

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 420/2003
MA 446/2003

New Delhi, this the 22nd day of August, 2003

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)

1. Bhumal, S/o Sh. R.I.Singh
35,11, Trilok Puri, New Delhi.
2. Nankoo Lal, S/o Sh. K.P.Singh
A-68, Ganga Vihar, Gokal Puri
Delhi.
3. Gian Singh, S/o Sh. Ram Sajeewan Singh
B-226, Rajbir Colony, Gharoli Extension,
Delhi.
4. Virender Singh, S/o Sh. Ram Sakhal Singh
F-2 Block, Gang Vihar, Delhi - 94.
5. Davinder Singh, S/o Sh. Shiv Lal Singh
C-2/172, Yamuna Vihar, Delhi.
6. Som Pal, S/o Sh. Mawasi
A-8, Ganga Vihar, Gokal Puri, Delhi -94.

...Applicants

(By Advocate Sh. Yogesh Sharma)

V E R S U S

Union of India through

1. The General Manager
Northern Railway, Baroda House
New Delhi.
2. The Divisional Railway Manager
Northern Railway, Delhi Division
Near New Delhi Railway Station
New Delhi.
3. The Divisional Personnel Officer
Northern Railway, DRM Office
Near New Delhi Railway Station
New Delhi.

...Respondents

(By Advocate Sh. R.L.Dhawan)

O R D E R (ORAL)

By Hon'ble Smt. Lakshmi Swaminathan,

MA 446/2003 has been filed on behalf of the six applicants who have sought permission to file a joint application. This MA is not opposed. Accordingly MA 446/2003 is allowed.

2. Applicants have stated that two similarly situated persons like them have filed OA 532/98 for seeking relief for re-engagement in preference of juniors and freshers after including their names in the Live Casual Labour Register (LCLR). That OA was allowed by judgement dated 20-7-99, copy placed on record. In that order the Tribunal directed the respondents to place the applicants in the LCLR according to their seniority and thereafter their chances of re-engagement had to be considered in accordance with their seniority. The applicants have prayed that a direction may be given to the respondents to re-engage them at any post at an early date with all consequential benefits. They have also prayed that a declaration may be given to the effect that the action of the respondents in not engaging them in preference to juniors as per their seniority position in the LCLR is illegal, arbitrary and in violation of Articles 14 & 16 of the Constitution of India. Therefore, they have submitted that they are entitled to be re-engaged with immediate effect with all consequential benefits. In the rejoinder filed by the applicants, they have alleged that the respondents have adopted a pick-and-choose policy while engaging persons from LCLR and also engaging fresh persons from the open market, which is, therefore, illegal and arbitrary. They have also submitted that they have sent representation dated 12-11-2002 and according to them, the statement of the respondents that they have not received the representation is totally false. Applicant states that their names are appearing in the LCLR at Sl.No. 527A, 527B, 532A, 545A, 549A and 679A

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- and the respondents have engaged the persons from the Register upto serial No. 690 and above and also fresh persons from the open market. They have also denied the averments of the respondents in their reply.

3. In the reply filed by the respondents, they have submitted that the applicants have to wait for their turn as per their position in the LCLR. They have further submitted that no junior persons in the LCLR had been re-engaged by the Railway Administration on their own except where there is a specific direction from the Court and they have not adopted any pick-and-choose policy as alleged by the applicants. Seniors are also waiting from the LCLR for appointment. They have submitted that a fresh face, i.e., Sh. Mool Chand brother of Ex. Army Personnel was engaged as substitute Khallasi as a result of an accident taking place on 7-2-1995 at Bikaner Division, on the orders of the Hon'ble Minister for Railways. Sh. R.L.Dhawan, learned counsel has submitted that this is the reason why a fresh face was appointed as Substitute Khallasi. Otherwise, he has submitted that no-one junior to the applicants, except those who have got the specific directions from the Court have been engaged. He has relied on order of this Tribunal dated 6-5-2003 in OA 1100/2003, copy placed on record.

4. Sh. Yogesh Sharma, learned counsel has submitted that, if as the respondents have submitted, persons junior to the applicants from the LCLR have been re-engaged as per the directions of the Court/Tribunal, there is no reason why persons like

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the applicants whose names appear above their names should not also have been considered for re-engagement.

5. I find that the respondents have not given any specific reply to the averments of the applicants that persons up to Sl. No.690 in the LCLR have been re-engaged, noting also the fact that applicants state that their names appear between Sl. Nos.527A and 679A. It was incumbent on the respondents to have produced the relevant judgements of the Court they are relying upon to show in what circumstances juniors to the applicants have been re-engaged from LCLR nor have they produced a copy of the LCLR to substantiate their averments. With regard to the engagement of the brother of a deceased ex-army personnel who died in a railway accident, as per the orders of the Railway Minister, that fresh entrant may be excused as a special case. However, the averments made by the respondents are not fully substantiated by the official records which they ought to have produced to rebut the averments of the applicants, namely, that juniors to them in the LCLR have been re-engaged ignoring their prior claims. It is, however, not disputed that the applicants should be re-engaged in their turn, that is by seniority and on/ ^{the} availability of work but the respondents cannot resort to any pick and choose policy. In the circumstances of the case, the judgement relied upon by the respondents' counsel will not assist them because other than explaining the case of one fresh entrant referred to above, no

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documents/judgments have been produced by them to show that juniors to the applicants have not been re-engaged by executive orders.

6. In the above facts and circumstances of the case, OA is disposed of with the following directions :-

(i) Respondents No.2 & 3 shall make available the copy of the relevant LCLR in which the names of the applicants appear to Sh. Yogesh Sharma, learned counsel for the applicants at the earliest on any working day at a mutually convenient time. Learned counsel shall be permitted to take copies of the relevant portions of the register. In particular, respondents are also directed to verify their records/LCLR particularly from Sl. Nos. 527A to 690 in the LCLR to ensure that the re-engagements of the employees has been done in accordance with law, rules and instructions;

(ii) In case any person junior to the applicants in the LCLR has been re-engaged by orders of the respondents, the respondents shall take immediate action to re-engage the applicants ^{the} notionally from that date when/juniors were engaged but without any claim for back wages. This shall not apply to those who have been re-engaged in pursuance of Court's orders.

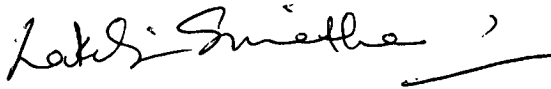
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Copies of the relevant orders of the Court should also be made available to the learned counsel for the applicants ;

- (iii) Any necessary action in terms of the above, shall be taken by the respondents within six weeks from the date of inspection of the records as stated earlier.

No order as to costs



(Smt. Lakshmi Swaminathan)
Vice-Chairman (J)

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