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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. NO.1171 of 2004

New Delhi, this the 31st day of January, 2006

**HON'BLE SHRI V.K. MAJOTRA, VICE CHAIRMAN (A)
HON'BLE SHRI SHANKER RAJU, MEMBER (J)**

1. Kesar Singh
2. Mohan Singh
3. Phool Singh
4. Mahipal Singh
5. Bias Dev
6. Dori Lal
7. Ram Charan
8. Ram Chander
9. Munki Devi (Ms)
10. Jagdish Sharan
11. Gobind Singh
12. Vishav Nath
13. Gauri Shankar
14. Shish Pal Singh
15. Asha Devi (Ms)
16. Kishan Lal Baid
17. Hitlar Singh

(All working as O.T. Assistants Gde. II in
Northern Railway Hospital, Basant Lane,
New Delhi-110001)

.....Applicants

(By Advocate : Shri R.K. Sarkar)

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VERSUS

Union of India, through

1. General Manager
Northern Railway,
Head Quarters Office,
Baroda House,
New Delhi.
2. Medical Director
Northern Railway Central Hospital,
Basant Lane,
New Delhi-110001.

.....Respondents.

(By Advocate : Shri R.L. Dhawan)

ORDER**Shri Shanker Raju, Member (J) :**

Applicants by virtue of this OA have assailed the order passed by the respondents on 4.3.2004 whereby the respondents by granting one time exemption to the rules relating to promotion of OT Asstt./Dresser-I had approved promotion of two ECG Technicians ex-cadre and have further sought consideration of the applicants for promotion as OT Asstt./Dresser-I. In pursuance of orders passed by this Tribunal in MA 2049/2003 in OA 1975/2002 dated 15.12.2003, regarding implementation of directions for filing up of posts of OT Asstt. Grade-I, the respondents have issued clarification on 27.2.2004 whereby Shri Kulbhushan, senior-most OT Asstt. has been promoted as ECG Technician w.e.f. 25.3.1998 and Shri Ram Avtar, Hospital Attendant, has been promoted as ECG Technician w.e.f. 27.8.1991. As per para 182 of IREM Vol.I all Grade 'D' employees of medical department are eligible for the post of OT Asstt./Dresser Grade III whereas vide letter issued by the General Manager on 4.3.2004, hierarchy for promotion for OT Asstt. Grade-I has been specified, which includes OT Asstt./Dresser Grade-III, OT Asstt./Dresser Grade-II and OT Asstt./Dresser

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Grade-I. Before the recommendations of Vth CPC, senior-most OT Assistants were used to be promoted as ECG Technician but after the Vth CPC's recommendations, bringing OT Assistants and ECG Technicians in the same pay scale of Rs.4000-6000 as one time exemption not to be quoted as precedent, as General Manager has accorded approval of two ECG Technicians and Dresser Grade-I, which has given rise to the present OA.

2. Learned counsel of applicants contended that the respondents having themselves laid down channel of promotion to the post of OT Asstt. Grade-I by laying down the Recruitment Rules, their action in promoting ECG Technicians, ex-cadre employees, to the post of OT Asstt. Grade-I is de hors the rules and beyond the channel which would not be in consonance with the Apex Court's decision in the case of **Suraj Parkash Gupta and Ors. vs. State of J & K and Ors.**, 2000 (7) SCC 561.

3. It is also contended that applicants, being senior-most OT Asstt. Grade-II, are the only eligible candidates to be promoted to the post of OT Asstt./Dresser-I. By not promoting them, their chances of consideration have been ruined. By placing reliance on the decision of the Apex Court in the case of **Baldev Prasad v. Sachendra Nath**, 1991 (10) SC SLJ 10, it is further contended that no person can be promoted when he has not been borne in the cadre.

4. On the other hand, learned counsel for respondents Shri R.L. Dhawan vehemently opposed the contentions of the applicants and by placing reliance on the decision of the Apex Court in the case of **The Railway Board and Ors. vs. P.R. Subramaniam and Ors.**, 1978 (1) SCC 158 and the decision of the CAT Full Bench in the case of **Wazir Chand vs. Union of India**, Full Bench C.A.T. (Principal Bench) Vol.II 287, contended that General Manager under Para 124 of IREM Vol. I has full power to



make Rules with reference to Group 'C' and Group 'D' employees until they are not in consistent with the Rules laid down by the Ministry of Railways .

5. By an order dated 20.5.2004, promotions made have been subjected to the final outcome of the OA and it has been directed to the Railway Administration to specify this in the promotion order.

6. The aforesaid has been complied with and the promotions made are specifically made subject to the final outcome of this OA.

7. We have carefully consideration of the rival contentions of the parties and have perused the records summoned. No doubt, General Manager has power to make Rules, but once in compliance of the directions of this Court it has been under the delegated powers of the Ministry of Railways that the General Manager has, by framing the Rules under IREM Vol.-I more specifically under Para 182, laid down hierarchy for promotion to the post of OT Asstt./ Dresser-I, promotion accorded to the ECG Technicians to the post of OT Asstt/Dresser-I, who have been borne on the cadre of OT Asstt. having been promoted earlier as ECG Technician, the approval for promotion as one time exemption not to be quoted as a precedent is de hors the Rules. No doubt, discretion is vested in the General Manager to frame the Rules but having framed the Rules and set the hierarchy violating the rules itself by bringing in ex-cadre employees, who are not borne in the cadre, is sheer violation of the decision of the Apex Court in the case of *Suraj Prakash Gupta* (supra) as well as decision in *Baldev Prasad* case (supra) where it has been held that one who has not even borne in the cadre cannot be promoted to the post. The record shows that the respondents vide their letter dated 27.2.2004, which has been referred to in the letter dated 4.4.2004, clearly laid down the Recruitment

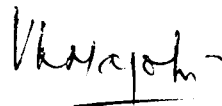
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Rules for OT Asstt. cadre, as such, making exemption to the Rules would not be bonafide exercise of power vested in the administrative authorities and in judicial review, this Court has ample power to set aside the action of the respondents, which violates the Rules.

8. Promotion and accord of chances of promotion cannot be claimed as a right but one has a right to be considered for promotion in accordance with Rules. By promoting ECG Technician to the cadre of OT Asstt., the consideration of the applicants for promotion would be greatly prejudiced and they would lose their right of being considered, which would not be countenanced in law, as respondents are to be estopped from detracting from their own rules and making promotion against it.

9. In the result, for the foregoing reasons, as the promotions have been made subject to the final outcome of the present OA and the respondents have specifically mentioned the same in the promotion order, the promotees do not have right to continue in the promotional post, as they had been promoted de hors the Rules. Accordingly, impugned order is set aside whereby one time exemption has been accorded to promote ECG Technicians to the Post of OT Asstt./Dresser-I is also set aside. The respondents are directed to consider the applicants subject to their eligibility and fitness, for the post OT Asstt./Dresser Grade-I in the scale of pay of Rs.4500-7000, within a period of two months from the date of receipt of a copy of this order. No costs. *OAs accordingly allowed*


(SHANKER RAJU)
MEMBER (J)


(V.K. MAJOTRA)
VICE CHAIRMAN (A)

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