

THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

H.M. (A)

May 1972

O.A. No. OA 238/2002
T.A. No.

200

DATE OF DECISION _____

Moti Lal Meena & Others

Petitioner

Mr. V.P. Mishra

Advocate for the Petitioner(s)

Versus

Union of India & Others

Respondent

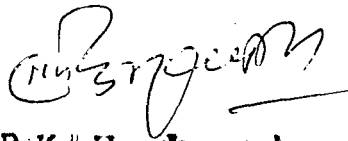
MR. S.R. Samota proxy for Mr. T.P. Sharma

Advocate for the Respondents(s)

CORAM:

The Hon'ble Mr. Justice G.L. Gupta, Vice Chairman

The Hon'ble Mr. R.K. Upadhyaya, Member (Administrative)


(R.K. Upadhyaya)
Member (A)

(G.L. Gupta)
Vice Chairman

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 ?

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

* * *

Date of Decision: 12.08.03

OA 238/2002

1. Moti Lal Meena s/o Gopi Ram Meena, Offg. Chief Goods Clerk, Snastrri Colony, Ganeshpura Road, Kota Jn.
2. Ram Singh Jhinjad s/o Shri Laxman Singh, HGC, Lakheri, Rly.Qr. Railway Colony, Lakheri.
3. Bhawani Shanker Meena s/o Shri Birchi Lal Meena, Offg.Chief Goods Clerk, 58, Gayatri Sadan, Panchwati Nagar, Nanta Road, Kota.
4. Rewad Mal Verma s/o Shri Mangal Prasad, Offg. Chief Goods Clerk, 7/E/E-Rly.Colony, Sawaimadhopur.
5. Narendra Nath s/o Shri Gendalal, Hd.Goods Clerk, 726/A, Railway Colony, Kota Jn.
6. Yatendra Kumar Sharma s/o Satya Deo Sharma, Hd.Goods Clerk, Rly.Colony, Jamuna Bridge, Agra.
7. Jay Ram Meena s/o Shri Jaganlal Meena, Offg.Chief Goods Clerk, SFC Colony, Gadepan, Kota.
8. Vishambher Singh s/o Shri Gulab Chand, Offg.Chief Goods Clerk, Near Rajendra Hotel, Dadwara, Kota Jn.

... Applicants

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager (Estt), Western Railway, Kota Jn.
3. Sr.Div.Commercial Manager (Estt), Western Railway, Kota Jn.

... Respondents

CORAM:

HON'BLE MR.JUSTICE G.L.GUPTA, VICE CHAIRMAN
HON'BLE MR.R.K.UPADHYAYA, MEMBER (A)

For the Applicants

... Mr.V.P.Mishra

For the Respondents

... Mr.S.R.Samota, proxy counsel
for Mr.T.P.Sharma

O R D E R

PER MR.JUSTICE G.L.GUPTA

The respondents had notified 17 posts of Chief Goods Clerk of rankers quota in the pay scale of Rs.1600-2660 vide notification dated 19.1.96 (Ann.A/4). An eligibility list of 50 candidates was issued on



22.3.96. Written examination was held on 14.4.96 and the supplementary examination was held on 17.8.96. The result of the written examination was declared on 27.9.96. The interview was held on 19.11.96. The applicants had succeeded in the written test and they appeared in the interview. Before the panel could be prepared, one candidate filed OA 250/95 in which this Tribunal passed interim order that the result would be kept in sealed cover and would not be declared. The said OA was ultimately decided on 29.3.2001. The respondents thereafter cancelled the selection process held under notification dated 19.1.96. Hence this OA challenging the action of the respondents in cancelling the selection process.

2. It is averred that the Tribunal while disposing of OA 250/95 had directed the respondents to modify the panel/eligibility list and the respondents have though prepared the revised seniority list but have not modified the panel and instead they have cancelled the entire panel. It is stated that the action of the respondents has jeopardised the promotion prospects of the applicants and their action is against the Railway Board's orders. The applicant No.1, it is stated, made representation against the action of the respondents on 7.9.2001 but no action was taken. The other applicants also made representations against the cancellation of the panel. It is prayed that the respondents be directed to modify the panel and not to initiate fresh selection for the posts.

3. In the counter, the respondents' case is that pursuant to the decision of the Tribunal dated 29.3.2001 amended seniority list has been issued on 3.7.2001 and the notional seniority list has also been amended, and the panel has been cancelled. It is stated that the selection process for 21 vacancies has been started vide notification dated 9.5.2002 in which 3 posts of SC and 1 post for ST have been reserved. It is also stated that written examination has already been held on 1.6.2002.

4. We have heard the learned counsel for the parties and perused the documents placed on record.

5. As already stated, it is admitted position that the applicants had participated in the selection process. It is seen that the panel has been cancelled because of the order passed by the Tribunal in OA 250/95, in which direction was given to the respondents to prepare a fresh seniority list keeping in view the legal position stated in that judgement. The applicants herein have not challenged the revised seniority list prepared pursuant to the decision of the Tribunal rendered in OA 250/95.



6. The question for consideration is whether after the preparation of the revised seniority list the selection process held vide notification dated 19.1.96 could stand ? OA 250/95 was decided alongwith many companion OAs. The relevant part of the decision dated 29.3.2001, rendered in OA 250/95, is reproduced hereunder :

"2. For the above reasons, we think it appropriate to dispose of this batch of cases with an observation that wherever eligibility list and/or panel are prepared for the purpose of promotion to the higher cadre, without following the law laid down by Hon'ble the Supreme Court in Ajit Singh II, Jatinder Pal Singh etc., such eligibility list and panel are prima facie, invalid and ineffective as long as the official respondents have not revised the seniority lists of the lower cadre, keeping in view the "Catch up" principle enunciated by Hon'ble the Supreme Court. We also find that even the impugned seniority lists challenged in different cases are the seniority lists prepared without considering the "Catch-up" rule. In these circumstances, keeping in view the law declared by Hon'ble the Supreme Court in Ajit Singh-II and Jatinder Pal Singh case etc., such seniority lists are required to be revised to bring them in conformity with the law declared by Hon'ble the Supreme Court, as we have already made it clear in OA No. 387/99 and OA No. 419/99. The judgement in OA No. 387/99 and OA No. 419/99 rendered separately today, shall be treated as part of this judgement. In fact, Hon'ble the Supreme Court has already issued a general direction dated 16.08.2000 in Special Leave to Appeal (Civil) Nos. 16135-16136 of 1999, directing the Union of India to implement the directions given by the Constitution Bench of Apex Court in Jatinder Pal Singh case. Hence, in our considered opinion, it is the duty of the department to implement the same. It is needless to point out that the law protect those who protect the law (Dharmo Rakshati Rakshtan).

3. For the above reasons, we pass the order as under :-

"All the above OAs are disposed of with a direction to the respondents not to give effect to any eligibility list and/or panel already prepared for the purpose of promotion to the next higher cadre, without revising the seniority in the lower cadre in the light of the "catch up" rule enunciated by Hon'ble the Supreme Court in Ajit Singh-II, Jatinder Pal Singh etc. The official respondents shall now take up the exercise for revising the seniority between the applicants and the respondents in each case with reference to other persons of the cadres at different levels, in terms of the base level seniority. This exercise shall be completed within a period of six months from the date of receipt of a copy of this order or before initiating the process for any promotion to higher cadre, whichever is earlier." (emphasis supplied)

7. It is seen that the detailed judgement was passed in OA 387/99 and OA 419/99 decided on the same day, the OA 250/95 was decided.

7.1 A perusal of the decision rendered in OA 387/99 and OA 419/99 shows that the court had directed to prepare the fresh seniority list and fresh



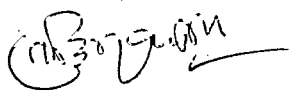
eligibility list for the purpose of promotion to the next level in accordance with law.

8. When the court had quashed the earlier seniority list and directed to prepare the fresh seniority list and fresh eligibility list, it has to be held that selection held on the earlier seniority list and eligibility list could not survive. The respondents cannot be said to have faulted when they have started the selection process again after cancelling the selection process held on the notification dated 19.1.96. It may be understood in this manner that when the fresh seniority list was required to be prepared in terms of the decision of the Supreme Court, some persons may not come in the zone of consideration and some persons, who were not in the zone of consideration as per the earlier seniority list, may come in the zone of consideration. In that situation, the face of the eligibility list will change. The respondents who had held the selection process on the basis of the old seniority list and the eligibility list could not be in a position to prepare correct panel. The only way of preparing the panel was to have fresh selection process on revised seniority list and eligibility list.

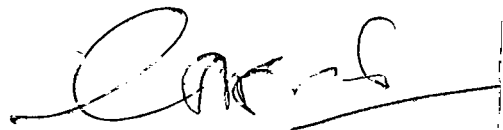
9. The provisions of Para-219 (K) or (L) of the Indian Railway Establishment Manual in no way help the applicants because the selection process has been cancelled on the basis of court's order. It is not the case where the officers of the respondents, of their own accord, have cancelled or amended the panel.

10. So also, the decisions rendered in the cases of Nagendra Ram & Ors. v. Union of India & Ors. - (1994) 28 ATC 677, Smt. Mridu Rani Mandal v. Union of India & Ors. - (1987) 5 ATC 599, Ujjal Kr. Chattopadhyay v. Union of India & Ors. - (1990) 14 ATC 631, and Suresh Chand & Ors. v. Union of India & Ors. - (1991) 16 ATC 829, relied^{on} by Mr. Misra, hardly help the applicants. As already stated, in the instant case, the officers of the respondents have not cancelled the selection process of their own but it has been done under the directions of the Court given in OA 250/95. They had no alternative but to hold fresh selection on the basis of revised seniority and eligibility lists.

11. Having considered the submissions made by the learned counsel for the parties, we find no merit in the instant OA and dismiss it. No order as to costs.



(R.K. UPADHYAYA)
MEMBER (A)



(G.L. GUPTA)
VICE CHAIRMAN