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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.3146/2001

This the 9th day of May, 2002.

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

1. Hind Kumar S/O Har Bhagwan Singh.

2. Dharam Pal S/O Ram Saran Dass.

(Both are working as Diesel Asstt.
at Northern Railway, Station,
Firozepur.)

... Applicants

(By Shri Yogesh Sharma, Advocate)

-versus-

1. Union of India through
General Manager, Northern Railway,
Baroda House, New Delhi.

2. General Manager (P),
Northern Railway, Baroda House,
New Delhi.

3. Divisional Railway Manager,
Northern Railway Ferozepur.

4. Shri Harish Kumar,
working as Diesel Assistant,
Northern Railway Station,
Firozepur.)

... Respondents

(By Shri R.L.Dhawan, Advocate)

O R D E R (ORAL)

Hon'ble Shri V.K.Majotra, Member (A) :

Applicants have challenged Annexure A-1 dated 8.11.2001 whereby name of respondent No.4 has been interpolated in the panel for post of Goods Driver grade Rs.5000-8000 at Sl. No.90A, i.e., below Shri Julfi Ram/SS and above Shri Krishan Kumar/DL. They have also challenged the action of respondent No.1 in relaxing the condition of eligibility for the post of Goods Driver in respect of respondent No.4 against rules. Applicants

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have sought quashing of "the action of respondents relating to the aforestated relaxation of qualification of experience in the case of respondent No.4 and have further sought direction to respondents to include names of remaining four persons for their promotion in the panel of Goods Driver on the four vacant posts of Goods Driver grade Rs.5000-8000, and consider them for promotion.

2. Learned counsel of applicants stated that Railway Board circular dated 1.5.1996 (Annexure A-4) which relates to promotion of non-gazetted staff in loco running cadre specifies, among others, a condition of 60,000 kms. experience of foot-plate as First Fireman/Diesel Assistant/Electric Assistant for filling up the vacancies of Goods Drivers from First Foreman/Diesel/Elect. Assistants including Shunters with less than three months' service with the personal approval of their General Manager whenever the Railways are unable to fill up the the vacancies of Goods Drivers in terms of Board's letters dated 3.8.1995 and 13.12.1995. The learned counsel stated that in the selection conducted during April-May, 2000 by holding a written test etc. for filling up 104 posts including six from candidates belonging to ST, a panel of 98 general candidates was declared on the basis of the written test and viva voce and 94 officials were promoted out of that panel vide Annexure A-2 dated 20.3.2001. He contended that four vacancies were kept vacant - one for a person against whom D&AR case was pending, three for Shri Harish Kumar (respondent No.4), Shri Amar Nath and Shri Ramji

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Dass, who did not fulfil the condition of 60,000 kms. experience of foot-plate. The learned counsel stated that persons up to Sl. No.127 in the result of the written test have been included in the panel and the names of applicants, Hind Kumar and Dharam Pal are at Sl. Nos. 129 and 135 and that applicants are entitled for promotion against remaining four vacancies. Learned counsel relied on the judgment of the Hon'ble Supreme Court in CA No.10651/1983 decided on 20.3.1997, **P.Sadagoppan v. Food Corporation of India**, in which it was held that when a particular experience is a pre-condition for consideration as per regulations for promotion from one category to another, it is wrong to accord relaxation regarding qualification of experience while considering a candidate for promotion. Learned counsel stated that there was no provision in the aforesated circular regarding relaxation from condition of 60,000 kms. experience of foot-plate, therefore, empanelment of respondent No.4 was illegal, arbitrary, against the relevant instructions and liable to be quashed, and thus the remaining posts including the one to be vacated by respondent No.4 should be offered to applicants.

3. Learned counsel of respondents, Shri Dhawan, stated that in the panel of 98 candidates against unreserved vacancies, name of respondent No.4 falls at Sl. No.95. According to him, services of respondent No.4 were utilised as Power Controller in the administrative interest and thus he could not complete 60,000 kms. experience of foot-plate by the cut-off

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date. However, later on, as per the office record, respondent No.4 exceeded the requirement of 60,000 kms. experience of foot-plate up to 7.7.2001 by completing Kilometerage of 75,850. He showed us a letter from the Northern Railway Headquarateers dated 11.10.2001 whereby the Railway Board did not agree to relax the criterion for promotion to the post of Driver (Goods) in foot-plate experience in favour of Shri Amar Nath and Shri Ramji Dass, but in the case of respondent No.4, Shri Harish Kumar, the relaxation was granted and he was promoted as Driver (Goods). The learned counsel also showed us certain orders of respondents whereby respondent No.4 had been put to duty in CNL office because of which he could not complete 60,000 km. experience of foot-plate before the cut-off date. Learned counsel relied on **Vasant Rao Roman v. Union of India**, 1993 (3) SLJ 73, in which appellant therein was allowed arrears of pay as neither he had been put under suspension nor any disciplinary proceedings were pending against him. On the contrary, he had been made to suffer on account of administrative reasons for which he was not responsible. The appellant was deputed for table work and, therefore, for administrative reasons he could not complete the requisite number of firing Kilometers.

4. In our view, the ratio of **Vasant Rao Roman** (supra) is not applicable to the facts of the present case. That case was decided on 4.3.1993 when Railway Board had not issued any circular prescribing any conditions for considering First Fireman etc. when Railways are unable to fill up the vacancies of Goods

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Drivers on regular basis. The related circular RBE No.40/96 (Annexure A-4) prescribing conditions when Railways are unable to fill up the vacancies of Goods Drivers in terms of Board's letters dated 3.8.1995 and 13.12.1995 was issued on 1.5.1996. In the present case, the ratio in the case of **P.Sadagoppan** (supra) is certainly applicable where it was held that relaxation from conditions prescribed in the regulations cannot be granted in matters of promotion.

5. Having regard to the discussion made and reasons recorded above, relaxation granted in the case of respondent No.4 against Annexure A-4 is held to be wrong and arbitrary and thus promotion of Shri Harish Kumar, respondent No.4, to the post of Driver (Goods) grade Rs.5000-8000 from Diesel Assistant when he had not completed the requisite condition of 60,000 kms. of foot-plate as Diesel Assistant, is quashed and set aside. Thus, respondents will have four slots available with them for promotion as Goods Driver from unreserved category. As one slot has to be kept vacant by the person against whom D&AR case is pending, three slots would be available with respondents to fill up on promotion. Respondents have already empanelled 98 selected persons giving coverage up to Sl. No.127 in Annexure A-3. They should declare results of applicants from this list so as to fill up the aforesated three slots from those candidates who are declared passed in the selection. If from amongst candidates who are declared passed from Sl. No.128 onwards applicants fall within the serial number so as to cover three slots, they

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should be promoted forthwith, with consequential benefits from the date Sl. No.127 was promoted. The above exercise should be carried out by respondents within a period of two months from the date of communication of these orders.

6. The OA is allowed in the aforesated terms. No costs.

S. Raju

(Sankar Raju)
Member (J)

V. Majotra

(V. K. Majotra)
Member (A)

/as/