

Central Administrative Tribunal, Principal Bench

C.P. No. 37 of 2004 In

O.A. No. 1381/2001

New Delhi this the 4th day of December, 2005

By Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

By Hon'ble Mr. D.R. Tiwari, Member (A)

1. Ajay Kumar
S/o Shri Hari Prasad
R/o 13, Balbir Nagar Extension,
Shahdara,
Delhi.
2. Vishwanath
S/o Raghuveer Singh
R/o F-10/121 Sector-15,
Rohini,
Delhi-110085.
3. Inder Pal Singh
S/o Badan Singh
R/o T.T. 50, Rly Colony,
Shadara,
Delhi.
4. Chandan Singh
S/o Arjun Singh
R/o A-281, Laxmi Garden,
Loni, Ghaziabad, U.P.
5. Ghan Shyam
S/o Budhai Prasad,
R/o J-373, Jahangirpuri,
Delhi.
6. Harkesh Kumar
S/o Man Singh
R/o J-1419, Jahangipuri,
Delhi.
7. Naresh Kumar
Hargyan Singh
R/o kWZ-232/A, Srinagar,
Skuarbasti, Delhi-110 034.
8. Mahesh Kumar
S/o Shri Ram Chnader
R/o WZ-224, Sayed Nangloi,
Delhi-110 087.
9. Ashok Kumar
S/o Reshem Lal
R/o 5/C-3, Railway Colony,
Punjabi Bagh,
Delhi-110 026.

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10. Sanjay Kumar
S/o Rajpal Singh
R/o 10/C-3 Railway Colony,
Punjabi Bag, Delhi-110 026.
11. Pawan Kohli
S/o Shri J.C. Kohli
R/o 10/B-3 Railway Colony,
Punjabi Bagh,
Delhi-110 026.
12. Bhupender Kumar
S/o Nanak Chand
R/o A-58 Mangolpuri,
Delhi.
13. Manoj Kumar Tomar
S/o Deputy Singh Tomar
R/o 89/2 Railway Colony,
Kishan Ganj, Delhi-7.
14. Ramesh Chander
S/o Shri Bhagwan Dass
R/o 187/8, R.P.F. Line,
Daya Basti, Delhi-110 032.
15. Kamal Kishore
S/o Devi Prashad
R/o A-26, Rishi Nagar,
Rani Bagh,
Delhi-10 034.
16. Yashpal
S/o Ram Lal
R/o C-158, Prem Nagar-II,
Nangloi, Delhi-110 041.
17. Bajrang Singh
S/o Soran Singh
R/o 345, Inder Enclave,
Prag.I, Kn. Mangloi, Delhi-110 041.
18. Satya Prakash Yadav
S/o Babu Ram
R/o D-13, Gali No.IIInd,
Part I, Mukundpur,
Delhi-110 042.
19. Joginder Singh
S/o Ram Chander
R/o 302/A, Railway Colony,
Shakurbasti,
Delhi.

.....Applicants

By Advocate: ^{SA}B.S. Mainee.

Versus

1. Union of India
Through Rajiv Ranjan Jaruha
G.M., Northern Railway,
Baroda House, New Delhi.

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2. Harjit Singh Khanna
The Senior Manager,
(Printing and Stationery)
Printing Press,
Northern Railway,
Shakurbasti,
New Delhi.

...Respondents

By Advocate: Shri V.S.R. Krishna and Shri S.M. Arif, proxy for Shri Saha Rehman.

ORDER

By Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

This order will decide the C.P. No. 37/2004 arising in OA No. 1381 of 2001.

2. Vide order dated 16.8.2002 passed in OA No. 1381/2001 the Tribunal has given the following directions:-

- (i) The respondents are directed to maintain an establishment-wise list of the trained apprentices according to their seniority in merit and batch.
- (ii) The appointments whether casual/substitute or regular shall be made strictly in accordance with the seniority in the list so maintained. In case any trained apprentice even after giving an opportunity does not come, then notice shall be given to the next candidate.
- (iii) The appointment against casual/substitute shall be made exclusively through trained apprentices until the list is exhausted.
- (iv) So far as the regular appointments including regularization are concerned, appointment shall be made strictly in accordance with the guidelines provided by the Hon'ble Supreme Court in the cases of U.P. State Road Transport Corporation (U.P) and U.P. Rajya Vidyut Parishad Apprentice Welfare Association (supra).
- (v) Respondents shall consider cases of applicants for appointment against the vacancies in skilled/unskilled categories with respondent No.2 as and when vacancies are available on the basis of the directions (i) to (iv) above.

3. The present Contempt Petition is filed complaining that the aforesaid order has been deliberately and wilfully disobeyed by the respondents since 34 vacancies in Printing Press in Shakur Basti were available for implementing the order but the respondents are seeking to fill them up by persons appointed on compassionate ground or by transfer in order to deny the applicants from reaping the fruits of the order so the respondents are in contempt and the proceeding under Contempt of Courts Act, 1971 be initiated against the respondent authorities.

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4. In reply to the show cause notice issued a number of affidavits have been filed by the respondents. The last one, which is referred to by both the parties, is dated 18.8.2005. In the affidavit it was stated that the respondents have high regard for the Tribunal and sincerely strived to implement the order and in case the Tribunal feels there had been some error and fault on the part of the respondents in implementing the directions, the same was unintentional and an unqualified and unconditional apology was being tendered. It was further stated that as per the direction of the Tribunal applicants had a right of prior claim in the Printing Press against the posts and vacancies in the direct recruitment quota in the grade of Rs.2550-3200 against Group 'D' posts and in the grade of Rs.3050-4590 against vacancies in direct recruitment quota of Group 'C' posts in the relevant trade in which they were trained, but they did not have any claim against promotion quota vacancies. It was further submitted that in the Printing Press there is only one type of Group 'D' post in the direct recruitment grade of Rs.2550-3200, namely Helper Grade-II. But due to surrender of 12 out of 14 posts of Helper Grade-II on account of a policy decision taken before the order of this Tribunal dated 16.8.2002, there remained only 2 posts of Helper Grade-II in the Printing Press which were already filled, so there were no vacancies against which applicants could be considered for engagement/appointment in the Printing Press. But there were a number of vacancies in the higher promotional grades in Group 'D' and 'C' for promotion from the feeder post of Helper Grade-II, such as Paper Counter, BTM and Helper Grade-I. 32 such vacancies in the higher promotional graded were lying vacant for want of suitable eligible employees in the feeder grade which created an anomalous situation since there were only 2 posts in the feeder grade and the post in the higher promotional grades lay vacant for want of persons in the feeder grade. The issue was, therefore, taken up with the Union and as a result, a decision was taken for the benefit of the employees to downgrade 26 posts in the higher grade of Rs.2650-4000 in the promotional quota to the grade of Rs.2550-3200 to be filled in by the change of category, compassionate appointment, transfers and re-deployment of staff. The downgraded posts being under the promotional quota, the applicants were eligible for being considered for downgraded posts. But in deference of the

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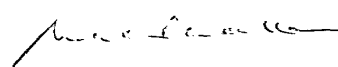
observation of the Tribunal during the hearing of the Contempt Petition, the respondents have suo moto considered the cases of the applicants for engagement as substitute in Group 'D' under another Scheme of Railway Board and accordingly all the applicants have been absorbed as substitute under Carriage and Wagon Department in the office of the DRM, Delhi vide order dated 7.12.2004 and they have accepted the offer, with initial hesitation, without any condition and on their unconditional acceptance they have been issued engagement orders. The applicants now cannot turn back and allege that offer of engagement was accepted subject to certain conditions. It was further submitted that the main objection of the department was to run Railways efficiently and with proficiency and in such a scenario, postings and appointments are ordered on a need based requirement keeping in view the larger objective of running railway efficiently and the petitioners engagement as a substitute in Group 'D' in Carriage and Wagon Department are a measure in this regard. It is accordingly submitted that the application is liable to be dismissed.

5. We have gone through the pleadings carefully and have given due consideration to the arguments advanced at the bar.

6. Here it will not be out of place to mention that the applicants, 20 in number, were trained apprentices who completed their training in book binding, offset plate making, process cameraman, machinist and literature lithography. On completion of their apprenticeship, they were not engaged in the Printing Press of the respondents though some outsiders were given such employment. They filed the OA for redressal of their grievances and the Tribunal disposed it off by the aforesaid directions. Since then the applicants were agitating that the respondents have vacancies available for employing them and to implement the order of the Tribunal, but they are deliberately flouting the orders.

7. In the present proceedings we are required only to consider whether the respondents have wilfully and contumaciously disobeyed the orders of the Tribunal dated 16.8.2002.

8. The learned counsel for the applicants has drawn our attention to the order of the Tribunal dated 23.8.2004 which showed that the respondents had admitted



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that a few substitute Bunglow Khalasis were appointed ignoring the claim of the respondents. The learned counsel for the respondents has submitted that the services of those Khalasis has already been terminated. Even otherwise, those appointments were of substitute Bunglow Khalasis and not in the Printing Press, which was the claim of the applicants, therefore, it cannot be said that the respondents by appointing substitute Bunglow Khalasis have disobeyed the orders of the Tribunal dated 16.8.2002. In case the applicants claim that under the order of the Tribunal they had preferential right to appointment in any of the department, post or vacancy of the respondent Railways they have already been engaged in C&W department and the respondents cannot be accused of disobeying the order or being in contempt. But their grievance is that as per order of this Tribunal they were to be appointed in Printing Press Shakurbasti but inspite of 34 vacancies being available other persons are being considered ignoring their prior right.

9. The respondents have filed the counter-affidavit now which has been relied upon by both the parties in support of their respective pleas.

10. According to the learned counsel for the applicants the respondents in their counter affidavit dated 18.8.2005 have admitted that 26 posts have been downgraded by them from the higher grade of Helper Grade-I to the Grade of Helper Grade-II and they could have been easily utilized by engaging the applicants against them, but they are not doing so on a ruse that those posts were downgraded from the promotion quota in higher grade for compassionate appointment, transfer, redeployment and change of category. It is submitted that it is a lame excuse and is indicative of the respondents intention not to implement the order of the Tribunal so an action under the Contempt of Courts Act, 1971 is called for against them.

11. Conversely, the argument of the learned counsel for the respondents is that the applicants could be appointed as per the directions of the Tribunal against direct recruitment quota and that there were only 2 posts in the Grade of Helper Grade-II and both were occupied. A number of posts were vacant in the higher promotional grade of Helper Grade-I, so in a meeting with the Employees' Union, it was decided that 26 pots in the higher grade of Helper Grade-I (in the promotional grade) be downgraded to the lower grade of helper of Helper Grade-II to be filled in by

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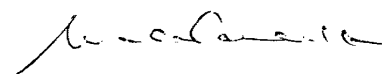
change of category, compassionate appointment, transfers and redeployment of staff. It is, therefore, submitted that no new post has been created or sanctioned for direct recruitment in the grade of Helper Grade-II so the applicants cannot be appointed against those downgraded posts.

12. As per the order dated 16.8.2002, the respondent would appoint the applicants against skilled and unskilled category in the office of the Senior Manager, Printing Press, Northern Railway, Shakurbasti, New Delhi as and when vacancies are available. This employment was to be given in accordance with the directions given in para (i) to (iv) of the operative portion of the order. As per these directions, the respondents were to maintain an establishment-wise list of the trained apprentices according to the seniority in merit and batch and they were to be appointed as casual/substitute or regular, shall be made strictly in accordance with their seniority in the list so maintained and the appointment was to be made exclusively through trained apprentices until the list was exhausted. It further stipulated that regularization would be strictly in accordance with the guide-lines laid down by the Hon'ble Supreme Court in the case of U.P. State Road Transport Corporation (Supra) and U.P. Rajya Vidyut Parishad Apprentice Welfare Association (Supra) which were relied upon in the order. These orders were to be implemented against the direct recruitment quota as the order would show.

13. In the present case no vacancy for direct recruitment in the post of Helper Grade-II in Printing Press is available. The statement of the respondent in this regard has not been controverted during the course of arguments.

14. The short question then arises whether the applicants have preferential claim for appointment against the 26 downgraded posts.

15. In the higher grade of Helper Grade-I there is promotional quota and the direct recruitment quota. The vacant post in the promotional quota have been downgraded, with the agreement with the Employees' Union, for specific purposes of appointment to be made by change of category, on compassionate appointment, by transfer and by redeployment of staff. The decision is for filling up these posts for specific purpose. Downgrading of 26 posts to the lower grade, to our considered view, would not amount to the post becoming available for direct recruitment from

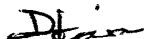


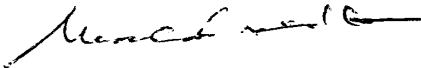
the market in view of the specific purpose for which the respondents have downgraded those posts by a conscious decision. Therefore, non-filling up of those posts by the applicants, to our view, would not be taken as a disobedience of the order of this Tribunal. We do not find that non filling up the 26 downgraded vacancies by appointing the applicants against those vacancies is a deliberate and contumacious act of the respondents in defiance with order dated 16.8.2002 for which they should be punished under Contempt of Courts Act, 1971.

16. The applicants have already been engaged by the respondents though in Carriage and Wagon Department. They have not so far been engaged in the Printing Press. Any how, the contempt petition is liable to be dismissed.

17. But before parting with we are constrained to observe that during the course of arguments it was submitted that the respondents are in dire need of workers in the Printing Press of the respondents at Shakurbasti and that they are not able to post workers there in view of the present proceedings although 26 downgraded post are available to be filled in by compassionate appointment, by change of category, by transfer or redeployment of the existing staff. We enquired from the learned counsel for the respondent whether the respondents have explored the possibility of the applicants, who are trained apprentices in different trades relating to Printing Press, being considered for posting against the available downgraded vacancies by change of their category/transfer since they were now working in the establishment of the Railways. Learned counsel for the respondents was fair enough to concede that this point did occur to him and that he will bring it to the notice of the appropriate authorities of the respondents. We will not like to give directions to the respondent in this regard since it will not fall within the scope of present proceedings.

18. The Contempt Petition is dismissed. However, the parties are left to bear their own costs.


(D.R. Tiwari)
Member (A)


(M.A. Khan)
Vice Chairman (J)