

(2018) 09 DEL CK 0301

In the Delhi High Court

Case No : Civil Writ Petition No.10003 Of 2018 & C.M. Nos.38953-54 Of 2018

Munna Lal And Ors

APPELLANT

Vs

Union Of India And Anr

RESPONDENT

Date of Decision : 24-09-2018

Acts Referred:

Citation : (2018) 09 DEL CK 0301

Hon'ble Judges : Hima Kohli, J;Rekha Palli, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The petitioners are aggrieved by the order dated 02.08.2016 passed by the Central Administrative Tribunal dismissing OA No.3691/2012 filed by them as also by the order dated 16.05.2017 passed by the Tribunal dismissing Review Application No.197/2016 filed by them for seeking review of the order dated 02.08.2016.

2. This is the third round of litigation that the petitioners have initiated on the same cause of action. In the year, 2008, the petitioners and some other similarly placed employees of the respondents had filed OA No.700/1998 before the Central Administrative Tribunal, Allahabad Bench for challenging the seniority list prepared by the respondents and issued on 19.01.1998, in respect of the post of Assistant Loco Pilot. Vide order dated 17.07.2008, the said petition was disposed of with directions issued to the respondents to consider the grievance of the petitioners as raised in the Original Application and pass a reasoned order and thereafter to prepare a fresh seniority list in terms of the settled law. Pursuant to the aforesaid order, the respondents passed a one line order dated 01.12.2008, simply stating inter alia that the

seniority list prepared by them was just and proper.

3. Aggrieved by the said non-speaking order, the petitioners approached the Central Administrative Tribunal, Principal Bench, New Delhi by filing OA

No.2914/2009, whereunder, order dated 01.12.2008 passed by the respondents was quashed and the matter was remanded back to the competent

authority to consider the representation of the petitioners and pass a detailed speaking order in the case of each applicant, showing each of them in the

revised seniority list as per the extant law.

4. In compliance of the aforesaid order, the respondents passed an order dated 25.07.2011, wherein the competent authority once again observed that

the petitioners had been assigned their correct seniority position and there was no reason to interfere with the said seniority list. Aggrieved by the said

decision, the petitioners filed OA No.3691/2012 before the Tribunal praying inter alia for quashing the seniority list prepared by the respondents and

for issuing directions to the respondents to place them above all those who had been appointed before 21.02.1990 with all the consequential benefits of

promotion from the date their juniors have been promoted. Â

5. By the impugned order dated 02.08.2016, the Tribunal rejected the OA filed by the petitioners by relying on the order dated 8.07.1995 issued by the

Office of the Divisional Railway Manager, Northern Railway, Allahabad on the subject of Assistant Loco Pilot (Diesel) grade 950-1500, which

enumerated the names of those Assistant Drivers who were till the date of issuing of the said order, working on ad hoc basis and were being

regularised upon being found suitable for promotion and on basis an interview held on 17.05.1995.

The names of the petitioners had featured in the said order. Â

6. On the plea taken by learned counsel for the petitioners that the respondents having not referred to the order dated 28.07.1995 when OA

No.700/1998 was filed by the petitioners before the Allahabad Bench of the Tribunal or in response to the subsequent OA No.2914/2009 filed by the

petitioners, the Tribunal had observed that the respondents had only to demonstrate the basis on which the claim of the petitioners that they are not ad

hoc or had been regularised only in 1995 was liable to be refuted and thereby disentitling them from getting the benefit of the order dated 02.08.2002,

passed by the Tribunal in OA No.853/1998, entitled Ram Babu & Ors. vs. Union

of India. Â

7. Once the Tribunal was apprised of the order dated 28.07.1995, the claim of the petitioners was turned down and it was held that they were ad hoc

Assistant Drivers till 28.07.1995 and therefore, had been correctly assigned their seniority in the seniority lists dated 16.04.2009, in which list the

seniority position of the petitioners was the same as was assigned to them in the list dated 19.01.1998.

8. Ms.Maine, learned counsel for the petitioners states that the order dated 28.07.1995, which was the basis for dismissing their O.A., did not see the

light of the day in two sets of proceedings filed by the petitioners before the Tribunal and therefore, the said document ought to be disregarded. She

further states that though the respondents had referred to the aforesaid order dated 28.07.1995 in their counter affidavit, they did not file a copy of the

same with the counter affidavit.

9. A perusal of the record reveals that after filing the counter affidavit, the respondents had subsequently filed an additional affidavit dated 15.03.2016

before the Tribunal wherein, it was specifically stated as follows:-

â??5. It is submitted that after passing the conversion course the applications were allowed to work as Elect. Asstt. Driver on adhoc basis letter in

the year 1991, he was asked to appear in selection of Elect. Asstt. Driver in Gr. Rs.950-1500/- because he was promoted as f/Man Ã?on adhoc

basis in Gr. Rs.950-1500/- but he refused and further he was called in the year 1994 to appear in the selection but he did not appear. After getting the

one time relaxation from HQ-office the applicant appeared in the selection of Elect. Asstt. Driver on 08.05.1995 and supplementary exam on

17.05.1995. Attendance of the applicant in enclosed) and his service has been regularized as Asstt. Elect. Driver and panel issued vide their office

letter No.727-E/EM-I/Asstt./DLS/95 DT. 28.07.1995. Copy of the Panel is enclosed herewith and marked as Annexure A/2.â??

10. The petitioners were granted an opportunity to file a reply affidavit in response to the additional affidavit filed by the respondents and surprisingly,

in the corresponding para of the reply to para 5 of the affidavit, they did deal with the said order at all. Instead, in their reply to para 5 of the additional

affidavit, the petitioners stated as follows:-

â??5. That the applicants repeatedly trying to mislead this Honâ??ble Tribunal

depriving the applicants of their right of seniority as well as promotions when their juniors have been promoted.â?? Â

11. In view of the above, it is not as if the respondents had pulled out the order dated 28.07.1995 like a rabbit out of a hat and the petitioners had no opportunity to make their submissions qua the said order. Instead, the record reveals that they were given an opportunity not only while filing a reply to the respondentâ??s additional affidavit but also while filing a rejoinder to the counter affidavit filed by the respondents. In the counter affidavit, the respondents had specifically stated in para 3 of the preliminary objections that the petitioners had appeared in the selection of Electric Assistant Driver on 08.05.1995 and participated in supplementary examination on 17.05.1995 and they had been empanelled in the panel only on 28.07.1995 and were regularized later on, as Electric Assistant (Driver).Â Even in the rejoinder filed by the petitioners, their response to the averment made by the respondents in para 3 of the preliminary objections was simply to the effect that they were working as Assistant Electric Drivers from the date they had completed training vide order dated 15.02.1990. Quite clearly, the petitioners had elected to skirt over the order dated 28.07.1995, that found specific mention in the preliminary objections taken by the respondents in their counter affidavit. Thus, the plea taken by learned counsel for the petitioners that no opportunity was afforded to the petitioners to respond to the aforesaid document is untenable and cannot be accepted. Filing of two petitions before the Tribunal earlier, would not come to the rescue of the petitioners as both the said petitions were not decided on merits. They were simply disposed of, with directions to the respondents to consider the grievance raised by the petitioners and pass a speaking order.

12. In view of the aforesaid facts and circumstances and in view of the order dated 28.07.1995, which clearly states that till the date of passing of the said order, the petitioners were working on an ad hoc basis, we do not find any error or infirmity in the impugned order to the effect that they have been correctly assigned their seniority in the seniority list dated 16.04.2009. As a result, the present petition fails and is dismissed in limine along with the pending applications.