

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 25th day of September, 2008

ORIGINAL APPLICATION No. 51/2007

CORAM:

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR.B.L.KHATRI, ADMINISTRATIVE MEMBER

1. Madan Mohan s/o Shri Gordhan Singh, r/o 105-A/28, Prajay Niwas, Near Post Office, Bhajanganj, Ajmer.
2. Devdutt Rajoria s/o Shri Manphool r/o 441/26, Mahabodhi Marg, Gautam Nagar, Ajmer.
3. Phool Chand s/o Shri Nand Kishore r/o House No.1070/32, Behind Convent School, Jadughar, Ajmer.
4. Sugan Chand s/o Shri Harish Chand C/o Shri Dinesh Uadi, A-215, M.D.S. Colony, Naka Madar, Chungi Chowki, Ajmer

.. Applicants

(By Advocate: Shri Dharmendra Jain)

Versus

1. Union of India
through the General Manager,
North Western Railway,
Zonal Headquarters,
Ganpati Nagar,
Jaipur
2. Divisional Railway Manager,
Ajmer Division,
North Western Railway,
Ajmer.

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.. Respondents

(By Advocate: Shri R.G.Gupta)

O R D E R

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

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

- "i) by an appropriate order or direction the respondents may be directed to give appointment to the applicants as has been given to other candidates by the order dated 05.06.2006 (Annex. A-10) in that regard;
- ii) by further appropriate order or direction the respondents may further be directed to grant benefit of age relaxation to the applicants being reserved caste candidates or in the alternative the Hon'ble Tribunal may declare that no age bar exists for appointment of apprentices and thereby the applicants be declared eligible for appointment;
- iii) action odents to treat the applicants as over-age be declared as illegal; and
- iv) applicants be given all consequential benefits arising out of the prayer made hereinabove.

2. Briefly stated, facts of the case are that the applicants are trained apprentices. They are aggrieved regarding order dated 13.1.2006 whereby the General Manager accorded approval for engagement of 10 persons who have completed apprenticeship course as substitute in Group-D posts as per list enclosed whereby name of the applicants did not find mention. The grievance of the applicants is that since they belong to reserved

category, as such, they should have been given age relaxation. It is on the basis of these facts, the applicants have filed this OA thereby praying for the aforesaid reliefs.

3. Notice of this application was given to the respondents. Respondents have filed reply. The facts as stated above, have not been disputed. According to the respondents, as per order dated 30.8.2004 guidelines were issued for engagement of Course Completed Act Apprentices as substitute in Group-D posts upto the age of 33 years in the case of General category and 38 years in the case of SC/ST categories with further age relaxation for a period of three years i.e. the period of apprenticeship. According to the respondents, age of the applicants was determined on 31.8.2004. Since all the applicants, belonging to reserved category as on 31.8.2004 were above 41 years of age (38 years + 3 years), as such, they were over age. Thus, according to the respondents, names of the applicants were rightly not included in the list as annexed with order dated 13.1.2006 (Ann.A5).

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

5. As can be seen from the material placed on record, the matter regarding engagement of apprentices as fresh face substitutes in Group-D was subject

matter in a case filed before the Jodhpur Bench of the Tribunal. It appears that the Jodhpur Bench has given certain directions. Feeling aggrieved by the order/judgment passed by the Jodhpur Bench respondents filed D.B. Writ petition No.4272/05 in the High Court of Judicature for Rajasthan at Jodhpur. It appears that the respondents moved an application before the Hon'ble High Court which application was disposed of vide order 1.2.2006. Copy of this order has been placed on record by the applicants as Ann.A10. At this stage, it will be useful to quota the order passed by the Jodhpur Bench of the Hon'ble High Court in the aforesaid application.

"We have heard learned counsel for the parties.

In view of our order dated 22.08.2005, the Railway Administration is supposed to proceed with the selections only in accordance with the policy decision, which was published on 30.08.2004. Any person falling under the policy decision dated 30.08.2004 is entitled to be considered who is within the age limit as on 30.08.2004 for the purpose of engagement as fresh face substitutes in Group 'D'

Accordingly, the application stands disposed of."

Pursuant to the order passed by the Hon'ble High Court at Jodhpur, the respondents took steps for the purpose of engagement of apprentices as fresh face substitutes in Group-D category and such selection was to be made in consonance with the policy decision as published on 30.08.2004 (Ann.A2). According to this policy decision, the cut off date for determination of the age was 31.8.2004. Further, as can be seen from

letter dated 4.5.2006 (Ann.A4), the respondents gave as one time further relaxation in upper age limits till 3.2.2007. As per this letter, in terms of the Railway Board letter dated 30.3.1990, the relaxation in upper age limit to the extent of the period spent on apprenticeship was permitted to Course Completed Act Apprentices in recruitment for filling up vacancies in Group-D posts. Accordingly, in the light of the policy decision dated 30.8.2004 read with RBE No. 57/06 as issued vide letter dated 4.5.2005 (Ann.A4), the respondents issued a select list dated 13.1.2006 (Ann.A5) subject to pendency of the aforesaid Writ Petition in the Hon'ble High Court at Jodhpur. Since selection was to be made strictly in accordance with letters Ann.A2 and A4, as stated above, and the applicants were over age despite the fact that vide RBE No.57/06 (Ann.A4) three years of relaxation was granted to all the candidates including the applicant, as such, we see no infirmity in the action of the respondents whereby names of applicants were not included in the select list dated 13.1.2006 (Ann.A5).

The learned counsel for the applicants submits that vide RBE No.57/06, three years relaxation has been given to General, SC/ST and OBC candidates as one time relaxation till 3.2.2007 i.e. for the period spent on apprenticeship, the case of the applicants who belong to reserved category cannot be equated with

that of general candidates, as such, they should have been given additional benefit of 5 years over and above the relaxation given to the general candidates. According to us, the averments made by the learned counsel for the applicants is wholly misconceived and deserve out right rejection. As can be seen from the order passed by the Hon'ble High Court, selection was to be held in terms of policy decision dated 30.8.2004 (Ann.A2). According to said policy decision cut off date was 31.8.2004 and as per the instructions issued by the department maximum age limit for General candidate was 33 years whereas for SC and ST category it was 38 years. Thus, benefit of age relaxation up to maximum of 5 years has already been granted to SC/ST category. Thus, contention of the applicants that while granting 3 years age relaxation to the apprentices as one time measure vide RBE No. 57/06 (Ann.A/4) the applicants should have been granted 5 years more relaxation, cannot be accepted, firstly, on the ground that relaxation cannot be claimed as a matter of right and in case the authority has decided to give one time relaxation that should be uniformly applied to all categories as basis for relaxation is the period spent by the apprentice in completing the apprenticeship training, as such, no additional benefit or double benefit of age relaxation can be given to the SC/ST category. Since admittedly, the applicants were over age, as such, we are of the view

that the applicants were not entitled for appointment in selection as apprentice substitute in Group-D category. At this stage, it will be useful to quote decision of the Apex court in the case of Chairman/M.D. Mahanadi Coalfields Ltd. and Others vs. Sadashib Behera and others, 2005 (1) SCSLJ 254 whereby the Apex Court has held that an apprentice is only trainee and cannot claim appointment on the basis of training. It was further held that the employer who is imparting training is not bound to offer any employment to the said trainee. Even on this account, the applicants are not entitled to any relief. However, the persons who have been selected as substitute in Group-D category, their cases were considered pursuant to the direction given by the Tribunal as well as order passed by the Hon'ble High Court, Jodhpur Bench and their engagement has been made subject to ultimate decision in the aforesaid Writ Petition pending before the Jodhpur Bench of Hon'ble High Court.

6. For the foregoing reasons, we are of the view that the applicants have not made out a case for our interference. Accordingly, the OA is dismissed with no order as to costs.


(B.L. KHATRI)
Admv. Member


(M.L. CHAUHAN)
Judl. Member

R/