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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 39/2004

New Delhi this the 21st day of April, 2007

HON'BLE MR. JUSTICE M. RAMACHANDRAN, VICE CHAIRMAN (J)
HON'BLE MRS CHITRA CHOPRA, MEMBER (A)

1. Tarsem Singh S/0 Shri Munshi Ram,
Cleaner, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi.
2. Brij Kishore S/0 Charan Singh,
Cleaner, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi.
3. Ram Swaroop S/0 Sukhan,
Cleaner, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi.
4. Jagan Nath S/0 Sheetal Din,
Cleaner, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi.
5. Ram Niwas S/0 Beni Madhav
Khalasi, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi.
6. Dashrath S/0 Badri Prasad
Khalasi, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi.
7. Jaipal Singh S/0 Narinder Singh,
Khalasi, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi.
8. Ram Nath S/0 Tola Ram,
Cleaner, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi.
9. Bhanwarpal Singh S/0 Pahup Singh,
Cleaner, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi.
10. Prem Nath S/0 Deo Raj Singh,
Cleaner, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi.
11. Ram Milan S/0 Bali Bhader,
Khalasi, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi.

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12. Kaptan Singh S/O Tek Chand,
Cleaner, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi.
13. Nand Ram S/O Ram Kawal,
Cleaner, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi.
14. Harsh Singh S/O Dewan Singh,
Khalasi, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi.
15. Hari Singh S/O Ghamand Singh,
Khalasi, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi.
16. Raj Kumar S/O Kishan Chand,
Cleaner, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi.
17. Viveka Nand S/O Suresh Prashad Mandla,
Khalasi, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi.
18. Arun Kumar S/O Srideo Jha,
Crana Man, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi.
19. Ram Baboo S/O Durga Prasad,
Cleaner, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi.
20. Sant Ram S/O Ram Sarar Mishra,
Khalasi, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi.
21. Jogendra Jha S/O Dev Narayan Jha,
Cleaner, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi.
22. Lalan Prasad S/O Jinath,
Cleaner, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi.
23. Paras Nath S/O Sukh Lal,
Cleaner, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi.
24. Ranjan Kumar Verma S/O Devi Lal Verma,
Cleaner, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi.
25. Damodar Prasad S/O Some Lal,
Cleaner, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi.

26. Bhagwan Prasad S/O Bindeshwari Prasad,
Cleaner, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi.
27. Mohan Swaroop S/O Chirlall,
Cleaner, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi.
28. Durga Dass S/O Prabhuram Sharma,
Cleaner, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi.
29. Shiv Kumar S/O Bhaiya Lal,
Khalasi, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi.
30. Ram Naresh singh S/O Lalbhan Singh,
Cleaner, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi.
31. Leeleshwar Sharma S/O Durga Prasad,
Cleaner, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi.
32. Nafe Singh S/O Birkha Ram,
Khalasi, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi.
33. Hari Kishan S/O Tek Chand,
Cleaner, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi.
34. Suresh Kumar S/O Salig Ram,
Khalasi, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi.
35. Srayar Singh S/O Todi Lal,
Cleaner, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi.
36. Vijay Kumar S/O Devi Singh,
Cleaner, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi.
37. Subhash Chand S/O Jhaman Lal,
Cleaner, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi.
38. Ram Singh S/O Banwari Lal,
Cleaner, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi.
39. Chotte Lal S/O Shriram Pher Yadav,
Cleaner, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi.

40. Narain Singh S/O Dhani Ram,
Khalasi, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi.
41. Gian Prakash S/O Hunman Singh,
Cleaner, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi.
42. Shiva Prasad Choudhary S/O Laldhary Choudhary,
Cleaner, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi
43. Om Prakash S/O Ram Chander,
Khalasi, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi.
44. Chandan Singh Rawat S/O L.S.Rawat,
Cleaner, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi.
45. Rash Bihari Pandey S/O Sudama Pandey,
Cleaner, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi.
46. Mohan Lal S/O Jagat Ram,
Cleaner, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi.
47. Ram Chander Ram S/O Jakhan Ram,
Cleaner, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi.
48. Ram Swaroop S/O Shiv Charan,
Cleaner, Diesel Shed, Northern Railway,
Tughlakabad, New Delhi.

... Applicants

(By Shri K.N.R. Pillai, Advocate)

versus

1. Union of India through
General Manager, Northern Railway,
Baroda House, New Delhi.
2. Divisional Railway Manager,
Northern Railway,
State Entry Road, New Delhi.
3. Sr. Divisional Mechanical Engineer,
Northern Railway, Diesel Shed,
Tughlakabad, New Delhi.
4. Satish Kumar, Apprentice Dsl. Technician
5. Ved Prakash -do-
6. Satyan Kumar -do-
7. Vijay Kumar -do-

8.	Jaswant Singh	-do-
9.	Deepak Kumar	-do-
10.	Vijay Kumar	-do-
11.	Dinesh Kumar	-do-
12.	Sanjay Kumar	-do-
13.	Raj Kumar	-do-
14.	Virender Singh	-do-
15.	Sunil Kumar	-do-
16.	Brijesh Bahadur Singh	-do-
17.	Rajesh Kumar	-do-
18.	Onkar Singh	-do-
19.	Naresh Kumar	-do-
20.	Chiddu Pal	-do-
21.	Gaurav Gupta	-do-
22.	Madhu Sudan Lama	-do-
23.	Manoj Kumar	-do-
24.	Ashwani Malik	-do-
25.	Jeewan Singh	-do-
26.	Ashok Kumar	-do-
27.	Suraj Bhan	-do-
28.	Suresh Kumar	-do-
29.	Vinod Kumar	-do-
30.	Rajesh Kumar	-do-
31.	Vinod Kumar	-do-
32.	Mukesh Kumar	-do-
33.	Om Prakash	-do-
34.	Vijay Arora	-do-
35.	Radha Raman Tripathi	-do-
36.	Ankit Bhardwaj	-do-
37.	Bhupinder Kumar	-do-
38.	Naveen Kumar	-do-
39.	Gautam	-do-
40.	Ravi Kumar	-do-
41.	Manoj Kumar	-do-
42.	Sunil Kumar	-do-

... Respondents

(Service of Respondents No.4 to 42 through
Asstt. Divl. Mech. Engr. (Trg),
Northern Railway, Diesel Shed,
Tughlakabad, New Delhi).

{ By Advocate Shri R.L.Dhawan }

O R D E R

(Hon'ble Mr. Justice M. Ramachandran, Vice Chairman (J)

The interpretation of a Railway Board order, dated 28.9.1998 (Annexure A- III), is substantially the issue, which has been raised in the above Original Application. Forty eight applicants herein originally had started their career as casual labour, and in due course they had been screened and empanelled by the Railway administration for regularization in Group 'D' posts. They claim that they were so regularized from 1996 onwards. The 5th Pay Commission had recommended for giving better prospects to qualified hands and vide Annexure A- III, 50 % of Group 'D' posts in Diesel / Electric Loco/EMU Maintenance trades were upgraded in Group 'C' scale of Rs.3050-4590 as Skilled Artisans (Technicians). The applicants claim that in clear terms the Board had directed that as far as serving candidates as on the crucial date, viz., 28.9.1998, they are entitled to be so accommodated as skilled artisans but, however, this had been over-looked by the respondents concerned. So much so the vacancies, to which lawfully they were to be accommodated had been filled up by the process of selection by direct recruitment.

2. The application is filed pointing out that the superior claim recognized by the Railway Board, should not be permitted to be thwarted by the lower officers, and it should be ensured that they are to be accommodated from the date of entitlement as skilled artisans in the grade of Rs. 3050-4590, borne on Group 'C' scale. It is further submitted that the new entrants are to be directed to be accommodated subject to the above claim. Applicants have also taken care to implead the affected parties as respondents 4 to 42.

3. In support of their contention, attention has been invited by the applicants to a judgment passed by the CAT Jodhpur Bench dated 11.4.2002 in OA 143/2001 and OA 144/2001. Persons who are similarly situated like them were

directed to be given the benefit, and the operative portion of the order is as given below:

"Both the OAs are allowed. The respondents are directed to consider the applicants for filling up the additional posts as well as the vacancies for the period from 2.8.1998 to 31.8.2002 against 60 % direct recruitment quota from the applicants and other eligible serving employees on roll as on 1.9.1998. The appointment of direct recruits against these posts would be treated as provisional till all the eligible in service candidates remain awaiting placement in the grade".

4. Reply statement is filed by the Railway Administration, wherein it had been contended that department has filled up the vacancies on a well accepted practice, and the applicants who were borne on the cadre of Diesel Khallasi were merged against the post of Diesel Cleaner, definitely in lower payscale and could not be accepted for promotion as Skilled Artisans Grade III. According to the statement, the claim, for promotion to a higher category in ignoring the intermediate category. It is not sustainable and the Original Application was not to be entertained. There was also an objection that the application was belated.

5. This Tribunal, in fact, had passed final order on the application on 17.2.2005, after examining the rival contentions. It had been observed that claim was silent about material factual details, and therefore, relief could not have been granted. We may quote the findings and observations of the Bench as recorded in para 11 which reads as following:

"It is thus clear that the posts could be filled from amongst the serving employees, who were on roll as on 01.09.1998 and who possessed the prescribed qualifications, namely, either they should have successfully completed the course of Completed Act of Apprentices, ITI pass candidates and matriculates but interestingly we have gone through the entire O.A. and find that there is not even a whisper on behalf of applicants that either they had completed successfully course of Completed Act of Apprentices or were ITI pass candidates and matriculates, which was the basic requirement to be fulfilled by the serving employees. Moreover, perusal of the judgment given by Jodhpur Bench on 11.4.2000 also shows that all the applicants in the said case were matriculates or ITI pass. It was in view of that Jodhpur Bench observed the applicants therein were eligible to be considered for placement in the Skilled Artisan grade of Rs. 3050-4590 in terms of the circular dated 28.9.1998.

6. Applicants being aggrieved by the judgment had taken the matter to the High Court by filing Writ Petition (C) No. 10861/2006 and connected cases.

Vide order dated 6.7.2005, the High Court was of the view that an opportunity is to be given to the petitioners to contend and prove before the Tribunal that they possess the requisite qualification for consideration of their cases for promotion to Group 'C' posts. It is further held that if they have the necessary qualifications, they should be considered for such promotion. Petitioners were directed to file affidavit within a prescribed time, disclosing that all of them is either matriculate or ITI passed and, therefore, they possess the requisite qualification for promotion to the posts, by way of documentary evidence,

7. Within the prescribed time, as above additional affidavit seems to have been filed and supporting documents also have been produced which clearly show that all the applicants possess necessary qualifications, as referred to by the Railway Board order (Annexure A-III) , which fact is not disputed. In reply dated 24.11.2006 to their additional affidavit, Railway administration has contended that since Original Application had been dismissed and Review Application No. 62/2005 also had been dismissed on 12.4.2005, further reliefs were not liable to be granted. Inter alia, it has also been submitted that applicants being in lower pay scale were promoted as Diesel Helper Cleaner in scale of Rs. 2650-4000 and, therefore, they were eligible for promotion as per seniority alone and to no other advantage.

8. However, after having considered the dictum of Jodhpur Bench of the Tribunal and the observations made by the Division Bench of the High Court, we do not see any merit in such technical objections. This is especially so since the administration had not challenged the earlier order passed by the Tribunal. The findings which may operate to the advantage of the applicants practically stands affirmed, the only question being as to whether they were entitled to the benefit of Annexure A-III. For this purpose, it may be necessary to refer to Annexure A-III order dated 29.9.1998 on the subject of recruitment of candidates. The issue was specifically considered as per the recommendations of the 5th Central Pay Commission. With the approval of the President, Ministry of Railways had laid down that minimum qualification for direct recruitment being fixed necessarily

certain re-fixation and distribution of the posts required to be carried out. It was directed as following:

- "(i) 60 % by direct recruitment from successful course completed Act Apprentices, ITI pass candidates and matriculates from the open market.
- (ii) 20 % from serving semi-skilled and unskilled staff with three years of regular service with educational qualification as laid down in the Apprentice Act; as outlined in Railway Board's letter No. E(NG) I/96/PM7/56 dated 2.2.1998; and
- (iii) 20 % by promotion of staff in the lower grade as per prescribed procedure.

6. With a view to give the benefit of the grade Rs.3050-4590 to the existing staff with the prescribed qualification stated in para 5 (1) above in a reasonable time, the following procedure of filling up the posts in grade Rs. 3050-4590 is laid down for the present:

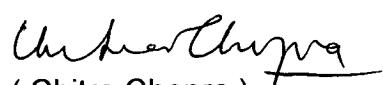
- (i) The additional posts in the grade Rs. 3050-4590 becoming available in terms of these orders will be filled up by the employees possessing the prescribed qualification indicated in para 5(i) above and who are on roll as on 1.9.1998, on passing the prescribed trade test.
- (ii) The 60 % vacancies earmarked for direct recruitment which accrue from 2.9.1998 onwards maybe filled up from serving employees on roll as on 1.9.1998 and who posses the prescribed qualifications as in para 5(i) above as outlined in Railway Board's letter No.E (NG) 1/96/PM 7/56 dated 12.2.1998 for a period upto 31.8.2002 or till such time as no such employees eligible as on 1.9.1998, remains awaiting placement in the grade, whichever is earlier".

9. As referred to earlier, after the remand, the scope of examination has become very limited. The only issue was whether the applicants were qualified for claiming the benefit prescribed by the Railway Board vide Annexure A-3 order. We are certain that while examining the claim the only aspect to be considered was as to whether applicant did come within the parameters prescribed by the Railway Board. The essential requirement was possession of the qualifications, The passing of trade test, and the condition that they should be on the roll as on 1.9.1998. If this condition has been fulfilled it should not have been possible for any authority to interpret the order in any other manner to deny the benefit which the Board in their wisdom had directed to be given to serving qualified persons.

10. Ear-marking 60 % posts to open market who had completed their Apprenticeship, ITI pass and matriculation, of course, could have been permissible only after absorption, of the existing hands who were already in service and were on the roll on 1.9.1998. This was precisely laid down. Therefore, search for candidates from the open market should have waited till 31.8.2002 and for further such time till no such employees were available so waiting for placement.

11. We are satisfied that by selecting respondents 4 to 42, the opportunity conferred on the applicants stand over looked. We find that applicants are similarly situated like the persons who had approached the Tribunal in OA 143/2001. They are entitled to the benefits, which have been snatched away from them. We, therefore, direct the respondents to accommodate the applicants properly against the posts to which they ought to have been considered and appointed as coming within the parameters prescribed under the Railway Board's orders.

12. Although private respondents were impleaded, there is no representation forthcoming from them. The applicants will be entitled to notional promotion as well as placement earlier than the direct recruits. We do not think that Railway Administration is justified in contending that the applicants were to wait for their turn for promotion when Railway Board's orders were clear and specific that possession of qualifications alone was relevant. Consequently, the rights of the applicants are upheld by us. We direct that appropriate orders should be passed within three months from the date of receipt of a copy of this order extending the benefits. Application is allowed. There shall be no order as to costs.


(Chitra Chopra)
Member (A)


(M. Ramachandran)
Vice Chairman (J)