

CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH, JABALPUR

Original Application No. 747 of 2004

INDORE, THIS THE 19th DAY OF AUGUST, 2005.

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. Madan Mohan, Judicial Member

1. Ganoo Lal S/o Shri Ayodhya Prasad
Aged about 48 years, R/o Kailashpuri, H.No.1389,
Gupteshward, Jabalpur (M.P.)
2. Abdul Rafique S/o Gulam Mohammed
Aged about 55 years,
R/o Opposite Jaleel Hotel, Thakkar Gram, Panchkash
Shashtri Ward, Jabalpur.
Deceased Through Legal Representatives

(i) Mohd Shfique, S/o Shri Abdul Rafique,
Date of birth 27.7.1981.

(ii) Mohd Rais, S/o Shri Abdul Rafique,
Date of birth 15.3.1987.

(iii) Mohd Shamim, S/o Shri Abdul Rafique,
Date of birth 30.4.1988.

(iv) Mohd Vasem, S/o Shri Abdul Rafique,
Date of birth 3.4.1990.

All are resident of H.No.1051, Near Pachkuiyan Bade
Kuai, Lalbahdur Shastri Ward, Jabalpur. Applicants

(By Advocate – Shri S.Paul)

V E R S U S

1. Union of India, Ministry of Railway
Through its General Manager, West Central Railway
Jabalpur.
2. The General Manager, West Central Railway
Jabalpur.
3. The Divisional Railway Manager,
West Central Railway, Jabalpur.
4. Jagdish Prasad Nand Ram
5. Prahad Singh Damanlal
6. Suresh Sadhu
7. Ratanlal Ramlal

8. Madanlal Sardar Singh
 9. Ramadhar Nawal Singh
 Respondent No.4 to 9 Through the Divisional Railway
 Manager, West Central Railway, Jabalpur - Respondents
 (By Advocate - Shri H.B. Shrivastava for official respondents)

ORDER

By M.P.Singh, Vice Chairman.-

By filing this Original Application, the applicants have claimed the following main reliefs:

“(ii) Set aside the seniority list Annexure A-3 and command the respondents to assign seniority to the applicant over and above the private respondents.

(iii) Consequently the respondents be directed to provide seniority retrospectively to the applicants when they were posted as MRCL Artisan Carpenter w.e.f. 1.9.1987 and 1.8.1987 respectively.

(iv) The respondents be directed to fix their pay in the pay-scale of Rs.950-1500 (RPS)/3050-4590 (RSRP) with retrospective effect with all consequential benefits and other attendant benefits.

(v) The respondents be further directed to promote the applicant in Carpenter Grade-II & I from the date their juniors have been promoted.

(vi) The respondents be directed to refund Rs.4000/- of one time arrears of Rs.8000/- paid to them while implementing the recommendations of Vth CPC. Out of Rs.8000/- arrears paid to them as Group ‘C’ employees, Rs.4000/- have been recovered from their wages when they were posted as Gangman in Group ‘D’ category @ Rs.500/- per month from their wages.”

2. The brief facts of the case are that the applicant no.1 Ganoolal and applicant no.2 Abdul Rafique (who died during the pendency of this OA and his legal representatives have come on record) while working as Monthly Rated Casual Labour (for short ‘MRCL’) Artisan Carpenter in the scale of Rs.950-1500 (Revised Rs.3050-4590) became eligible for appointment on regular basis in the railways consequent upon the decasualization of the casual

labourers as permanent employees during 1987. However, they were not made permanent Carpenter Grade-III (Rs.3050-4590) in Group-C category of Railways and were directed to be posted as Gangman [Rs.775-1025 / Rs.2610-3540(Revised)] in Group-D category on de-casualisation. Aggrieved by this, they had filed O.A.Nos.870/1997 and 871/1997, and the said OAs were allowed by the Tribunal vide common order dated 7.3.2002. Paragraphs 4 and 5 of the order dated 7.3.2002 passed by the Tribunal are reproduced below:-

"4. We have carefully considered the rival contentions of the parties and perused the material on record. The contention of the respondents that the applicants have been decasualized as per circular in Class-IV rightly as they are not eligible having not possessed the qualification of Sixth passed is not legally tenable. From the perusal of the scheme of decasualization we find that in clause (2) of the scheme a specific mention has been made to the cut off date i.e. 18.12.1980. According to which the casual labourers who have been recruited after this date should preferably have educational qualification of having sixth class pass. This requirement and eligibility criteria would have no application to those casual labourers who have been recruited prior to 18.12.1980. As such, the respondents action by imposing upon this condition upon the applicants to deny them the decasualization in the pay scale of Rs.950-1500 cannot be countenanced.

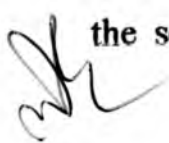
5. Having regard to the reasons recorded above, these Original Applications are allowed. The respondents are directed to decasualize the applicants in the pay scale of Rs.950-1500 subject to availability of vacancies/ posts and as per their seniority. In that event they shall be entitled to all the consequential benefits. While implementing the directions, it should be kept in mind that the juniors to the applicants have already been decasualized in the pay scale of Rs.950-1500 and the respondents shall not take any steps to surrender the posts to make our directions infructuous. These directions shall be complied with within a period of three months from the date of receipt of a copy of this order".

The respondents thereafter vide order dated 13.6.2002 (Annexure-A-2) promoted the applicants as Carpenter Grade-III. It is stated in the said order that they would be given proforma promotion/seniority and pay fixation w. e. f. 27.10.1997 whereas



they were entitled to seniority in the cadre of Carpenter Grade-III from 1st September 1987 and 1st August, 1987 respectively. According to them, the Tribunal has categorically directed for grant of all consequential benefits and also directed the respondents to keep in mind the fact that the juniors of the applicants had already been decasualized. However, the respondents have not taken any steps to provide the consequential benefits and grant proper seniority to the applicants. Hence this Original Application.


3. The respondents in their reply have stated that in pursuance to the order dated 7.3.2002 passed by the Tribunal, the applicants having been decasualized in the scale of Rs.950-1500/Rs.3050-4590 from 27.10.1997 have been given proforma fixation of pay and seniority from 27.10.1997 i.e. the date when the next junior was promoted to such a grade, as mentioned in the order dated 13.6.2002(Annexure-A-2). According to the respondents, the immediate junior to the applicants viz Jamuna Prasad, and other MRCL Carpenters were promoted and regularized w.e.f.27.10.97 in compliance of the notification dated 30.12.91 (which was challenged by the applicants in the aforementioned OAs filed in 1997). Hence in compliance with the orders of this Tribunal dated 7.03.02, the applicants have also been given proforma fixation of pay and seniority from 27.10.97. The respondents have further submitted that the applicants are not entitled to seniority from 1.9.87 and 1.8.87 as claimed by them. The applicants have been given proforma fixation of pay and seniority from the date their next junior was promoted viz. 27.10.97. The applicants' junior was promoted and regularized as per scheme of decasualization as circulated by the Railway Board on 19.6.1991. The scheme itself was introduced in 1991 and given effect in 1997 and as such the claim of the applicants cannot sustain from 1987. The applicants had claimed decasualization against the posts made permanent in the scheme as per Railway Board's letter dated 19.6.1991. The



applicants have been assigned seniority with reference to their juniors who were decasualized as per the scheme of 1991. The applicants had never challenged the promotion of other private respondents and cannot do so now as they have approached the Tribunal for non implementation of orders passed in OAs 870 & 871/1999 decided on 7.3.2002. The applicants have not named any person who has been promoted after 27.10.1997 viz the date from which proforma fixation of pay and seniority has been assigned to them. The applicants have been assigned proforma fixation of pay and seniority from the date Jamnua Prasad Khemchand has been decasualized. The arrears of pay has not been granted to the applicants as they did not shoulder higher responsibility.

4. Heard the learned counsel of parties and carefully perused the pleadings.

5. The learned counsel for the applicants has submitted that there was a specific direction of the Tribunal to grant consequential benefits. Therefore, the applicants are required to be appointed on regular basis and not on proforma basis, with all the arrears of pay. Moreover, they have been granted proforma promotion from the date their junior Jamuna Prasad Khemchand was granted the promotion. According to the learned counsel, the applicants are much senior to aforesaid Jamuna Prasad Khemchand. Jamuna Prasad Khemchand was not the immediate junior to the applicants. The learned counsel has drawn our attention to the seniority list of Carpenter Grade-III dated 14.6.2002 (Annexure-A-3) wherein the names of applicants are shown at serial nos.8 and 9 and their date of appointment has been shown as 20.2.1981 and 16.5.1984, and their date of proforma promotion has been shown as 27.10.1997. The learned counsel has submitted that as per the date of appointment shown in the seniority list Jamuna Prasad Khemchand is not the immediate junior of the applicants. Even Jagdish Prasad Nand Ram, who is shown at serial no.1, is also junior to the applicants as his date of




appointment has been shown as 20.8.1985, whereas he has been given promotion with effect from 26.2.1993. Therefore, the applicants are required to be given proforma promotion from an earlier date with all consequential benefits.

6. On the other hand, the learned counsel for the respondents has submitted that the aforesaid seniority list dated 14.6.2002 is not based on the basis of date of appointment in the lower Group-D post but according to the date of appointment in the higher grade of Carpenter Grade-III. He has submitted that since the post of Carpenter Grade-III is not in the direct line of promotion from Group-D, therefore, the seniority list cannot be prepared strictly in accordance with the date of appointment in the lower grade.

7. The learned counsel for the applicants has submitted that as per the recruitment rules, 50% of the posts are required to be filled up by promotion and the applicants are required to be placed in the higher grade with reference to their junior and grant of consequential benefits i.e. seniority, arrears of pay etc.

8. We have given careful consideration to the rival contentions advanced on behalf of both the parties. We find that the Tribunal had earlier directed the respondents to decasualize the applicants in the pay scale of Rs. 950-1500 subject to availability of vacancies/ posts and as per their seniority. Based on that finding, the respondents have appointed the applicants on regular basis and have granted them proforma promotion from a retrospective date and have also granted the benefit of pay fixation from the date. The applicants were working only as MRCL. They have been regularized and granted promotion as per the direction of the Tribunal.



9. In view of the above facts, we are of the considered view that the applicants have failed to substantiate their claim by giving any documentary evidence whereby immediate junior to the applicants have been given promotion from an earlier date. He is claiming the benefit only on the basis of seniority list dated 14.6.2002, which cannot be accepted and is accordingly rejected. Thus, the applicants have failed to prove their case for grant of relief sought for in this Original Application.

10. In the result, for thereasons stated above, this Original Application is dismissed, however, without any order as to costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

Rkv.

कृष्णांकन सं ओ/न्या.....जबलपुर, दि.....

प्रतिनिधि आयो निरा:-

- (1) सचिव, उच्च न्यायालय का एडमिनिस्ट्रेशन, जबलपुर
- (2) आवेदक श्री/श्रीमती/व्यक्ति.....के सचिव
- (3) प्रत्यक्षी श्री/श्रीमती/व्यक्ति.....के सचिव
- (4) मध्यम, केंद्र, जबलपुर न्यायाधीश
सूचना एवं आवश्यक कार्यवाही हेतु

26/8/05 उपे रजिस्ट्रार

S. Paw AAOBP
H.S. Jhnavastava
AOBP

Filed
m
26-8-05