

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA.No.1933/96  
MA.1827/96  
MA.2141/96

New Delhi, this 17th day of October, 1997.

HON'BLE MR JOSE P. VERGHESE, VICE CHAIRMAN(J)  
HON'BLE MR K. MUTHUKUMAR, MEMBER(A)

1. Ishwar Dass  
S/o Shri Nathu Ram  
R/o 6-D, Railway Colony  
Tuglakabad  
New Delhi.
2. Tulsi Ram Meena  
S/o Shri Sawalya Ram Meena  
R/o Prahladpur Colony  
Badarpur  
Tuglakabad  
New Delhi-44.

... Applicants

By Advocate: Shri K. N. R. Pillay for applicant:

versus

1. Union of India, through  
the General Manager  
Northern Railway  
Baroda House  
New Delhi.
2. Divisional Railway Manager  
Northern Railway, Delhi Division  
State Entry Road  
New Delhi-1.
3. Shri S. K. Bansal  
Divisional Mechanical Engineer(C&W)  
DRM Office, Northern Railway  
State Entry Road  
New Delhi-1
4. Shri Jagdish Parsad
5. Shri Madan Kumar
6. Shri Jagdish Narain

Respondents 4,5,&6 service to be effected  
through 2nd respondent Divisional Railway  
Manager, Northern Railway, Delhi Division,  
State Entry Road, New Delhi.

... Respondents

By Advocate: Shri O. P. Kshatriya

## O R D E R (ORAL)

Dr Jose P. Verghese, VC(J)

(15)

The applicants in this case were eligible for promotion to Group 'C' as both of them were, at the relevant time, holding Group 'D' post. By an order dated 27.6.88 and the subsequent order dated 19.7.88, both the applicants were shown to have passed the written test. According to the applicants the rules applicable to the case at hand is para-184 as well as para-188 of the Indian Railway Establishment Manual. It was stated that even after passing the written test the applicants were not considered for promotion, but for the interference of respondent no.3 at whose instance respondents-4,5,&6 were inducted from outside the Branch, which is contrary to the rules contained in para-184. According to the said para-184 the promotions are to be made from Group 'D' to Group 'C' within the respective branches. The applicants are coming from the Running Sheds branch, while respondents-4,5&6 are from the Carriage and Wagon Depots and the said respondents were wrongly inducted at the cost of the career of the applicants. Para-184 and para-188 are reproduced herein below:

Para-184: "Every unskilled staff in running sheds and carriage and wagon depots should be made eligible for promotion to higher grade like semi-skilled/Basic Tradesmen in their respective branches, i.e. running sheds or carriage and wagon depots, as the case may be, subject to his acquiring the necessary qualification. No category shall be excluded from such consideration and there need to be no subgrouping within the respective branches. Unskilled staff in running sheds should also be eligible for consideration for transfer to posts of cleaners upto the age

of 30 years, relaxable upto 35 years in the case of the persons belonging to Scheduled Castes and Scheduled Tribes, subject to their being otherwise eligible for such consideration, but on two occasions only and their having the necessary aptitude and satisfying the medical and educational qualifications."

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Para-188: "Lower grades in Group 'C' like Junior Clerks, Material Checkers etc. in scales such as Rs.825-1200 should be wholly filled by promotion from Group 'D' railway servants who have put in 5 years service. In the case of posts which are in the normal avenue of promotion to Group 'D' railway servants, promotion should be made from amongst the railway servants of the Department concerned in each promotion unit on the basis of seniority-cum-suitability after holding such written and/or practical tests as may be considered necessary. In the case of the posts which are not in the normal avenue of promotion, promotion should be made on the basis of selection after holding such written and/or practical test as may be considered necessary and from panel drawn according to prevailing rules in respect of selection posts."

After notice the respondents filed reply, and stated that the selection will have to be conducted in accordance with para-189 of the said Manual and it was stated that even though the applicants have passed the written test, they have not cleared the viva-voce. On a perusal of para-189, it is seen that the said para is applicable only when the promotions are resorted to in the higher level of Group 'C' while the applicants in this case are promoted from lower grade Group 'D' to Group 'C' and the respondents should have considered their case in accordance with para-188.

The counsel for the respondents also states that the application is awfully delayed and the same is liable to be dismissed on the ground of laches. The condonation of delay application filed by the applicants indicates that they had made a

representation on 22.8.89. Thereafter it is stated that the Union pertaining to the said branch had taken up the matter and in accordance with the rules pertaining to the settlement of disputes at the instance of the Union, the matter had reached till the General Manager and thereafter this was forwarded to the Railway Board. The procedure being extremely lengthy, the settlement of issue between the applicants and the department could not be obtained before filing of this OA. It was stated that the dispute is still pending and the department has not passed any final orders on the other hand, has issued instructions not to make any promotions in the same grade.

In view of the matter that the issue has not been till today finally disposed of by the respondents even though it was initiated at the request of the applicants at the instance of the Union, we are of the opinion that this matter cannot be dismissed on the ground of laches. On the other hand, from the submissions of the counsel for the applicants it transpires that the challenge of the order of promotion of respondents 4, 5 & 6 is well founded and in the absence of any reply to this allegation made against, as well as the promotions made to the respondents-4 to 6, we are of the considered view that the respondents shall reconsider the case of the applicants, if necessary by holding a Review DPC, not in accordance with para 189 of the Manual but only in accordance with para 188 of the Manual. Appropriate orders of promotion shall be passed by the respondents

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within four weeks from the date of the receipt of a copy of this order and the applicants will be entitled to all consequential benefits, but shall be entitled to payment of arrears only with effect from 1.1.95. We have fixed this date of 1.1.95 for the purpose of payment of arrears, in view of the fact that the applicants are entitled to 18 months' time under the statute by which time, the applicants could file a petition and then a condonation of delay application for the remaining period. In view of the fact that we are not inclined to condone the delay beyond 18 months of filing of this OA, we allow this OA, to the extent stated above. No order as to costs.

(K. Nuthukumar)  
Member(A)

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

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