

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER-SHEET

31.10.2011
OA No. 62/2011 with MA No. 281/2011

Referred
not filed
Date

In pursuance to the notification No. 7/4/2003/Estt./Vol.III/1055,
dated 25.10.2011, the matter is adjourned to 26.11.2011.

OA No 62/2011
COURT OFFICER

26-11-2011

OA No 62/2011 with MA No. 281/2011

Mr. Shobhit Tiwari, Poony counsel for
Mr. R.P. Tiwari, Counsel for applicants.
Mr. Anupam Agarwal, counsel for respondents

Heard.

O.A. and M.A. are disposed
of by a separate order on the
separate sheets for the reasons
recorded therein.

Anil Kumar

[Anil Kumar]

Member (A)

12. S. Rathore
[Justice K.S. Rathore
Member (J)]

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 26th day of November, 2011

ORIGINAL APPLICATION No. 62/2011
WITH
MISC. APPLICATION NO. 281/2011

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

1. Lokesh Kumar Saini son of Shri Radhey Shayam Saini,, aged about 36 years, resident of 160, Janakpuri, Mala Road, Kota.
2. Rajendra Jangir son of Shri Ram Prasad Jangir, aged 40 years, resident of Village and Post Sukhal, District Sawaimadhopur.
3. Samsher Singh son of Shri Veerbhan Singh, aged about 36 years, resident of 15 LC, Loko Colony, Gangapur City, District Sawaimadhopur.
4. I.D. Dubey son of Shri R.B.Dubey, aged 33 years, resident of Shyam Sadan, Rangpur Road No. 3, Bheemganj Mandi, Kota.
5. Akbar Ali son of Shri Himayat Ali, aged about 45 years, resident of Makholi, District Sawaimadhopur.
6. Kajod Ram Yadav son of Shri Laxmi Narayan Yadav, age 34 years, resident HNO 192, C/o Shri Bajrang Motors, Sahakar Path, Bhojpur Basti, 22 Godam, Jaipur.
7. Diwan Singh Gurjar son of Shri Jawan Singh aged 34 years, resident of Quarter No. L/601 A, 40 Quarter, Railway Bagla Colony, Gangapur City, Sawaimadhopur.
8. Yogesh Gupta son of Shri Pooranchand Gupta, aged about 36 years, resident of C/o Shri Satwant Singh Aroda, Near Jhulelal Mandir, Sindhi Colony, Gangapur City, District Sawaimadhopur.
9. Babu Lal Sharma son of Shri Dhani Ram Sharma, aged 44 years, resident of Bangla No. 152 L, Railway Bangla Colony, Ganapur City, District Sawaimadhopur.
10. M.K. Sharma son of Shri J.P. Sharma aged about 42 years, resident of H.No. 289, Jawahar Nagar, Mahun Kala, Ganapur City, District Sawaimadhopur.

... Applicants

(By Advocate : Mr. Shobhit Tiwari proxy to Mr. R.P. Tiwari)

Versus

1. Union of India through Secretary, Ministry of Railway, Rail Bhawan, New Delhi.

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2. The General Manager, West Central Railway, Jabalpur.
3. The Senior Divisional Electrical Engineer- Traction Operation (Estt.), Western Central Railway, Kota Division, Kota.
4. The Divisional Railway Manager, Kota Division, (Western Central Railway), Kota.
5. Shri Jaswant Singh R, Goods Loco Pilot Headquarter Ganapur City, Kota Division, working under Chief Traction Crew Controller, Ganapur City, District Sawaimadhopur.
6. Shri Rajendra Kumar Meena, Assistant Loco Pilot, Headquarter Kota, Kota Division, working under Chief Traction Crew Controller, Kota.
7. Shri Kailash Chand Meena, Assistant Loco Pilot, Headquarter Kota, Kota Division, working under Chief Traction Crew Controller, Kota.
8. Shri Harkesh Kumar, Assistant Loco Pilot, Headquarter Gangapur City, Kota Division, working under Chief Traction Crew Controller, Ganapur City, District Sawaimadhopur.
9. Shri Nek Ram, Assistant Loco Pilot, Headquarter Kota, Kota Division, working under Chief Traction Crew Controller, Kota.
10. Mohan Lal Meena, Loco Pilot (Goods), Headquarter Ganapur City, Kota Division, working under Chief Traction Crew Controller, Ganapur City, District Sawaimadhopur.
11. Union of India through Secretary, Department of Personnel & Training, North Block, New Delhi.

... Respondents

(By Advocate : Mr. Anupam Agarwal)

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

"It is, therefore, prayed that the Hon'ble Tribunal may kindly pleased to all for the entire record of the case, examine the same and accept & allow this Original Application. The Hon'ble Tribunal further be pleased to :-

- (i) issue an appropriate order or direction wherby set aside the impugned office memo dated 10.08.2010 annexure A/1.
- (ii) issue an appropriate order or direction declare the list dated 16.12.2010 in part from serial NO. 106 to 132 and the same may not be made the basis for further promotions in the cadre of Loco Pilots.

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- (iii) issue an appropriate order or direction in case any orders of promotions are issued on the basis of the list dated 16.12.2010 henceforth or by the time the matter comes before the Tribunal or during the pendency of the application, to the prejudice of the petitioner send other members of the general category in the cadre the same may also be quashed and set aside as & when such orders are permitted to be placed on record by amendment or otherwise.
- (iv) Any other appropriate order or direction which is deemed just and proper by this Hon'ble Tribunal may also be passed in favour of the applicants.
- (v) The Original Application may kindly be allowed through out with costs."

2. Heard the rival submission of the parties and perused the relevant documents on record. It is not disputed between the parties that the OM No. 36012/45/2005-Estt. (Res.) dated 10.08.2010 of the DOPT has already been quashed & set aside by the Hon'ble Punjab & Haryana High Court in the case of **Lachhmi Narain Gupta & Others vs. Jarnail Singh & Others** [CWP No. 13218 of 2009 (O&M) decided on 15.07.2011] and, therefore, to this extent the prayer (i) has become infructuous. However, with regard to other prayers, learned counsel for the respondents argued that the action has been taken by the respondents based on RBE No. 126/2010 and not on the basis of the office Memorandum of OM dated 10.08.2010 (Annexure A/1). That the respondents have not adopted this office memorandum of the DOPT and the circular of the Railway RBE No. 126/2010 dated 14.09.2010 has not been challenged by the applicant. Therefore, the OA has no merit and needs to be dismissed.

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3. On the contrary, learned counsel for the applicant argued that the railways have adopted the DOPT OM No. 36012/45/2005-Estt.(Res.) dated 10.08.2010 while issuing the RBE No. 126/2010 dated 14.09.2010. Para No. 3 of the RBE 126/2010 is quoted below:-

"3. The instructions on the subject have since been reviewed by the Nodal Department i.e. DOP&T in the light of the CAT/Madras order in OA No. 900/2005 (S.Kalugasalatnoonby vs. UOI & Others), upheld by the Hon'ble High Court/Madras (WP No. 15926/2007). Based on the decision communicated by DOP&T in the matter, it is now clarified that SC/ST candidates appointed by promotion on their own merit and seniority and not owing to reservation or relaxation of 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. These orders shall take effect from 21.08.1997, the date of which post based reservation was introduced on Railways....."

4. Thus a comparison of OM No. 36012/45/2005-Estt. (Res.) of the DOPT dated 10.08.2010 and RBE No. 126/2010 dated 14.09.2010 clearly shows that this RBE is based on the facts given in the DOPTs OM dated 10.08.2010. Therefore, it can be easily concluded that the Railways have adopted the OM of the DOPT while issuing the RBE No. 126/2010. Since it is not disputed that the OM No. 36012/45/2005-Estt.(Res.) dated 10.08.2010 of the DOPT has been quashed by the Hon'ble High Court of Punjab & Haryana in the case of **Lachhmi Narain Gupta & Others vs. Jarnail Singh & Others** (supra), therefore, the instructions issued vide RBE No. 126/2010 can also not survive. Therefore, any action taken by the respondents in

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pursuance to the RBE No. 126/2010, particularly with reference to Para No. 3 of circular, will not remain relevant. Therefore, the respondents are directed not to give effect to RBE No. 126/2010 dated 14.09.2010 as the OM of the DOPT No. 36012/45/2005-Estt.(Res.) dated 10.08.2010 has already been quashed. With regard to relief nos. 2 & 3, the respondents are directed to take further action in the matter ignoring the RBE No. 126/2010 dated 14.09.2010. It was stated at Bar that the judgment of the Hon'ble Punjab & Haryana High Court in the case of **Lachhmi Narain Gupta & Others vs. Jarnail Singh & Others** (supra) has been challenged in the Hon'ble Supreme Court by way of SLP. Therefore, these directions of the Tribunal are subject to the final outcome of the SLP filed in the Hon'ble Supreme Court.

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

6. In view of the order passed in the OA, no order is required to be passed in MA No. 281/2011, which shall also stands disposed of accordingly.

Anil Kumar
(Anil Kumar)
Member (A)

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