

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 22nd day of October, 2010

ORIGINAL APPLICATION NO. 229/2010

CORAM

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

1. Birdhi Lal son of Shri Panchu aged about 50 years. At present employed on the post of Permanent Way Supervisor (PWS), Sawaimadhopur in Western Central Railway, Kota Division, Rajasthan.
2. Farook son of Shri Mustak Ahmed, aged about 35 years. At present employed on the post of Senior Permanent Way Supervisor at Hindaun Under Senior Section Engineer (PW) Hindaun in Western Central Railway, Kota Division.
3. Heera Singh son of Shri Khem Chand. At present employed on the post of Permanent Way Supervisor (PWS) Lakheri, under Senior Section Engineer (PW), Lakheri in Western Central Railway, Kota Division, Rajasthan.

.....Applicant

(By Advocate: Mr. Sachin Mehta proxy to Mr. Virendra Lodha)

VERSUS

1. Union of India through General Manager, Western Central Railway, Jabalpur (M.P.).
2. The Chairman, Railway Board, Rail Bhawan, New Delhi.
3. The Divisional Rail Manager, Kota.
4. The Senior Divisional Personnel Officer, Western Central Railway, Kota Division, Kota (Rajasthan).

.....Respondents

(By Advocate: -----)

ORDER (ORAL)

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

"(i) by issuance of appropriate order or direction the impugned order dated 24.09.2009 (Annexure A/1) deleting the name of the applicants from panel dated 2.2.2006 after more

than 3 and ½ years, may be declared illegal, arbitrary, unjustified and same be quashed and set aside.

(ii) by issuance of an appropriate order or directions the impugned order dated 20.04.2010 (Annexure A/2) be declared as illegal, arbitrary and contrary to the order passed by the learned Tribunal dated 29.1.2010 and same be quashed and set aside.

(iii) by an appropriate order or direction the respondents be directed to promote the applicants on the post of Permanent Way Supervisor as per the panel dated 2.2.2006 and then accord the further promotion of Senior Permanent Way Supervisor with all consequential benefits including the seniority and backwages.

(iv) by issuance of an appropriate order or the applicants no. 1 and 2 be allowed to work on the post of Senior Permanent Way Supervisor, similarly the applicant No. 3 may kindly be allowed to the post of Permanent Way Supervisor as if the impugned order dated 24.9.2009 (Annexure A/1) has not been passed at all during the pendency of this OA and thereafter and in case if any person junior to the applicants is promoted in the meanwhile similar benefits be accorded to the applicants.

(v) if any order prejudicial/ detrimental to the interest of the applicants is passed the same may be quashed and set aside declaring the same as illegal and arbitrary.

(vi) any other appropriate or direction which is deemed just and proper by this Hon'ble Tribunal may kindly be passed in favour of the applicant.

(vii) The Original Application may kindly be allowed through out with costs.

2. When the matter was listed before the Single Bench on 29.04.2010, the Bench made the following observations:-

"....."

The plea of the learned counsel for the applicants is that the applicants were initially appointed as Gangmen and two of the applicants S/Shri Birdhi Chand and Farook were promoted as P. Way Supervisor vide order dated 29.3.2007 (Annexure A/7) in which their names appear at Sl. No. 1 and 3. Name of applicant No. 3, Shri Heera Singh, does not appear in the promotion order Annexure A/7. It is also pleaded that applicant no. 1 and 2, S/Shri Birdhi Chand and Farook were further promoted to the post of Senior P. Way Supervisor vide order dated 28.5.2009 (Annexure A/8).

Now grievance of the applicants is against the impugned order dated 24.9.2009 (Annexure A/1) and also order dated

[Signature]

20.4.2010 (Annexure A/2). It appears that the respondents have cancelled all the orders of promotion in pursuance of the order of the Central Administrative Tribunal which has also been affirmed by the Hon'ble High Court. The learned counsel for the applicant is directed to file copy of the order of this Tribunal as well as the Hon'ble High Court referred to sl. No. 2 and 3 in the impugned order dated 24.9.2009 (Annexure A/1). The learned counsel for the applicant is also directed to explain how the cases of the applicants are not covered by the judgment of this Tribunal and whether this Tribunal is competent to interfere in the impugned order Annexure A/1 which has been passed in pursuance of the order passed by this Tribunal, which h has also been affirmed by the Hon'ble High Court."

3. Pursuant to the observations made by this Tribunal in the aforesaid terms, the applicants have not made any compliance till date though the matter was listed before the Bench on 04.05.2010, 17.05.2010, 12.07.2010 and on 14.10.2010, when this Tribunal had passed the following order:-

"On the request of the proxy counsel appearing on behalf of the applicant, let the matter be listed on 22.10.2010. It is made clear that no further adjournment will be granted in this case as the matter has been adjourned for more than 4 occasions."

4. Even today, the compliance of the order dated 29.04.2010 has not been made. We have heard the learned counsel for the applicants. The grievance of the applicants in this case regarding the order dated 24.09.2009 (Annexure A/1) whereby the name of the applicants have been deleted from the panel of P. Way Supervisor in the grade of Rs.4500-7000/-, prepared vide letter dated 02.02.2006. As can be seen from the said order, the names of the applicants were deleted pursuant to the judgment rendered by this Tribunal in OA No. 57/2006 and 58/2006. The decision of the Tribunal has been upheld by the

Hon'ble High court. It may be stated that earlier the respondents have prepared the panel of the aforesaid category on the basis of seniority in respect of persons who have qualified the selection test. This Tribunal in the aforesaid cases had held that the panel should have been prepared on the basis of marks obtained in the selection on merit basis and not on seniority basis. Consequently the name of the applicants, whose names were included in the panel, ^{as were} ~~was~~ deleted. Thus on the face of the decision rendered by this Tribunal, which has been upheld by the Hon'ble High Court, we see no infirmity in the action of the respondents whereby the names of the applicants have been deleted from the panel.

5. In view of what has been stated above, we are of the view that the applicants have got no case on merit. It may be stated that it is not the case of the applicants in this OA that the fresh panel dated 24.09.2009 (Annexure A/1) so prepared pursuant to the judgment rendered by this Tribunal has not been correctly prepared and the persons with less merit than the applicants have been included in the impugned panel. As such, the matter is not required to be examined on this aspect, which was the only permissible ^{ground} ~~remedy~~ on which OA could have been entertained. However, it is clarified that in case such plea is taken by the applicants by filing separate OA with contemporaneous record, this order shall not operate as res-judicata. It will also be open for the respondents to take all permissible objections in the OA, if filed by the applicants on the aforesaid terms.

6. With these observations, the OA is disposed of at admission stage itself.

Anil Kumar

(ANIL KUMAR)
MEMBER (A)

M.L. Chauhan

(M.L. CHAUHAN)
MEMBER (J)

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