

CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

O.A.NO.060/00415/2018

Orders pronounced on: 17.09.2019
(Orders reserved on: 22.08.2019)

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MR. A.K. BISHNOI, MEMBER (A)**

1. Mamta Saini, Aged 39 years D/O Sh. Baldev Saini, R/O House No. 56, Arya Nagar, Near D.A.V. School, Jagadhari Workshop, Northern Railway, Yamunanagar.
2. Rekha Sharma, Aged 39 years D/O Sh. Nootam Kumar, R/O House No. 755-A, Mahavir Colony, Yamunanagar.
3. Poonam Sharma, Aged 40 years D/O Sh. Nootam Kumar, R/O House No. 920/17 B IX, Preet Nagar, Near S.D. Public School, Railway Workshop Road, Yamunanagar.
4. Asha Rani, Aged 34 years D/O Sh. Baldev Saini R/O House No. 56, Arya Nagar, Near D.A.V. School, Jagadhari Workshop, Northern Railway, Yamunanagar.
5. Poonam, Aged 35 years D/O Sh. Beer Singh, R/O House No. 125, Jawahar Nagar, Jagadhri Workshop, Near Ram Mandir.

.....APPLICANTS

Versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. General Manger(P), Northern Railway, Head Quarters office, Baroda House, New Delhi.
3. The Chief Works Manager, Jagadhri Workshop, Northern Railway, Yamunanagar, Haryana.

..... RESPONDENTS

**Present: MR. R.K. SHARMA, ADVOCATE, FOR THE APPLICANTS.
MR. ROHIT SHARMA, ADVOCATE FOR THE RESPONDENTS.**

ORDER
(BY HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)):

For the reasons stated in M.A. No. 060/0557/2018, it is allowed and the applicants are permitted to file this Original Application (OA) jointly.

2. The applicants have invoked the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, seeking quashing of order dated 18.10.2017 (Annexure A-1), whereby their claim for their adjustment on Group 'D' posts has been rejected and to issue direction to the respondents to issue them offer of appointment as substitute Group 'D' on the same basis as has been granted to similarly situated persons who were party in O.A. No. 856/HR/2012, w.e.f. 24.4.2016, with all the consequential benefits.

3. The facts of the case are largely not in dispute. All the applicants possess the qualification of Diploma in Engineering and have undergone Practical Training as Apprentices Mechanical Engineering (under the Apprenticeship Act, 1961) from Jagadhari Workshop of Northern Railway. Some other persons, namely Manoj Kumar and others had undergone training during the year 2005-2006/2006-2007. As per letter dated 21.06.2004 (RBE No. 136/2004) Course Completed Act Apprentices can be engaged as substitutes in Group 'D' under GM's powers in administrative exigencies subject to fulfillment of prescribed requirements. As per letter dated 02.12.2010 (RBE No. 171/2010) Diploma/ Degree Holders trained under the Apprenticeship Act, 1961 (as amended from time to time) in Railway establishment can also be considered (similar to ITI etc. Trained Act Apprentices engaged as substitutes) for engagement as substitutes in Group 'D' posts within the General Manager's powers in administrative exigencies, subject to their fulfillment of prescribed norms mentioned therein.

4. The applicants plead that they submitted a joint representation dated 22.03.2011, for appointment as Group 'D' substitute at Jagadhari workshop which was forwarded vide letter dated 08.04.2011. It was mentioned that as there were large number of vacancies to the tune of around 700, hence the engagement of applicants will help the Administration. Finding no response, they approached this Tribunal by O.A. No.301/HR/2012 which was disposed of on 29.03.2012 with the directions to the respondents to consider the case of the applicants, as per instructions on the subject. Respondent no.2 had asked the respondent No.3 vide letter dated 30.03.2012 to send the list of such Diploma Holder apprentices who were trained in Jagadhari Workshop after scrutinizing their applications by taking cut-off date as 01.01.2012. A list of 18 candidates (including applicants) who were trained in Jagadhari Workshop under Apprentice Act, 1961 was sent vide letter 28.04.2012.

5. The respondents issued call letters to the applicants for Screening Test which was to be held on 07.08.2012, as deferred to 17.08.2012. Under RTI Act, they came to know that 17 candidates were screened by the Screening committee on 17.08.2012 and out of the 17 candidates, all the applicants were found eligible and their names appear at Sr. No.16, 17, 13, 18 and 15. However, 10 incumbents namely Manoj Kumar & Others whose names appear at Sr. No.7, 3, 5, 6, 8, 12, 10, 9, 11 and 2 were found ineligible, as per letter dated 20.11.2017 (Annexure A-15). These ineligible candidates filed O.A. No. 856/HR/2012 titled Manoj Kumar and others Vs. UOI etc. In which interim relief was granted on 13.08.2012, restraining the respondents from filling up of adequate number of posts for the applicant herein, in abeyance. Finally, the O.A. was decided on 30.04.2013, directing respondent No.5 (therein) to issue certificate of proficiency on the basis of

the certification issued by respondent no.4 (therein) in favour of the applicants. It was further directed to consider them for being engaged as substitute Khalasi in Group 'D' posts. It was upheld in judicial review in CWP No. 14285 of 2013 vide order dated 18.03.2014. The SLP No. 12440/2014 was also rejected vide order dated 09.05.2014, observing that it may not be treated as a precedent.

6. The applicants were kept on waiting for implementation of the outcome of the Screening Test held on 17.08.2012 on the plea that Manoj Kumar etc. had not been issued certificate of proficiency from Board of Apprentice Training Northern Region, Kanpur. Finding no response, they filed O.A. No. 1371/HR/2013 seeking directions to the respondents to issue appointment letters to the applicants and appoint them on the Group 'D' posts, which was dismissed by this Tribunal vide order dated 23.09.2014 as infructuous on the ground that the respondents had rejected the case of the applicants vide order dated 30.07.2014, on the ground that there were no vacancies and no administrative exigencies exist to consider them for engagement as substitutes. They filed O.A. No. 060/01170/2014, which was dismissed vide order dated 26.08.2015. This order was challenged before the Punjab and Haryana High Court by filing CWP No. 14118/2016. Meanwhile, respondents issued order dated 24th April, 2016 offering appointment to all the 10 applicants in O.A. No. 856/HR/2012 (Manoj etc.), ignoring the applicants. Due to changed circumstances, Writ Petition filed by applicants was disposed of with liberty to the applicants herein, to submit their representation and to treat them at par with already adjusted candidates. The applicants submitted detailed representation dated 01.06.2017. Ultimately, same was rejected vide order dated 18.10.2017. Hence the O.A.

7. The respondents have filed a written statement opposing the claim of the applicants. They submit that adjustment of Act Apprentices, does not fall within the jurisdiction of this Hon'ble Tribunal. They have also mentioned about instructions dated 21.6.2004 and clarification dated 2.12.2010. They have also given sequence of events of litigation and state that claim of applicants has been rejected as at present there is no policy for absorbing the candidates directly, who completed Act Apprentice, and recruitment to all Group D posts has to be done through Railway Recruitment Board and Railway Recruitment Cell was created in Northern Railway, which caters to such needs. As per para 22 of Apprentice Act, 1961, it shall not be obligatory on the part of employer to offer any employment to such apprentices. Since applicants were not a party in the O.A. filed by Manoj Kumar etc. (supra), hence benefit cannot be granted to them at this stage. Their case was considered on the basis of judicial verdict and not otherwise. In view of latest instructions in RBE Circular no. 34/2017 dated 12.4.2017, the earlier instructions have lost their relevance and claim of applicants merits rejection.

8. The learned counsel for the applicants argued that stand taken by respondents is not tenable in view of directions issued by Hon'ble High Court to examine their claim at par with applicants in O.A. No. 856/HR/2012. He argued that similar objections, as raised in this case, were also taken but was not accepted by Court and applicants are governed by same set of Rules, instructions as were applicable to them as their screening was initiated on 17.08.2012 and under the old dispensation they were eligible and entitled to be considered and had there been no delay due to litigation, applicants would have been offered appointment in 2012 itself but due to litigation initiated by ineligible persons, applicants have been denied

opportunity of appointment which is harsh and arbitrary. In the screening test held on 17.08.2012, applicants were found eligible and the other 10 persons were ineligible. So, ineligible have been given appointment whereas eligibles are out of job, which is discriminatory. He argued that new instructions or the new Rules cannot be applied to the case of the applicants as they are governed by the rules whereby the appointment process was initiated by holding screening on 17.08.2012 and the new instructions cannot be applied to them. He argued that reliance placed by respondents in the case of **HARYANA POWER GENERATION CORPORATION LTD. AND OTHERS VERSUS HARKESH CHAND AND OTHERS** (AIR 2013 SC 403), is misconceived, as similarly situated persons have already been offered appointment, then applicants cannot be left in lurch. Qua SLP in which it was noticed that it may not be treated as precedent, he argued that such observation will not be applicable in the case of applicants as their case was already pending and they were similarly situated. On the other hand learned counsel for respondents reiterated what has been mentioned in the written statement.

9. We have considered the submissions made by both sides minutely and have gone through the record with their able assistance.

10. It is not in dispute that applicants and likes of them (Manoj and Others) were screened on 17.8.2012, in which applicants were found eligible, whereas applicants in indicated O.A. were found ineligible. They filed an O.A. 856-HR-2012 which was allowed on 30.4.2013 with direction to issue certificate of proficiency and then consider them for engagement as Substitute Khalasis in Group D posts. After issue was decided and finalized at apex dispensation of the country, they were allowed appointment. The applicants too had raised their claim by separate proceedings, by pleading that they were found eligible and their claim was on better footing than

Manoj & Others. This Tribunal rejected their claim which order was challenged in Hon'ble High Court and during pendency of CWP, Manoj and Others were offered appointment giving fresh cause of action to the applicants herein, so the CWP was dismissed as withdrawn with liberty to them to submit a representation to the authorities. Now the representation filed by applicants was rejected, which is under challenge in the instant O.A.

11. The objection raised by respondents that the claim of applicants cannot be allowed as they were not a party to the litigation, initiated by Manoj & Others (supra) deserves to be rejected outrightly, as it is settled law that, as per judicial pronouncements in a number of decisions including in **UNION OF INDIA & ANOTHER ETC. VS. LALITA S. RAO & OTHERS**, AIR 2001 SC 1792, **E.S.P. RAJARAM & OTHERS VS. UOI ETC.** AIR 2001 SC 581 and Division Bench of our own jurisdictional High Court in **SATYAPAL SINGH & OTHERS VS. THE STATE OF HARYANA & ANOTHER**, 1999 (2) RSJ, 377 and **SATBIR SINGH VS. STATE OF HARYANA**, 2002 (2) SCT 354 etc. that similarly situated employees should be extended the benefit of a decision, without forcing each one of them to approach a court of law as such an act would be harsh and arbitrary.

12. The other objection raised by learned counsel for the respondents and as pleaded in the written statement that since the rules have changed, so their claim cannot be considered is also without any merit. Undisputedly, the applicants herein along-with others had raised their well in time by filing O.A. No.301-HR-2012 which was decided on 29.3.2012, with direction to the respondents to consider the claim of applicants therein as per instructions. The applicants then filed O.A. No. 1371-HR-2013, which was dismissed as infructuous as their claim had been rejected on 30.7.2014. In view of liberty granted, they filed O.A. No. 060/1170/2015 which was dismissed on 26.8.2015 and CWP No.14118/2016 filed against such

rejection was also disposed of on 18.5.2017 in view of changed circumstances, with liberty to applicants to file a representation and on rejection of same, they have filed this O.A. So, the position as exists in 2012-2013 has to be seen when litigation had been initiated and not in 2016-2017 when their claim was rejected. The changed rules or regulations cannot be applied to their case of the applicants as it would be illegal per se.

13. One thing is very clear that the issue raised in this case has been clinched by this Tribunal in the case of Manoj Kumar & Others (supra), which has attained finality upto Apex dispensation and the respondents cannot be allowed to reject their claim on hyper-technical grounds. The case of applicants is not only similar but on better footing than Manoj Kumar & Others (supra), as such denial of appointment to them would be violative of articles 14 and 16 of the Constitution of India, in view of the law laid down by Hon'ble Apex Court in case of **MAN SINGH VS. STATE OF HARYANA AND OTHERS** AIR 2008 SC 2481 and **RAJENDRA YADAV VS. STATE OF M.P. AND OTHERS** 2013 (2) AISLJ, 120 wherein, it was ruled that the concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equal is to be treated equally even in the matter of executive or administrative action. As a matter of fact, the Doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. It was also held that the administrative action should be just on the test of 'fair play' and reasonableness.

14. In the wake of aforesaid discussion, this O.A is allowed. The impugned order, Annexure A-1 is quashed and set aside. The respondents are directed to issue appointment orders in favour of the applicants, at par with Manoj Kumar & Others (supra) from the date it was granted to latter, with notional benefit of pay and allowances and seniority. However, the actual benefit would be available to them from the date they are allowed to join their duties. The needful be done within a period of two months from the date of receipt of a certified copy of this order. No costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(A.K. BISHNOI)
MEMBER (A)

PLACE: CHANDIGARH
DATED: 17.09.2019

HC*

