

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 24th day of May, 2011

Original Application No.177/2007

CORAM:

**HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)**

1. Archana Jain w/o Late Shri Sita Ram Jain r/o Q.No.Y-5, Road No.3, Ganpati Nagar, Jaipur
2. Jaswant Sharma s/o Shri Jagdish Chander Sharma, working as Technician-I Diesel Shed, NWR, Phulera r/o Phulera.
3. Inderpal s/o Shri Panna Lal, working as Technician-I Diesel Shed NWR Phulera r/o Kumawat Colony, Balaji Road, Phulera, Jaipur
4. Swroop Chand s/o Shri Mangal Chand, working as Technician-I Diesel Shed, NWR Phulera.
5. Rajendra Kumar s/o Shri Jai Singh working as Technician-I Diesel Shed NWR, Phulera.
6. Jagdish Prasad s/o Chhaju Ram, working as Technician-I, Diesel Shed NWR Phulera.

.. Applicants

(By Advocate: Shri Nand Kishore)

Versus

1. Union of India through General Manager, North Western Railway, Hasanpura Road, Jaipur.
2. Divisional Railway Manager, North Western Railway, Power House Road, Jaipur

3. Shri Om Prakash Sharma s/o Shri Radhey Shyam Sharma, Diesel Shed, NWR Phulera.
4. Shri Mohan Kishan Bassi s/o Shri Vas Deo Bassi, Technician-I, Diesel Shed NWR Phulera.
5. Shri Om Prakash s/o Ganga Ram, MCM, Diesel Shed NWR Phulera.
6. Shri Jagdish Prasad s/o Shri Rama Kishan, J.E. Diesel Shed, NWR Phulera.
7. Shri Mata Deen Meena s/o Kana Ram, Technician-I, Diesel Shed NWR Phulera.
8. Shri Kuldeep Singh Choudhary, Technician-I Diesel Shed NWR Phulera.

.. Respondents

(By Advocate: Shri Tej Prakash Sharma and Shri Anupam Agarwal)

O R D E R (ORAL)

Brief facts of the case are that the applicants are working as Electric Fitter in the Diesel Shed, Phulera of Jaipur Division, North Western Railway. The respondents issued letter dated 28.2.2007 and revised seniority of the staff as mentioned in the letter. Shri Jaswant Singh and others filed OA No.864/92 before CAT-Jaipur Bench challenging the panel dated 8/12.2.89 for the post of Electric Fitter and the same was decided on 22.9.2004 stating therein that "for all these reasons we are of the view that the panel, Annexure A/1, should be quashed. The respondents have given the appointments subject to the decision of this Tribunal, naturally, they will not be operative on account of the judgment of this Tribunal" and in para-6 observed as under:-

"6. Looking to the hardship, we direct that the appointments so made may be continued for a period of



three months only from the date of the receipt of the copy of this order. The respondents will be at liberty to give the provisional appointments afresh on the basis of the merit list/marks secured till the fresh selections are made according to the rules and the persons who are eligible are allowed to appear. Thus, the provisional appointments so given shall not be continued beyond one year. However, the respondents will be at liberty to prepare the fresh panel according to the rules and in case the panel is prepared earlier, then panel can be enforced."

The respondents have mentioned that the seniority has been changed and notified as per direction of Hon'ble CAT, Jodhpur Bench in OA No.368/96 and 111/97 decided on 27.9.2000.

The General Manager, Western Railway framed a policy in the year 1998 and this policy was framed in consultation with both the Trade Unions and decided that staff of Diesel Shed, Abu Road, Phulera, Chitorgarh, Udaipur, Ajmer, Jaipur were given option to maintain their lien, seniority and promotion on the basis of their final option exercised upto 31.8.1998 and the policy was circulated vide DRM, Ajmer letter dated 25.8.98.

The applicants represented their case to the respondents against the seniority notified vide Ann.A/2 and also given notice for demand of justice through their advocate on 29.3.2007 and respondents have replied the representation vide letter dated 18.4.2007 advising that the seniority list dated 28.2.2007 (Ann.A/2) is final.

Aggrieved and dis-satisfied by the action of the respondents rejecting representation vide Ann.A/1, the applicants have filed the present OA on the ground that pursuant to direction issued by the CAT-Jodhpur Bench vide judgment dated 22.9.94, the seniority list



was revised and since the respondents have not preferred any appeal against the judgment dated 22.9.94, as such, it has attained finality in the year 1994 itself.

The respondents have promoted the employees on the basis of the seniority notified for Jaipur Division and the staff working in Diesel Shed, Abu Road (Ajmer Division) was not included in this list. The benefit of judgment Ann.A/4 is restricted to the applicant Heera Lal s/o Shri Durga Das (in OA No.368/96) and to Shri Sampat Ram s/o Shri Choti Ram, Shri Satya Narain s/o Shri Ram Sahai (applicant in OA No.111/97) and the respondents can not be allowed to unsettle the position as has been done while issuing Ann.A/1 and the action of the respondents is contrary to the judgment reported in 1986(4) SCC 531, AR Mudgal and ors. vs. UOI and ors.; (2007) 1 SCC (L&S) 500, UP Jal Nigam vs. Jaswant Singh and ors. It is also contended on behalf of the applicants that seniority can be given from substantive appointment (panel position in the railways) and can not be reckoned from the date of occurrence of vacancy and in support of his submission he placed reliance on the judgment rendered by the Apex Court in the case of State of Uttranchal and Ors. vs. Dinesh Kumar Sharma reported in 2007(1) SCC (L&S) 594.

2. On the contrary, the learned counsel appearing for the respondents admits this fact that pursuant to the order passed in OA No.368/96 and 111/97 and with reference to the letter dated 19.7.2006 issued by the All division with reference to the above orders and letters, the seniority as well as pay of the employees have been revised vide letter dated 28.2.2007 and further admitted



to the extent that Jaswant Sharma and others have approached to the Tribunal by filing OA No.864/92 whereby they challenged the panel dated 8/12.02.1989 in the post of Electrical Fitter and the same was decided on 22.9.1994. The Tribunal has given liberty to the railway administration to prepare the fresh panel according to the rules and in case the panel is prepared earlier then that panel can be enforced. The railway administration again prepared panel to the ranker of Electric fitter Grade-III in pay scale of Rs. 950-1500 on 22.9.1995.

Two OAs were filed before the CAT-Jodhpur Bench which were registered as OA No.368/96 and 111/97 and the same were decided on 29.9.2000 holding that the applicants would be deemed to have been promoted to the post of Electrical fitter w.e.f. 14.6.1996 from the date of panel. This promotion will be back from the year 1989 for the purpose of seniority. The period from initial appointment as Electric Fitter on the basis of 1989 panel dated 22.9.1995 will count for the purpose of increment for fixation of their pay in the pay scale of Rs. 950-1500 on 14.6.1996 and accordingly they may be given promotion and seniority.

It is also admitted to the extent that the General Manager North Western Railway framed a policy in the year 1998 and this policy was framed in consultation with both the unions and decided that the staff of Diesel Shed, Abu Road, Phulera, Chittorgarh, Udaipur, Ajmer and Jaipur were given option to maintain the lien, seniority and promotion on the basis of policy. The final option has to be exercised upto 31.8.1998. The said policy was



circulated vide letter dated 25.8.1998. The OA No.43/2003 filed by the applicant earlier against this circular was pending at the time of filing of this OA.

The Diesel Shed Phulera was administratively controlled by the Ajmer Division prior to 1.9.1998 and after that it came under the jurisdiction of Jaipur Division. However, the General Manager (HQ), CCG, Mumbai asked the option from the working employee of the Diesel Shed Phulera who were earlier working under the control of Ajmer Division and who had given option their seniority has been fixed and maintained as was in original nature.

3. The learned counsel appearing for the applicants referred certain documents filed alongwith rejoinder as Ann.A/7 i.e. letter dated 30.3.2000 wherein it was made clear that so far as seniority is concerned, it will be finalized after completion of six months training. He also referred to Ann.A/9 dated 23.7.1998 issued by the respondents by which after completion of six months' training screening test was taken and result was declared. These persons were declared successful for Electric Fitter Gr.III and seniority of these persons will be determined after completion of training of other persons. He also referred to letter dated 11.2.1998 (Ann.A/10) prescribing procedure for filling up the posts of skilled artisan against 25% quota. As per Par 2(vii) seniority of staff on promotion in the skilled grade will be regulated in terms of para 302 of IREM i.e. with reference to the date of promotion (after passing the trade test) maintaining their inter-se-seniority in the respective groups as at (iv) and (v).



4. Having considered the rival submissions and the judgments rendered by the CAT-Jodhpur Bench and Jaipur Bench in the OAs preferred prior to the present OA. The OA No.43/2003 which was pending at the time of filing of this OA has been decided vide order dated 12.2.2008 (Ann.A/8) allowing partly.

5. We have also examined the order dated 22.9.1994 passed by this Tribunal in OA No.864/92. This Tribunal looking to the hardship directed that the appointments so made may be continued for a period of three months only from the date of receipt of the order and the respondents were given liberty to give provisional appointment afresh on the basis of merit list/marks secured till the fresh selections are made according to the rules and the persons who are eligible are allowed to appear. The provisional appointments so given shall not be continued beyond one year. However, the respondents were at liberty to prepare the fresh panel according to the rules and in case the panel is prepared earlier, then that panel can be enforced. Pursuant to this direction, the respondents have prepared fresh panel which has not been disputed by the applicants.

6. We have also gone through the judgment of the Jodhpur Bench in OA No.368/96 and 111/97. The controversy before the Jodhpur Bench was with regard to promotion of the applicants to the post of Electrical Fitter in pursuance of the panel dated 14.6.1996 against the vacancies of the year 1989 with all consequential benefits. The aforesaid OAs were allowed and the applicants were deemed to have been promoted to the post of



Electrical Fitter w.e.f. 14.6.1996 (date of the panel). This promotion was related back to the year 1989 for the purpose of seniority and the period from their initial appointment as Electrical Fitter on the basis of 1989 panel till 22.9.95 was to be counted for the purpose of increment for fixation of their pay in the scale of Rs. 950-1500 on 14.6.1996 and four months were allowed to the respondent to comply with the direction issued by the Tribunal. The Tribunal has considered the fact that the applicants on being selected in the year 1989, had already undergone the requisite training and were posted as Electrical Fitter. One of the applicants (Heera Lal in OA NO. 368/96) was even further promoted as Armacher Winder vide order dated 13.12.94. Consequent upon quashing the panel of 1989 in terms of order dated 22.9.94 in OA No.864/92 of Jaipur Bench the applicants stood reverted to their original post of Khallasi after 22.9.95. As per the directions of the Tribunal the respondents prepared a fresh panel dated 14.6.96 in lieu of the panel of 1989. In this background, the applicants had prayed for promotion to the post of Electric Fitter against the vacancies of the year 1989 with all consequential benefits. The Jodhpur Bench has considered the judgment dated 22.9.94 rendered by the Jaipur Bench in OA No.864/92 and allowed the same in the terms indicated hereinabove.

7. The applicants want to take advantage of the judgment rendered by the Jodhpur Bench as the benefit has been granted. As per the submissions advanced on behalf of the applicants, the judgment rendered by the Jodhpur Bench is not in rem but in



persona whereas the respondents in compliance of the order passed by the Jodhpur Bench has prepared a fresh panel and in accordance with fresh panel promotions and seniority was given to the employees on the basis of seniority list notified for Jaipur Division. The applicants admittedly belong to Jaipur Division and they cannot take advantage of another division as per the policy framed by the respondents in the year 1998 as circulated vide letter dated 25.8.1998. The OA No.43/02 preferred by the applicants therein against assigning seniority to respondents No. 3 to 9 and also against inclusion of respondent Nos. 3 to 5 in the eligibility list prepared for selection to the post of Diesel Electrical Fitter Gr.II Diesel Shed, Mechanical Department Jaipur Division vide notification dated 16.12.2002 showing their names in list-A whereas names of applicant Nos. 1 to 3 have been placed in list-B will be called for the purpose of selection only if any of the person in list-A show their unwillingness to appear in the selection test. The grievance of the applicants in the aforesaid OA was that respondent Nos. 3 to 5 have exercised option for Abu Road as such, it was not permissible for the railway authorities to entertain their request after cut off date i.e. 31.8.1998 to withdraw their request for option. In any case at the most they can be treated as fresh entrants who have been transferred to Jaipur Division subsequently on their own request and in that eventuality, they are entitled to bottom seniority in terms of provisions contained in para 312 of the Indian Railway Establishment Manual (IREM). Another grievance of the applicants therein was regarding assigning seniority to



respondent Nos. 6 to 9 over and above the applicants. The Tribunal observed that the respondent Nos. 3 to 5 cannot be treated senior to the applicants therein once their lien has been transferred to Ajmer Division and exercising of revised option to maintain their lien at Jaipur Division can at the most be treated at their own request for transfer to Jaipur Division and thus seniority has to be regulated in terms of Rule 226 and 229 of the Indian Railway Establishment Code read with para 312 of the IREM.

8. We have also perused the impugned order dated 18.4.2007 (Ann.A/1) and order dated 28.2.2007 (Ann.A/2) which have been passed pursuant to the direction issued by the Jodhpur Bench. It appears that while deciding representations so filed by the applicants pursuant to the direction issued by the Jodhpur Bench of the Tribunal, the seniority has been revised vide order dated 28.2.2008 and seniority list dated 28.2.2007 has been treated as final and pursuant to the direction issued by the Jodhpur Bench seniority list has been published and benefit of pay fixation has been given.

9. Having considered the judgment passed by this Tribunal in the aforesaid OAs and having considered the impugned order under challenge in the present OA, we are of the view that the representations decided vide Ann.A/1 is in mechanical manner and the same cannot be said to be considered properly. As such, we deem it proper to direct the respondents to reconsider representations filed by the applicants on its merit in accordance with provisions of law and in accordance with various judgments passed by the Tribunal relating to the present controversy and as



per the policy laid down by the respondents and pass a reasoned and speaking order expeditiously and in any case not later than three months from the date of receipt of copy of this order.

8. With these observations, the OA stands disposed of with no order as to costs.

Anil Kumar

(ANIL KUMAR)
Admv. Member

K. S. Rathore

(JUSTICE K.S.RATHORE)
Judl. Member

R/