

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR**

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**ORDER SHEET**

**ORDERS OF THE TRIBUNAL**

**21.04.2009**

OA No.101/2007 with MA No.191/2007

Mr. C.B.Sharma, counsel for applicant  
Mr. T.P.Sharma, counsel for respondents

Heard the learned counsel for the parties.

For the reasons dictated separately, the OA stands disposed of.

  
(B.L. KHATRI)  
Admv. Member

  
(M.L. CHAUHAN)  
Judl. Member

R/

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

Jaipur, this the 21<sup>st</sup> day of April, 2009

ORIGINAL APPLICATION No.101/2007

CORAM:

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

1. Harish Chandra S s/o Shri Samant Singh r/o Chopra Farm, Gali No.5, Dadwara Kota Junction and presently working as Mail Express Loco Pilot, West Central Railway, Kota.
2. Ram Singh P s/o Shri Pati Ram r/o House No.11, Gali No.1, Sunder Nagar, Kota and presently working as Mail Express Loco Pilot, West Central Railway, Kota.
3. Nandan Singh s/o Shri Raman Lal r/o Ward No.13, Balaji Nagar, Behind Sunder Nagar, Kota and presently working as Mail Express Loco Pilot, West Central Railway, Kota.
4. Abdul Kayyum s/o Shri Nathu Khan r/o Ranj Talab, New Basti Kota and presently working as Mail Express Loco Pilot, West Central Railway, Kota.

..Applicants

(By Advocate: Mr. C.B.Sharma)

Versus

1. The Union of India through General Manager, West Central Zone, West Central Railway, Jabalpur.
2. Divisional Railway Manager, West Central Railway, Kota Division,

W

Kota.

3. Senior Divisional Electrical Engineer (TRO)  
 West Central Railway,  
 Kota Division,  
 Kota.

.. Respondents

(By Advocate: Mr. Tej Prakash sharma)

O R D E R (ORAL)

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

- i) That the entire record relating to the case be called for and after perusing the same the respondents be directed to extend benefits of the scheme at Annexur-A/2 by counting service since initial appointment as qualifying service as on 30/6/2004 by quashing letters dated 5/3/2007 (Annexure-A/1) with letter dated 28/11/2006 (Annexure A/8) with all consequential benefits.
- ii) That the respondents be further directed to give similar treatment to the applicants as given to Shri Chandra Bhan Singh in the matter of retirement under safety related retirement scheme by extending similar benefits or retirement as well as employment to a suitable ward of the applicants with all consequential benefits.
- 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, grievance of the applicants is that benefit of Safety Related Retirement Scheme-Drivers and Gangmen (Ann.A2) has not been extended to them on the ground that they have not completed 33

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years of qualifying service, although the applicants were in the age group of 55 to 57 years. According to the applicants, they have completed 33 years of qualifying service as prior to their regularization they were engaged as substitute and thus it was not permissible for the respondents to count 50% of the service which the applicants have rendered as substitute for the purpose of qualifying service whereas as per rule the entire period has to be counted as qualifying service.

3. Notice of this application was given to the respondents. The respondents have filed reply thereby controverting the stand taken by the applicants.

4. The applicants have filed rejoinder. In Para 4.2 of the rejoinder, the applicants have mentioned names of junior persons who have been extended benefit of the said scheme and their seniority position vis-à-vis the applicants has been mentioned in the said para.

5. When the matter was listed on 17.3.2008, this Tribunal passed the following order:-

"In sum and substance grievance of the applicants is that service rendered by them in substitute capacity has not been considered by the respondents as qualifying service whereas they have only counted 50% of such service for the purpose of calculating the qualifying service, which is contrary to rules. The applicants have also filed rejoinder. In para 4.2 of the

rejoinder, the applicants have mentioned names of persons who are similarly situated and whose names find mentioned in the seniority list Ann.A5 alongwith applicants and whose entire service in casual capacity has been counted as qualifying service.

The respondents are directed to file additional affidavit thereby explaining the circumstances under which the service of persons whose name find mentioned in para 4.2 of the rejoinder has been fully counted as qualifying service. The respondents may also produce the relevant record in order to show whether the applicants were engaged as substitute or they were engaged as casual labour and thus were not granted the regular pay scale.

..."

Thereafter the matter was adjourned from time to time and when the matter was listed on 25.7.2008, this Tribunal after perusing photocopy of the service particulars as submitted by the respondents came to the conclusion that record as produced by the respondents do not show whether the applicants were engaged as Non-approved candidate (NAC) or substitute and passed the order, which thus reads:-

"Applicants in para 4.2 of the rejoinder have mentioned the names of persons who were also given appointment, whose names find mentioned in the seniority list at sl.Nos. 650, 671, 675, 677 and 679 who were similarly situated as that of applicant and entire service were counted, where as in the case of the applicants, the entire service rendered by the applicant has not been counted. Despite repeated opportunity to the respondents to file ~~affidavit~~ affidavit, the respondents have not filed any affidavit to clarify the position as per contention raised by the applicant. First such opportunity was granted to the respondents vide order dated 17.3.2008.

Learned counsel for the respondents produced the photo-copy of the service particulars of the applicants, from which it cannot be said that the applicant was similarly situated to that of

persons mentioned at 4.2 of the rejoinder. Accordingly, the respondents are again directed to file additional affidavit to indicate the service particulars of the persons mentioned in Para No. 4.2 which will specifically indicate the designation of such persons at the time of their initial appointment as per service record vis-à-vis applicant.

From the material placed on record, we are of the firm view that the applicant has made out a case for grant of relief. In case additional affidavit is not filed by the respondents within a period of four weeks from today, it will be presumed that the respondents are conceding the claim of the applicant and the respondents will not be heard further on this point as repeated opportunity has been granted to the respondents.

...."

Thereafter the matter was adjourned from time to time and the respondents sought further time to file affidavit but order of the Tribunal has not been complied with. The learned counsel for the respondents submits that the matter has been recommended by the DRM, Kota and sent to the Headquarters for reconsideration of the matter, but no such decision has been taken till date.

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

7. We are of the view that in view of the order passed by this Tribunal vide order dated 17.3.2008 and, more particularly, order dated 25.7.2008 whereby it was specifically recorded that in case additional affidavit is not filed by the respondents within a period of four weeks from that day, it will be

presumed that the respondents are conceding the claim of the applicants, the applicants have made out a case for grant of relief. It may be stated that the respondents have not filed additional affidavit till date thereby controverting claim of the applicants. Thus, we are of the view that service rendered by the applicants prior to their regularization was in the capacity of substitute and thus entire service rendered in that capacity was required to be counted as qualifying service as was done in the case of similarly situated persons.

8. Accordingly, the respondents are directed to reconsider case of the applicants in terms of Para 2(vii) and (xi) of RBE No.04/2004 (Ann.A2) within a period of two months from the date of receipt of a copy of this order.

9. The OA stands disposed of accordingly with no order as to costs.

10. In view of disposal of the OA, no order is required to be passed in MA No.191/2007, which shall disposed of accordingly.

  
(B.L.KHATRI)  
Admv. Member

  
(M.L.CHAUHAN)  
Judl.Member

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