

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH.

Jaipur, this the ⁵ ~~5~~ day of February, 2010

Original Application No.306/2006

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

1. Bansi Dhar s/o Shri Mangal Ram, r/o Barkat Nagar, Tonk Phatak, Jaipur and presently working as Record Sorter, Office of Senior Divisional Finance Manager, North-Western Railway, Jaipur Division, Jaipur
2. Sudhir Kumar Mishra s/o Shri Mahent Mishra r/o T-122/T Loco Colony, Jaipur and presently working as Bungalow Peon under Financial Advisor and Chief Accounts Officer (Construction), North-Western Railway, Jaipur
3. Hari Mohan Saini s/o Shri Ganga Sahai Saini r/o Q.No. 7, Jal Bhawan, Hasanpura, Near NBC, Jaipur and presently working as Peon, Office of Senior Divisional Finance Manager, North-Western Railway, Jaipur Division, Jaipur
4. Deepak Kumar Singh s/o Shri M.M. Singh, r/o JS/12/J, Loco Colony, Jaipur and presently working as Peon Office of Senior Divisional Finance Manager, North Western Railway, Jaipur
5. Kesar Bahadur s/o Shri Ram Bahadur, r/o R-3, Loco Colony, Jaipur and presently working as Peon, Office of Financial Advisor & chief Accounts Officer (Construction), North Western Railway, Jaipur
6. Smt. Sneh Lata Mathur d/o Late Shri Ravi Shanker Mathur, r/o Q.No.216/3, Loco Colony, Jaipur and presently working as Peon Office of Senior Divisional Finance Manager, North Western Railway, Jaipur
7. Ashok Kumar s/o Shri Bhuralal, r/o Hasanpura, Near NBC, Jaipur and presently working as Peon Office of Financial

Advisor and Chief Accounts Officer (Construction), North Western Railway, Jaipur

8. Ramji Lal Sharma s/o late Shri Ram Sahai Sharma, r/o Village and post Bilwa, Sanganer, Distt. Jaipur and presently working as Peon Office of Senior Divisional Finance Manager, North Western Railway, Jaipur

.. Applicants

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India
through General Manager,
North Western Railway, Jaipur
2. Financial Advisor & Chief Accounts Officer,
North Western zone,
North Western Railway,
Jaipur.
3. Senior Divisional Finance Manager,
North Western Railway,
Jaipur Division,
Jaipur
4. Financial Advisor and Chief Accounts Officer
(Construction),
North Western Railway,
Jaipur

.. Respondents

(By Advocate: Shri N.C.Goyal)

ORDER

Per Hon'ble Mr. M.L.Chauhan, M(J)

The applicants have filed this OA thereby praying for the following reliefs:-

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- i) That the entire record relating to the case be called for and after perusing the same respondents may be directed to maintain combined seniority for Group 'D' staff working in Head quarter office and Division and Survey Construction of Accounts Department and treat the applicants eligible for the examination to the post of Accounts Clerk in the scale of Rs. 3050-4590 and allow them in further selection process by quashing letter dated 7/8/2006 (Annexure A/1) with all consequential benefits.
- ii) That the respondents be further directed to entertain the applications submitted by the applicants to appear in examination going to conducted on 20.8.2006 to the post of Accounts Clerk in the scale of Rs. 3050-4590 and also in further selection process.
- iii) Any other order, direction or relief may be passed in favour of the applicants which may be deemed fit, just and proper under the facts and circumstances of the case.
- iv) That the costs of this application may be awarded."

2. Briefly stated, facts of the case are that consequent upon formation of new railway zone pursuant to the Railway Board letter dated 9.7.2002, North Western Railway Head Office, Jaipur was created w.e.f. 1.10.2002 comprising of existing Bikaner and Jodhpur Divisions of Northern Railway and Jaipur and Ajmer Divisions of Western Railway. All the existing four divisions were having different units/offices at the same city, such as Divisional Accounts Office headed by DFM/Sr.DFM under DRM office were combined, but the seniority of the Traffic Accounts Office is separated because it was controlled by the Headquarter Traffic Accounts Office headed by Dy. C.A.O./T in the parent railway. In reference to Jaipur, there were two units already existing i.e. Divisional Accounts Office headed by Sr. DRM, Jaipur and Survey and Construction Accounts Office under CAO, Construction, Jaipur. The newly formed Headquarter

Accounts Office headed by FA & CAO under G.M. Office took place w.e.f. 1st October, 2002. Consequent upon formation of the Headquarter Accounts Office, the respondents took a policy decision to form two separate units at Jaipur namely one Headquarter Office, which will be under the control of Deputy CAO (C) ⁱⁱ ~~have~~ combined seniority in Jaipur Division and Survey and Construction organization which will be under the control of Senior DFM/Jaipur. However, regarding seniority of Traffic Accounts Office, Ajmer and Jaipur units, decision was taken to keep separate seniority of the Traffic Accounts, Ajmer and Traffic Accounts, Jodhpur units for Group-C and D staff except SOS/SO. The applicants have placed such policy decision on record as Ann.A/2. The grievance of the applicants in this case is that respondent No.2 called for applications from Group-D staff for filling up four posts of Accounts Clerk in the scale of Rs. 3050-4590 vide Ann.A/4. Pursuant to such order, the applicants also submitted their applications and also represented before respondent No.2 to appear in the examination to be held on 20.8.2006. The said request of the applicants was rejected vide impugned order Ann.A/1 on the ground that they belong to separate seniority unit. It is this order which is under challenge before this Tribunal and the applicants have prayed for the aforesaid reliefs.

3. Notice of this application was given to the respondents. The respondents have not disputed the facts as stated above. The respondents in the reply affidavit have categorically stated that 4 vacancies for the post of Accounts Clerk pertain to Headquarter

to

Accounts Office/NWR, Jaipur for which Group-D staff working in the Headquarter Accounts Office were eligible. Since the applicants belong to other seniority unit of North Western Railway zone, they were not eligible to appear in the said examination. Thus, according to the respondents, the applicants have no right to claim promotion over the vacancies in the Headquarter office. It is however stated that the written examination to be held on 20.8.2006 was later on postponed vide Ann.R/5.

4. The applicants have filed rejoinder thereby reiterating the submissions made in the OA.

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

6. According to us, the applicants are not entitled to any relief so long as validity of the order dated 20.6.2003 (Ann.A/2) is not challenged as either arbitrary or discriminatory. As can be seen from Ann.A/2, the respondents have taken a policy decision whereby two separate seniority units were created in respect of accounts office, one pertaining to Headquarter Accounts Office under the control of FA&CAO and another seniority unit under the control of DFM/Sr. DFM. Admittedly, the applicants belong to the later category. The post which was required to be filled in belongs to Headquarter Accounts Office for which purpose only the employees belonging to Headquarter seniority unit were eligible. As already stated above, since the applicants have not challenged validity of this policy decision, as such, the applicants are not entitled to any relief based on consequential order Ann.A/1 which is

outcome of policy decision Ann.A/2. As such, the OA is required to be dismissed solely on this ground. At this stage, we wish to reproduce relevant portion of the decision of the Apex Court in the case of State of Kerala and Anr. vs. Naveena Prabhu and Ors., 2009

(1) SCC (L&S) 759. That was a case where agreement was executed between the Govt. of Kerala and governing body of the private college for bringing the said colleges under the direct payment system subject to certain conditions. However, the benefit of direct payment system by the government was extended to the number of staff of the college and staff of hospital attached to the college was excluded for applicability of the aforesaid benefit. The said action of the Government was challenged. It was under these circumstances, the Apex Court in Para 15 has made the following observations:-

"15. The decision of the Government to exclude the staff of the hospital attached to the College from the purview of the aforesaid orders was made specifically stating that direct payment system is not introduced by the Government so far as the College hospital is concerned. The same being a policy decision of the Government and having not been challenged as either arbitrary or discriminatory at any stage by the respondents, thus we are not called upon to scrutinize the legality and validity of the aforesaid decision. Besides, the same being a policy decision of the Government, the same stands as this Court generally does not interfere with the policy decision of the Government."

The ratio as laid down by the Apex Court in the aforesaid case is also squarely applicable in the facts and circumstances of this case. In the instant case also, the respondents have created two different seniority units. It is pursuant to such policy decision that

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respondents have taken steps for filling up the posts belonging to one seniority unit thereby excluding the applicants who belong to another seniority unit. Thus, so long as validity of this policy decision is not challenged, the applicants are not entitled to any relief.

7. In view of the aforesaid, the OA being bereft of merit, which is accordingly dismissed with no order as to costs.



(B.L.KHATRI)
Admv. Member



(M.L.CHAUHAN)
Judl. Member

R/