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RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH: ALLAHABAD**

ORIGINAL APPLICATION NO.1534 OF 2005

ALLAHABAD THIS THE 25th DAY OF MAY, 2006

**HON'BLE MR. K. B. S. RAJAN, MEMBER-A
HON'BLE MR. A. K. SINGH, MEMBER-J**

1. Babu Lal, S/o Sri Radhani.
2. S.M. Shukla, S/o Sri S.K. Shukla
3. Har Charan, S/o Sri Pooran Lal.
4. Ram Baran, S/o Sri Shyam Sunder
5. D.K. Mittra, S/o Sri S.K. Mittra
6. Laxmi prasad, S/o Sri Bharosa

.....Applicants

By Applicant: Shri S.N. Khare

Versus

1. Union of India, through the General Manager, N.C.R., Allahabad.
2. D.R.M., N.C.R., Jhansi.

.....Respondents

By Advocate: Shri P. Mathur

O R D E R

By K.B. S. Rajan, Member-J

The legal issue involved in this case is whether the applicants, who have been functioning as ad hoc goods drivers for the past three-four years should be granted promotion on the basis of viva only (wherein too they should not be, as per the extant rules, rejected as they have been on ad hoc basis in the post of drivers for over 18 months) or should they be properly tested by way of written test cum viva voce, as

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contended by the respondents, as the post of Goods Driver is a selection post.

2. The brief facts of the case are as under:-

](i) The applicants are at present working as "Adhoc promotee Goods Driver" at Banda/Jhansi of NCR. Prior to this promotion, all the applicants were Diesel Asstt/Asstt. Driver/ Shunter etc. and while working as such, all were screened for their suitability for the post of Goods Driver and having been found 'suitable' for this post were sent for the Goods Driver's training to Area Training School, Bhusaval.

(ii) The applicants passed the suitability test. All the applicants were thus, having been screened and tested and found suitable for the post of Goods Driver were promoted by the Respondents as adhoc promotee Goods Driver and posted at different Depots in Jhansi Division of NCR as far back as 18.1.2002 and on different dates. While so working for the last 3/4 years quite satisfactory efficiently without any Chargesheet or complaint whatsoever the applicants were called for suitability test for the post of Goods Driver by the respondents vide their dated 29.3.2005.



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(iii) When the list of the candidates who were found suitable for the post of Goods Driver was released, to their surprise, they did not find their names in that list. They jointly represented to the respondents ^{for insertion} of their names in that list at their proper place, but ^{as} ^{no} action was taken by the respondents, the applicant filed O.A. no. 354 of 2004 before this Tribunal for giving direction to the respondents to include their names in the list of candidates found suitable for the post of Goods Driver which is still pending for decision of this Tribunal.

(iv) While this O.A. was at the stage of final hearing on 2.6.2005, the applicants were advised by the Registry that case has been kept as pending and shall be taken on its turn.

(v) Respondents vide their impugned letter dated 22.11.2005 have been called the applicants to appear in the suitability test for the post of Goods Driver.

3. Respondents' resistance as contained in the CA.

(a) The issue in respect of regular promotion against selection post on the ground of continuous adhoc working i.e. more than 18 months against such selection post have already been discussed in detail by the Hon'ble Full Bench of the Tribunal on the

reference made by various Benches of the Tribunal as reported in ATR 1990 (1) CAT 587 in re. Jethanand Versus Union of India & Others decided on 5.5.1989. After due ~~analysation~~ of various instructions issued by the Railway Board as in the present case it has categorically been held that an employee can not be promoted against the selection post unless and until he has passed the requisite selection

4. Rejoinder, reiterating the contention in the OA has been filed.

5. Arguments were heard and documents perused.

6. First as to the rule position:

Admittedly, the post of Goods Driver is a selection post. As recently as on 6th September, 2005, the Railways have issued a circular and the same reads as under:-

"Sub: Procedure for holding selection for promotion to the posts classified as 'selection'-Modified procedure in case of loco running staff.

In terms of extant procedure the posts of Goods Driver and Passenger Driver are required to be filled up by a positive act of selection. After elimination of viva voce from departmental selections in terms of instructions contained in this Ministry's letter dated 7.8.2003 written test has been made mandatory as part of the selection process to assess professional ability of the candidates as against Written test and viva voce earlier.

2. *It has been brought to the notice of this Ministry by one of the Zonal Railways, and the Federations that there will be difficulty in holding written test in terms of sparing all the eligible staff at the same time to appear in the written test will affect train operations.*

3. *The matter has been considered carefully by the Ministry of Railways after obtaining views of the Railways. It has been decided that while written test may be*

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continued for promotion as Goods Driver for promotion as Passenger Driver selection may be on the *viva voce* after passing the prescribed promotional course.

4. The revised procedure for filling up the post of Passenger Drivers will be applicable to selections notified on or after the date of issue of this letter."

7. The applicant on his part relied upon the following documents:

- (a) Order dated 21-05-1956
- (b) Order dated 29-06-1983
- (c) Order dated 03-08-1989
- (d) Order dated 06-01-2004

The above orders are reproduced below:-

- (a) "an employee officiating for 18 months CONTINUOUSLY with SATISFACTORY working should not be REVERTED. He should also be NOT DECLARED " UNSUITABLE" in interview he fulfills this condition."
- (b) Such posting and promotion should be avoided and where imperative personal approval of CPO should be obtained. Last instructions in this respect are in Industrial Advisor D.O. No. E(NG) II-81/RE-1-1 of 1.4.1981. It has come to notice that still in Railways for many years back adhoc promotions are in continuation and when in selection such promotees are failed, they are reverted who on turn go to the High Court etc and who had given them benefit contemplated in Board's letter no. E(D&A)65/RG/6-24 of 9.6.56 and 15.1.66 wherein it is laid down that if a man after adhoc promotion has officiated as such for more than 18 months cannot be reverted. He can be reverted only under DAR proceedings. Against this decision of the High Court Special Leave having been rejected, the Board had no alternative but to reiterate that adhoc promotions may be restored to very rarely that too only with the personal approval of the CPO and that regular



selection be held and any lapse in selection should be seriously viewed."

(c) General Manager has accorded sanction for your proposal of selection to the post of Passenger Guard Gr. Rsl 1350-2200 (RPS) (Selection Post) on the basis of record of service, personality and professional ability adjudged by Viva Voce test dispensing with the written test as a one time relaxation of Jhansi Division only.

It may kindly be ensured that the selection is finalized as early as possible intimating this office the details of Goods Guards called for selection etc."

(d) "Rule no.4 : The existing classification of the posts covered by these orders as 'selection' and 'non-selection' as the case may be remains unchanged. However, for the purpose of implementation of these orders if an individual Railway servant becomes due for promotion to a post classified as 'selection post' the EXISTING SELECTION PROCEDURE will STAND MODIFIED in such a case to the EXTENT that the selection be BASED only on Scrutiny of RECORD AND CONFIDENTIAL REPORT WITHOUT HOLDING ANY WRITTEN AND/OR VIVA VOCE TEST. This MODIFIED SELECTION PROCEDURE has been decided upon by the Ministry of Railways as a one time exception by Special dispensation in view of the numbers involved with the OBJECTIVE OF EXPEDITING the IMPLEMENTATION of these orders."

8. Of the above, order at © i.e. order dated 29-06-1983 relates to promotion as passenger guard and as such, the same is not applicable. Of course, though it is stated to be a selection post, in their own wisdom, the Railways have obviated the requirement of holding written test to test the candidates and viva alone was retained. In any event, the same does not in any way assist the applicant. Similarly, as regard (d) the modified selection procedure is in respect of re-structuring and as such, the same too does not come to the rescue of the applicants. As regards (a) above, it is true

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that by a long experience of 18 months one is expected to have expertised in the job entrusted to him and other conditions being fulfilled, in the viva he should not be rejected. This is with a view to minimizing personal victimization etc., and again, invariably, at the time when the order was issued, there was written test followed by viva and once in the written test an individual qualifies, the same coupled with experience of over 18 months would make him perfect in his job and thus, even in viva if the individual due to lack of eloquence, fumbles, he be not disqualified on account of this minor deficiency. But, qualifying the written test must have been a sine qua non. Or else, the post would be a non selection post entailing only viva voce and in such circumstances also rich experience fills up the gap of deficiency in qualifying in the viva.

9. As regards (b) above, the same calls for closer scrutiny as it appears to be more in favour of the applicant. The said order mandates that ad hoc promotions should be kept to the minimum since, an ad hoc promotee cannot be reverted save under D.A.R. In the instant case, the applicants have been performing the duties of goods driver for the past four years plus. As such, if the above direction of the Railway Board is adopted, there is no question of their being reverted.

10. The question that then arises for consideration is whether the applicants should continue only as ad hoc goods

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drivers or could they be regularized as goods driver, whereafter alone they can be considered for promotion to the post of Passenger Drivers/Mail/Express drivers. Here comes into play the order dated 6th September, 2005 of the Railway Board, which is relied upon by the respondents. As per the said order, written test followed by viva is a sine qua non for promotion to the post of Goods driver, while for promotion from Goods driver to Passenger Driver, viva alone would suffice. First, there is a rationale in this stipulation. Normally a shunter is considered for promotion to the post of goods driver. A shunter's job is limited to a particular station and by doing his job, he gains experience to some extent in driving the engine, with or without any bogies/wagons attached to the engine. This little experience together with knowledge on the subject, which would be tested in the written examination followed by viva voce enables the authorities to decide whether such shunters would be in a position to drive a goods train (which do not carry passengers but only goods and as such, even if there be any accident, there would not be loss of human lives). Thus, the initial movement on the main rails could be permitted by properly testing the individuals to ascertain whether they have adequate knowledge in running the train on main lines. Once a shunter becomes a goods driver, his experience as goods driver gives him sufficient confidence in manning a passenger train. Since he is already on the main line, not much of additional knowledge is essential to test him whether he would be suitable for manning a passenger

train. It is, in all probability, for this reason that only viva is insisted instead of written test cum viva voce. This is comparable to the erstwhile system of selection process from Group B to junior Group A post and from Junior Group A to senior groups. The lowest rung of Group A is considered as "selection" post, while that of senior Group A, the same is non selection.

11. What, however, puzzles is that when the post of goods driver has been categorized as a selection post, then, what is the rationale in the following?

(a) How come, ad hoc promotions are made from shunters to Goods Drivers? Does it not have the same grave risk, which the Railways want to avoid in respect of promotion to the post of Goods Driver on regular basis? Would not the Railways run the risk of railway accidents by deputing the shunters on main line to man goods trains? If there be shortfall of the number of goods drivers, will not adoption of the system of ad hoc promotion of shunters which may no doubt tide over the situation, result in accidents or derailment?

(b) Likewise, what is the logic in insisting for regular promotion the requirement of qualifying in the written test, while exempting the individuals from written test when it comes to the question of promotion at the time of restructuring? Is not the risk there when a person is promoted on restructuring scheme? (This question is posed, as there is nothing on records here to show that such exemption from written test is not applicable to 'safety post'.)

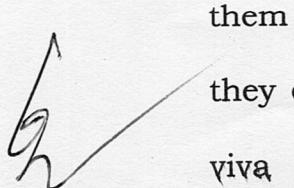
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12. It is, however, for the Railways to consider the above and modify the procedure for selection or posting on ad hoc basis in respect of 'safety post'.

13. Coming to the issue in question in this case, it is trite that the applicants cannot become eligible to be considered for promotion to the post of Passenger drivers as long as they continue to be ad hoc goods drivers. Reverting them is impossible as per the order dated 03-08-1989 and keeping them as goods drivers on ad hoc basis is detrimental both to the interest of the applicants as well as of the organization. The most logical way is to send them for some sort of training so that they would be asked to prepare for the written exam and once they qualify in the written test, they should be posted as regular goods drivers. Directly promoting them as goods driver without testing them in the written examination would not be congenial to the interest of the organization. The relief sought for by the applicants cannot be granted in the manner the applicants want.

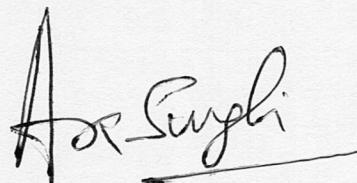
14. In view of the above, interest of justice would be met if the railways are directed to send the applicants and similarly situated ad hoc goods drivers (who have been in that capacity for over 18 months) for a training of short duration so as to prepare them for facing the written examination and permitting them thereafter to participate in the written examination. Once they qualify in the written examination, they be also tested in *viva voce* but they should not be rejected in the *viva* in



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accordance with the order of 1956. As the future career of the applicants is dependent upon their regular appointment as goods driver, the respondents should chalk out a proper programme for imparting training within a period of six months from the date of communication of this order and the duration of course shall be as the respondents may consider adequate to prepare the ad hoc goods drivers to qualify in the written test.

15. The OA is disposed of on the above terms. No cost.


MEMBER-A
MEMBER-J

GIRISH/-