

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

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ORDERS OF THE BENCH

Date of Order: 16.07.2012

OA No. 192/2009

Dr. Saugath Roy, counsel for applicant.
Mr. Ajay Singh, proxy counsel for
Mr. Tanveer Ahmed, counsel for respondent nos. 1 to 4.
None present for other respondents.

At the request of learned proxy counsel for Mr. Tanveer Ahmed, counsel for respondent nos. 1 to 4, put up the matter on 31.07.2012 for hearing.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

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

Kumawat

31/07/2012

OA No. 192/2009

Dr. Saugath Roy, counsel for applicants.
Mr. Tanveer Ahmed, counsel for R-1 to 4.
None present for other respondents.

Heard.
O.A. is disposed of by a
separate order on the separate
sheets for the reasons recorded
therein.

Anil Kumar
[Anil Kumar]
Member (A)

K. S. Rathore
(Justice K.S. Rathore)
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 31st day of July, 2012

Original Application No.192/2009

CORAM:

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

1. Mahesh Chand s/o Chotmal r/o Village Kachroda, Post Phulera, presently posted as Office Superintendent Grade-II, Power Control Section, Divisional Railway Manager Office, North Western Railway, Power House Road, Jaipur.
2. Mrs. Sudha Gaur w/o Man Mohan Gaur r/o D9/90, Chitrakoot Scheme, Ajmer Road, Jaipur, presently working as Office Superintendent Grade-II, General Section, Divisional Railway Manager Office, North Western Railway, Power House Road, Jaipur.
3. Jata Shankar s/o Durga Prasad r/o Gram Morija, Tehsil Chomu, District Jaipur, presently working as Clerk, Carriage and Wagon Depot, North Western Railway, Jaipur.
4. Mrs. Veena Jain w/o Ashok Jain r/o A-43, Sen Colony, Power House Road, Jaipur, presently working as Chief Office Superintendent, Carriage and Wagon Depot, North Western Railway, Jaipur.

.. Applicants

(By Advocate: Dr. Saugath Roy)

Versus

1. Union of India
through Chairman,
Railway Board,
Rail Mantralaya, Rail Bhawan,
New Delhi.

2. The General Manager,
North Western Railway,
Hasanpura Road, Jaipur.
3. The Divisional Railway Manager,
North Western Railway,
Power House Road,
Jaipur.
4. Shri L.R.Meena,
Senior Divisional Personnel Officer,
Divisional Railway Manager office,
Power House Road,
Jaipur.
5. Mahendra Kumar s/o Shri Doodh Nath,
6. Ramesh Kumar s/o Shri Suraj Mal
7. Sanjay Sharma s/o Shri Moti Lal
8. Ramavtar Sharma s/o Shri Moti Lal
9. Ramotar Sharma s/o Shri Murari Lal Sharma
10. Ram Kishore s/o Ram Sahai
11. Moti Singh
12. Chot Mal s/o Shri Bhagwan Sahai
13. Rajendra s/o Mahadev
14. Pravin Kumar s/o Badri Prasad
15. Satyavir Singh
16. Ajeet Singh s/o Jetha Singh
17. Bhupendra Singh
18. Kumari Sangeeta Kaur d/o Balbir Singh
19. Ramphool Meena
20. Kirori Lal
21. Manphool s/o Shri Govind Ram
22. Ram Singh s/o Keshav Singh

23. Ganesh Narain Mathur

(respondent No. 5 to 23 to be served through Senior Divisional Personnel Officer, Divisional Railway Manager Office, North Western Railway, Power House Road, Jaipur)

.. Respondents

(By Advocate: Shri Tanveer Ahmed for resp. No.1 to 4)

ORDER (ORAL)

The applicants filed this OA jointly against the order dated 29.4.2009 whereby medically de-categorised staff has been absorbed and posted only in MOCG unit, not in other units/departments, ignoring the provision given in the Master Circular No. 25 thereby exhausting the promotional avenues of the applicants.

2. The applicants have submitted that Para 5.8 of the Master Circular clearly says that the railway administration should ensure, while absorbing medically de-categorised staff in the alternate employment, that the interest of the staff in service in that cadre are not adversely affected as far as possible. Further, para 6.2 of the Mater Circular further provides preferences of the medically de-categorised persons for absorption.

3. The learned counsel appearing for the applicants submits that the official respondents absorbed medically de-categorised staff in MOCG unit and not posted in other departments in contravention of the provisions given in Master Circular No. 25, as such, right of consideration for promotion of the applicants has been adversely affected. Therefore, the applicants submitted their



representation, but ignoring representation filed by the applicants, the respondents have posted the medically de-categorised persons in MOCG unit.

4. It is further submitted that the official respondents are flouting the orders passed by the Railway Board vide letter dated 26.3.2009 which clearly says that mail/express drivers after medically de-categorisation are entitled to the post of Loco Inspector and Power/Crew Controller. The private respondent No.5 was fit for the above said post, even though, he has been posted in MOCG unit as Chief Office Superintendent. The applicants also controvorted and represented against the action of the respondents posting medically de-categorised private respondents in MOCB unit, as already more than 25% medically de-categorised persons are working in the MOCB unit.

5. It is also stated by the learned counsel appearing for the applicants that around 70 posts are lying vacant in operating/commercial/mechanical departments, even though private respondents have been given posting in MOCG unit. So in such eventuality, the applicants' seniority and promotional avenues will be badly affected, which is against Article 14 and 16 of the Constitution of India. Therefore, by way of this OA the applicants have prayed for suitable writ, order or direction that the impugned order Ann.A/1 dated 29.4.2009 may kindly be quashed and set-aside and the respondents be directed not to post the other similarly de-categorised persons including respondent 5 to 23 in the



MOCG unit, which will otherwise affect the promotional avenues of the applicants. Further prayed that the official respondents be restrained not to absorb/post the medically de-categorised private respondents in the MOCG unit and the promotional post lying vacant in the MOCG unit be filled up through the eligible candidates of MOCG unit.

6. On the contrary, the learned counsel appearing for the official respondents has strongly controverted the submissions made on behalf of the applicants and raised preliminary objection regarding maintainability of this OA. It is submitted that the present OA does not survive with regard to applicant No.4 who has since expired. Further, as per the order dated 29.4.2009, which has been challenged by way of this OA, the claim of applicant No.1 and 2 who are working as Office Superintendent Gr.II is not entertainable for the reason that the claim of the applicants in this OA is that if the medically de-categorized employees are adjusted in the MOCG unit, their seniority and chances for promotion would be seriously curtailed, which is per se not true as by bare perusal of order dated 29.4.2009, it is apparent that except one Shri Mahendra Kumar s/o Shri Doodhnath, who has been given the grade of Chief Office Superintendent, rest of the employees have been taken in the grade of Sr. Clerk/Clerk and, as such, claim of applicant No. 1 and 2 cannot be entertained. It is also stated that from the list dated 29.4.2009, Shri Mahendra Kumar/Doodhnath has been posted on the post of Sr. Shunter vide order dated 9.12.2009 and Shri Ramesh



Kumar s/o Shri Suraj Mal has been posted as Shunter undr SSE, Loco, Jaipur vide order dated 14.12.2009 (Ann.R/1 and R/2 respectively).

7. The official respondents have submitted that the clerical wing has been divided in three units in the Jaipur Division and on medical de-categorisation the employee concerned is adjusted on the alternative post on the availability of vacancy/post. At the relevant time, the vacancies in the other units could not have been exercised as at the relevant point of time, due to an interim order passed in OA No.136/2008, Ganesh Lal and Ors. vs. UOI, none of respondents could have been adjusted in establishment section. So far as vacancies of other sections are concerned, those were not of the medical category for which the screening committee had found the private respondents fit and, as such, the medically declassified persons were rightly absorbed and posted in the alternative post in MOCG unit.

8. The respondents have further submitted that the medically de-categorised employees are absorbed in pursuance to the Railway Board circular dated 29.4.1999 and they had been given the benefit as per these provisions and the official respondents proceeded for the process of absorption of the medically de-categorised staff as per provisions of Para 1308, 1309, 1310 and 1311 of the Indian Railway Establishment Manual (IREM) and the Master Circular. In addition to these, the medically de-categorised staff of running category is absorbed in the non-running category as per Railway Board circular dated 1.10.1999 and as per Railway Board



circular dated 26.3.2009, the absorption is made as per the above provisions on availability of vacancies.

9. Having heard the rival submissions of the respective parties and upon careful perusal of the material available on record and more particularly, the Master Circular filed by the private respondents alongwith reply and other documents which have been relied upon by the respective parties, it is evident that the applicants have challenged absorption and posting of private respondents on the ground that the respondents have violated the provisions of Master Circular No.25 and further that the applicants have been deprived of their right of promotional avenues.

10. It is not disputed that applicant No.1 Shri Mahesh Chand and applicant No.2 Smt. Sudha Gaur are working on the higher post and applicant No. 3 Shri Jata Shanker could not be posted in view of the interim order passed by this Tribunal in OA N.136/2008 filed by Shri Ganesh Lal and others. It is further not disputed that applicant No.3 Smt. Veena Jain has since expired.

11. Upon careful perusal of the provisions of Master Circular No.25, which has been heavily relied upon by the respective parties and the more particularly the provisions of clause 5.8 of this circular wherein it is provided that the railway administration should ensure, while absorbing medically de-categorised staff in alternative employment, that the interest of staff in service in that cadre are not adversely affected as far as possible. It is not disputed that as



per aforesaid Master Circular absorption is made. The respondents referred clause 6.1 of this Master Circular, according to which, medically de-categorised staff may as far as possible be absorbed in such alternative posts which should broadly be in allied categories and where their background and experience in earlier post can be utilized. For this purpose, attempt should be made to absorb the disabled railway servants not only within the divisions or the departments but also in another divisions or departments. As per clause 6.2 of this circular, in the case of medically unfitted/de-categorised running staff preference for absorption may be given in the following categories:-

1. Power Controllers;
2. Assistant Loco Foreman;
3. Instructions in Zonal School
4. Janitors
5. Shedman;
6. Job Recorders;
7. Telephone Clerks;
8. Clerks in Control Office;
9. Hostel Warden
10. Hospital Superintendent;
11. Welfare Inspector;
12. Wagon Movement Inspector; and
13. Trains clerk.

12. Further as per clause 6.5 whenever a medically de-categorised employee has enough knowledge for discharging efficiently the duties of the alternative post, the prescribed educational qualifications for recruitment to that grade need not be insisted upon and any minor deficiency should be made good by the training referred to in para 5.6 above.



13. The official respondents not only followed the Master Circular, as referred hereinabove, but also given appointment to medically decategorised persons, in view of the circular dated 29.4.1999 and as per provisions of Para 1308, 1309, 1310 and 1311 of the IREM.

14. Thus, having thoroughly considered the relevant provisions of the Master Circular and the IREM and the circulars issued by the Railway Board from time to time and as discussed hereinabove, it reveals that the applicant Nos. 1 and 2 have already been promoted and are working on the higher post and applicant No.3 could not be posted due to interim order passed by this Tribunal in OA No.136/2007 and so far as applicant No.4 is concerned, the OA has becomes infructuous since respondent No.4 has died while in service.

15. Consequently, having considered the submissions made and provisions referred on behalf of the respective parties, we find no illegality in the order impugned dated 29.4.2009 whereby private respondents were given appointment after following the due process of law and therefore, no interference, whatsoever, is required in this OA. Accordingly, the OA being bereft of merit fails and the same is hereby dismissed with no order as to costs.

Anil Kumar
(ANIL KUMAR)
Admv. Member

K.S.Rathore
(JUSTICE K.S.RATHORE)
Jdil. Member

R/