

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

New Delhi this the 14th Day of July 1997.

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)
Hon'ble Shri S.P. Biswas, Member (A)

O.A. No. 1816/1996

1. Raj Kishore Singh
2. Vinod Kumar
3. Ishwar Singh
4. Anand Prakash
5. Hari Prakash
6. Vishnu Nath Sah
7. Suresh Kumar Rathia
8. Jagdish Ram
9. Shishpal Singh
10. Kashmir Singh
11. Yashpal Singh
12. Prem Chjand
13. Surender Dutt
14. Ram Dass
15. Pankaj Mathur
16. Dori Ram
17. Lav Kush
18. Mool Chand Gupta
19. Jag Narayan Prasad
20. Man Bahadur
21. Daniel Cambell
22. Joginder Singh
23. Ganesh Singh
24. Vishram Meena
25. Laxman Singh Rawan
26. Ranjeet Singh
27. Hukam Chand
28. Heera Lal Soni
29. Smt. Kanta Ekka
30. Smt. Sunita
31. Sunil Kumar
32. Suresh Kumar
33. Jai prakash
34. Rajesh Kumar
35. Pramod Kumar
36. Dinesh Mehta
37. Smt. Sheela

Petitioners

(By Advocate: Shri C. Hari Shankar)

All working as Hospital Attendants in
Central Hospital, Northern Railway, New
Delhi-1.

O.A. No. 1312/1996

1. Chander Bhan
2. Pitambar
3. Rajinder Kjmar
4. Kailash Chand Pant
5. R.S. Meena
6. Hoshiar Singh
7. Ram Kewal
8. Ishwar Singh

9. Manish Mehta
10. Ram Lal
11. Vijay Rajavi
12. Harish Kumar
13. Anil Kumar
14. Ramu Ram
15. Lal Siongh
16. Rakesh Khanna
17. Madan Singh
18. Ramesh Kumar
19. Vishwa Manglam
20. Kanchi
21. Ram Gopal Meena
22. Mrs. Maria Gorithi Minj
23. Mrs. Shashi Bala
24. Bansi Dhar

(11)

Petitioners

(By Advocate: Shri S.L. Pal)

All working as Group 'D' Employees in
Central Hospital, Northern Railway,
New Delhi-110 001.

1. The Medical Director,
Northern Railway
Central Hospital, New Delhi.
2. The Chief Medical Director,
Northern Railway, HQR
Baroda House,
New Delhi.
3. The Director General Health Services,
Railway Board,
Rail Bhawan,
New Delhi.
4. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
5. The Chairman,
Railway Board,
New Delhi.

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Respondents

(By Advocate: Shri B.S. Jain)

(By Advocate: Shri B.S. Oberoi
for private Respondents)

O R D E R

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)

These 61 petitioners are Group 'D' employees working
in the Medical Department of Railways and are seeking
promotion to Group 'C' cadre against the 33-1/3%

(12)

promotional quota available within Group 'D' from among other existing employees. Similarly, 24 hospital attendants are seeking similar relief in OA No. 1312/96. All these employees are challenging the order of the respondents dated 23.5.1995 by which the respondents announced selection of Group 'D' employees. These petitioners also challenging the said order in which the respondents announced selection of Group 'D' employees to Class III in the grade of Rs. 950-1500 but at the same time decided to exclude the petitioners in O.A. No. 1312/96 from the selection zone on the ground that these petitioners are hospital attendants and the said hospital where they were working viz., Central Hospital, Railways is an extra sub-division and their ministerial cadre is controlled by the Chief Medical Director, Central Hospital, New Delhi. The said order also stated that the petitioners can be considered for selection against the said quota as and when the Class III post in the Central Hospital in the grade of Rs. 950-1500 becomes available.

2. Shri Hari Shankar, the learned counsel for the petitioners contended that the exclusion of the petitioners from selection and not permitting them to compete when other eligible Group 'D' candidates, is illegal and contrary to law. According to him, all the petitioners are Group 'D' employees and they are entitled to apply for Group 'C' post against the prescribed quota whenever the vacancies arises in the same division. He further submitted that Delhi in accordance with the railway division of zone for the administrative purposes at no time have been divided into two divisions and the

submission from the counsel for the respondents that Delhi Headquarters as well as the Central Hospitals are to be treated as two divisions for the administrative purpose is totally incorrect. The respondents had vehemently argued that the present vacancies are available exclusively for the Group 'D' employees and the Northern Railway Headquarters at Baroda House. The Learned Counsel for the Petitioners vehemently opposed the said contention and further stated to set apart all the available vacancies to Group 'D' employees of Baroda House alone is contrary to the orders of the Railway Board which is statutory in nature. Railway Board, by their order dated 23.5.1995 had clarified that the hospital attendants are to be considered as Group 'D' employees and they shall, if found eligible can be considered for promotion as Clerks in other departments against 33-1/3% quota. The relevant portion of the said order is reproduced herebelow:

It is clarified that before the issue of Board's letter No. E(NG)J/77/CFP/38 dated 4.11.1978. Hospital Attendants on your Railway had get promotion to the post of Dressers before they could be considered for promotion to the Clerical posts.

2. Board under their letter dated 4.11.1978 referred to above had only accepted your proposal to made Hospital Attendants eligible directly for selection to Class III clerical cadre in the Medical Department without being routed through the channel of Dressers. There was no intention to deny Hospital Attendants the normal channel of promotion as clerks against the vacancies in the departments other than Medical as was available to other Group 'D' employees of Medical Department are allowed to be considered for promotion as clerks in other Departments against 33-1/3% quota. Hospital Attendants will also have to be given the same avenue." (emphasis added).

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3. In pursuance to the above orders of the Railway Board, the Northern Railway has admitted that the Medical Attendants who are now being considered as Group

'D' employees can be considered for promotion as Clerks in other Departments as well against the available quota and passed an order by way of implementing the above referred Railway Board's order. The Northern Railway order dated 6.9.1995 is reproduced herebelow:

(A)

Subject: Selection of Group -D employees to Class III cadre against Promotee quota.

The Class IV employees who are working in the Central Hospital and Chief Medical Director and whose lien retained in H.Q. and whose selection of promotion does not exist in Central Hospital and according to Notice No. 11042, the Hospital Attendants/Dressers too, can apply for the same".

4. The Counsel's contention, therefore, is on the face of the orders of the Railway Board, and subsequently implemented by the Northern Railway, to exclude the petitioners from competing for the post of Clerk now available in other Departments, other than the Medical Department is in violation of the said orders of the Railway Board which is statutory in nature.

5. The Learned Counsel for the Respondents persistently argued that Group 'C' posts now become available, are exclusively to be filled up from among Group 'D' employees of the Baroda House. The interpretation submitted by way of argument on behalf of the respondents to the Railway Board's order is that the said order only confirms the eligibility of the Hospital Attendants to compete for the post of Clerks against the available quota in Medical Department alone. This submission is based on the previous letter of the Railway Board dated 4.11.1978.

6. We have considered the submissions of both the parties. We are of the view that the previous order of the Railway Board dated 4.11.1978 has been specifically referred to in the subsequent letter of the Railway Board dated 23.5.1995 now being relied upon by the petitioners vide the underlined portion of the order at para 2 and therefore to deny the promotional avenue to the Medical Attendants now available to Group 'C' posts in the Headquarters would be illegal and the contention of the respondents that the Railway Board's letter dated 23.5.1995 should be confined to promotion to Group 'C' in Medical Department of the Central Hospital alone is contrary to what is stated on the face of the said order. The Railway Board's Order is clear that the Medical Attendants should be promoted to compete for the post of Clerks in other Departments as well.

7. Even otherwise the demand of the petitioners in this case (in-OA No. 1312/96) is not that they should be straightway appointed to the Group 'C' post now become available rather the request is limited that they should be allowed to compete with all other eligible candidates and if become successful their promotion may be considered to Group 'C'. We see no difficulty to permit the petitioners to compete for the Group 'C' posts now become available since the appointment to any of the petitioners to Group 'C', depend upon the test and other selection procedure adopted by the department and only after they succeed in the test or another examination, they will be eligible for consideration to Group 'C' post. As far as the official respondents are concerned it is understandable why the Hospital Attendants should not

be allowed to compete in accordance with the Railway Board's order dated 23.5.1995, which would give them only an extended field from which they can select the best meritorious persons to hold the Group 'C' post that has become now available. It is, therefore, fit and proper that the Hospital Attendants be allowed to compete along with other eligible candidates from Headquarters or from anywhere for that matter, from the same division and permit them to attend the test/examination to be held for the purpose and the respondents should select the best among them to fill up the 33-1/3% quota of the promotional posts in Class III.

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8. It is pertinent to mention here that many of the eligible candidates from the Headquarters has filed an intervention application to this court stating their interest will be prejudicially affected if this Court permit the Medical Attendants from the Central Hospital as well to compete for the Group 'C' post. Firstly, it is not for this Court to permit the Medical Attendants to appear in the test or examination to be held for the purpose, rather this Court only is interpreting the orders of the Railway Board dated 23.5.1995 and is holding that the Medical Attendants have been permitted to appear for test held for selection of candidates to Group 'C' against the available quota as they have also become eligible to be considered. Secondly, the intervenors are of the wrong impression that by allowing the petitioners to appear for the test, is prejudicially affect their interest or chance of promotion or there would be a resultant reduction in the availability of the Group 'C' posts for them. It was stated at the Bar that

when the petitioners from the Central Hospital are allowed to compete for the now available Group 'C' posts at the Headquarters, the Group 'D' employees of the Headquarters will also be permitted to compete alongwith the other Medical Attendants as and when the Group 'C' posts in the relevant quota become available. Therefore, the prejudice that is now projected to be suffered by the intervenors is totally misplaced.

9. Moreover, the intervenors do not acquire any vested right or interest towards the 33-1/3% of the promotional posts available in Group 'C', unless and until these intervenors appear for the test/ examination and succeed to be included in the selection list. Until their names appear in the selection list, the intervenors may not have the locus to stop other eligible candidates from appearing in the test/examination or compete themselves against the available quota of promotional posts in Group 'C'.

10. The Learned Counsel for the Respondents reiterated that the promotions to Group 'C' from Group 'D' posts has been in vogue since 1964 and Medical Attendants were not permitted under the said rule. The respondents produced at Page 97, the order of the Railway Board dated 22.9.1964 in which 20% quota was reserved for promotion of Class IV staff to Class III posts which has now been subsequently raised to 33-1/3%. It was also stated by the respondents that according to these rules, the vacancies now arisen in the Headquarters shall be filled up only from among the Group 'D' employees of the Headquarters alone.

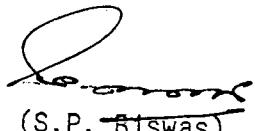
11. We do not agree with this contention of the Counsel for the respondents for the reasons that even in the order dated 22.9.1964, now being produced by the respondents, it was stated that the list of Class III categories have been enlarged so as to include almost all categories entrusted with semi-clerical duties irrespective of the department in which they are working. In the note appended to the said rule has further clarified that all Class IV staff employed in the offices with five years service irrespective of the grade held, will also be eligible for promotion to the post of Clerks/typists. Learned counsel for the respondents submitted that the category of Medical Attendant does not find place in the said 16 categories appended to Note 2. But the opening words of Note 2 are "in addition to the above, the following categories of staff.....", therefore, absence of the Medical Attendants in the list of Note 2, does not exclude them from competing for the Class III posts because the said categories are over and above all Class IV staff employed in the Offices.

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12. In view of the above findings, the order of the respondents dated 8.5.1996 is illegal and contrary to the orders of the Railway Board dated 23.5.1995 and as such the impugned order dated 38.5.1996 is quashed and the respondents are directed to permit all the petitioners to compete alongwith all other employees belonging to Group 'D' posts and if only they succeed in the test, consider them for the selection of Class III post in the grade of Rs. 950-1500 against promotee quota of 33-1/3% in the Headquarters or in any Department within the Delhi

Division. We make it clear that for the purpose of this Order, the Headquarters and the Central Hospital are to be considered as both belongs to one and the same Division.

13. These OAs No. 1816/1996 and 1312/96 are allowed to the extent mentioned above and there is no order as to costs.



(S.P. Biswas)
Member (A)



(Dr. Jose P. Verghese)
Vice Chairman (J)

Mittal

