

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 05th day of May, 2011

ORIGINAL APPLICATION NO. 175/2009

CORAM

HON'BLE MR. JUSTICE K.S. RATHORE, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Lekhraj R son of Late Shri Ram Kumar Singh aged about 58 years, resident of Gudha Road Bar Bagichi Bandikui (Rajasthan), District Dausa. Presently working as Pipe Fitter Grade I under Sr. DME (C&W), Jaipur.

.....Applicant

(By Advocate: Mr. Shailendra Shrivastava)

VERSUS

1. Union of India through General Manager, North Western Railway in front of Railway Hospital, Hasanpura Road, Jaipur.
2. Divisional Railway Manager, Jaipur Division of North Western Railway, Jaipur.
3. Divisional Personal Officer, Jaipur Division of North Western Railway, DRM Office, Jaipur.
4. Sr. Divisional Mechanical Engineer (C&W), Jaipur Division, North Western Railway, Jaipur.
5. Anwar Mohammed at present working as MCF under Sr. DME (C&W) Department, Jaipur Division of NWR at Jaipur.

.....Respondents

(By Advocate: Mr. Hawa Singh)

ORDER (ORAL)

The present OA is directed against the respondents for their discriminatory act against the applicant by which they have given promotion to the junior of the applicant on promotional post of Master Craftsman Pipe Fitter in the pay scale of Rs.5000-8000/- and have ignored the applicant. Through this OA, the applicant has prayed for the following reliefs:-



- "(a) That this Hon'ble Tribunal may graciously be pleased to direct the respondents to promote the petitioner on the promotional post of MCF in the pay scale of Rs.5000-8000 retrospectively with all consequential benefits with effect from the date junior to the petitioner has been promoted.
- (b) Any other order, which this Hon'ble Tribunal may deem fit and proper as per the facts and circumstances of the case, may be passed in favour of the petitioner."

2. The respondents raised the preliminary objection with regard to limitation as the OA is filed after a lapse of more than three and a half years and no Misc. Application for condonation of delay has been filed.

On merit, the respondents have submitted that the selection for the post of Master Craftsman Pipe Fitter in the pay scale of Rs.5000-8000/ 9300-34800 (R) Grade Pay of Rs.4200 is made from Pipe Fitter Grade I of pay scale Rs.4500-7000/ 5200-20200 (R) on the basis of seniority cum suitability and on the basis of service. The applicant was called for suitability test vide office letter dated 11.11.2005 from 'A' list and orally examination was conducted on 16.11.2005. Vide letter dated 11.11.2005 it was made clear that the applicant found unsuitable and to fortify this fact the letter dated 01.12.2005 was issued. On being found the applicant unsuitable for the post of MCF, a office letter dated 23.12.2005 was issued vide which the next junior employee, respondent no. 5, working as Pipe Fitter Grade I was called and he was found suitable.

3. As the selection on the post of MSC was purely on the basis of seniority cum suitability and on the basis of service record, the applicant being the senior most was called for suitability test vide



order dated 11.11.2005 but he was not found suitable, accordingly the applicant's next junior was called for suitability test and was found suitable for the post of MSF. This impugned order was passed way back in the year 2005 and the same has not been challenged by the applicant at the relevant point of time. The present OA has been filed in the year 2009. Thus the present OA is not maintainable in view of the ratio decided by the Hon'ble Supreme Court in the case of **D.C.S. Negi vs. Union of India & Others** [Special Leave to Appeal (Civil) 7956/2011 decided on 07.03.2011] wherein the mandate of the Hon'ble Supreme court is issued in the term that it is the duty of the

• Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21(3). Here in the instant case, the applicant has not preferred any application for seeking condonation of delay. Thus this OA deserves to be dismissed only on the ground of delay and latches. Even on merit also, this OA does not survives. as discussed hereinabove. Consequently, the OA is dismissed with no order as to costs.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

AHQ

K.S. Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)