

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH

CIRCUIT SITTING AT INDORE

OA No.134/04

Indore, this the 13th day of July, 2005.

C O R A M

HON'BLE MRM.A.KHAN, VICE CHAIRMAN
HON'BLE MR.S.K.NAIK, ADMINISTRATIVE MEMBER

Madanlal M.
S/o Shri Moolchand
Retired Diesel Assistant
Passenger Yard,
Ratlam (MP)

Applicant.

(By advocate Shri M.K.Verma)

Versus

1. Union of India through
General Manager
Western Railway,
Church Gate
Mumbai.
2. The Divisional Railway Manager
Western Railways
Do Batty Choraha
Ratlam (MP)

Respondents.

(By advocate Shri Y.I.Mehta)

O R D E R (oral)

By M.A.Khan, Vice Chairman

The applicant has filed this OA for quashing the order dated 29.2.2000 (Annexure A7), whereby the applicant was reverted from the post of Diesel Assistant to the post of Skilled Khalasi in Grade IV and for directing the respondents to extend the benefit of the order of Madhya Pradesh High Court in WP No.7014/2002 decided on 22.7.2003. He has also prayed for a direction to the respondents to treat him in the grade of Diesel Assistant and fix his pension in the said grade with all consequential benefits.

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2. The facts, briefly stated, are that the applicant was working as Fireman Grade II in Steam Loco. The Loco was closed down and the personnel working there were rendered surplus. The surplus staff, on the closure of the Loco, was to be deployed in other departments in accordance with the instructions contained in Annexure A1. The applicant was deployed in Diesel Shed and was appointed as Diesel Assistant on adhoc basis after he had undergone the requisite training. He had been working as Diesel Assistant for 15 years when he was required to appear in the selection test for regularisation on the post of Diesel Assistant from the year 1997 onwards. The applicant appeared at the written test but failed to qualify the viva voce and interview. Consequently, the applicant was reverted from the post of Diesel Assistant to the post of Skilled Khalasi, which is in lower grade, vide order dated 29.2.2000. He challenged this order by filing OA No.399/2000. The Tribunal disposed it of vide order dated 13.9.2000 and the respondents were directed to consider the representation of the applicant and dispose it of by a reasoned order. The respondents rejected the representation of the applicant vide order dated 10.5.2001 (Annexure A8). The applicant did not challenge this order before the Tribunal.

3. The present OA has been filed by the applicant with the allegation that one Moolchand and some other persons, who were also working as Adhoc Diesel Assistants and whose services as Diesel Assistants were also not regularised, challenged this order of the respondents by filing a joint OA No.211/95. The Tribunal partly allowed this OA

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on 13.3.2001 (Annexure P-4) and directed the respondents that "based on the selection ordered and panel prepared on 14.12.93, the applicants shall be deemed to be regularised on the post of Fireman Grade I/Diesel Assistant w.e.f. the same date their juniors were regularised based on the same panel and the seniority determined accordingly". This order has already been implemented by the respondents.

4. Certain other persons - Babulal and others - who were also working as adhoc Diesel Assistants in the Diesel Loco Shed filed another OA No.233/2000 claiming regularisation of their services on the post of Diesel Assistant. The Tribunal dismissed their OA on merit vide order dated 13th November, 2002. This order was challenged by those applicants in W.P.No.7014/02. They relied upon the decision of the Tribunal in Moolchand's case. The Madhya Pradesh High Court decided this WP vide order dated 22.7.03 (Annexure P-10). The operative portion of the order reads as under:

"In view of the aforesaid, we are inclined to direct that if Moolchand and others had not appeared in any written test, the present petitioners would not be compelled to appear in the test and be treated at par with Moolchand on the principle of parity by the Railway Administration."

The applicant, after his reversion to the post of Helper Khalasi, applied and was granted voluntary retirement from service and he retired w.e.f. 13.11.2002. His pension and pensionary benefits have been granted on the basis of the emoluments which he was drawing on the reverted post of Helper Khalasi. In the present OA, he is

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aggrieved that persons who are similarly placed like him have been regularised on the post of Diesel Assistant by virtue of the order of the Tribunal in the case of Moolchand and others and the order in W.P.No.7014/02. He has filed this OA for extending the benefit of these two orders to him also.

5. Respondents resisting the claim of the applicant have tried to distinguish the cases of Moolchand & others (OA No.211/1995) and Babulal.R. & others (WP No.7014/02) on the ground that while Moolchand and others and those writ petitioners had appeared in the written test but had failed in the interview/viva voce, the applicant was required to appear in the written test but had failed to clear it repeatedly. It is, therefore, submitted that in view of the nature of the order passed by the High Court in the writ petition, the benefit of the order cannot be extended to the applicant in this case.

5. We have heard learned counsel for the parties and carefully gone through the relevant record.

7. The applicant - Moolchand & others in OA No.211/95 and the writ petitioners in WP No.7014/02 were all adhoc Diesel Assistants working in the Diesel Loco Shed. The services of Moolchand and others and the writ petitioners have since been regularised without requiring them to qualify in the interview and the written test with effect from the date of their empanelment from 1993 onward, whereas the applicant who was also similarly working as Diesel Assistant has been required to appear in the written

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test, which he has not been able to clear. Learned counsel for the applicant has drawn our attention to the guidelines issued by the Railway Board in Annexure A1. According to the guidelines, the surplus staff was to be re-deployed in other departments, after giving them suitable conversion training in identical grades and suitable trades. It is submitted that as per these guidelines, clearing written test and viva voce/interview was not a condition precedent to the re-deployment of such surplus staff in identical grades and suitable trades. Learned counsel of the applicant has further submitted that Moolchand and others in OA No.211/95 and the writ petitioners in WP No.7014/2002 have been regularised on the post of Diesel Assistant from the respective date of empanelments without being required to appear in the written test and interview. They had, of course, subsequently appeared in the selection test held in 1997 and had cleared it. It is argued that clearance of the written test and interview in the subsequent selection held in 1997 would not be the distinguishing feature on the basis of which the applicant could be denied parity with their cases. It is submitted that in the case of Moolchand and others, the Tribunal has held that Moolchand and others were not in fact required to appear in the written test or viva voce, in accordance with the guidelines issued by the Railway Board (Annexure A1). It is further submitted that the writ petitioners had also not appeared in the written test and viva voce/interview, yet they were given the benefit of the order of the Tribunal in Moolchand's case.

Moolchand

8. The argument of the learned counsel for respondents is that the facts of the cases in Moolchand & others and Babulal.R.& others were different. The applicants in both these cases appeared at written test and had cleared it but they failed to qualify the viva voce/interview. It is submitted that in the present case, the applicant appeared in the written test but failed in 1997 as well as in the subsequent selection tests. It is, therefore submitted that the applicant cannot be said to be similarly placed persons so as to be given the benefit of the order in the case of Moolchand and others and Babulal and others.

9. From para 10 of the order of the High Court in W.P. No. 7014/02, it is clear that the fact whether Moolchand and others had appeared in the written test and had cleared is a disputed question. In the present case, so far as the selection of 1993 is concerned, the respondents have not placed any material on record to hold that in the selection test of 1993 or in the subsequent selection between 1993 and 1997, Moolchand and other and Babulal and others had appeared in the written test and had cleared it and, therefore, their services were regularised on the post of Diesel Assistant. Infact the respondents had filed a statement Annexure R-3, which stated that present applicant has failed in all the selection held from 1997 onwards and Moolchand and other applicants in the OA No. 211/1995 had cleared the selection test in 1997 and they were empanelled in the year 1997. But they have not filed any statement showing that Moolchand and others and Babulal and others had appeared in the test prior to 1997 and had cleared it.

10. At this stage, learned counsel for the respondents has submitted that the ends of justice would be met if this Tribunal gives a direction to the respondents to consider the case of the applicant afresh, and in case Moolchand & others

Mulayam Singh

in OA 211/95 and Babulal and other in WP No. 7014/02 had not appeared in the written test and or they had appeared in the written test but had failed in the selection held prior to 1997, the benefit of the order of the Tribunal in OA 211/95 and WP No. 7014/02 be extended to the applicant also by granting the relief which has been granted to the applicants in those cases.

11. Since the complete material has not been placed by the department on record, we are in agreement with the submissions made on behalf of the respondents. Accordingly, we dispose of this OA directing the respondents to re-examine the case of the applicant in the light of the order of the Tribunal in OA 211/95 Moolchand & Others and the Hon'ble High Court in WP No. 7014/02 Babulal & others, and in case the applicants/petitioners in those two cases had not appeared in the written test and or had appeared but failed in the written test prior to 1997, the applicant in the present case shall also be extended the benefit of the order of the Tribunal in Moolchand's case and the order of the High Court in Babulal's case at par.

12. If a decision is taken in favour of the applicant, the order dated 29.2.2000 shall stand quashed. If the applicant is granted the benefit of the order of the Hon'ble High Court in Babulal's case and of this Tribunal in Moolchand's case, his emoluments shall be fixed in the grade of Diesel pension and ^{and} Assistant for the purpose of pensionary benefits notionally on the date of his reversion and thereafter on the date of his retirement and pension and other pensionary benefits shall be granted to the applicant calculated on the basis of that emoluments. However, the applicant shall not be entitled to monetary benefits from the date of his reversion to the date of retirement. Parties to bear their own costs.

S.K. Naik
(S.K. Naik)
ADMINISTRATIVE MEMBER
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M.A. Khan
(M.A. Khan)
VICE CHAIRMAN