

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 1868 of 2002
New Delhi, this the 28th day of July, 2003

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)
HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (A)

(19)

1. Rishal Singh S/o Shri Ram Kumar
2. Dayanand S/o Shri Rati Ram
3. Raj Pal Singh S/o Shri Pyare Lal
4. Padam Singh S/o Shri Ram Kishan
5. Devender Singh S/o Shri Shish Ram
6. Braham Dutt Singh S/o Sh. Khem Chand
7. Maru Ram S/o Shri Prahlad Singh
8. Bhagwan Dass S/o Shri Shimbuream
9. Ram Niwas S/o Shri Mam Raj
10. Amir Chand S/o Shri Gopal Dass ..Applicants

All are working as Helper Khalasi under
Carriage and Wagon Department under
respondent No. 3.

(By Advocate: Shri Yogesh Sharma)

Versus

1. Union of India through the
General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Personnel Officer,
DRM Office, Northern Railway,
Bikaner Division,
Bikaner.
3. The Divisional Engineer,
Northern Railway (MG)
Delhi Junction. Respondents

(By Advocate: Shri R.L. Dhawan)

O R D E R

By Hon'ble Mr. Kuldip Singh, Member (Judl.)

The applicants who are 10 in number have filed the present OA against an order dated 13.3.2002 by which the claim of the applicants for filling up their 75% promotion quota for the post of Skilled Artisans had been rejected which is stated to be illegal, arbitrary, discriminatory and violates Articles 14 and 16 of the Constitution of the India.

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2. Facts in brief are that the applicants are working as helper Khalasi in the grade of Rs.2650-4000 in the Northern Railway. They further submit that as per para 159 of the IREM Volume-I the next promotion for the applicants is in the category of Skilled Artisans Grade-III in the scale of Rs.950-1500/2050-4590.

3. They further submit that as per para 159 of the IREM there are three modes for filling up the vacancies which are prescribed as below:-

" 159 (I) the vacancies in the category of skilled Artisans Grade-III in scale of Rs.950-1500 in various Engineering Departments will be filled as under:-

(i) 25% by selection from course completed 'Act Apprentices' ITI passed candidates and Matriculates from the open market, serving employees who are course completed Act Apprentices or ITI qualified could be considered against this quota allowing age relaxation as applicable to serving employees.

(ii) 25% from serving semi-skilled and unskilled staff with education qualification as laid down in Apprentices; and

(iii) 50% by promotion of staff in the lower grade as per prescribed procedure".

4. The applicants further submit that reading of the above para would show that the 75% belonging to promotion quota and 25% can be filled up by direct recruitment.

5. It is further submitted that since 1988 the respondents have not filled up promotional quota as per para 159 of the IREM and they are continuously filling up 25% direct quota from the open market including.

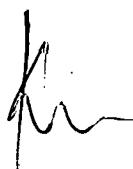


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6. It is also alleged that as per the Government instructions only 5% posts of direct recruitment should be filled by appointment on compassionate grounds and whereas the respondents have appointed more than 25 persons on appointment on compassionate grounds.

7. The above issue was also raised in Agenda Items of 1st information meeting of 2001 of SC/ST Association Bikaner Division but no action has been taken. The applicants had earlier filed an OA 3154/2001 before the Hon'ble CAT New Delhi for seeking the relief of filling up their 75% promotion quota and the OA was decided with a direction to the respondents to dispose of the representation of the applicants, as the same was pending, within a period of 2 months from the date of receipt of a copy of this order but the respondents again rejected the demand of the applicants and one of the reason assigned for not filling up the vacancy under the promotion quota of 75% was that due to surplus staff in Division who are being adjusted so promotions are not being made. The applicants have also pleaded that per the judgment of the Delhi High Court in the case of Vijay Pal Singh and Others Vs. Delhi Administration and Others reported in 1983 (4) DRJ 337 (Delhi) surplus staff cannot be appointed/adjusted against the vacancies meant for promotion. Thus the applicants submit that the order passed by the respondents is violative of Articles 14 and 16 of the Constitution of India.

8. The respondents are contesting the OA. The respondents in their reply pleaded that in terms of the Recruitment Rules as per para 159 of the Indian Railway



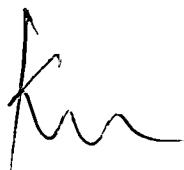
Establishment Manual Volume-I, the applicants have not become eligible for consideration for promotion as Artisan Grade-III against 50% promotee quota. Respondents also pleaded that as per the vacancies available under para 159 (1) sub-para (ii), the same are not to be treated as promotion granted as in the scheme itself it has been held to be a direct quota as per the judgment of this Tribunal in OA 356/2000 so the applicants cannot claim any right of posting under 50% quota.

9. Besides that it is also pleaded that respondents have to accommodate surplus staff against the said 25% quota so the representation of the applicants have been rightly rejected.

10. The respondents have also pleaded that because of the dispute with regard to reservation policy from Bikaner Division the promotions are not being made as the matter is pending before the Hon'ble Supreme Court.

11. We have heard the learned counsel for the parties and gone through the records.

12. The perusal of para 159 would go to show that there is no dispute with regard to para 159 (1) sub para (i) and (iii) because sub-para (i) deals with direct recruits and sub-para (iii) deals with the vacancies to be filled by promotion.



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13. It is not disputed that after 1998 no steps have been taken by the department to fill vacancies under promotion quota.

14. As regards the contention of the department that since there are disputes regarding reservation policy which is pending before Hon'ble Supreme Court so no promotions are being made. We find that this plea of the respondents have no merits because first of all there are no stay order issued by the Hon'ble Supreme Court. Assuming for the sake of the argument if any petition is pending before the Hon'ble Supreme Court then promotions can be made with a rider that any promotions made will be subject to the outcome of petition before the Hon'ble Supreme Court.

15. The next contention of the respondents is that since there is a surplus staff so promotions are not being made against 25% quota for employees who hold the qualification of Apprentices Fitter. But as regards this the applicants have referred to a judgment of the Delhi High Court and submitted that the surplus staff could not be appointed to the prejudice of the petitioners in the case of Vijay Pal Singh and Others Vs. Delhi Administration and Others in CW No.138 of 1973. As regards this position is concerned we find that the judgment has been quoted out of context where petitioners were appointed directly to the post of PGT on ad hoc basis and they had been working for some time but their services have been terminated which they had challenged before the Hon'ble High Court and it was in those proceedings it was pointed out that the if the department



wants to adjust surplus teachers they can adjust against direct recruitment but the court held that this cannot be done to the prejudice of the petitioners. No law as such has been laid down that against the promotional vacancies surplus teachers can be adjusted nor any law has been shown by any of the parties if there is any bar to appoint surplus staff against the vacancies meant for 25% quota as prescribed in para 159 (1) of sub-rule (ii).

16. However, the counsel for the applicants referred to the latest instructions issued by the Railway Board as per RBE 23/98 which prescribes procedure for filling up the post of Skilled Artisan against 25% quota. The said instructions have been issued on 2.2.1998. Since these instructions have been issued by the Railway Board which assume the position of the law and the respondents are bound to follow the same. These instructions are reproduced hereinbelow:-

"2. The question of laying down a uniform procedure for filling up the vacancies against the quota referred to at 1 (ii) above has been under the consideration of the Ministry of Railways. It has not been decided that henceforth the following procedure may be followed for filling up the vacancies in the category of Technician (Trade) grade Rs.950-1500 (RPS)/3050-4590 (RSRP) against the quota referred to and commonly known as qualified staff quota:-

(i) Khalasis/Khalasi Helpers possessing the qualifications prescribed in the Apprentices Act, with a minimum of three years regular service will be eligible to appear in the selection. However, Scheduled Caste and Schedule Tribes candidates possessing the requisite qualifications will be eligible for being considered against the vacancies reserved for them as per the extant instructions, if they have completed a minimum of one year's regular service.

(ii) All the eligible volunteering employees may be subjected to a written test followed by a viva-voce. Distribution of marks between written test and viva-voce may be 85 and 15 respectively. Those

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securing 60% marks in the written test may be eligible to be called for viva-voce. Those securing 60% and above in the aggregate will qualify for being included in the panel.

(iii) The panel may be drawn up on the basis of seniority from amongst those who qualify the total number to be empanelled not exceeding the number of vacancies assessed to be filled against the prescribed quota. There will be no classification of outstanding.

(iv) The empanelled staff possessing the qualification of ITI/Course Completed Act Apprenticeship in the relevant trade in the Railway Establishment may be subjected to a trade test and those passing the same may be promoted as Technician (Trade) grade Rs.950-1500/3040-4590 (RSRP).

(v) Such of the empanelled staff as do not possess the qualification of ITI/Course Completed Act Apprenticeship in the relevant trade in the Railway Establishment may be imparted suitable training.

(vi) On completion of the prescribed training the staff may be subjected to a trade test and such of them as pass the trade test may be promoted as Technician (Trade) grade Rs.950-1500/3050-4590 (RSRP).

(vii) Seniority of staff on promotion in the Skilled Grade will be regulated in terms of Para 302 of IREM, i.e., with reference to the date of promotion (after passing the trade test) maintaining their inter-se-seniority in the respective groups as at (iv) and (v) above. This also disposes of DLW's letter No.27/236/66E/pt. X dated 6.1.1996".

17. So the department has to fill up vacancies against 25% quota as per para 159 in accordance with the instructions. There is no dispute about the 50% quota meant for promotion as per mode of appointment prescribed in para 159 sub-para (iii) so the 50% quota meant for promotion is to be filled up from amongst their employees of the feeder cadre and no direct recruitment can be made against the vacancies meant for promotion of staff from the lower grade.

18. Similarly the 25% vacancies are to be filled up from the serving Khalasi and Khalasi Helpers (formerly known as Skilled and Semi-skilled) respectively with

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educational qualification as laid down in the Apprentices Act. The use of the word 25% from serving Khalasi shows that no direct appointment can be made against this quota. Hence, the appointment on compassionate grounds can also not be made under para 159 sub-para(ii) since that is meant only for serving Khalasis. So surplus staff cannot be adjusted against them and recruitment has to be made in accordance with the latest instructions of the Railway Board No. RBE 23/98.

19. In view of the above the OA has to be allowed and the impugned order has to be quashed. Accordingly, the OA is allowed and the impugned order is quashed and respondents are directed as under:-

(1) In order to fill up the vacancies under para 159 sub-para (ii) respondents shall abide by the instructions under RBE 22/98 and no compassionate appointment or surplus staff can be appointed against these vacancies.

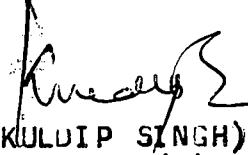
(2) Since as per para 159 sub-para (iii) the appointment under this can be made by promotion so the department cannot appoint anyone else on compassionate basis or by adjusting any of the surplus staff.

(3) If any vacancy is available under quota of 159 (ii) and (iii) the same be filled accordingly at the earliest as per rules, instructions and judicial pronouncements on the subject.

No costs.

(GOVINDAN S. TAMPI)
MEMBER (A)

Rakesh


(KULDIP SINGH)
MEMBER (J)