

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

OA No. 124/2005.

Jaipur, this the ^{5th} day of November, 2006.

CORAM : Hon'ble Mr. M. L. Chauhan, Judicial Member.
Hon'ble Mr. J. P. Shukla, Administrative Member.

1. Hemant Kumar Mhawar
S/o Shri Jagan Singh Mahawar,
Aged about 42 years,
R/o 553/B, New Railway Colony,
Kota Junction. Kota.
2. Onkar Singh Lawasia
S/o Shri Prem Raj,
Aged about 41 years,
R/o 907/B, Old Railway Colony,
Kota Junction.
3. Rameshwar Prasad Meena,
S/o Shri Mohan Lal Meena,
Aged about 40 years,
R/o 18/E, Railway Colony,
Bhawani mandi, Rajasthan.
4. Dhan Prakash
S/o Sita Ram
Aged about 38 years,
R/o New Railway Colony,
Kota.

... Applicants

By Advocate : Shri D. K. Jain.

Vs.

1. Union of India
Through General Manager,
West Central Railway,
Jabalpur (M.P.)
2. Divisional Railway Manager,
West Central Railway,
Kota Division, Kota.
3. The Chief Personal Officer,
West Central Railway,
Jabalpur.

... Respondents.

: O R D E R (ORAL) :

This application was initially filed by six applicants along with MA No.107/2005, which is application for permitting all the applicants to pursue this case as they are aggrieved by the same order. However, when the matter was taken up for admission it transpired that Applicant No.4&5, Shri Kiran Pal S/o Shri Ved Ramji and Shri Prakash S/o Shri Yadav Ram, respectively, are presently working in the office of A. En Shamgarh (M.P.), as such, they were ordered to be deleted from the arrays of the applicants as this Tribunal has no territorial jurisdiction to entertain the claim of these applicants. Accordingly, this OA has been confined to 4 persons namely Shri Hemant Kumar, Shri Onkar Singh Lawasia, Shri Rameshwar Prasad Meena and Shri Dhan Prakash. In this case the applicants have prayed for the following reliefs :-

"(i) by an appropriate order or direction, the respondents be commanded with the direction that the applicants be assigned correct seniority position in view of the facts narrated in the OA and they may be further given consequential benefits arising out of it after quashing the impugned order if so desire, in the facts and circumstances mentioned by the humble applicants.

(ii) that the respondents be further commanded with the direction that looking to the Constitutional amendment, reserved caste category candidates should be called for the posts meant for them and determination of eligibility of reserved caste candidates should be made after exclusion of the names of the general caste candidates from the seniority list and thus the denial of appearance of the applicants in the selection be declared as illegal and they may be allowed to appear in the selection and if they are selected they be given all

consequential benefits including the benefit of promotion.

(iii) by appropriate order or direction the result of the Exam of A.En. declared by the respondents on 7.3.2005 in pursuant to the order dated 3.12.2004 may kindly be quashed and set aside.

(iv) any other appropriate order or direction, which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case may also kindly be passed in favour of the applicant.

(v) Cost may also be awarded to the applicant."

2. Briefly stated, the facts of the case are that the applicants were initially appointed by the respondents on different dates in the year 1987 except the applicant Shri Dhan Prakash, whose initial date of appointment is 3.4.1992. Their grievance is regarding assigning of seniority over and above one Shri M. R. Meena, whose initial date of appointment is 15.12.1987. At this stage it may be relevant to mention here that so far as three applicants namely Shri Hemant Kumar, Onkar Singh Lawasia and Shri Dhan Prakash are concerned their date of initial appointment is 5.12.1987 in the case of Hemant Kumar Mahawar, 15.12.1987 in case of Onkar Singh and 2.4.1987 in the case of Rameshwar Meena. As already stated above the date of appointment of Shri Dhan Prakash is 3.4.1992 much after the date of appointment of Shri M. R. Meena and further he was promoted as Section Engineer in the scale of Rs.6500-10500 w.e.f. 27.9.2002 much after the date of initial date of induction of Shri M. R. Meena in the said grade on 6.10.1997. As such, the grievance of Shri Dhan Prakash regarding seniority over and above Shri

M. R. Meena is wholly misconceived and he is not entitled to any relief and this OA has been confined to the remaining three applicants as mentioned above.

3. In sum and substance the case set up by the applicants S/s Hemant Kumar Mathur and Onkar Singh Lawasia, as can be seen from the representation placed on record (there is neither any pleading nor any representation on record qua ~~Ramchandawat~~ thereby ventilating his grievances) is that in the year 1997 the respondents have issued Notification No. EE/E/1025/2 Part-I dated 8.4.1997 for selection to the post of Section Engineer whereby out of 5 posts, one post was notified for ST category and no post was notified for SC candidate. It is further stated that thereafter in the year 1999, a notification for selection of 6 posts of Section Engineer in the scale of Rs.6500-10500/- was notified vide Notification No. E/E/1025/2 Part-I dated 5.8.1999, out of which 2 posts were notified for SC category. The grievance of the applicants is that these two posts which were notified in the year 1999 were required to be notified in the year 1997 as till 1999 there was no increase in the cadre strength of Section Engineer and the two vacancies which were notified in the year 1999 pertains to the year 1997 or prior to that. Further grievance of the applicants is that they were not called for selection for the post of Section Engineer as conducted in the year 1997 against the two posts

reserved for SC category as notified in the year 1999. As such, prejudice has been caused to them. In the background of these facts, it is stated that their names may be incorporated in the Panel which were prepared pursuant to the selection held in the year 1997 and their name be shown over and above Shri M. R. Meena who was selected as Section Engineer in the year 1997. It is further averred that in case applicant's name is incorporated over and above Shri M. R. Meena, in that eventuality, they are entitled for consideration to the post of Assistant Engineer, Group-B, in the scale of Rs.7500-12000/-, the selection of which was conducted pursuant to the notification dated 12.10.2004, the result of which selection was finally notified vide letter dated 7.3.2005 (Annexure A/2). The applicants in this case have challenged the order dated 3.12.2004 which is the eligibility list prepared on the basis of list of eligible staff as per integrated seniority list for selection of A.Ens, in which the name of the applicants did not find mention along with order dated 7.3.2005 whereby the result of 51 persons who have qualified the examination for the post of AEN, Group-B cadre in the pay scale of Rs.7500-12000 were declared and the applicants have prayed that these orders be quashed and set aside and the respondents may be directed to assign the correct seniority to the applicants.

4. We have heard the Learned Counsel for the applicants at admission stage and we are of the view that the applicants have not made out any case for the grant of relief.

5. As already stated above, in sum and substance, the case of the applicants is that since they are senior to one Shri M. R. Meena, whose name find mention at Sl. No.167 of the list of Eligible Staff as per integrated seniority list prepared for selection to the post of AEN, Annexure A/3, as such, their names should be incorporated above Shri M. R. Meena who was granted promotion in the grade of Rs.6500-10500/- in the year 1997 as the respondents have failed to notify the two vacancies for SC category in the year 1997. For that reason, they could not appear in the examination conducted for the post of Section Engineer in the scale of Rs.6500-10500 in the year 1997. The respondents have pleaded that this fact regarding availability of two vacancies for SC category came to their notice in the year 1999 when out of 6 posts in the category of Section Engineer in the scale of Rs.6500-10500, two posts were reserved for SC category, in which selection both applicants, Shri Hemant Kumar Mahawar and Shri Onkar Singh Lawasia appeared and were subsequently promoted w.e.f. 18.4.2000. At this stage, it may be relevant to mention that though the initial appointment of Shri Rameshwar Prasad Meena, who belongs to SC category is 2.4.1987, he was promoted on

the post of Section Engineer in the scale of Rs.6500-10500/- w.e.f. 27.9.2002. However, neither there is any averment/pleading, nor there has been any document placed on record to justify that he was entitled for promotion in the grade of Section Engineer in the year 1997 when Shri M. R. Meena was promoted as Section Engineer w.e.f. ~~10.9.1997~~. He has been simply impleaded as applicant along with other applicants. As such, we are of the view that this applicant is not entitled to any relief whatsoever as admittedly he was promoted in the grade of Rs.6500-10500 w.e.f. 27.9.2002 and as such he cannot claim any seniority in the said grade w.e.f. 10.9.1997 simply because his date of initial appointment is prior to the date of initial appointment of Shri M. R. Meena who was promoted/selected in the grade of Rs.6500-10500 as far back in the year 1997.

6. So far as the claim of Shri Hemant Kumar Mahawar and Onkar Singh Lawasia is concerned, they have pleaded that they came to know about the non availability of 2 posts of SC in the category of Section Engineer in the scale of Rs.6500-10500 in the year 1999 when 2 posts shown to have been reserved for SC category out of 6 posts, were notified and the applicants were selected and thereafter they made repeated representations to the respondents in the year 2000, 2003 and 2004 thereby praying that they should be assigned seniority over and above one Shri M. R. Meena. We are of the view that these two applicants

are also not entitled to any relief. It may be that these two applicants namely Shri Hemant Kumar and Onkar Singh may be senior to one Shri M. R. Meena in the initial grade when they were inducted in West Central Railway, however, as per integrated seniority list for selection to the Assistant Engineer Annexure A appended with the order dated 12.10.2004 (Annexure A/3) reveals that the name of Shri M.R. Meena find mention at Sl. No.167 of the said gradation list, his date of initial appointment has been shown as 15.12.1987 and date of promotion in the grade of Section Engineer in the scale of Rs.6500-10500 has been shown as 6.10.1997. In the said seniority list the name of Shri Hemant Kumar find mention at Sl. No.209, his date of appointment is 5.12.1987 and date of promotion is 18.4.2000. Similarly the name of Shri Onkar Singh find mention at Sl. No.212 and his date of initial appointment is 15.12.1987 and date of promotion in the grade of Assistant Engineer is 18.4.2000. Thus, admittedly both the applicants are junior to Shri M. R. Meena in the grade of Rs.6500-10500. The applicants have also not challenged the promotion of Shri M. R. Meena in the grade of Section Engineer in the scale of Rs.6500-10500 in the year 1997. Further, the applicants have not challenged selection of general candidates in the grade of Rs.6500-10500 made in the year 1997. But their case is that the respondents ought to have notified 2 vacancies in the grade of Section Engineer in the scale of Rs.6500-10500 from amongst SC

categories as these vacancies were available when the notification for filing up of 5 posts of Section Engineer in the scale of Rs.6500-10500 were notified on 8.4.1997. This plea of the applicants cannot be entertained at this stage. Admittedly a notification for filling up of 5 posts of Section Engineer was issued on 8.4.1997 in which one post was shown to be reserved for ST category and remaining 4 posts for general category. It was for the applicants at that stage to agitate the matter, in case the respondents have wrongly notified the vacancies whereby no post of SC category was advertised. Against 1997 selection 4 persons from general category have been selected and one from ST category. The applicants cannot be granted this relief at this stage as their induction in the select list of 1997 will result in treating the promotion of two general category candidates as invalid. This relief cannot be granted to the applicants without impleading the affected parties as respondents in this case.

7. That apart, the applicants have neither appeared in the selection conducted for the post of Section Engineer nor they have challenged the validity of the said order. As such, no relief can be granted to the applicants on this score also. Moreover, the applicants cannot be granted relief qua Shri M. R. Meena because he was selected against the post of ST candidate which post was notified in the year 1997 whereas the applicants belongs

to SC category. It is not their case that no post for ST category ought to have been reserved in the year 1997. Rather their case is that the respondents have failed to notify two vacancies for SC category as two posts which were notified in the year 1999 pertains to the year 1997 or prior to that date. Thus assigning of seniority to the applicants over and above Shri M. R. Meena will definitely affect the right of Shri M. R. Meena who have not impleaded Shri M. R. Meena as party respondent. As such, no relief can be granted to the applicants on this score also. As already stated above, the applicants have not challenged the selection conducted by the respondents in the year 1997 whereby 4 candidates were selected from General category and one from ST category. The effect of granting relief to the applicants from the year 1997 will result in reverting two general category candidates who were promoted against the 4 general category vacancies. In Prem Prakash vs. State of Utter Pradesh, AIR 1985 SC 167 and State of Bihar vs. Kameshwar Prasad Singh, AIR 2000 SC 2036, it has been held by the Apex Court that the candidates whose appointments are challenged are necessary parties and if they are not impleaded as respondents the Court cannot quash the appointments. As already stated above, the applicants have not challenged the selection of Section Engineers made in 1997 thereby impleading two general category candidates who according to applicants were promoted against 2 vacancies allegedly

meant for SC category. Thus, no relief can be granted to the applicants on this score also.

8. That apart, this OA is liable to be dismissed on the ground of delay and latches. The applicants have approached this tribunal for the first time by filing OA in March 2005 against the vacancies which were notified in the year 1997. The applicants have not explained as to how the OA is within the period of limitation as prescribed under Section 21 of the Administrative Tribunals Act, 1985. Cause of action in favour of the applicants has arisen in the year 1997 when 5 posts of Section Engineers were notified and selection made whereby no posts were reserved for SC category. In any case and as per own showing of the applicants they made a representation regarding treating them selected in the year 1997 and assigning their seniority on the basis of Panel prepared on 6.10.1997 in the year 2000 as according to them they became aware about the existence of two vacancies of SC category in the year 1999 when the same were notified vide notification dated 5.8.99. Even after the aforesaid date, the applicants have not approached this Tribunal within a period of limitation and continue to make repeated representation. The Constitutional Bench decision of the Apex Court in S. S. Rathore vs. State of MP, AIR 1990 SC 10, has held that non statutory repeated representation shall not condone the limitation. Thus, the respondents have not committed

any infirmity whereby the name of applicants Shri Hemant Kumar Mahawar and Shri Onkar Singh Lawasia has been shown at Sl. No.209 and 212 of the list of Eligible staff as per integrated seniority list for selection of AEN as enclosed with letter dated 12.10.2004, which seniority has been prepared on the basis of date of promotion in the grade of Rs.6500-10500. Further, we are of the view that the respondents have not committed any illegality whereby the name of applicants were not included in the eligibility list dated 3.12.2004 for the purpose of selection for the post of AEN, Group-B in the scale of Rs.7500-12000, as against 36 posts as notified vide order dated 12.10.2004 (Annexure A/3) comprising of 18 unreserved, 11 SC and 7 ST candidate. Perusal of eligibility list ~~.....~~ annexed as Annexure A with letter dated 12.10.2004 reveals that against 11 SC vacancies the zone of consideration was extended 5 times in terms of IREM Para 203.6 against requirement of 33 SC candidates. Since the applicants were far below in the list of Eligible staff as per integrated seniority list prepared for selection to the post of AENs and does not come within the zone of consideration, even if the field of zone of consideration was extended 5 times, as such, we see no infirmity in the aforesaid eligibility list enclosed with order dated 3.12.2004 and also the examination held pursuant to the said eligibility which result was declared vide impugned order dated 7.3.2005 (Annexure A/2).

9. Yet for another reason, the applicants have no locus standi to challenge the impugned selection for the post of Assistant Engineer in the grade of Rs.7500-12000 as its settled position that a court could consider and examine the legality or otherwise of a matter only at the instance of a person who is qualified and eligible and has locus standi and not the one who were not eligible in the examination and desires that their candidature should be considered by incorporating their name in the Panel of 1997 when they have neither challenged the selection conducted in the year 1997 nor they have impleaded the person who is likely to be affected in case the applicant is granted relief w.e.f. 1997. In the instant case as per eligibility list Annexure A/2 applicants name have not been included for selection to the post of AEN in the grade of Rs.7500-12000. As such, they have no locus standi to challenge this selection.

10. At this stage it may also be useful to quote the decision of the Apex Court in the case of A. J. Fernandis vs. Divisional Manager, South Central Railway and others, 2001 SCC (L&S) 217 whereby the Apex court has observed that Respondent No.3 chooses to challenge the appointment only on 11.12.1987 i.e. after a period of four years. As such, on the ground of delay and latches also, the application of 3rd respondent should have been dismissed.

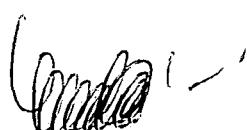
In the case before the apex court the appellant and Respondent/ No.3 competed for the post of Ticket Collector. But the appellant got selected on the post of Ticket Collector while Respondent No.3 was not selected. The Apex court held that in such situation irrespective of the fact that the appellant had joined commercial department later than Respondent NO.3, Respondent No.3 could not claim seniority over the appellant. In this case also, even if, the applicants have been appointed and are senior to one Shri M. R. Meena when they were initially appointed but Shri M. R. Meena was promoted as Section Engineer w.e.f. 10.9.1997 whereas the two applicants were promoted on 2.3.2000 after almost two and a half year, as such, they cannot claim seniority over and above Shri M. R. Meena in the cadre of Section Engineer in the scale of Rs.6500-10500, more particularly, when they have sought to challenge the said seniority after a lapse of 6 to 9 years as against 4 years in the case before the Apex Court. Thus, the ratio as laid down by the Apex Court in the case of A. J. Fernandis is fully applicable in the instant case.

11. For the foregoing reasons, the OA is dismissed at admission stage with no order as to costs.



(J. P. SHUKLA)

ADMINISTRATIVE MEMBER



(M. L. CHAUHAN)

JUDICIAL MEMBER