

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 12th day of January, 2011.

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

Original Application No. 446/2009

Devendra Singh s/o Shri Fateh Singh, working as Driver (Jeep/Truck) under IOW (Construction), North Western Railway, Dausa in scale 3050-4590, r/o Village Kabjara, Tehsil Bayana, District Bharatpur.

... Applicant

(By Advocate: Shri Nand Kishore)

Versus

1. Union of India through General Manager, West Central Railway, Jabalpur (M.P.)
2. Divisional Railway Manager, West Central Railway, Kota.
3. Chief Administrative Officer (Construction), North Western Railway, Jaipur

... Respondents

(By Advocate: Shri Anupam Agarwal)

Original Application No. 447/2009

Saleem Mohammad s/o Shri Idu Mohammad, working as Driver under Dy.Chief Engineer (Construction), Ajmer, North Western Railway, in scale Rs. 3050-4590, r/o Village Mandalgarh-Sarana, Bastikheda, Distt. Bhilwara. (Raj.)

....Applicant

(By Advocate: Shri Nand Kishore)

Versus

1. Union of India through General Manager, West Central Railway, Jabalpur (M.P.)
2. Divisional Railway Manager, West Central Railway, Kota.
3. Chief Administrative Officer (Construction), North Western Railway, Jaipur
4. Mukh Lal s/o Shri Kalicharan at present posted at Va.Kha.SSE (PW) (N) KTT.
5. Farukh s/o Suleman, at present posted as Va.Kha. SEE (PW), (N) KTT
6. Raghuvir Prasad s/o Shri Tulsiram, at present posted at Va.Kha. SSE(W)(I) KTT
7. Poorandas s/o Shri Kaludas at present posted at Va.Kha. SSE(PW) SEZ
8. Mohammad Yusuf s/o Shri Suleman Khan at present posted at Va.Kha.SSE (PW)(S) KTT
9. Devraj s/o Shri Gopalji at present posted at Va.Kha. SSE(W)(I) KTT
10. Paramanand s/o Shri Prabhu Lal at present posted as Va.Kha. SSE(W)(I) KTT
11. Nooruddin s/o Allanoor at present posted at Va.Kha.SME KTT

... Respondents

(By Advocate: Shri Anupam Agarwal for respo.No.1 & 2, Shri B.K.Pareek, proxy counsel for Shri Tej Prakash Sharma for resp. No.3 and Shri R.D.Tripathi, for resp. No. 4 to 11.)

Original Application No. 448/2009

1. Hari Kishan s/o Shri Dal Chand working as Driver under IOW (Construction), North Western Railway, Headquarter, Jaipur in the scale Rs. 3050-4590, resident of c/o Shri Manohar Lal Driver, Railway Quarter, Loco Colony, Jaipur.
2. Manohar s/o Hazari Lal, working as Driver under IOW (Construction), North Western Railway, Head Quarter, Jaipur in the scale Rs. 3050-4590, r/o Railway Quarter, Loco Colony, Jaipur.

3. Om Prakash s/o Prabhu Lal, working as Driver under IOW (Construction), North Western Railway, Headquarter, Jaipur in the scale Rs. 3050-4590, r/o Karni Palace Road, Bhuneshwari Vatika, Panchyawala, Jaipur.

.. Applicants ..

(By Advocate: Shri Nand Kishore)

Versus

1. Union of India through General Manager, West Central Railway, Jabalpur (M.P.)
2. Divisional Railway Manager, West Central Railway, Kota.
3. Chief Administrative Officer (Construction), North Western Railway, Jaipur

.. Respondents

(By Advocate: Shri Anupam Agarwal for resp. 1 and 2 and Shri Alok Garg for resp. No.3)

Original Application No. 70/2010

Abdul Gaffar s/o Shri Ali Mohammad, working as Driver in scale 5200-20200 (Grade Pay 1900), under Division Railway Manager, West Central Railway, Kota r/o Railway Gali No.2, Keshar Bag, Near Mashid, Kota.

.. Applicant

(By Advocate: Shri Nand Kishore)

Versus

1. Union of India through General Manager, West Central Railway, Jabalpur (M.P.)
2. Divisional Railway Manager, West Central Railway, Kota.
3. Dy. Chief Engineer (Construction), West Central Railway, Kota.
4. Farooq s/o Suleman working as Driver under Senior Division Engineer, West Central Railway, Headquarter, D.R.M. Office, Kota.

5. Shri Mohammad Rafique s/o Shri Achhan Miyam, working as Driver c/o Dy. Chief Engineer (Construction), West Central Railway, Kota.

... Respondents

(By Advocate: Shri R.G.Gupta)

O R D E R

Per Hon'ble Mr. M.L.Chauhan,M(J)

By this common order we propose to dispose of all these OAs as the issue which requires our consideration in these OAs is confined regarding the selection made pursuant to the memorandum dated 19.5.2009 (Ann.A/1) whereby the respondents issued eligibility list for 10 posts of Vehicle Driver Grade-III scale Rs. 5200-20200 + Grade Pay Rs. 1900 in which names of the applicants do not find mention. It may be stated here that in OA No.446/2009, the applicant has also challenged order 22.9.2009 whereby the applicant was repatriated to Kota Division where he was holding his lien against the substantive post of Group-D. The applicant in Para 4 (XIII) has stated that D.B.C.Writ Petition No.5441/01 has been filed before the Hon'ble Rajasthan High Court and the Hon'ble High Court has granted status quo with regard to status of the applicant as Driver. Thus, in view of this fact that the Hon'ble High-Court is seized of the matter, the learned counsel for the applicant submits that he is not pressing prayer regarding his transfer/repatriation against substantive post of Group-D vide letter dated 21.8.2009 in this OA. As such no finding is required to be given. Similarly, in OA No.447/2009, the applicant was repatriated and transferred to his substantive post of Group-D vide letter dated 7.8.2009 (Ann.A/10) and in OA No.70/2010 vide order dated 7.8.2009 (Ann.A/1).

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2. The stand taken by the respondent No.2 in OA No.70/2010 and 447/2009 for repatriating the applicants is that applicants being surplus, it was not possible for the respondents to put on duty in Construction division, as such, they were repatriated to their parent division where their lien was maintained i.e. Kota Division. The respondent No.3 has stated that there were 21 vehicles, out of which 13 were available and 8 were not available in the Construction unit, as such, the applicants became surplus. Thus, in view of the stand taken by respondent No.3 in the reply filed in OA filed by Shri Saleem Mohammad and similarly in other OAs that services of the applicants were not required, as such, they were repatriated to Kota Division, the prayer of the applicants that they should not be repatriated to their parent division, cannot be accepted in view of the Railway Board letter circulated vide letter dated 23.4.1997 which stipulate conditions for regularization of casual labours. At this stage, it will be useful to quote para 2 (a), (c), (d), (e) (f), (g) of this letter, which thus reads:-

"2. The matter has been further considered by the Board who have decided to reiterate and lay down further guidelines for the Railways as enumerated below:-

- a) All Casual Labour working in the construction must clearly stand allotted to the concerned Divisions for screening and absorption/regularization.
- b) ...
- c) The orders for appointment/regularisation of empanelled casual labour must be issued by the concerned divisions thereafter the staff must be released by the Construction to take up their new assignment.

- d) Where the Constitution cannot spare such staff due to its needs, the Division may give such staff paper lien while allowing them to continue in the Construction Organisation against work charged posts as available in the Construction. The Divisions must also include such staff in appropriate seniority lists so that there is no difficulty in their further career advancements.
- e) The release of staff working in a construction organization as a result of reduced requirement at a later stage should be well planned and coordinated with the division concerned so that a sudden cadre excess does not take place.
- f) In case casual staff in Group 'C' scales working in construction, got regularized against Group 'D' posts on the Divisions, but are needed in the construction their continuance against Group 'C' work-charged posts in construction would be on ad-hoc promotion basis.
- g) Henceforth since the lien of construction staff would be in the open line promotions within Group 'D' and from Group 'D' to Group 'C' would only be done by Divisions controlling the cadre."

To the similar effect is another Railway Board letter i.e. RBE No.115/2003 which stipulates that casual staff in Group-C scales in construction who were regularized against Group-D posts on the divisions would continue in the open line in the relevant cadre of Headquarter/Division and they would be considered for selection/promotion in their turn in the said cadre of Headquarter/Division/extra Divisional unit, as the case may be. Admittedly, the applicants who were working in the construction organization were regularized against Group-D post in Kota Division in terms of Railway Board letter circulated vide letter dated 23.4.1997, relevant portion of which has been reproduced above. They continued against Group-C work-charged posts in construction organization temporarily as their services were needed

in the construction organization. Once they were declared surplus by the construction organization, they cannot have any legal right to continue in the construction unit and had to be repatriated in the parent cadre of open line as Group-D employee where their lien was maintained and further they would be eligible for promotion to Group-C only in Kota Division in terms of para 2(g) of the instructions dated 23.4.1997 (Ann.A/2) as well as in terms of RBE No.115/2003 (Ann.A/3). Thus, grievance of the applicants regarding their repatriation cannot be interfered with.

3. Now, let us examine the larger issue which has been agitated by the applicants in these OAs ~~that~~ ^{viz.} the selection made for the post of Vehicle Driver Gr.III pursuant to impugned order dated 19.5.2009 (Ann.A/1) whereby name of the applicants were not included in the eligibility list. The contention raised by the applicants in these OAs is that the applicants were not aware about the said selection, as such, they could not apply for the selection of aforesaid 10 posts of Vehicle Driver Grade-III which was conducted pursuant to memorandum dated 19.5.2009. The applicants have further stated that since they have already qualified the trade test of Vehicle Driver while working in the open line as Driver (Jeep/Truck), as such, in terms of provisions contained in the instructions dated 23.4.1997 contained in para 2(g) read with RBE No. 115/2003, it was not necessary to conduct the trade test again. Based on the provisions of the aforesaid two paragraphs, it is argued that direction may be given to the respondents to post the applicants as Driver in Kota Division where their lien is being maintained and the applicants may

be treated as duly qualified and selected Drivers against the vacancies notified vide Ann.A/1.

4. We have given due consideration to the submissions made by the learned counsel for the parties. The undisputed facts are that the applicants were initially engaged as casual labours in the open line. They were also granted temporary status and subsequently they were permitted to perform the duties of Driver (Jeep/Truck) in Group-C category. It is also admitted fact that applicants were working as Driver against Group-C category in the construction organisation. However, their services were subsequently regularized against Group-D category in Kota Division in the open line where they were having their lien. It is also admitted fact that when services of the applicants were regularized in Group-D in Kota Division, they were not repatriated to their parent division and continued to work in the construction organization as Driver. It cannot also be disputed that such arrangement was as a temporary measure and once the work was not available, which the applicants were performing in the open line, they were to be repatriated to the respective division where they were maintaining lien i.e. in Kota Division. This is clear from para 2 (c) and (d) of the letter dated 23.4.1997, as reproduced above. Further, in terms of para 2(g) of this letter, the applicants could be promoted to Group-C post only by the division controlling the cadre i.e. Kota Division. This fact is also admitted by the applicants in these OAs where they have also placed reliance on para 2(g). Admittedly, names of the applicants were not included in the eligibility list while filling up 10

posts of Vehicle Driver Gr.III in terms of memorandum dated 19.5.2009, as such, case of the applicants was not considered. Thus, in view of the fact that the applicants have not appeared in the selection test for Vehicle Driver pursuant to aforesaid memorandum and persons so selected are not before us, as such, no relief can be granted to the applicants regarding their appointment against 10 posts of Vehicle Driver Grade-III advertised vide memorandum dated 19.5.2009. The contention raised by the learned counsel for the applicants that since they have passed the trade test in construction organization and it was thereafter they were appointed as Vehicle Driver, as such, they are not required to pass the trade test again in terms of RBE No.115/2003 and they may be given appointment against 10 posts of Vehicle Driver as advertised vide Ann.A/1, cannot be accepted for more than one reason. As can be seen from the letter dated 28.4.1997 (Ann.A/7) which has been placed on record in OA No. 447/2009, whereby selection process for 2 posts of skilled Vehicle Driver Gr.III was initiated, 6 conditions have been stipulated in the said letter for the purpose of fixing eligibility criteria for selection to the said post. Perusal of this letter further reveals that copy of this advertisement has been issued to various authorities/functionaries of the department. Thus, on the face of criteria as laid down vide Ann.A/7 and in the absence of any pleading made by the applicants in the OAs that trade test as conducted by respondent No.3 when the applicants were working in construction organization met the requirement of selection criteria laid down in Ann.A/7, no positive finding can be given to

the effect that trade test which the applicants have passed while working in construction organization is comparable test as prescribed for the purpose of promotion to Group-C post. This is another reason, the relief of granting promotion to the post of Vehicle Driver without undergoing selection process cannot be granted to the applicants against vacancies advertised vide memorandum dated 19.5.2009, that too when these posts stood already filled in from the eligible candidates in terms of the selection held pursuant to the said memorandum dated 19.5.2009, who are not parties in these OAs. The Hon'ble Apex Court in the case of Public Service Commission, Uttarakhand vs. Mamta Bisht & Ors., JT 2010(6) SC 221 relying on its earlier decisions in para-8 held that if a person challenges the selection process, successful candidates or at least some of them are necessary parties. Further, the Apex Court in the case of Prabodh Verma vs. State of U.P., 1984 SCC (L&S) 704 has held that High Court can not proceed to hear the parties and take a decision adverse to those affected persons without getting them or their representatives impleaded as parties. Even on this ground also no relief can be granted to the applicants.

5. Before parting with the matter, we wish to observe that (as per the stand taken by respondent No.3 in the additional affidavit with MA No.4/2011 whereby it is stated that copy of the notification to fill up post of Driver pursuant to Ann.A/1 was never received in the office of respondent No.3, as such, the said information was not got noted from the applicants) in future while undertaking any selection to Group-C posts from Group-D employees, the Kota

Division will ensure that copy of such advertisement/notification should be endorsed to the constructions organization where employees, whose lien has been maintained against Group-D posts, are working so that such employees can apply against Group-C posts. MA No.4/2011 shall stand disposed of accordingly.

6. With these observations, the OAs are disposed of with no order as to costs. Interim stay granted by this Tribunal and extended from time to time shall stand vacated.

(ANIL KUMAR)
Admv. Member

(M.L.CHAUHAN)
JUDL. MEMBER

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