the suitability of the applicants and those similarly situated on the basis of their respective length of service and other relevant criteria and accommodate them as casual labourers wherever vacancies exist and in accordance with the scheme which is under preparation. Pursuant to the aforesaid directions given by the Principal Bench, the railway administration prepared a list of 16 eligible persons out of 32 applicants, in which the name of the applicant find mention at Sl.No.7, as can be seen from the order dated 10.12.92 (Ann.A2). The Principal Bench in subsequent OA No.1670/97 in which the present applicant was also one of the applicant (applicant No.4) and after noticing the scheme dated 31.8.92 and the decision of the CAT, Jaipur Bench in OA No.396/93 specifically directed the respondents to continue their efforts to engage the applicants as per their seniority and in any of the Divisions of Western Railway. On the face of the directions given by the Principal Bench in these two OAs, it was incumbent upon the railway administration to give appointment to the applicant in near future as and when vacancy exist. Indeed, it cannot be a case on behalf of the respondents that there are no vacancy available, as such the applicant could not be engaged as per his seniority. In fact, the respondents vide the impugned

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order dated 4.8.2000 (Ann.A1) have engaged two persons namely S/Shri Ram Swaroop Bairwa and Lallu Lal Jogi whose names find mention at Sl.No.6 and 8 respectively whereas the name of the applicant find mention at Sl.No.7 of the list Ann.A2, who was not offered appointment. This action of the respondents cannot be legally sustained and is contrary to the directions given by the Principal Bench in OA No.1670/97 whereby it has been directed that the respondents shall continue their efforts to engage the applicant as per their seniority and in any of the Division of the Western Railway. It does not lie open in the mouth of the respondents to contend that the persons appointed vide Ann.A1 have not been appointed amongst coal loaders/unloaders and they were engaged as fresh face substitute by the General Manager. The action of the respondents in giving appointment to persons junior to the applicant is contrary to the directions given by this Tribunal in OA No.1670/97 as also in OA No.2685/91 whereby the respondents were directed to continue engagement of the applicant wherever vacancy exist, and to engage them as per their seniority in any of the Division of the Western Railway. These specific directions given by the Principal Bench in the aforesaid two OAs cannot be scuttled by the administrative order by contending that the persons so appointed were appointed with the sanction of the General Manager as fresh face substitute ignoring the seniority list/eligibility list which was prepared pursuant to the directions issued by the Tribunal in the aforesaid OAs.

4.3 Not only this, during the pendency of this OA, the respondents have given appointment to one Shri Raj Kumar, whose name find mention at Sl.No.10 and who was junior to the applicant, on the same pretext that the

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General Manager has power to make fresh appointment. The respondents have not given any explanation as to why the directions issued by the Principal Bench in OA No.2685/91, Mohan Lal and 31 ors. Vs. Union of India and ors. decided on 6.7.92 to the effect that the respondents should consider the suitability of the applicants and those similarly situated on the basis of their respective length of service and accommodate them as casual labourers wherever vacancies exist and also the directions issued in subsequent OA No. 1670/97 that the respondents shall continue their efforts to engage applicants as per their seniority and in any of the Division of the Western Railway, have not been complied with and ignored in impugntiy.

4.4 In these circumstances, we are of the view that the action of the respondents in giving appointment to S/Shri Ram Swaroop and Raj Kumar, whose name find mention at Sl.No. 8 and 10 respectively of the order dated 10.12.92 (Ann.A2) ignoring the claim of the applicant, whose name find mention at Sl.No.7, and is admittedly senior to these two persons, is not only arbitrary but also against the directions issued by this Tribunal in OA Nos. 2685/91 and 1670/97. Accordingly, we find no justification for disallowing the relief claimed by the applicant in this OA who is also entitled to be treated in the same manner as has been done by the respondents by engaging persons who were junior to the applicant and were engaged with the approval of the General Manager, Western Railway. We are further of the view that the applicant has been given discriminatory treatment in the matter of engagement with reference to Article 14,16 and 21 of the Constitution of India. Accordingly, the OA is allowed and

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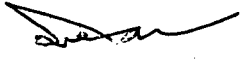
the respondents are directed to consider candidature of the applicant for appointment to a post in Group-D in similar manner and on the same terms and conditions as persons junior to the applicant namely S/Shri Ram Swaroop and Raj Kumar have been appointed. Such exercise shall be completed within a period of 4 months from the date of receipt of copy of this order.

5. The OA is disposed of accordingly with no order as to costs.



(M. L. CHAUHAN)

Member (J)



(S. F. AGFAWAL)

Member (A)