

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 09.07.2014

OA No. 308/2011 with MA No.83/2012

Mr. Kamal Singh Panwar, Counsel for the applicant.
Mr. Tanveer Ahmed, Counsel for the respondents.

Heard the learned counsel for parties.

Order Reserved.


(RAJ VIR SHARMA)

JUDICIAL MEMBER


(ANIL KUMAR)

ADMINISTRATIVE MEMBER

Adm/

Dt. 11.7.2014

Order pronounced today in the
open court by the presiding
Hon'ble Bench.


COURT OFFICER

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION No. 308/2011
With
MISC. APPLICATION NO. 83/2012

ORDER RESERVED ON 09.07.2014

DATE OF ORDER : 11.7.2014

CORAM :

HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER
HON'BLE MR. RAJ VIR SHARMA, JUDICIAL MEMBER

1. Teju Chelani son of Shri Tek Chand resident of 2D/26 J.P. Nagar, Ajmer working as Gangman, Ajmer Division, Ajmer.
2. Pappu son of Shri Aatu Mal, resident of 16/207, Khari Kui, Near Hindu Press, Ajmer. Working as Gangman, Ajmer Division, Ajmer.
3. Jethanand son of Shri Aatu Mal resident of 16/207, Khari Kui, Near Hindu Press, Ajmer. Working as Gangman, Ajmer Division, Ajmer.

... Applicant

(By Advocate: Mr. Kamal Singh Panwar)

Versus

1. Union of India through General Manager, North Western Railway, Jagatpura, Jaipur.
2. The Divisional Rail Manager, North Western Railway, Ajmer Division, Ajmer.

... Respondents

(By Advocate: Mr. Tanveer Ahmed)

ORDER

PER HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Initially the present OA was filed on 20.07.2011. Subsequently, the applicant filed an MA No. 137/2012 seeking amendment in the OA. This Tribunal vide order dated 26.11.2012 allowed the MA and the amendment in the OA was allowed.

Anil Kumar

2. The applicant has sought the following reliefs in the Amended OA:-

- "(i) That the respondents be directed to allow the applicants to work as Running Room Bearer at Marwar by quashing order dated 25.06.2010 (Annexure A/1) and order dated 28.12.2011 (Annexure A/7) and order dated 24.01.2012 (Annexure A/18).
- (ii) Any other order, direction or relief may be passed in favour of the applicants which may be deemed fit just and proper under the facts and circumstances of the case.
- (iii) That the cost of this application may be awarded."

3. The brief facts of the case are that the applicants were engaged as Commissioner Venders in Railway Catering on 01.12.1983.

4. That a Writ Petition was filed by Shri R. Mahalingham in the Hon'ble Supreme Court in the year 1984 in which the applicants were also party for payment at par with the regular venders and also to make permanent in the Railways.

5. That the Hon'ble Supreme Court in its judgments announced that these Commission venders should be given scale rate at par with other regular venders and also they should be absorbed in railway service in catering department progressively till such time railway cannot appoint any person either as bearer or vender at permanent basis in railway service from any source and these venders should be absorbed as early as possible (Annexure A/2).

Anil Kumar

6. That from 1991 to 2005, no action was taken on the Hon'ble Supreme Court decision and fresh appointments were continued in the Commercial Department and the applicants continued to work as Khallasi/Watermen.

7. However, on the request of the applicants to the General Manager to post them back in the Traffic Department, the General Manager accepted their request and posted them as RRB at Marwar vide order dated 18.06.2010 (Annexure A/6). On the basis of this order, DRM also issued order on 24.06.2010 for their posting as RRB.

8. That suddenly on the next day i.e. 25.06.2010 the respondent no. 2 without showing any reason cancelled the above letter (Annexure A/1). That the respondent no. 2 has no power or jurisdiction to cancel the order of his higher authority i.e. respondent no. 1.

9. That respondent no. 2 vide letter dated 25.11.2010 (Annexure A/9) disclosed that the orders were cancelled on the verbal order of CPO, Jaipur. The learned counsel for the applicant submitted that even CPO has no power or jurisdiction to cancel the orders of higher authority i.e. respondent no. 1.

10. That in the case of Shri Deepak Chand Sharma, a similarly situated employee, this Tribunal has quashed the orders of reposting him in Engineering Department instead of Commercial Department vide order dated 22.09.2011 in OA No. 430/2010

Anil Kumar

(Annexure A/13). Shri Deepak Chand Sharma has been given posting as RRB by respondent no. 2 vide order dated 13.01.2012 (Annexure A/16). Therefore, the action of the respondent no.2 in not posting the applicants as RRB is highly discriminatory and illegal.

11. The learned counsel for the applicant submitted that the Circular No. D (D&A) 2003/RG6-25 dated 27.11.2007 (RBE 155/2007) (Annexure A/17) provides that once an order has been challenged before a Court of law, it should not be interfered with during the pendency of the case. The impugned order has to be taken as it is and nothing can be reduced or added to it and in such situation, any proposed fresh order should be passed only with the leave of the court whereas in this case during the pendency of this OA, the respondents have revised the orders.

12. The General Manager vide order dated 20.12.2011 (Annexure A/15) restored the orders issued on 18.05.2010 for change of category from Gangman to RRB but within a week vide order dated 28.12.2011, the General Manager granted ex-post facto approval for the cancellation of the original order issued by the GM issued on 18.06.2010 in respect of the applicant. In compliance of these orders, DRM i.e. respondent no. 2 issued an order dated 24.01.2012 (Annexure A/18) vide which the applicants were reverted to their original post of Trackman. Thus the orders of the respondent no.2 are nullity in the eyes of law in view of the RBE No. 155/2007 (Annexure A/17). Therefore, the OA be allowed and the respondents be directed to post them as

Anil Sharma

RRB at Marwar by quashing the order dated 25.06.2010 (Annexure A/1) and order dated 28.12.2011 by which General Manager has given ex-post facto approval for the cancellation of the original order and order dated 24.01.2012 vide which DRM has posted the applicants to their original post of Trackman.

13. The respondents have filed their reply to the OA as well as Amended OA. In the reply, the respondents have stated that applicant no. 1 has filed a representation against the order dated 25.06.2010 vide which the order for the change of category has been cancelled. This representation has been rejected vide letter dated 25.11.2010 but this letter/order has not been challenged in the present OA, therefore, the present OA is not maintainable and liable to be dismissed with costs.

14. The learned counsel for the respondents submitted that the order with respect of Deepak Chand Sharma to continue as RRB has been issued by respondent no.1 in terms of the order dated 22.09.2011 passed by the Hon'ble Tribunal in OA No. 430/2010. The respondents have issued letter dated 24.01.2012 in term of the order dated 28.12.2011. Therefore, there is no illegality on the part of the respondents in issuing these orders. The learned counsel for the respondents submitted that applicant no. 1 (Teju Chelani) has been removed from service. Hence all of three applicants are not on equal footings and, therefore, the present OA cannot be said to be maintainable as joint application.

Anil Kumar

15. The respondents have submitted that it is not disputed that the applicants were appointed as Gangman vide order dated 05.04.2006. The applicants have already filed OA Nos. 18/2007 (Teju Chelani- Applicant no. 1) and OA No. 38/2007 (Pappu & Jethanand – Applicant nos. 2 & 3) on the same contentions which have already been decided by the Tribunal vide order dated 01.02.2008 and 16.03.2007 (Annexure R/3 & R/4 respectively).

16. The respondents have admitted that the change of category of the applicants from Gangman to RRB have been sanctioned by respondent no. 1 vide order dated 18.06.2010 (Annexure A/6). On the basis of the order dated 18.06.2010, the respondent no.2 issued order dated 24.06.2010 (Annexure R/1) for posting of Running Room Bearer but the same has been immediately cancelled vide order dated 25.06.2010 (Annexure A/1) issued by the respondent no.2 and the same has been cancelled by the same authority i.e. respondent no.2 immediately and the respondent no.2 was having competence to pass such an order of cancellation. Thus, the order of respondent no. 2 passed on 25.06.2010 (Annexure A/1) is not suffering from any error of jurisdiction and there is no malafides in passing such order. Further the same is not discriminatory in any manner and the order is perfectly legal and justified.

17. The respondents have also admitted that Shri Deepak Chand Sharma has filed an OA No. 430/2010 and which was decided by this Tribunal vide order dated 22.09.2011 and in compliance of the order of this Tribunal, Shri Deepak Chand

Anil Kumar

Sharma has been posted as RRB vide order dated 13.01.2012 (Annexure A/16). However, they have submitted that the case of the applicants in the present OA is not similar to the case of Shri Deepak Chand Sharma's case. The applicants in the present OA had earlier filed OA Nos. 18/2007 and 38/2007 almost for the similar relief. Both these OAs have already been decided by this Tribunal vide order dated 01.02.2008 and 16.03.2007 (Annexure R/3 & R/4 respectively).

18. The applicants were screened by the Screening Committee and were posted as Gangman. Therefore, they cannot be posted in another department. The learned counsel for the respondents submitted that the OA as no merit and it should be dismissed with costs.

19. Heard the learned counsel for the parties, perused the documents on record and the case law referred to by the learned counsel for the parties. The facts of the case are not disputed that the applicants were working as Gangman and were subsequently posted vide order dated 18.06.2010 (Annexure A/6) as RRB. On the basis of this order, DRM also issued order for their posting as RRB. However, on the very next date, these orders were cancelled by the DRM. The contention of the learned counsel for the applicants is that the order for the change of category from Gangman to RRB were issued by the General Manager, therefore, the DRM was not the competent authority to cancel this order. We are inclined to agree with the averments made by the learned counsel for the applicant that since the

Anil Kumar.

original order for the change of category from Gangman to RRB was issued by the General Manager, therefore, any modification in this order could have been made only with the approval of the General Manager. The controversy has already been decided by this Tribunal in the case of **Deepak Chand Sharma vs. Union of India & Others** in OA No. 430/2010 vide order dated 22.09.2011 (Annexure A/13).

20. We are inclined to agree with the arguments of the learned counsel for the applicant that the case of Deepak Chand Sharma is on the similar footing as that of the applicants. The applicants had earlier filed OA No. 18/2007 and OA 38/2007 before this Tribunal. We have carefully perused the pleadings of the applicants in OA NO. 18/2007 and OA No. 38/2007 and we are of the view that the pleadings in these OAs are very different from the pleadings in the present OA. In the present OA, the issue is with regard to the change of category from Gangman to RRB. The order of their change of category from Gangman to RRB was not the issue when these OAs (OA No. 18/2007 and 38/2007) were filed. The order by the General Manager for change of category has been issued on 18.06.2010 whereas the earlier OAs were filed in the year 2007.

21. Shri Deepak Chand Sharma is also one of the four persons whose category was changed by the same order from Gangman to RRB, therefore, we hold that applicants are similarly situated to Shri Deepak Chand Sharma.



22. The learned counsel for the respondents submitted that one of the applicants (applicant no. 1 – Teju Chelani) has already been removed from service. The learned counsel for the applicant submitted that in view of the changed situation, he is not claiming any relief for that applicant no. 1 – Teju Chelani. Therefore, we are of the opinion that the OA can be decided for applicants nos. 2 & 3. In view of the discussion above and in terms of the orders in OA No. 430/2010, Deepak Chand Sharma (Supra), the order dated 25.06.2010 (Annexure A/1) and order dated 28.12.2011 issue by General Manager (Annexure A/7) and order dated 24.01.2012 issued by DRM (Annexure A/18) are quashed and set aside.

23. Since the case of the applicants is similar to Shri Deepak Chand Sharma and the respondents have admitted/allowed Shri Deepak Chand Sharma for change of category from Gangman to RRB, therefore, the respondents are directed to consider the case of the applicants Nos. 2 & 3 also afresh for the change of category from Gangman to RRB being similarly situated to Shri Deepak Chand Sharma.

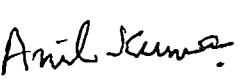
24. The respondents are directed to pass a speaking & reasoned order afresh according to the provisions of law within a period of three months from the date of receipt of a copy of this order in respect of applicants nos. 2 & 3 of the present OA.

25. With these directions & observations, the OA is disposed of with no order as to costs.

Anil Kumar

26. In view of the order passed in the OA, the MA No. 83/2012 filed by the applicants to cancel the orders dated 28.12.2011 issued by General Manager and order dated 24.01.2012 issued by DRM, Ajmer stands disposed of as this prayer has been made by the applicants in the Amended OA.


(RAJ VIR SHARMA)
MEMBER (J)


(ANIL KUMAR)
MEMBER (A)


abdul