

Central Administrative Tribunal
Jaipur Bench, JAIPUR

ORDERS OF THE BENCH

11 October, 2009

OA. 393/2005

Present: Shri Pradeep Asthana, counsel for applicant
Shri S.P.Sharma, counsel for respondents

Heard counsel for the parties.

For the reasons to be dictated separately, OA is disposed of.


(B.L.Khatli)
Member (Administrative)


(M.L.Chauhan)
Member (Judicial)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 1st day of October, 2009

OA No.393/2005

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)
HON'BLE MR. B.L.KHATRI, MEMBER (ADMV.)

1. Chandraveer Singh s/o Shri Choudhary Charan Singh r/o Bapu Colony, Near Shiv Mandir Gali, Kota Junction, presently working as Helper Khallasi under Senior Divisional Engineer Electrical (General), West Central Railway, Kota Junction, Kota.
2. Mohan Giri s/o Shri Moti Ram Giri, r/o Q.No.960-B, New Railway Colony, Kota Junction, presently working as Helper Khallasi under Senior Divisional Engineer Electrical (General), West Central Railway, Kota Junction, Kota.

.. Applicants

(By Advocate: Shri C.B. Sharma)

Versus

1. Union of India through General Manager, West Central Railway, Jabalpur.
2. Divisional Railway Manager, West Central Railway, Kota Division, Kota.
3. Senior Divisional Electrical Engineer (General), West Central Railway, Kota Division, Kota.
4. Senior Divisional Electrical Engineer (Establishment), West Central Railway, Kota Division, Kota.

.. Respondents

(By Advocate: Shri S.P. Sharma)

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

- i) That respondents may be directed to give promotion to the applicants on the post of A.C.C.A. scale Rs. 2750-4400 taking into consideration of seniority list dated 4/3/2001 (Annexure A/3) by quashing letter dated 29/7/2005 (Annexure A/1) with all consequential benefits.
- ii) That the respondents be further directed to allow promotion on the posts belonging to R.A.C. cadre from the R.A.C. staff and be restrained to allow promotion to the officials of Train Lighting as per direction of this Hon'ble Tribunal vide order dated 18/4/2005 (Annexure a/14) with all consequential benefits.
- iii) Any other order/direction of relief may be granted in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case.
- iv) That the costs of this application may be awarded.

2. The grievance of the applicants in this case is that despite the facts that seniority list dated 27.3.2003 was quashed by this Tribunal vide its order dated 18.4.2005 passed in OA No.545/2003, the respondents have again prepared eligibility list vide impugned order dated 29.7.2005 (Ann.A/1) based on the quashed seniority list.

3. When the matter was listed on 5.9.2005, this Tribunal on the basis of the contention raised by the learned counsel for the applicants granted interim stay thereby staying operation of the order dated 29.7.2005 (Ann.A/1). The said stay is still continuing.

4. At this stage, it will be useful to notice few relevant facts. The facts of the case are that the applicants were initially appointed as Khallasi in the Refrigeration and Air Conditioning (RAC) department under respondent No.3 and presently working as Helper Khallasi in the scale of Rs. 2650-4000. They were further due for promotion in the higher scale of Rs. 2750-4400 as per channel of promotion Ann.A2. It is further stated that respondent No.4 issued seniority list in respect of RAC (Electrical Department) vide letter dated 4.3.2001 in which names of the applicants were placed at Sl.N.5 and 6 in the list of Helper Khallasi (Ann.A/3). It is further averred that respondents took a decision for merger of cadre of RAC and Train Lighting staff and to this effect notification came to be issued on 6.2.2002 inviting objections against the proposed action. It is the case of the applicants that the applicants along with co-workers objected to the proposed action vide request dated 12.2.2002 and the said representation was forwarded by the Senior Section Engineer (RAC) to respondent No.3 vide letter dated 12.2.2002 (Ann.A/6) thereby objecting for merger of Train Lighting and RAC department. It is further averred that despite pendency of the representation, the respondents issued eligibility list dated 29.11.2002 by including staff of Train Lighting and subsequently also issued combined seniority list dated 27.3.2003 belonging to Train Lighting and RAC. Based on this provisional seniority list, promotion was granted to the staff of Train Lighting in the scale of Rs. 3050-4590 ignoring claim of the applicants and persons similarly situated. Further case of the applicants is that said action of the respondents was subject matter

of OA No.545/2003 filed by one Shri Rajendra Singh and this Tribunal has quashed the combined seniority list dated 27.3.2002 and the impugned order dated 6.3.2002 and it was further held that the applicant shall be entitled for all consequential benefits including consideration of promotion as per seniority list dated 4.3.2001. At this stage, it will be useful to quote para 12 of the judgment, which thus reads:-

"12. In view of what has been said and discussed above, we find ample force in this Original application and the same must succeed and stands allowed accordingly. The impugned order dated 6.3.2002 (A/4), order dated 27.3.2003 (A/10) and all subsequent proceedings thereof are hereby quashed and set aside. The applicant shall be entitled to all consequential benefits including consideration of his promotion as per seniority list dated 4.3.2001 (A/3). This order shall be complied within a period of three months from the date of its communication. Costs made easy."

It is on the basis of these facts, the applicants have filed this OA.

5. Notice of this application was given to the respondents. The respondents have filed reply. The facts, as stated above, have not be disputed by the respondents. The stand taken by the respondents in the reply is that the judgment dated 18.4.2005 passed by this Tribunal has been challenged before the High Court vide Writ Petition No.4750/2005 which is pending before the Hon'ble High Court. The further stand taken by the respondents in the reply in order to justify their action is the same which was noticed by the Tribunal in Para-7 of the judgment. The stand taken by the respondents in the earlier OA as well as in this OA is that the

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competent authority vide letter dated 17/18.4.2002 and minutes of the meeting .. by DO letter dated 27.12.2001 has taken decision to merge the cadre of Train Lighting and RAC group. This contention of the respondents was not accepted by the Bench as elaborated and considered in Para -10 of the judgment and it has been categorically held that no such rule has been framed by the competent authority and; therefore, the so called exercise of merger can be said to be amply termed as void ab initio and non-existent in the eye of law. It was based on this finding recorded by the earlier Bench, the combined seniority list dated 27.3.2003 was quashed.

6. We have heard the learned counsel for the parties and gone through the material placed on record.

7. From the material placed on record, it is evident that the judgment dated 18.4.2005 of this Tribunal in earlier OA No.545/2003 has not been stayed by the Hon'ble High Court. Facts remain that the seniority list dated 27.3.2003 stood quashed and is non-existent as on today. On the face of this position, it was not permissible for the respondents to prepare eligibility list dated 29.7.2005 (Ann.A/1) on the basis of this non-existent combined seniority list.

8. Accordingly, we are of the view that the applicants have made out a case for grant of relief. The eligibility list dated 29.7.2005 (Ann.A/1) is quashed and set-aside. The OA is allowed in the aforesaid extent. It is further clarified that in case the respondents want to give promotion to the applicants on the basis of seniority list dated 4.3.2001 based on the judgment rendered by this Tribunal in

the case of Rajendra Singh (supra), this order will not come in the way of the respondents to grant such promotion.

9. Before parting with the matter, it may be observed that it was permissible for the respondents to grant promotion to the applicants and persons similarly situated based on the seniority list dated 4.3.2001 in the light of the direction given by this Tribunal in the case of Rajendra Singh (supra) vide order dated 18.4.2005 but certainly it was not permissible for the respondents to ignore the judgment of this Tribunal in earlier OA and grant promotion on the basis of combined seniority list dated 27.3.2003 which stood already quashed and set-aside, which judgment of the Tribunal is still operative.

10. With these observations, the OA is disposed of with no order as to costs.


(B.L.KHATRI)
Admv. Member


(M.L.CHAUHAN)
Judl. Member

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