

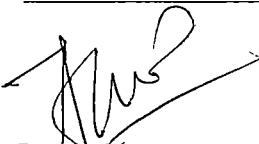
**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER OF THE TRIBUNAL**

Date :05/05/2014
O.A. No. 628/2011

Mr. Shobhit Tiwari proxy counsel for
Mr. R.P. Tiwari counsel for the applicant
Mr. Anupam Agarwal counsel for the respondent Nos. 1 to 4
Mr. Nand Kishore counsel for the respondent No. 5.

Heard the learned counsel for the parties.

Order Reserved.


(Jasmine Ahmed)
Member (J)


(Anil Kumar)
Member (A)

Vv

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

ORDER RESERVED ON 05.05.2014

DATE OF ORDER : 9 .05.2014

CORAM :

**HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER
HON'BLE MRS. JASMINE AHMED, JUDICIAL MEMBER**

1. **ORIGINAL APPLICATION NO. 656/2011**
WITH
MISC. APPLICATION NO. 253/2012 & 298/2012

1. Dileep Kumar Bhatnagar son of Shri Bhagwan Swarup Bhatnagar, age 54 years, resident of II, Rangpur Road, Behind Govind Building, Kota Junction. Presently posted at WCR, Kota.
2. Ashok Kumar Sharma son of Shri Roshan Lal Sharma, age 53 years, resident of 448, Anand Vihar, Street No. 4, Dadwadha, Kota Junction. Presently posted at WCR, Kota.

... Applicants

(By Advocate: Mr. Shobit Tiwari)

Versus

1. Union of India through Secretary, Ministry of Railway, Rail Bhawan, New Delhi.
2. Union of India through Secretary, Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, North Block, New Delhi.
3. Senior Divisional Personnel officer, Western Central Railway, Mandal Office, DRM Office, Railway Station, Kota Junction.
4. Divisional Railway Manager, Kota Division (Western Central Railway), Kota Junction, Kota.
5. Prem Chand Raigar son of Shri Govardhan Lal, age 51 years, resident of Near Gurudwara.
6. Ram Kishore Meena son of Shri Birbal Meena, age 44 years, resident of RE II/IOB, RE Railway Colony, Kota Junction.

... Respondents

(By Advocates: Mr. Anupam Agarwal – Respondent nos. 1,3, 4 & 6)
None present for other respondents.

2. **ORIGINAL APPLICATION NO. 657/2011**

WITH
MISC. APPLICATION NO. 252/2012 & 297/2012

Ajay Dixit son of Shri S.N. Dixit, age 52 years, resident of Near Raj Kesar Hotel, Mala Road, Kota Junction. Presently posted WCR, Kota.

... Applicants

(By Advocate: Mr. Shobit Tiwari)

Versus

1. Union of India through Secretary, Ministry of Railway, Rail Bhawan, New Delhi.
2. Union of India through Secretary, Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, North Block, New Delhi.
3. Senior Divisional Personnel officer, Western Central Railway, Mandal Office, DRM Office, Railway Station, Kota Junction.
4. Divisional Railway Manager, Kota Division (Western Central Railway), Kota Junction, Kota.
5. Sanjay T. Meena son of Shri Tej Ram Meena, age 43 years, resident of Meena Colony, Near Shiv Puri, Gangapur City.
6. Nathu Ram Mirda son of Shri Sita Ram, age 54 years, resident of C/o Narendra Singh, Nehru Nagar, Rangpur Road, Kota Junction.

... Respondents

(By Advocates: Mr. Anupam Agarwal)

3. ORIGINAL APPLICATION NO. 628/2011

1. Anil Kumar Sharma son of Shri Laxmi Dutt Sharma, age 43 years, resident of E-54, Ram Nagar Extension, Sodala, Jaipur.
2. Ram Niwas Chaudhary son of Shri Rameshwar Dayal, age 42 years. Presently working as Assistant Loco Pilot at SSE Loco, Phulera resident of Village Raipur Post Goth via Singhania, District Jhunjhunu.
3. Anil Kumar Soni son of Shri Ratan Lal, aged 44 years, presently working as Assistant Loco Pilot C/o SSE Loco Phulera, North Western Railway, Phulera resident of Village and Post Bochadiya, Tehsil Narnaul, District Mahendragarh, Haryana.
4. Rakesh Kumar Sharma son of Shri Radhey Shyam Sharma, age 37 years. Presently working as Assistant Loco Pilot, resident of 5/38, Near Housing Board, Alwar, Rajasthan.

5. Deep Singh Charan son of Shri Amar Singh Charan, age 40 years, presently working as Assistant Loco Pilot, resident of Plot No. 34, Gokul Vihar, Sikar Road, Harmara, Jaipur.
6. Bharteesh Chand Dadich son of Shri Prabhu Dayal Sharma, aged 39 years, presently working as Assistant Loco Pilot, resident of Dadich Sadan, Near Shiv Mandir, Phulera, District Jaipur.
7. Pratap Singh Saini son of Shri Somwar Saini, age 42 years, presently working as Assistant Loco Pilot, C/o SSE Loco Phulera, North Western Railway, Jaipur Division and resident of Neemawali Dhali, P.O. Baghad, District Jhunjhunu.

... Applicants

(By Advocate: Mr. Shobit Tiwari)

Versus

1. Union of India through Secretary, Ministry of Railway, Rail Bhawan, New Delhi.
2. Union of India through Secretary, Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, North Block, New Delhi.
3. Senior Divisional Personnel officer, Western Central Railway, Mandal Office, DRM Office, Railway Station, Kota Junction.
4. Divisional Railway Manager, Kota Division (Western Central Railway), Kota Junction, Kota.
5. Devi Singh [SC] son of Shri Ganga Ram, age 52 years, presently working as Assistant Loco Pilot and resident of Krishna Nagar, Near Singh Ki Jhopdi, Bandikui, Alwar.
6. Ashok Kumar son of Shri Ganga Ram, age 46 years, presently working as Assistant Loco Pilot and resident of Railway House No. 487 C, Railway Colony, Phulera, Rajasthan.

... Respondents

(By Advocates: Mr. Anupam Agarwal – Respondents nos. 1 to 4
 Mr. Nand Kishore – Respondent no. 5.
 None present for respondent no. 6.

4. **ORIGINAL APPLICATION NO. 241/2012**
WITH
MISC. APPLICATION NO. 261/2012

Bhawan Das son of Shri Govind Ram, age 50 years, resident of 4 Jha 18, Vigyan Nagar, Kota. Presently working in Kota Division of Western Central Railway.

... Applicant

(By Advocate: Mr. Shobit Tiwari)

Versus

1. Union of India through Secretary, Ministry of Railway, Rail Bhawan, New Delhi.
2. Union of India through Secretary, Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, North Block, New Delhi.
3. Senior Divisional Personnel officer, Western Central Railway, Mandal Office, DRM Office, Railway Station, Kota Junction.
4. Divisional Railway Manager, Kota Division (Western Central Railway), Kota Junction, Kota.
5. Lokendra Singh son of Shri Kirori Singh, resident of Vikthaldas ji ka Makan, Sindhi Colony, Gangapur City.
6. Hari Prasad Meena son of Shri Kishan Lal Meena, resident of Railway Bangala Colony, Foons Wari, Gangapur City Rajasthan.

... Respondents

(By Advocates: Mr. Anupam Agarwal)

ORDER

PER HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Since the fact & law points of all these OAs are the same, therefore, they are being disposed of by a common order with the consent of the learned counsel for the parties. For the sake of convenience, the facts of OA No. 656/2011 (Dileep Kumar Bhatnagar vs. Union of India & Others) are taken as a lead case.

2. The brief facts of the case, as stated by the learned counsel for the applicant, are that the applicants were initially appointed on the post of Train's Clerk. That the respondents issued a seniority list dated 22.02.2011 for different posts of Guards cadre (Annexure

A/4). The applicants are the members of the General category and are aggrieved against the policy and circulars issued by the DOPT and consequential circulars issued by the North Western Railway.

3. The learned counsel for the applicant relied upon the judgment of the Hon'ble Supreme court in the case of R.K. Sabbarwal vs. State of Punjab, 1995 (2) SCC 745 as well as in the case of J.C. Malik vs. Union of India, 1978 (1) SLR 844 and submitted that the reservation of jobs for the backward classes SC/ST/OBC should apply to posts and not to vacancies. Further that vacancies based roster can operate only till such time as the representation of the persons belonging to the reserved categories in the cadre reaches the prescribed percentage of reservation and thereafter the roster cannot operate and vacancies released by retirement, resignation, promotion etc. of the persons belonging to general and reservation categories to be filled by appointment of persons from the respective category so that the prescribed percentage of reservation is maintained. That the observation of the Hon'ble Supreme Court in the case of R.K. Sabbarwal, which provides the post based roster system has been endorsed in the recent judgment of K. Manorama vs. Union of India & Others, 2010 (10) SCALE 304.

4. The Government of India issued an OM dated 11.07.2002 provided for reservation with regard to SC/ST candidates promoted on their on merit (Annexure A/7). However, vide OM dated

31.01.2005 (Annexure A/8), it was clarified that OM dated 11.07.2002 does not apply to the promotions made by non selection method. Subsequently, the Government of India vide OM dated 10.08.2010 withdrew office Memorandum dated 31.01.2005 and observed that SC/ST candidates appointed by promotion on their own merit & seniority and not owing to reservation or reservation of the qualification, will be adjusted against unreserved points of reservation roster, irrespective of the fact whether the promotion is made by selection method or non selection method. The Railways adopted this OM and issued RBE No. 126/2010. That the Hon'ble Punjab & Haryana High Court in the case of **Lachmi Narain Gupta & Others vs. Jarnail Singh** had quashed the OM dated 10.08.2010 of the DOPT vide its order dated 15.07.2011. The judgment of the Hon'ble High Court of Punjab & Haryana has been challenged and it is pending before the Hon'ble Supreme Court for final adjudication.

5. That an OA No. 62/2011 (**Lokesh Kumar Saini & Others vs. Union of India & Others**) was preferred before this Tribunal challenging the OM dated 10.08.2010 and RBE No. 126/2010. The Hon'ble Tribunal vide its order dated 26.11.2011 (Annexure A/9) held that the OM of the DOPT No. 36012/45/2005-Estt.(Res.) dated 10.08.2010 has already been quashed and further directed the respondents to take further action in the matter ignoring RBE No. 126/2010.

6. That the respondents are undertaking the exercise of making promotion to the post of Mail Express Guard on the basis of provisions of RBE No. 126/2010. They are placing reliance on the seniority list drawn on 22.02.2011 and the eligibility list dated 12.12.2011 (Annexure A/1). The learned counsel for the applicant submitted that the SC/ST employees who are coming under the general seniority cannot be considered against the unreserved vacancies.

7. That the respondent Railways Kota Division published a suitability/eligibility list dated 12.12.2011 for the post of Mail Express Guard in the pay band of Rs.9300-34800 + 4200 (Grade Pay) for 11 vacancies (8 General, 1SC and 2 ST). It is relevant to mention that respondents have considered all the top required serial numbers for general category regardless of SC/ST roster point candidate occupying that serial number and further took SC/ST employees from bottom of the list, this way providing double benefit of SC/ST and over subscribing of reserved class. The respondents on the basis of the OM dated 10.08.2010 had considered the SC/ST on the general roster points.

8. That the official respondents are considering the reserved class employees on general roster points despite of the fact that earlier they had sought promotion on their respective posts on the basis of reservation.

9. The learned counsel for the applicant further submitted that suitability/eligibility list dated 12.12.2011, which has been prepared in pursuance of OM of the DOPT dated 10.08.2010 and RBE No. 126/2010 is bad in law as the OM of the DOPT dated 10.08.2010 has already been quashed and RBE No. 126/2010 of the Railways is not to be taken consideration as per the directions of the Tribunal. He also referred to the judgment of the Hon'ble High Court of Rajasthan at Jaipur Bench in DB Civil Writ Petition No. 2733/2012 in which the Hon'ble High Court has held that the circular of RBE No. 126/2010 cannot be given effect to pending the SLP and is binding upon the Railway Administration in particular. Therefore, he submitted that the office order dated 12.12.2011 (Annexure A/1) be quashed and set aside.

10. On the contrary, the learned counsel for the respondents submitted that the sanctioned strength of Mail/Express Guard is 95. There are 52 vacancies in this cadre. The feeder cadre of Senior Passenger Guards is 50 and men on roll are 39. Thus there are more vacancies in the Mail/Express Guards than the number of employees working in the feeder cadre i.e. Senior Passenger Guard. Therefore, all the 39 employees working as Senior Passenger Guard will get promoted if found suitable and there will not be any dispute with regard to application of reservation in promotion. The post of Mail/Express Guard is essentially a safety category post and, therefore, it will not be in the public interest if these posts are left vacant. Therefore, the Tribunal should allow the promotion on these

posts. The remaining posts of Senior Passenger Guard, Senior Goods Guard, Goods Guard can be filled up subject to the outcome of the decision of this Tribunal or as may be decided by the Hon'ble Supreme Court pending SLP.

11. The learned counsel for the respondents submitted that the applicant has not challenged the seniority list and, therefore, without challenging the seniority list, the applicant cannot challenge the promotion order based on the said seniority list dated 22.02.2011 (Annexure A/4).

12. That the applicant has not impleaded all the successful candidates as detailed in the eligibility/suitability list dated 12.12.2011 (Annexure A/1) and, therefore, no relief can be given against them in their absence. Therefore, on this ground alone, the OA needs to be dismissed.

13. In Para No. 4 (20) of their reply, the respondents have stated that select list has been prepared keeping in view the mandate of the Railway Board letter dated 01.09.2010 RBE No. 126/2010, therefore, there is no element of any illegality in the action of the answering respondents.

14. Private respondent no. 6 has also filed his reply. He has also reiterated that the applicant has not challenged the seniority list dated 22.02.2011 (Annexure A/4) and, therefore, the penal dated

12.12.2011 (Annexure A/1), which is prepared on the basis of this seniority list cannot be challenged. The Railway Board has not taken any steps by amending its policy decision, therefore, the Railway Administration cannot differ with its earlier practice. The Private respondent no. 6 in his reply has stated that the learned Tribunal in OA No. 62/2011 alongwith MA No. 281/2011 (**Lokesh Kumar Saini & Others vs. Union of India & Others**) has held that OM of the DOPT 36012/45/2005-Estt (Res.) dated 10.08.2010 has already been quashed by the Punjab & Haryana High Court. That the RBE No. 126/2010 being based on the OM dated 10.08.2010 be ignored by the respondents for taking further action in the matter.

15. The private respondent no. 6 has further submitted that CAT Mumbai Bench in OA No. 76/2011 has upheld the validity of OM of the DOPT dated 10.08.2010. It has further been maintained by the Hon'ble Mumbai High Court. The CAT, Jaipur Bench in its order dated 26.11.2011 has held that the judgment of the Hon'ble Punjab & Haryana High in the case of **Lachmi Narain Gupta & Others vs. Jarnail Singh (supra)** has been challenged before the Hon'ble Supreme Court by way of SLP. Hence, till this controversy is settled by the Hon'ble Apex Court, no challenge is maintainable. The private respondent no. 6 has also stated that all those who are affected by the outcome of the present OA are ~~not~~ necessary party. The applicant has failed to implead all the selected candidates as party respondents rather he has impleaded only two private

respondents in a representative capacity. Therefore, the OA has no merit and it should be dismissed.

16. 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.

17. From the perusal of the documents, it appears that the office order dated 12.12.2011 (Annexure A/1) is based on the provisions of RBE 126/2010. The respondents vide order dated 26.11.2011 passed in OA No. 62/2011 were directed to ignore the RBE No. 126/2010 for taking further action in the matter but it appears that the respondents while passing the office order dated 12.12.2011 (Annexure A/1) have ignored this direction of the Tribunal. The Hon'ble High Court vide its order dated 11.11.2013 in DB Writ Petition No. 2773/2012 has also observed that the RBE No. 126/2010 cannot be given effect to pending SLP and is binding upon the Railway Administration in particular.

18. The contention of the learned counsel for the respondents that since the number of posts in the Mail/Express Guards are 52 and whereas the number of filled up posts in the feeder cadre that is Senior Passenger Guard is 39, hence, all Senior Passenger Guards will get promotion subject to their eligibility and therefore, the applicants would not suffer any loss is not acceptable. Every

employee has a right to be given proper seniority according to the rules in the cadre in which he is promoted.

19. With regard to the submission of the learned counsel for the respondents that all the employees who have been empanelled vide order dated 12.12.2011 (Annexure A/1) have not been made party, the learned counsel for the applicant submitted that he has made private respondents nos. 5 & 6 as representative for SC & ST. It is not necessary to implead every-one in the select list as party respondents. However, on this point, we are not going into the merit of the rival submissions of the respective parties.

20. The applicant in OA No. 628/2011 (Anil Kumar & others vs. Union of India & Others) have also challenged the seniority list dated 20.07.2011 (Annexure A/4 of that OA) of Senior Assistant Loco Pilot/Assistant Loco Pilots.

21. Having considered the rival submissions of the respective parties, perusal of the documents on record as well as case law referred to by the respective parties, it is clear that the OM dated 10.08.2010 of the DOPT has been quashed and set aside by the Hon'ble Punjab & Haryana High Court. However, the same has been challenged by way of filing an SLP before the Hon'ble Supreme Court, which is still pending consideration and no interim direction has been granted against the judgment of the Hon'ble Punjab & Haryana High Court. This Tribunal in OA No. 62/2011 (**Lokesh**

Kumar Saini & Others vs. Union of India & Others) has directed the respondents to ignore the provisions of RBE 126/2010. This order of the Tribunal was challenged by the respondents before the Hon'ble High Court of Rajasthan at Jaipur Bench in DB Writ Petition No. 2773/2012. The Hon'ble High Court in the said Writ Petition held that:-

"There is no need to pass any further order since the circular of RBE No. 126/2010 dated 14.09.2010 has been taken note of by us and it cannot be given effect to pending SLP and is binding upon the Railway Administration in particular."

22. Therefore, we are of the view that any exercise undertaken by the respondents which is subject of challenge in the present proceeding shall remain subject to the final outcome of the SLP pending before the Hon'ble Supreme Court against the judgment of Hon'ble Punjab & Haryana High Court in the case of **Lachmi Narain Gupta & Others vs. Jarnail Singh** (supra) and the applicants are at liberty to redress their grievance, if any, after the final verdict of the Hon'ble Supreme Court.

23. With these directions, the OA is disposed of with no order as to costs. The interim relief granted by the Tribunal on 23.12.2011 is vacated.

24. In view of the order passed in the OA, the MA Nos. 253/2012 and 298/2012 vacation of interim stay are allowed.

25. The Registry is directed to place the copy of this order in the respective OAs files.

26. The MA Nos. 252/2012 & 297/2012 for vacation of interim stay filed in OA No. 657/2011 are allowed. In the same way the MA No. 261/2012 filed in OA No. 241/2012 for vacation of interim stay is also allowed.

(JASMINE AHMED)
MEMBER (J)

(ANIL KUMAR)
MEMBER (A)

abdul

V No. 547 To 556

to 13/5/14

dated