

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 9th day of August, 2011

OA No. 71/2009

CORAM:

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

1. Subran Singh s/o Amar Singh r/o A-3, Durganagar, Poona Colony, Main Road, Kota Junction.
2. Ved Sheel Sharma s/o Late Shri Ramdatta Sharma r/o 796, New Colony, Kota Junction.
3. Ranjeet Singh s/o Shri Kushal Singh, r/o 34, Bapu Colony, Kota Junction.

.. Applicants

(By Advocate : Shri Punit Singhvi proxy counsel for Shri R.N.Mathur)

Versus

1. Union of India through General Manager, Western Central Railway, Jabalpur.
2. Chief Workshop Manager, Wagon Repair Workshop, West Central Railway, Kota.
3. Satya Prakash Pandey s/o Shri Jagannath Pandey, Jr. Engineer Western Central Railway, Kota
4. Narendra Kumar Sharma s/o Shri Kishorilal Sharma, Jr. Engineer, Western Central Railway, Kota.
5. Ravinder Kumar Sharma s/o Shri Hari Shankar Sharma, Jr. Engineer, Western Central Railway, Kota.

6. Inderjeet Singh s/o Shri Rikhee Ram, Jr. Engineer, Western Central Railway, Kota.
7. Heera Lal Prajapat s/o Shri Ram Chandra, Jr. Engineer, Western Central Railway, Kota.
8. Geeta Peshwani w/o Shri Suresh Kumar, Jr. Engineer, Western Central Railway, Kota.
9. Ghanshyam Kushwaha s/o Shri Moti Lal Kushwaha, Jr. Engineer, Western Central Railway, Kota.
10. Tarun Kumar Sinsawal s/o Shri Mohan Lal, Jr. Engineer, Western Central Railway, Kota.
11. Narendra Singh s/o Shri Nand Singh, Jr. Engineer, Western Central Railway, Kota.
12. Hariom Sharma s/o Shri Tej Singh, Jr. Engineer, Western Central Railway, Kota.

.....Respondents

(By Advocate : Shri Anupam Agarwal)

ORDER (ORAL)

This is second round of litigation. Earlier the applicants preferred OA No.105/2006. The aforesaid OA was preferred against the order dated 3.1.2006 (Ann.A/1 to the OA) on the ground that they have not been found eligible for being included in the panel prepared by the department for the purpose of promotion. The Tribunal in the aforesaid OA in para 6 observed as under:-

"6. As noted earlier, the impugned order does not show application of mind as, we find not even an apology for reasons to ascertain as proof as to why the contentions raised by the applicants in their



representation have not found favour with the respondent authorities. In that view of that matter, the impugned order dated 25.1.2006 has been passed in violation of the principles of natural justice and cannot be sustained in law. Consequently, the said order dated 25.1.2006 (Ann.A/3 to the OA) is hereby set aside and this case is remanded back to the concerned competent authority to decide the representation of the applicants, copy of which has been filed as Ann.A/2 to the OA, within two months of receipt of a certified copy of this order provided this certified copy of this order is served upon the concerned competent authority within four weeks from today. It is made clear that, at this stage, we have not entered into merits/demerits of the impugned order dated 3.1.2006 (Ann.A/1 to the OA) and concerned competent authority is required to decide the representation exercising its unfettered jurisdiction on the basis of record as well as relevant rules/circulars before it."

2. The representation was decided by the respondents vide order dated 16.1.2008 (Ann.A/1) in the light of the judgment passed by this Tribunal. Aggrieved and dis-satisfied with decision taken vide order dated 16.1.2008, the applicants preferred this OA on 19.2.2009. The respondents raised preliminary objection regarding maintainability of the OA stating that the OA has been filed after a lapse of one year, therefore, it deserves to be dismissed on the ground of limitation.

3. We have considered the preliminary objections raised by the respondents. The impugned order has been passed on 16.1.2008 and the OA has been preferred by the applicants on 19.2.2009 i.e. only after a delay of 1 month 3 days. Thus, we are

satisfied with the explanation given by the applicants and the OA is treated within limitation.

4. We have also examined the present OA on merit. The challenge to the impugned order Ann.A/1 is on the ground that this order is contrary to letter dated 8.10.2007 (Ann.A/6) and the panel dated 3.1.2006 is ex-facie illegal and persons who have been selected are not meritorious though the criteria is a positive merit because the post is a selection post. Our attention is drawn by the learned counsel for the applicants towards the Railway Board letter dated 8.10.2007 wherein it is stated that final panel in respect of LDCs conducted for filling up vacancies of Traffic and Commercial Apprentices should be arranged in order of merit whereas the respondents have prepared panel on the basis of seniority.

5. Per contra, the learned counsel appearing for the respondents has referred to RBE No.232/86 issued on 26.11.86, more particularly para 2 which provides as under:-

"...Accordingly the Board wish to clarify that that all the eligible volunteers should be called for the written test. All those who secure 60% or above in the written test should be called for interview. Such of them as secure at least 60% marks under "Professional ability" and 60% aggregate would qualify to be empanelled. The panel should be drawn up on the basis of seniority from among those who qualify. However, any candidates who secure above 80% marks should be treated as 'outstanding' and placed on the top of the panel without any restrictions as to their number but maintaining inter-se-seniority among themselves."



Further relied upon RBE No.263/1998 issued on 16.11.1996, more particularly para 2(ii) which provides that panel will be drawn up from amongst those securing 60% marks in the professional ability and 60% marks in the aggregate, in the order of seniority provided that those securing a total of more than 80% marks will be classed as outstanding and placed on the top of the panel in order of seniority. Also submits that at the time of preparing the panel in the year 2006, this circular RBE No.263/98 was applicable and according to this circular panel has been prepared and the circulars which are referred to and relied upon by the applicants are issued after the panel is prepared i.e. much after 2006. He also referred to letter dated 4.1.1996 (Ann.R/1) which clarifies that strict observance of procedure as stipulated in the Railway Board's letter dated 26.11.1986 should be followed. In case any deviation has been made arising out of any subsequent clarification/advice, same should be ignored. As such, the panel to be drawn strictly on the basis of seniority from amongst the staff who qualify in the written test.

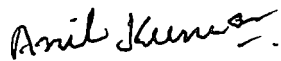
6. Following the clarification and the RBE No.232/86, the panel has been prepared on the basis of seniority from amongst the staff who qualify in the written test. In view of the aforesaid circular and in view of the facts and circumstances of this case, we find no illegality in the panel prepared by the



respondents on 3.1.2006 as well as in the order dated 16.1.2008 by which representation of the applicants have been decided pursuant to the direction issued by this Tribunal vide order dated 4.9.2006 and, therefore, no interference is called for.

7. Consequently, the OA being devoid of merit is dismissed with no order as to costs.

8. In view of the order passed in the OA, no order is required to be passed in MA No.41/2009, which is accordingly disposed of.



(ANIL KUMAR)
Admv. Member



(JUSTICE K.S.RATHORE)
Judl. Member

R/