

CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH,
JA BALPUR

Original Application No.825 of 2005

Jabalpur this the 28th day of March, 2006.

**Hon'ble Dr.G.C.Srivastava, Vice Chairman
Hon'ble Mr. G.Shanthappa, Judicial Member**

1. Akilluddin Jamali, aged about 45 years,
Son of Shri K.Jamali, Goods Driver,
Resident of 160-RB-II Railway Colony,
West Central Railway Guna (M.P.).
2. Kishore Singh, aged about 46 years
S/o Shri Bhawan Singh, Goods Driver,
Resident of Achwal Ward Bina,
District Sagar (M.P.).
3. Malhare Meena, aged about 43 years,
Senior Goods Driver, C/o Loco Foreman,
Guna Distt.Guna (M.P.).
4. Raj Kishore Sahu, aged about 46 years,
S/o Shri V.D.Sahu, Goods Driver,
C/o Loco Foreman Guna, Distt.Guna (M.P.).
5. Man Mohan aged about 43 years
S/o Shri Ram Dayal, Goods Driver
C/o Loco Foreman Bina, Distt.Sagar (M.P.).
6. Hari Ram aged about 53 years,
S/o Shri Bhagwan Dass, Senior Goods Driver,
Resident of Type G-5-B, Railway Colony,
Bina, Distt.Sagar (M.P.).

Applicants

(By Advocate – Shri L.S.Rajput)

V E R S U S

Union of India Through,

1. General Manager, West Central Railway,
"Indira Market" Near Railway Station,
Jabalpur (M.P.)482001.

2. Divisional Railway Manager, West Central Railway,
Habibganj, Bhopal (M.P.).

3. Senior Divisional Personnel Officer,
West Central Railway, DRM's Office,
Habibganj-Bhopal.

Respondents

(By Advocate – Shri S.P.Sinha)

ORDER

By Dr.G.C.Srivastava, Vice Chairman.-

This application has been filed by six employees of the West Central Railway against order No. WCR/ PHQ/ CT/ 1186 dated 05-08-2005 passed by respondent no.1, General Manager of the West Central Railway, (annexure-A-1) rejecting the claim of seniority of the applicants. The applicants, who are presently working as Goods Drivers, have prayed for quashing of the impugned order and for assigning seniority to the applicants as indicated in letter dated 22-06-1995 issued by the office of the Divisional Railway Manager at Bhopal (annexure-A-3). The applicants have also prayed for all the consequential benefits.

2. The case of the applicants is as follows:

All the applicants were initially appointed as Group-D employees in the Jhansi Division of the Central Railway, but later on, in 1987, they were assigned to the newly created Bhopal Division. On 14.11.1994, while they were working as Diesel Assistant, a seniority list was circulated (annexure-A-2) against which they represented. As a result, the seniority list was modified on 22-06-1995 (annexure-A-3) to the satisfaction of all the applicants. This modification in the seniority list was, however, subsequently withdrawn, forcing the applicants to approach this Tribunal for relief. This Tribunal vide order dated 21-03-2002 in O.A.135/1996 directed the respondents to reconsider the case of the applicants and pass a detailed and speaking order (vide annexure-A-4). The claim of the applicants was again rejected



vide order dated 21-08-2003 (annexure-A-7). As a result, the applicants again approached this Tribunal, which vide order dated 03-11-2004 in O.A.690/2003, directed the General Manager of West Central Railway "to personally look into the matter and decide all the issues raised by the applicants and take a final decision, if necessary by giving the applicants a personal hearing and thereafter pass a detailed speaking and reasoned order" (vide annexure-A-8). The claim of the applicants has again been rejected by the impugned order, compelling the applicants to approach this Tribunal once again. The applicants claim that their names should appear between serial numbers 85 and 86 of the seniority list of Goods Drivers as corrected on 28-05-2002 and circulated on 29-05-2002 (annexure-A-10), wherein their names appear at serial numbers 149, 156, 159, 160, 161 and 163 respectively. Their claim is based on the fact that they were screened and found suitable for the post of Fireman II on different dates before 24.03.1988 (11-11-1987, 03-02-1988, 13-07-1987, 13-01-1988, 13-07-1987, 20-11-1987 respectively) and should have, therefore, been promoted as Fireman II along with other employees, who were promoted on 24-03-1988. Instead, they were promoted as Fireman II on 01-05-1989. This has resulted in their delayed promotion to other higher positions.

3. The respondents in their reply have taken the plea that the application is barred by limitation, as it challenges the seniority list of 14-11-1994. The respondents have further contended that the seniority lists have been correctly finalized after considering objections received from persons affected and that the impugned order was rightly passed after giving a personal hearing to the applicants and on the basis of the records. It has also been stated by the respondents in their reply that "the applicants after screening were selected as Fireman-II but for want of vacancies due to quota system, they were promoted as Fireman-II only on 1-5-89". The respondents have denied that the applicants were screened and

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found suitable as Fireman-II before 24-3-1988. The respondents have further submitted that the applicants did not challenge their promotion as Fireman-II with effect from 01-05-1989 for seven years and hence they cannot seek relief on this account now.

4. We have heard the learned counsels of the applicants and the respondents. We have carefully gone through all the documents on record including the records of OA 135/1996 and OA 690/2003.

5. So far as the objection regarding the limitation is concerned, it is seen that the impugned order was passed on 05-08-2005 and the present application was filed well in time on 30-09-2005. Since the impugned order does take cognizance of the date of promotion of the applicants as Fireman-II, this fact can be taken into consideration by this Tribunal also while deciding this case. Hence the objection of the respondents regarding limitation is overruled.

6. Coming to the merit of the case, the records show that the seniority list relevant to the applicants was issued on 14-11-1994 (annexure-A-2) and the applicants did represent against the seniority list at that time (vide annexure-A-20 in OA 135/1996) primarily on the ground that their promotion as Fireman-II with effect from 01-05-1989 was made without any consideration of seniority. Hence, the contention of the respondents that the plea of the applicants for ante-dating their promotion as Fireman-II is belated, cannot be accepted.

7. The entire thrust of the argument advanced by the learned counsel of the applicants is on the date from which the applicants should have been promoted as Fireman-II. By applicants' own admission (vide para 5.3 of their application), they were declared suitable for appointment as Fireman-II on 11-11-1987, 03-02-1988, 13-07-1987, 13-01-1988, 13-07-1987, 20-11-1987 respectively and they claim that since the order of appointment of Fireman-II was issued on 24-03-1988, their names should have been included in the said appointment order. A perusal of this

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appointment order, which is placed at annexure A-7 in the record of OA 135/1996, shows that this order was issued on the basis of a list of employees "who were found suitable for the post of Second Fireman as per DRM(P) Jhansi letter No.P/168/4/2/IR of dt.13-7-87". As per the statement made by the applicants in their application, none of them were declared suitable for appointment as Fireman-II before 13-07-1987. Hence their claim for inclusion in the list of promotees issued on 24-03-1988 is not justified, as their names could not have been included in the letter issued by DRM,Jhansi on the basis of which the promotion order was issued. Their names were subsequently communicated on 06-06-1988 for utilization as Fireman-II (vide annexure A-8 in OA 135/1996) and their names were included in the subsequent appointment order of Fireman II issued on 01-05-1989 (annexure A-17 in OA 135/1996). As per the statement of the respondents, this order was issued in accordance with the vacancies available. In view of this, the impugned order, which confirms this position, does not call for any interference.

8. The applicants have alleged (vide para 5.5 of their application) discrimination against them vis-à-vis Dhaniram Mangal, who was promoted as Fireman-II on 06-10-1988 and was given proforma promotion with effect from 24-03-1988. The impugned order does not contain any justification of this promotion, which to us, appears to be unreasonable in as much as he was also screened for Fireman II after 13-07-1987 like the applicants but he was singled out for promotion before 01-05-1989 and that too with retrospective effect from 24-03-1988. We, however, agree that this promotion has not adversely affected the promotion prospects of the applicants as they would not have been eligible for consideration for promotion as Diesel Assistant in February,1990 (vide para 4.10 of the reply of the respondents in OA 135/1996) when Dhaniram Mangal was promoted and as mentioned in the impugned order, Dhaniram Mangal did not get



any further promotion, whereas the applicants are holding the higher post of Goods Driver. We, however, expect that the respondents will keep our observations in respect of the case of Dhaniram Mangal in mind while considering his promotion and refixation of seniority, if it becomes necessary, in future.

9. At this stage, we would also like to point out that respondent no.1 who was directed by this Tribunal vide order dated 03-11-2004 in OA 690/2003 to "decide all the issues raised by the applicants" did not, in fact, apply his mind to any of the issues raised by the applicants and did not try to find out if the representations made by the applicants in the past were decided by his subordinates at various stages correctly and after due consideration. This attitude of indifference, which has been pervading in the hierarchy at every level as is apparent from the cryptic manner in which various orders regarding seniority were passed, has resulted in this prolonged litigation.

10. In view of the above, we do not find any merit in the application and it is accordingly dismissed.

11. The parties to bear their own costs.

G.Shanthappa
(G.Shanthappa)

Judicial Member

Girish
(Dr.G.C.Srivastava)
Vice Chairman

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पृष्ठांकन सं. ओ/व्या..... जवलपुर, दि.....
द रिहिरियि लाले दिता
(1) रमेश, उत्तर राज्य विद्यालय, जवलपुर
(2) लालेश्वर लोगो, लाले लोगो, को काउन्सल
(3) प्रत्यार्थी श्री/ लाले लोगो, को काउन्सल
(4) वंशपाल, लाले लोगो, लाले लोगो, को काउन्सल
सूचना एवं आवश्यक घासीको द्वारा

C.J. Report No 20038
S.P. P. 1464 No 20038

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Horrell
29/3/06