

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO.2949/2004

M.A. NO.191/2005

with

O.A. NO.578/2005

This the 14th day of September, 2006

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SHRI MUKESH KUMAR GUPTA, MEMBER (J)

1) O.A. NO.2949/2004

1. Subhash Chand S/O Babu Ram
2. Ram Raj S/O Ram Sewak
3. Raj Kumar S/O Shiv Datt
4. Om Prakash S/O Inderjit
5. Som Kumar S/O Hari Prashad
6. Mahindra Kumar S/O Dal Chand
7. Vijay Kumar S/O Jawahar Lal
8. T.N. Sukumaran S/O T.K.N. Nair
9. Ram Pratap Dubey S/O R.D. Dubey
10. Chandra Prakash S/O Hardev Singh
11. Barnori Lal S/O chander Lal
12. Uttam Chand S/O Dewan Chand
13. Surender Kumar S/O Prema Nand
14. Satish Kumar S/O Ram Prakash
15. Ghan Shyam Dass S/O Shankar Lal

(All are working under Senior Section
Engineer (Train Lighting) Office of the
Divisional Railway Manager,
New Delhi.

... Applicants

(By Shri Rajeev Sharma, Advocate)

Versus

1. Union of India through
Secretary, Ministry of Railways,
Rail Bhawan, New Delhi.

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2. General Manager,
Northern Railway,
Baroda House, New Delhi.
3. Divisional General Manager,
Northern Railway,
New Delhi.
4. Pradeep Kumar
5. Lallu Prashad
6. Ram Niwas
7. Bhagwan Dass

(Respondents 4 to 7 are working under
Senior Section Engineer (Train Lighting)
Office of the Divisional Railway Manager,
New Delhi).

... Respondents

(By Shri Sunil Roy, Advocate for Respondents 1 to 3; Shri K. K. Patel,
Advocate for Respondents 4 to 7)

2) O.A. No.578/2005

1. Santa Kumar S/O Pooran Chand
 2. Shambhu Nath S/O Ram Gohan Ram
 3. Ramesh Kumar S/o Harbas Lal
 4. Charanjit Singh S/O Mohinder Singh
 5. Pargan Ram S/O Ram Lakhen Singh
- (All are working under Senior Section
Engineer (Train Lighting) Office of the
Divisional Railway Manager, New Delhi).

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... Respondents

(By Shri Sunil Roy, Advocate for Respondents 1 to 3; Shri K. K. Patel,
Advocate for Respondents 4 to 7)

ORDER

Hon'ble Shri V. K. Majotra, Vice-Chairman (A):

The facts and issues in these OAs being identical, they are being disposed of by this common order.

2. For convenience, facts have been taken and stated here from OA No.2949/2004. Applicants who are working as Technician-II since 29.8.1997 have challenged Annexure-1 dated 13.9.2004 whereby alleged juniors S/Shri Pradeep Kumar, Laloo Prashad, Bhagwan Dass and Ram Niwas, i.e., respondents 4 to 7, have been granted promotion on *pro forma* basis as also seniority as TLF-III with consequential benefits from the date their juniors S/Shri Rajinder Kumar, Hargovind Pant etc., were assigned seniority as TLF-II in grade Rs.4000-6000 above Shri Rajender Kumar. These private respondents are stated to have been accorded above benefits in terms of Tribunal's orders dated 20.3.2003 in OA No.408/2001.

3. Applicants are stated to have joined the Railways initially as casual labourers. Their services were regularized as Khalasi on 28.7.1978. Thereafter they were promoted as Helper Khalasi in 1984, and further as

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Technician-III on 1.1.1989. Lastly, they were promoted as Technician-II on 29.8.1997. According to applicants, promotion from the post of Technician-III onwards is based on a trade test as per rules. Those qualifying in the trade test are entitled for promotion with seniority in the higher grade on the basis of the trade test. It is claimed that applicants are senior in all respects vis-à-vis the private respondents 4 to 7 as follows:

“As far as Shri Pradip Kumar and Lallu Prasad are concerned they were Khalasi in the year 1979 and promoted as Helper Khalasi in 1986. They were further promoted as Technician-III in 1998 and Technician-II in 2003. Similarly, as far as Ram Niwas and Bhagwan Das are concerned initially they were appointed in the Loco Department and came to Electrical Department in the year 1983 with the condition that they will be placed at the bottom of the seniority in the Electrical Department. Accordingly, they should have been placed at the bottom of the seniority list of Khalasis. They were promoted as Helpers in the year 1993 and Technicians-III in 1998.

As far as Rajinder Kumar, Hargobind Pant, Dewan Singh and Girdhari Lal are concerned, who were respondent Nos.3 to 6 in O.A. No.408/2001 they all were juniors to the applicants, however, were shown senior on the strength of manipulation. As far as rules are concerned seniority in the promotional post can only be calculated on the basis of the trade test.”

4. As per applicants, Tribunal in OA 408/2001 did not allow the respondents to promote the private respondents herein to the next higher post. The direction was only to the effect that the case of applicants of that OA be considered as per the applicable rules. In that event, necessary notice should have been issued to all affected persons, including present applicants, before declaring the present applicants' junior to the persons who were junior to the present applicants. The rules of promotion state that promotion can be granted on the basis of a trade test and as the applicants had cleared the trade test prior to the private respondents who were junior

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to applicants in all respects, they cannot be made junior to the private respondents.

5. The official respondents through their counter reply have stated that respondents have acted strictly in accordance with the directions of this Court in OA 408/2001. According to these respondents S/Shri Rajinder Kumar, Hargovind Pant, Dewan singh and Girdhari Lal who were made private respondents in OA No.408/2001 are senior to applicants in the present OA, and as such, respondents have been in the right in rejecting representation of applicants by the impugned orders.

6. Private respondents 4 to 7 have stated that they had been working in the Loco Department and were regularized in the post of Khalasi in scale Rs.750-940 under the statutory rules after completion of 120 days of continuous service and qualifying the screening test. Respondents 4 and 5 along with some other aggrieved employees filed OA No.2065/1991 – *Chander Mohan Sethi & Others v General Manager, Northern Railway*, which was disposed of on 20.9.1995 with a direction to respondents to hold a trade test for the post of Fitter as per rules for all eligible Helper Khalasis who were senior to Shri Hargovind Pant and who had not been trade tested. Eligible candidates who successfully cleared the trade test and were otherwise qualified for regularization were to be considered for regularization against available vacancies against promotion quota. The present private respondents were illegally treated by the official respondents though they were senior to Shri Hargovind Pant who was promoted as Electrical Fitter earlier than the private respondents. Respondents had not called the private respondents 4 and 5 for trade test despite directions dated 20.9.1995 in OA No.2065/1991. Private



respondents 6 and 7 were not respondents in OA No.2065/1991. However, in compliance of Tribunal's orders dated 20.9.1995 private respondents 4 and 5 as also private respondents 6 and 7 were trade tested and declared successful for the post of Electrical Fitter. However, certain juniors were promoted on the post of TLF-III whereupon respondents 6 and 7 filed OA No.2351/1998 during the pendency of which they were promoted as TLF-III in scale Rs.3050-4590, but they were not granted consequential benefits from the date their juniors had been promoted as TLF-III and further in the higher grades of TLF-II and TLF-I, along with consequential benefits.

7. In rejoinder it has been stated on behalf of applicants that not only that they were senior to the private respondents, they had also qualified in the trade test prior to the private respondents. These respondents had come to the Train Lighting Department from Loco Department on request with the condition that they would be placed at the bottom of the seniority list, therefore, these respondents could never have been accorded seniority over applicants who had been in the Train Lighting Department right from the beginning and much prior to them.

8. The learned counsel of applicants contended that in terms of Tribunal's orders dated 20.3.2003 in OA No.408/2001 respondents were required to assign proper seniority to applicants as TLF-II in accordance with law and rules. Thereafter, they were to be granted promotion to the applicants from the date their juniors were promoted to the higher grades with all consequential benefits. Respondents have not considered the issue of seniority of applicants in accordance with law and rules and also not granted promotion to applicants from the date their juniors, i.e., respondents 4 to 7 were promoted to the higher grades, with consequential benefits.



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The learned counsel of official respondents stated that private respondents were accorded seniority at Sl. Nos. 132A, 132B, 132C and 132D respectively in the seniority list dated 7.4.1994 and vide Annexure R-II dated 26.6.2003 they were also allowed to appear in the trade test for the post of TLF-II grade Rs.4000-6000, which they qualified. Thereafter, provisional seniority list dated 5.5.2004 was issued. Both Annexure R-II dated 26.6.2003 and the seniority list dated 5.5.2004 have not been challenged by applicants.

9. We have bestowed our careful consideration to the respective contentions of the parties as also the material on record.

10. It is not disputed that the private respondents were initially working in Loco Department in Ghaziabad and during the year 1985 were declared surplus and absorbed in Electrical Department (TL Wing). In OA No.408/2001 respondents had taken the stand that the private respondents herein were given full seniority as they were re-deployed in small numbers as surplus staff and were transferred to Electrical Department on administrative grounds. It had been contended on behalf of the applicants in that case that the surplus staff did not constitute a "small number" and that in terms of the judgment of the Hon'ble Supreme Court in *V. K. dubey & Others v Union of India & Others* (1997) 5 SCC 81, it had been held that seniority of surplus staff who had been re-deployed could not be fixed above the staff already working on the electrical side. The court had observed that as many as 800 employees in the Loco Shed, Ghaziabad were declared surplus and were re-deployed in Electrical Department (Train Lighting Wing) of the Delhi division. Such number was not considered a

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“small number” for absorption. In *V. K. Dbuey* (supra) the Hon’ble Supreme Court held as follows:

“...It is seen that the diesel engine drivers and the staff working with them operate in one sector, namely, diesel locomotive sector, while electrical engine drivers and the staff operating on the electrical engines operate on a different sector. Consequent upon the gradual displacement of diesel engines, instead of retrenching them from service they were sought to be absorbed by giving necessary training in the trains operating on the electrical energy. As a consequence, they were shifted to a new cadre. Under these circumstances, they cannot have a lien on the posts on electrical side nor can they be entitled to seniority over the staff regularly working in the electrical locomotives department.”

It was directed that respondent had to re-consider the matter of assigning seniority to the applicants in accordance with the settled principle of law taking into account also the aforesaid judgment of the Hon’ble Supreme Court and the Railway Board circulars dated 21.4.1989 and 7.7.1995 which deal with re-deployment of a “large number” of employees. In this light OA No.408/2001 was allowed with the following directions:

- “(i) The respondents to assign proper seniority to the applicants in Train Lighting Fitter Grade-II, in accordance with law and rules;
- (ii) Thereafter they shall grant promotion to the applicants from the date their juniors were promoted to the higher grades with all consequential benefits;
- (iii) The above action shall be taken within three months from the date of receipt of a copy of this order.”

11. A perusal of impugned orders dated 13.9.2004 does not indicate that Tribunal’s directions as also the law laid down by the Hon’ble supreme Court in the case of *V. K. Dubey* (supra), the related rules, and Railway Board’s circulars dated 21.4.1989 and 7.7.1995 were considered by respondents while assigning seniority to respondents 4 to 7 over applicants. Admittedly, applicants had been senior to respondents 4 to 7.

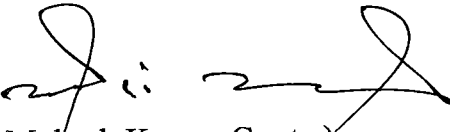
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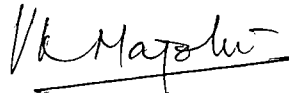
Applicants had been working in Electrical Department right from the beginning and much prior to these respondents. Respondents 4 to 7 had been declared surplus from Loco Shed, Ghaziabad and had come to Electrical Department (Train Lighting Wing). In terms of the aforesaid Supreme Court decision as also Tribunal's orders dated 20.3.2003 in OA No.408/2001 respondents 4 to 7 could not have been considered senior to applicants. Applicants had always been senior to respondents 4 to 7 in the Electrical Department (Train Lighting Wing). They had also cleared the trade test earlier than respondents 4 to 7. Respondents had passed order dated 13.9.2004 without considering the law laid down in the case of *V. K. Dubey* (supra) as also directions of this Court.

12. In result, Annexure-1 dated 13.9.2004 is quashed and set aside. Respondents are again directed to give up casual approach and seriously assign proper seniority to applicants in Train Lighting Fitter Grade-III in accordance with law laid down by the Hon'ble Supreme court in *V. K. Dubey* (supra), related rules and Railway Board's circulars dated 21.4.1989 and 7.7.1995 dealing with re-deployment of a "large number" of employees. After assigning proper seniority as above, applicants shall be granted promotion from the date their juniors were promoted to the higher grades with all consequential benefits. The entire action shall be taken by respondents within three months from the date of receipt of these orders.

13. Both the OAs are allowed as above.


(Mukesh Kumar Gupta)
Member (J)

/as/


(V. K. Majotra)
Vice-Chairman (A)

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