

Central Administrative Tribunal
Jabalpur Bench

OA No.810/04

Indore this the 17th day of November, 2005.

C O R A M

Hon'ble Mr.M.P.Singh, Vice Chairman

Hon'ble Mr.Madan Mohan, Judicial Member

Hiralal Babulal
Diesel Assistant
R/o 34, Rajiv Nagar
Ratlam (MP).

Applicant

(By advocate Shri A.N.Bhatt)

Versus

1. Union of India through its
General Manager
Western Railway
HQ Office, Churchgate PO
Mumbai.

2. The Divisional Railway Manager
Western Railway, Do-Batti
Divisional Office, Ratlam.

3. Shri Jainesh.T.
Diesel Assistant working
Under CTCC-Lossy
PO:Ujjain(MP).

Respondents

(By advocate Shri Y.I.Mehta along with Smt.S.H.Mehta)

ORDER

By Madan Mohan, Judicial Member

By filing this OA, the applicant has claimed the following reliefs:

- (i) Applicant be treated as regular from the date of his ad-hoc posting
- (ii) The orders issued for regularization from 20.10.98 are required to be modified from the date of applicant's ad-hoc



promotion or from the date of his passing the selection i.e. 26.9.97.

- (iii) The seniority list prepared by the respondents in contravention of Rules and law enunciated by the Supreme Court be quashed.
- (iv) Applicant be assigned seniority from the date of his ad-hoc promotion.
- (v) On the basis of the revised seniority all the due promotions and other consequential benefits be allowed prior to direct recruit departmentally against 20% quota.
- (vi) Pay fixation, pay and other allowances on account of revision of seniority and promotion dates be allowed along with arrears and interest thereon.

2. The brief facts of the case are that the Ministry of Railways ordered restructuring of cadre of running staff with effect from 1.6.81 vide letter dated 17.7.81. In this restructuring, it is ordered that for Fireman-A/Diesel Assistant, Asstt. Electrical Drivers, there would be a change but all the Fireman 'B' working on Goods and Passenger trains will be upgraded to the scale of Rs.290-350/260-400/950-1500 i.e. the same pay scale as was admissible to Fireman 'A'/Diesel Asstt./Asstt.Elec. (Annexure A3). Respondent No.2 issued a letter dated 15.12.97 in which it was mentioned that the posts of Fireman 'B' and Fireman 'A' are merged in one grade of Rs.950-1500. The applicant was holding and officiating on adhoc basis on the post of Diesel/Electrical Assistant. In this letter it is mentioned that the rankers amongst the running side should have first been regularized against these posts, who are already officiating on adhoc basis. Had the respondents conducted the selections regularly and in time, the rankers would have been promoted as Diesel/Electrical Assistants earlier to the lateral induction of non-running skilled artisans. Respondent No.2 instead of regularizing the rankers in terms of the above circular called for an open market recruitment from the serving employees in the year 1997 in a hurry. The applicant, who was officiating since long, qualified, duly trained and was also placed on panel on 26.9.1997, yet regularized after one year on 20.10.98 after the regularization



of direct recruits. After passing the tests and three months course prescribed for rankers, the applicant was posted as Assistant on adhoc basis on 19.3.1996 and since then he is working as an Assistant. On 26.9.1997, the applicant also passed the selection of Diesel Electrical Assistant. Vide letter dated 20.10.98 the applicant was posted on regular basis. The selection of the applicant was held on 21.8.97 and its result was declared on 26.9.97 but regular posting orders were issued after 13 months. The Department has not conducted selection from 1994 to 1996 though it is to be conducted every year as per rules. The action of the respondents is illegal, unlawful and discriminatory. The applicant is also challenging the seniority list published by respondent No.2 vide order dated 27.7.2000. Hence this OA is filed.

3. It is contended in the reply of the respondents that the applicant is challenging the seniority list Annexure A2 without joining the affected persons over whom he wants seniority and as such the OA is not maintainable. Applicant was not Fireman 'A' nor 'B' but was Fireman 'C', a fact which has been suppressed by the applicant. Hence he could not get the benefit of Annexure A3 and Annexure A4 at the relevant time. Respondent No.2 did not fail to conduct selection. In 1996-97 the applicant was not eligible because he was promoted as Fireman 'C'/Fireman II in 1995 and the eligibility for selection to promotion as Electrical/Diesel Assistant was three years continuous working as Fireman II and therefore he was considered for selection only subsequently that too by giving relaxation in such working as he belonged to Steam Loco which was being closed, therefore he was one of those such surplus employees. Applicant was never promoted as Diesel /Electrical Assistant after due selection. The above post is selection post. The selection list of those senior persons who were eligible and permitted to take part in the selection process was published on 20.2.97 (Annexure R1) but for those seniors who failed in the selection, no selection process could be started at least for 6



months as per rules whereas certain juniors who were eligible due to relaxation because of steam loco surplus, the panel for eligible persons was published earlier but after Annexure R1. The failed seniors had to appear again in the written test, interview and psychological test and could all be done only after August 1997 and all these test consume time and therefore the GDCE/Rankers quota which included the aforesaid failed seniors were all required to face the tests and thereafter the promotion order of the selected employees was issued on 20.10.98. Our attention is drawn to an order passed by the Tribunal in OA No.587/2002, decided on 11.1.2005 and OA 316/95 decided on 19.4.2001 and the counsel argued that the present OA is squarely covered by the aforesaid decisions.

4. After hearing learned counsel for both parties and perusing the records, we find that para 11 of the order in OA No.316/95 reads as follows:

"11. The law laid down by the Supreme Court in this regard and also the directions of the Tribunal in Jodhpur Bench and Bangalore Bench and this Bench referred to earlier have not been kept in view by the GM while rendering the speaking order. We accordingly hold that the decision of the GM so far it pertains to the seniority of the applicants vis-à-vis direct recruits cannot be sustained and accordingly quash Para 5 (b) (ii) of the GM's speaking order. We note that the direct recruits have not been made parties in the present OA. In the circumstances, we direct the Railway administration to re-examine the seniority of the applicants vis-à-vis the direct recruits in accordance with the various provisions referred to and in particular the decision of the Supreme Court in Vijayan's case and decision of the Jodhpur Bench in the case of Madan Lal Vs. UOI in OA 404 of 92 decided on 22.12.98 and to take a decision in this regard after giving an opportunity to the direct recruits. However, while considering the reply from the various interested persons in respect of the opportunity having been given, the Railway Administration are required to follow the law laid down by the Supreme Court in this regard. This exercise shall be completed within four months from the date of receipt of a copy of the order."

5. The facts of the present OA seem to be squarely covered by the aforesaid decision. Accordingly the respondents are directed to re-examine the seniority of the applicants vis-à-vis the direct recruits in accordance with the various provisions referred to and in particular the decision of the Supreme Court in Vijayan's case and decision of the Jodhpur Bench in the case of Madan Lal Vs. UOI in OA 404 of 92 decided on 22.12.98 and to take a decision in this regard after giving an opportunity to the direct recruits. However, while considering the reply from the various interested persons in respect of the opportunity having been given, the Railway Administration ^{are} required to follow the law laid down by the Supreme Court in this regard. This exercise shall be completed within four months from the date of receipt of a copy of the order. The OA is disposed of finally with the above direction. No costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

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पृष्ठांकन सं ३९/८५५..... जमानपुर, दि.....

- सूचना सं ३९/८५५
- (1) जमानपुर
 - (2) जमानपुर
 - (3) जमानपुर
 - (4) जमानपुर

सूचना सं ३९/८५५ का प्रतीक सं ३९/८५५
उप रजिस्ट्रार

A. K. Bhatt
Ret. Line
Y. J. Mahapatra
Ret. Line

23/11/05