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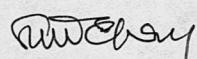
**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

THIS THE 15 DAY OF December 2011

**HON'BLE MR. JUSTICE S. C. SHARMA, MEMBER (J)
HON'BLE MR. SHASHI PRAKASH, MEMBER (A)**

ORIGINAL APPLICATION NO. 300 OF 2005
(U/S 19, Administrative Tribunal Act, 1985)

1. Sompal Singh s/o Shri Ram Das Singh aged about 48 years working as Technician Grade-III, N.E. Railway Diesel Shed, Izatnagar, Bareilly.
2. Sakimul Hussain s/o Shri Tasdduk Hussain aged about 40 years, working as Technician Grade-III, N.E. Railway, Diesel Shed, Izatnagar, Bareilly.
3. Shripal Singh s/o Shri Gajaraj Singh aged about 49 years working as Technician Grade-III, N.E. Railway, Diesel Shed, Izatnagar, Bareilly.
4. Mohd. Zafar s/o Shri Mohd. Jaan aged about 40 years, working as Technician Grade-III, N.E. Railway, Diesel Shed, Izatnagar, Bareilly.
5. Ramesh Chandra (C) s/o Shri Chob Singh aged about 34 years working as Technician Grade-III, N.E. Railway, Diesel Shed, Izatnagar, Bareilly.
6. Munna Lal s/o Shri Duibhajan aged about 48 years aged about 48 years, working as Technician Grade-III, N.E. Railway, Diesel Shed, Izatnagar, Bareilly.
7. Maalik Prasad s/o Shri Ram Iqbal aged about 44 years working as Technician Grade-III, N.E. Railway, Diesel Shed, Izatnagar, Bareilly.
8. Kishun Lal s/o Shri Gaya Prasad aged about 40 years working as Technician Grade-III, N.E. Railway, Diesel Shed, Izatnagar, Bareilly.
9. Taar Babu s/o Shri Nageshwar aged about 46 years working as Technician Grade-III, N.E. Railway, Diesel Shed, Izatnagar, Bareilly.
10. Darshan Prasad s/o Shri Tirthraj aged about 47 years working as Technician Grade-III, N.E. Railway, Diesel Shed, Izatnagar, Bareilly.


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11. Zahiruddin s/o Shri Tashir aged about 41 years working as Technician Grade-III, N.E. Railway, Diesel Shed, Izatnagar, Bareilly.
12. Ashok Kumar Tiwari s/o Shri Vidya Narayan Tiwari aged about 41 years working as Technician Grade-III, N.E. Railway, Diesel Shed, Izatnagar, Bareilly.
13. Bhagirath s/o Shri Hira Lal, aged about 47 years working as Technician Grade-III, N.E. Railway, Diesel Shed, Izatnagar, Bareilly.
14. Jagdish Prasad s/o sh. Viri Singh aged about 47 years working as Technician Grade-III, N.E. Railway, Diesel Shed, Izatnagar, Bareilly.

(All above named applicants are working under SSE (Diesel Shed), N.E. Railway, Izatnagar, Bareilly).

.....Applicants

V E R S U S

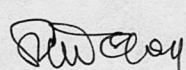
1. Union of India, through General Manager, N.E. Railway, Hd. Qrs. Office, Gorakhpur.
2. General Manager, N.E. Railway, Headquarters Office, Gorakhpur.
3. Divisional Railway Manager, N.E. Railway, Izatnagar, Bareilly.
4. Sr. Divisional Personnel Officer, N.E. Railway Izatnagar, Bareilly.
5. Chairman, Railway Board, Rail Bhawan, New Delhi.

.....Official Respondents

6. Shri Sanjai Kumar Srivastava s/o Shri K. P. Srivastava, Technician Grade-II Diesel Shed, N.E. Railway, Izatnagar through Sr. DME, N.E. Railway, Izatnagar, Bareilly.
7. Dharam Veer Singh, s/o Shri Malkhan Singh, Technician Grade-II Diesel Shed, N.E. Railway Izatnagar through Sr. DME, N.E. Railway, Izatnagar, Bareilly.
8. Bhola Shanker s/o Shri Chet Ram, Technician Grade-II Diesel Shed N.E. Railway, Izatnagar through Sr. DME, N.E. Railway, Izatnagar, Bareilly.



9. Samar Kant Sarkar s/o Shri K. P. Sarkar, Technician Grade-II Diesel Shed N.E. Railway, Izatnagar through Sr. DME, N.E. Railway, Izatnagar, Bareilly.
10. Shahid Ali s/o Wahid Ali, Technician Grade-II Diesel Shed N.E. Railway, Izatnagar through Sr. DME, N.E. Railway, Izatnagar, Bareilly.
11. Vighnesh Kumar Shukla s/o D.N. Shukla, Technician Grade-II Diesel Shed N.E. Railway, Izatnagar through Sr. DME, N.E. Railway, Izatnagar, Bareilly.
12. Vikash Rajada s/o P. Rajada, Technician Grade-II Diesel Shed N.E. Railway, Izatnagar through Sr. DME, N.E. Railway, Izatnagar, Bareilly.
13. Pushpendra Sharma s/o M. P. Sharma, Technician Grade-II Diesel Shed N.E. Railway, Izatnagar through Sr. DME, N.E. Railway, Izatnagar, Bareilly.
14. Sudipt Bhattacharya s/o D.K. Bhattacharya, Technician Grade-II Diesel Shed N.E. Railway, Izatnagar through Sr. DME, N.E. Railway, Izatnagar, Bareilly.
15. Arvind Kumar Sinha, s/o Shri R. P. Sinha, Technician Grade-II Diesel Shed N.E. Railway, Izatnagar through Sr. DME, N.E. Railway, Izatnagar, Bareilly.
16. Vishwa Deo Arya s/o Shri K. L. Arya, Technician Grade-II Diesel Shed N.E. Railway, Izatnagar through Sr. DME, N.E. Railway, Izatnagar, Bareilly.
17. Brijesh Kumar Awasthi s/o Shri D. D. Awasthi Technician Grade-II Diesel Shed N.E. Railway, Izatnagar through Sr. DME, N.E. Railway, Izatnagar, Bareilly.
18. Mohd. Zuber, s/o Shri Mohd. Yusuf, Technician Grade-II Diesel Shed N.E. Railway, Izatnagar through Sr. DME, N.E. Railway, Izatnagar, Bareilly.
19. Shri J. K. Tiwari s/o Shri B. R. Tiwari, Technician Grade-II Diesel Shed N.E. Railway, Izatnagar through Sr. DME, N.E. Railway, Izatnagar, Bareilly.
20. Shri Sandeep Kumar Mishra s/o Shri D. N. Mishra, Technician Grade-II Diesel Shed N.E. Railway, Izatnagar through Sr. DME, N.E. Railway, Izatnagar, Bareilly.
21. Shri Sanjay Kumar Sharma s/o Shri H. N. Sharma, Technician Grade-II Diesel Shed N.E. Railway, Izatnagar through Sr. DME, N.E. Railway, Izatnagar, Bareilly.



22. Shri Rajendra Ram Tamta s/o Shri Pratap Ram, Technician Grade-II
Diesel Shed N.E. Railway, Izatnagar through Sr. DME, N.E. Railway,
Izatnagar, Bareilly.

.....Proforma/Private Respondents

Present for the Applicant: Sri Sudama Ram.

Present for the Respondents: Sri Anil Kumar.

ORDER

Instant O.A. has been instituted for the following relief/s:-

"(i). The Hon'ble Tribunal may graciously be pleased to quash the impugned order darted 20.9.2004 along with proposed revised seniority list attached with the letter (Annexure-A-1) and impugned reply/letters dated 1.11.2004 (Annexure-A-2 and Annexure-A-3) respectively passed by the DRM (P)/N.E. Rly./Izatnagar and the impugned seniority revised list dated 4.11.2004 alongwith G.M.(P)/N.E. Railway, Gorakhpur's letter dated 18.8.2004 (Annexure-A-4/A) and direct the respondents to restore the original seniority position of the applicant as settled in the seniority list of Artisen staff dated 1.4.2002 (Annexure-A-10).

(ii). The Hon'ble Tribunal may also be pleased to quash the impugned order dated 01.12.2004 partially (deleting the name of the private respondents S. No.6 to 22 from the panel/promotion order dated 1.12.2004 (from Sl. No.20 to 36) and direct the respondents to declare the withheld result of trade test of the applicants held in August, 2004 for the post of Technician Grade-II Rs.4000-6000/- under cadre restructuring.

(iii). The Hon'ble Tribunal may further be pleased to direct the respondents to give the benefits of promotion in Technician Grade-III Rs.4000-6000/- under cadre



re-structuring with retrospective effect from 1.11.2003 with arrears of pay under the rules.

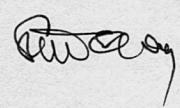
(iv). The Hon'ble Tribunal may further be pleased to give benefits of promotions in terms of para 228 of iREM Vol.-I in respect of their junior persons in further higher grades with arrears of pay from the date they were promoted ignoring the claim of the applicants.

(v). Any other writ or order or direction which the Hon'ble Tribunal deems fit and proper in the circumstances of the case may also kindly be issued in the interest of justice.

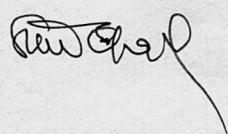
(vi). Cost of the Application may also be awarded."

2. The pleadings of the parties in brief are as follows:-

It has been alleged by the applicants that they were promoted from Artisan Khalasi Grade Rs.750-940 to Helper Khalasi Grade Rs.800-1150/- in the year 1993 and 1995. Seniority list of the Helper Khalasi Grade Rs.800-1150/2650-4000 was issued by DRM (P), N.E. Railway, Izatnagar vide letter dated 28th May, 1996 and this seniority list became final for all purposes and for next higher grade promotions. That the applicants are senior to the private respondents (Sl. No. 06 to 22) in all Grade i.e. Artisan Khalasi Grade Rs.750-940/-, Helper Khalasi Grade Rs.800-1150/- and Skilled Artisan/Technician Grade-III Rs.3050-4590/- as per seniority list issued by the respondents on 01st



April, 2002. Railway Board issued a letter dated 28th September, 1998 and certain directions were given regarding upgradation and promotions on the post of Technician-III and it was provided that the post in grade Rs.750-940 (Rs.2550-3200) to the extent lying vacant shall stand surrendered with immediate effect and the balance in due course. That the balance posts shall not be adjusted against any additional creation and have to be surrendered in due course. The posts surrendered shall not be credited to the surplus staff bank and cannot be used as matching surrender for creation of additional posts. The additional posts in grade Rs.3050-4590 in terms of these orders will be added to the skilled grade of Rs.950-1500 (Rs.3050-4590) and consequently these posts will be increased in the numbers of posts in the grade higher than Rs.3050-4590/-, the posts will not be restructured in accordance with the prescribed percentage. The posts were to be filled up by different mode as per revised percentage and the posts were filled up in Artisan category and the applicants and private respondents were promoted in accordance of the Railway Board's letter dated 28th September, 1998. Minimum qualification was provided vide letter dated 28th January, 2000 for the post Skilled Artisans. That the applicants were promoted in the 1998-99 and they were also assigned seniority position in Skilled

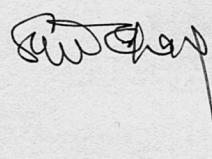
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Artisan/Technician Grade-III and also issued seniority list vide letter dated 01st April, 2002 correctly and it was finalized for all purposes and no amendment is permissible in terms of rules contained in para 321 (b) of the I.R.E.M. Vol.-I 1989 edition, but later on Railway Board issued certain directions on 09th October, 2003, 06th January, 2002 and 23rd/26th July, 2004 in order to give benefit of the promotion against the upgraded post under restructuring then against chain/resultant vacancies by adopting the modified selection procedure with retrospective effect. A show cause notice was issued by the respondents on 28th September, 2004 under pressure of the Trade Union. It has been provided in show cause notice that according to para 6 of the Railway Board's letter dated 28th September, 1998 and as per Railway Board's letter dated 20th January, 2000, skilled artisan staff who were working in Diesel Shed in Pay scale Rs.3050-
4590/- and who were ^{on} [✓] roll on 01st September, 1998 and who had minimum prescribed qualification indicated in para 5(i) were to be considered against 60% posts to be filled up by direct recruitment from successful course completed Act Apprentices, I.T.I. pass candidates and Matriculations from the open market and rest 20% from serving semi skilled and unskilled staff with three years of regular service with educational qualification as

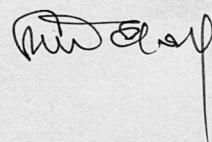
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per Railway Board's letter dated 02nd February, 1998 and the rest 20% by promotion of staff in the lower grade. Representations were submitted by the applicants of the show cause notice, but the respondents revised the seniority list dated 01st April, 2002 and it has become final, but they have placed the private respondents who ^{were} ~~junior~~ ^{later} ~~earlier~~ scale were placed above the applicants and this revision of the seniority list is against the rules as provided in I.R.E.M. and the settled position of law by the Hon'ble Apex Court, hence the O.A..

3. Respondents contested the case and filed Counter Reply and denied from the allegations made in the O.A.. It has further been alleged that there is no violation of Articles 14 and 16 of the Constitution of India in the matter of revising the seniority list of the applicants and the private respondents. Show cause notice was served on the applicants and after considering the representation of the applicants the seniority list was revised and proper opportunity was provided to the respondents of hearing. That the matter is related to seniority and promotion and not related to appointment. That Railway Board issued letter on 18th September, 1998 regarding restructuring of the cadre of the applicants and the respondents. All the posts were distributed as



provided in the Railway Board's letter in pursuance to the changes revised methodology for filling up the posts of skilled artisan in the grade Rs.3050-4590/- will be as provided. According to the revised methodology 60% posts by direct recruitment from successful course completed under Act of Apprentices, I.T.I. pass candidates and matriculates from open market, 20% from serving semi-skilled and unskilled staff with three years of regular service with educational qualification as laid in the Apprentice Act as outlines in Railway Board's letter and 20% by promotion of staff in the lower grade as per prescribed procedure. The additional posts in grade Rs.3050-4590/- becoming available in terms of these orders to be filled up by the employees possessing the prescribed qualification prescribed in para 5(i) above and who are on roll as on 01st September, 1998, on passing the prescribed trade test. The 60% vacancies earmarked for direct recruitment which accrue from 02nd September, 1998 onwards may be filled up from serving employees on roll as on 01st September, 1998 and who possess the prescribed qualifications as in para 5(i) above as outlined in Railway Board's letter dated 02nd February, 1998 for a period upto 31st August, 2002 or till such time as no such employees eligible as on 01st September, 1998, remains awaiting placement

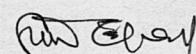


in the grade whichever is earlier. 56 employees who were possessing the qualification of I.T.I. Act of Apprentice in the relevant trade were given benefit of promotion in grade Rs.3050-4590/- in the years 1999 and 2000 along-with those who did not possess the required qualification. A demand was raised by staff members who were possessing the required qualification in the relevant trade should also be given the promotional benefit in the grade Rs.3050-4590/- w.e.f.01st September, 1998 as per the instructions contained in para 6(i) of the letter dated 28th September, 1998 and necessary guidelines were issued by the G.M.(P) Gorakhpur in this connection. And as in doing so it was observed that the seniority of the other employees will be affected, hence the reasonable opportunity of hearing was provided to the affected persons and after hearing and perusing the representation of both streams of employees the seniority list dated 01st April, 2002 was revised and vide letter dated 01st November, 2004, indicating their date of promotion in the grade Rs/3050-4590/- as on 01st September, 1998. That all the applicants were not senior to the private respondents, but some were senior as per seniority list dated 01st April, 1996. It was not provided in the Railway Board's letter dated 28th September, 1998 that the mode by which the vacancies are to be filled rather it lays



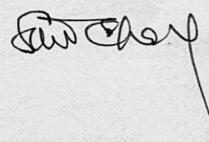
down the revised percentage distribution of the group 'D' posts existing on 01st September, 1998. It was not a fact that 50% of Helper Khalasi (800-1150/2650-4000) were promoted as Technician in the grade Rs.3.50-4590/- but the fact is that on revision of percentage distribution, total 124 posts of artisan grade (3050-4590) were obtained in up-gradation of post from Helper Khalasi (2650-4000) and Khalsi (2550-3200). The Helper Khalasi in the grade of Rs.(2630-4000) were promoted against the upgraded post as per their turn on passing the requisite trade test. During the implementation of the above decision it was observed that the seniority of some of the employees would be affected and the reasonable opportunity was provided to the affected persons. That all the Railway Board's circulars and rules have been followed. That the O.A. lacks merits and liable to be dismissed.

4. In response to the Counter Affidavit of the respondents Rejoinder Affidavit has also been filed by the applicants and Moreover, Supplementary Counter Affidavit as well as Supplementary Rejoinder Affidavits have also been filed by the respondents and applicant annexing the documents which shall be discussed at the relevant place.

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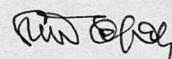
5. We have heard Sri Sudama Ram, Advocate for the applicant and Sri Anil Kumar, Advocate, for the respondents and perused the entire facts of the case.

6. It is an undisputed fact that the applicants and the private respondents had been working as Artisan Khalasi in the Grade Rs.750-940/-, Helper Khalasi Grade Rs.800-1150/- and there seniority was fixed on 28th May, 1996. It has been alleged by the applicants that the seniority list became final for all purposes and for next higher grade promotions. That the applicants were senior to the private respondents in these grades and that the Railway Board issued a letter on 28th September, 1998 providing up-gradations of the post of semi skilled/unskilled grades of Artisan Khalasi/Technician grade-III in Grade Rs.3050-4590 and according to the provision of this circular letter of the Railway Board the seniority of the applicants was finalized on 01st April, 2002, but subsequently under pressure of the Trade Union and the private respondents the respondents issued a show cause notice in order to revised the seniority list and applicants also submitted the representation as required vide show cause notice dated 20th September, 2004 (Annexure-A-1) and afterwards vide letter dated 01st December, 2004 the seniority list was finalized



earlier on 01st April, 2002 was revised and the applicants being senior to private respondents were placed below private respondents. That it has been provided in para 321 (b) of the I.R.E.M. that if the seniority list is not challenged within one year then it shall be final and within one year this seniority list was not challenged by any affected person rather the seniority list was revised on dated 01st December, 2004 and that it is against the provisions of para 302 of the I.R.E.M.. It is also an admitted fact that at present and at the time of filing the O.A. these applicants as well as private respondents had been working as Skilled Artisan/Technician Grade-III in grade Rs.3050-4590/- and earlier to 28th September, 1998 these applicants as well as private respondents were working on the post of Artisan Khalasi in Grade Rs.750-940/- and their seniority was fixed on 28th May, 1996.

7. From perusal of the pleadings of the parties it is evident that Railway Board issued circular letter dated 28th September, 1998 regarding recruitment of the candidates of Artisan Khalasi in Diesel/Electric Loco/EMU maintenance trade is matriculation/Apprenticeship pass under Apprentices Act in relevant trades/Diploma in Electrical/Mechanical/Electronic Engineering, with ITI pass in relevant trade being an additional



desirable qualification in the case of matriculates. These group 'D' posts are distributed in the ratio of 20% in grade Rs.750-940 (2550-3200) and 80% in the grade Rs.800-1150 (2650-4000) respectively. While 50% of the posts in these two grades as on 01st September, 1998 will be placed in the grade of Rs.950-1500 (Rs.3050-4590), 10% of the posts in these two grades as on 01st September, 1998, will be surrendered in the grade of Rs.750-940. Accordingly the revised percentage distribution of Group 'D' posts existing on 01st September, 1998 in the Diesel/Electric Loco/EMU maintenance trades will be as indicated below:-

S. No.	Scale	Existing percentage	Revised percentage
1.	Rs.950-1500/Rs.3050-4590	NIL	50
2.	Rs.800-1150/Rs.2650-4000	80	30
3.	Rs.750-940/Rs.2550-3200	20	10
4.	To be Surrendered		10

Para No.5 and 6 of this Railway Boards letter is material which is reproduced below:-

5. In pursuance to the above changes, the revised methodology for filling up the posts of skilled Artisans in grade Rs. 3050-4590 in diesel/ electric/ EMU maintenance trades will be as under :

- 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

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Board's letter No. E(NG)I/96/PM7/56 dated 2.2.1998 (RBE 23/1998); and

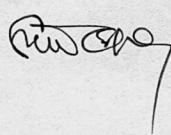
iii. *20% by promotion of staff in the lower grade as per prescribed procedure.*

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(i) above in a reasonable time, the following procedure of filling up the posts in grade Rs. 3050-4590 is laid down for the present:*

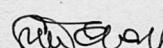
i. *The additional posts in the grade Rs. 3050-4590 becoming available in terms of these orders will be filled up by the employees possessing the prescribed qualification indicated in para 5(i) above and who are on roll as on 1.9.1998, on passing the prescribed trade test.*

ii. *The 60% vacancies earmarked for direct recruitment which accrue from 2.9.1998 onwards may be filled up from serving employees on roll as on 1.9.1998 and who possess the prescribed qualifications as in para 5(i) above as outlined in Railway Board's letter No. E(NG)I/96/PM7/56 dated 2.2.1998 (RBE 23/1998) 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."*

8. From perusal of the above paragraphs of the Railway Board's letter it is evident that what shall be the revised methodology for filling up the post of skilled Artisans in grade Rs. 3050-4590/-. It has been held in para 6(i) That 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, hence



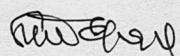
a procedure has been provided that how these posts shall be distributed. It has been alleged by the learned counsel for the applicant that posts were distributed as provided in the Railway Board's letter dated 28th September, 1998 and promotions were given to the applicants as well as respondents in the year 1999-2000 and the seniority was also finalized on 01st April, 2002 whereas, it has been alleged on behalf of the respondents that in the Railway Board's letter dated 28th September, 1998 nothing has been provided that how seniority will be fixed of the persons who have minimum qualification as provided in para 5(i) and vis-vis the semi skilled/unskilled employees promoted against 20% quota. When this matter was agitated by certain employees and trade union and the matter was studied by the respondents and it was revealed that the matter of seniority is to be considered and the seniority is to be revised as per chart of the letter dated 28th September, 1998, hence a show cause notice was issued to the applicants of the present case so that they may represent their stand and prior to taking decision finally representations were submitted by the applicants and decision was taken by the respondents and seniority list was revised on 01st December, 2004. That it was done in accordance of the Railway Board's Rules.



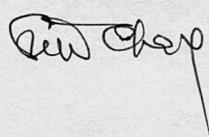
9. It has been argued by the learned counsel for the respondents that as per Railway Board's direction 50% posts of the above grades as on 01st September, 1998 has to be placed in the grade Rs.950-1500/- (Rs.3050-4590) and 10% of the posts in the above two grades as on 01st September, 1998 has to be surrendered in the grade of Rs.750-940 (Rs.2550-3200). Accordingly the revised percentage distribution of the group 'D' posts existing as on 01st September, 1998 in the cadre has been prescribed as under:-

S. No.	Scale	Existing percentage	Revised percentage	Posts
1.	Rs.950-1500/Rs.3050-4590	NIL	50	124
2.	Rs.800-1150/Rs.2650-4000	80	30	74
3.	Rs.750-940/Rs.2550-3200	20	10	20
4.	To be Surrendered	-	10	20

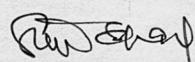
As is evident from above ~~charge~~ that there were 159 posts in the grade 2650-4000 and 53 posts in the grade Rs.2500-3200/-, total 248 posts were existing in the above two grades as on 01st September, 1998. In compliance to the above orders, 124 posts (i.e.50% of 248) were placed in grade (3050-4590), 74 posts (i.e.30% of 248) in the grade (2550-3200) and the remaining 25 posts (i.e.10% of 248) were surrendered. Hence in view of the methodology for filing up the skilled artisan in grade Rs.3050-4590/- was done and 60% by direct



recruitment from successful course completed under Act of Apprentices, I.T.I. pass candidates and matriculated from the open market, 20% from serving semi skilled and unskilled staff with three years of regular service with educations qualification as laid down in the Apprentice Act and 20% by promotion of staff in the lower grade as per prescribed procedure. It has also been alleged by the respondents that in order to give benefit of the grade Rs.3050-4590/- to the existing staff with the prescribed qualification stated in para 5(i) above in a reasonable time the prescribed procedure was adopted. That the additional posts in grade Rs.3050-4590/- becoming available in terms of these orders to be filed up by the employees possessing the prescribed qualification indicated in para 5(i) above and who are on roll as on 01st September, 1998, on passing the prescribed trade test. That the 60% vacancies earmarked for direct recruitment which accrue from 02nd September, 1998 onwards may be filled up from serving employees on roll as on 01st September, 1998 and who possess the prescribed qualification. That the 56 employees who were possessing the qualification of I.T.I./ Act of Apprentice in the relevant trade were given the

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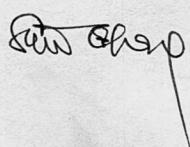
benefit of promotion in grade Rs.3050-4590/- in the years 1999-2000 along-with those who did not possess the said qualification. Hence on the basis of the above methodology learned counsel for the respondents argued that the seniority of the applicant vis-à-vis private respondents was finalized on dated 01st December, 2004. Learned counsel for the respondents further argued that there were numerous employees who were possessing the qualification of I.T.I. and Apprentice they made a representation to give them the promotional benefit in grade Rs.3050/- w.e.f. 01st September, 1998 and after receiving instructions it was finalized. As nothing was mentioned in the Railway Board's letter dated 28th September, 1998 that how the seniority will be fixed, hence subsequently Railway Board issued letter in this connection that how the seniority will be revised and fixed. That it was done according to procedure. We have stated above that 60% posts are to be filled up by direct recruitment from successful course completed under the Act of Apprentices, I.T.I. pass candidates and matriculates from the open market, but it was further provided that if such candidates are available then the employees were possessing



these qualification as provided in para 5(i) of the Railway Board's letter were given benefit and they were promoted in view of para 5(i) of the Railway Board. Learned counsel for the respondents argued that these persons will be placed senior to the applicants.

10. Annexure-A-2 is a letter issued by the respondents that such unskilled employees who had completed the syllabus Act Apprentice/I.T.I. will be given promotion from the date of qualifying trade test in the scale of Rs.3050-4590/- and the promotion shall be given w.e.f. 01st September, 1998. Certain policies were also considered by the respondents as has been referred in letter dated 01st November, 2004 and it has also been provided that after qualifying the trade test such employees shall be given the benefit of the scale of Rs.3050-4590/- w.e.f. 01st September, 1998 and actual benefit has been given with effect from the date on which they promoted which was in accordance with rule.

11. Nothing has been argued on behalf of the applicants against these methodologies of recruitment as provided in

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Railway Board's letter dated 28th September, 1998, rather reliance has been placed by the applicant's Advocate also on this letter of the Railway Board. Learned counsel for the applicant argued that as the matter of seniority was finalized by issuing seniority list on dated 01st April, 2002 and hence it cannot be re-agitated and there is provision in para 332 (b) of the I.R.E.M.. Learned counsel for the applicant also argued that seniority of the applicants vis-à-vis private respondents possessing the minimum qualification prescribed in the circular letter of the Railway Board dated 28th September, 1998 was finalized and moreover, the seniority is to be fixed according to para 302 of the I.R.E.M.. It will be material to peruse para 302 of the I.R.E.M. revised edition 1989 and which is as follows:-

"302. Seniority in the initial recruitment grades

- Unless specifically stated otherwise, the seniority among the incumbents of a post in a grade is governed by the date of appointment to that grade. The grant of higher pay than the initial pay should not, as a rule, confer on railway servant seniority above those who are already appointed against regular posts. In categories of post partially filled by direct recruitment and partially by promotion, the criterion for determination of seniority should be the date of regular promotion after due promotion in the case of promotees and the date of joining the working post after the due

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process in the case of direct recruits, subject to maintenance of inter-se seniority of promotees and direct recruits among themselves. When the dates of entry in to a grade of promoted railway servants and direct recruits are the same they should be put in alternate positions, the promotees being senior to the direct recruits, maintaining inter-se seniority of each group.

Note - In case the training period of a direct recruit is curtailed in the exigencies of service, the dates of joining the working post in case of such a direct recruit shall be date he would have normally come to a working post after completion of the prescribed period of training."

12. We have perused this provision of the I.R.E.M., but it has also been provided at the outset commencement of this paragraph that 'unless specifically stated otherwise, the seniority is to be fixed as provided'. The position in the present case is entirely different, ^aletter was issued by the Railway Board on 28th September, 1998 prescribing certain criterion for allocating percentage to different scale of persons for direct recruits and minimum qualifications for those candidates who will be recruited against direct quota, but it has also been provided for the time being ^{that} skilled and unskilled Artisan Khalasi shall be considered against 60% quota if they ^{are} possessing the minimum qualification as provided in para 5(i) in Railway Board's letter, the respondents were possessing the minimum qualification.

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These posts became available on 01st September, 1998 as has been provided in this letter and such candidates must be on the roll of the respondents on 01st September, 1998. They are required to qualify the required trade test and it was for all persons, and as the methodology for promotion or recruitment was changed by the Railway Board's letter hence it is to be considered that it is otherwise govern by the methodology 'unless specifically stated otherwise, in the normal circumstances the seniority is to be assigned according to para 302, but in abnormal circumstances it will be presumed that it is otherwise specifically stated. As the Railway Board prescribed methodology of recruitment and also promotion percentage, but it has not been laid down that how the seniority is to be fixed of the promotes as well as of direct recruits and it was wanting in the Railway Board's letter dated 28th September, 1998 and applicants as well as respondents had already ^{availled} ² ~~taken up~~ the benefit of the scale of Rs.3050-4590/- then a representation was made by the private respondents and the matter was taken up by the union and the matter was thoroughly considered and it was detected that the seniority has not been fixed correctly as provided in the Railway Board's letter. In Annexure-A-1 it has been specifically stated that in view of para 6(i) of the letter dated 28th September, 1998 and letter dated 28th

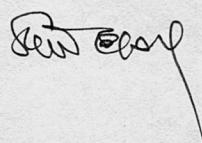
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January, 2000 the skilled Technician has been placed in the scale of Rs.3050-4590/-, but regarding such posts which are ~~held~~ by the employees who are on the roll of the respondents as on 01st September, 1998 possessing the minimum qualification as provided in the Railway Board's letter and how their seniority will be fixed and if the candidates who were on the roll of the respondents on 01st September, 1998 and possess the required qualifications then all will be given proforma promotion w.e.f. 01st September, 1998 in the scale of Rs.3050-4590/- and actual benefit will be given from the date of promotion and hence a show cause notice was issued. In the letter dated 01st November, 2004 respondents had also held that as per Railway Policy ~~all the~~ different circular letters issued by the Railway Board and the benefit is to be given to such employees who are possessing the required minimum qualification w.e.f. 01st September, 1998, but there is no direction for giving such benefit w.e.f. 01st September, 1998, ^{to} ₁₉₉₈ such employees who are only matriculate and as the applicants are not possessing the minimum qualification as provided in para 5(i), hence they were not entitled to the benefit of promotional post w.e.f. 01st September, 1998. In our opinion certain distinction is to be made and it cannot be said arbitrary or discriminatory. If there are two category of persons, one who is

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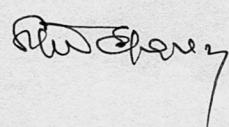
possessing the minimum qualification required for the post and there is another set of persons who are not possessing the required qualification, but are only matriculation, hence the distinction is only as has been provided in the Railway Board's letter dated 28th September, 1998. Such employees who have minimum qualification have been placed above the persons who are to be promoted against 20% quota and those persons who possess the minimum qualification as provided in para 5(i) were required to possess the qualification and they are on roll of the respondents as on 01st September, 1998 then they are required to be given the benefit. And it has also been provided for such employees that they have to qualify the prescribed trade test. Hence actual promotion is to be given on proforma basis w.e.f. 01st September, 1998. Only requirement of the respondents is that such employees must possess the minimum qualification prescribed in para 5(i) and also they are on roll of the respondents as on 01st September, 1998 whereas, for the employees who are promoted must have put in three years of regular service,² they may be serving in semi skilled or unskilled staff.

13. Learned counsel for the applicant argued that the act of the respondents is discriminatory as junior persons have been placed

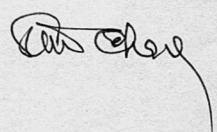


above the senior employees/applicants. That it is immaterial that the junior persons/respondents are possessing minimum required qualification as provided in para 5(i), but the applicants were regularized earlier in the next lower scale of the seniority and the seniority list of the lower scale was also issued on 28th May, 1996, hence respondents have committed illegality in giving the benefit to the respondents from 01st September, 1998. It has also been argued by the learned counsel for the respondents that the seniority of the applicants was finalized according to para 302 of the I.R.E.M. on 01st April, 2002 and now it is final and it cannot be reopened and re-agitated. We had already considered the provision of para 302 and it will not be justified to repeat the same and moreover, it has also been argued that after expiry of one year the seniority cannot be re-agitated but the valid reasons have been given by the respondents for revising the seniority list.

14. Learned counsel for the applicant cited certain judgments of the Hon'ble Apex Court reported in All Indian Service Law Journal 2009 (1) 269 SC Union of India & Ors. Vs. Deo Narain & Ors., but this judgment of the Hon'ble Apex Court is on different point. In the present case no benefit can be given on the basis of this judgment of the Hon'ble Apex Court because in the present

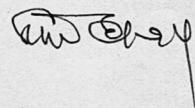


case respondents were promoted as they were possessing the requisite qualification whereas the applicants were given promotion as they were in service and put in three years. Whereas the employees who are possessing the minimum qualification were not required to put in three years minimum service for giving promotion and that the posts will be available on 01st September, 1998 from the date when they were on the roll of the respondents. Although, it is a fact that the eligibility and seniority are different things, but as is evident that the posts were restructured as a consequence of 5th C.P.C. and entire methodology was also provided. The matter in controversy before the Hon'ble Supreme Court was different that one L.D.C. working in particular Collectorate on compassionate ground opted for transfer to another Collectorate on the post of L.D.C. and both these Collectorate has got their own seniority list, hence the applicant was given bottom seniority. And when the case was considered for promotional post then applicant also submitted representation as he had put in much more than three years in service in earlier Collectorate. But in the present case the matter is entirely different.

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15. Learned counsel for the applicant also cited 1996 SCC (L&S) 1187 Anuradha Mukherjee (Smt.) and others VS. Union of India & Ors.. In this judgment Hon'ble Apex Court held that how the seniority is to be fixed when certain persons were recruited through L.D.C.E. and promotees, but in the present case there is no disputes of the recruitment of the direct recruits as well as of promotees. In the present case a letter was issued by the Railway Board for restructuring of the cadre of Artisan Khalasi and certain methodology has been provided that how much percentage will be given to the direct recruits and others, but nothing was provided regarding seniority that how it will be determined and later on certain letters were issued by the respondents and thereafter, it was held that according to letter dated 28th September, 1998 the employees who are possessing requisite qualification were placed above. Hence no benefit can be given to the applicants on the basis of this judgment.

16. Learned counsel for the applicant also cited 1996 SCC (L&S) 1192 Ashok V. David , M.G. Halappanavar Vs. Union of India and Ors., but no benefit can be given to the applicants on the basis of this judgment, because this judgment is on different point. Learned counsel for the applicant also cited (2011) 1 SCC (L&S) 481 Pawan Pratap Singh and Ors. Vs. Reevan Singh and



Ors., 2010(1) SCC (L&S) 1012 H.S. Vankani & Ors. Vs. State of Gujarat and Ors., but these judgments are on different points, hence no benefit can be given to these applicants on the basis of these judgments.

17. Learned counsel for the applicant also cited an order of C.A.T. Principal Bench, New Delhi in O.A. No. 1238 of 2008 in the case of Tasreem Singh & 48 Ors. Vs. Union of India & Ors., but in that matter no doubt was involved regarding seniority and in that matter the employees who had already passed the trade test were not considered against 60% vacancies of direct recruitment, but in the present case there is no such dispute and in the present case the dispute is between persons who are possessing the minimum qualifications as provided in para 5(i) of the letter as well as among the employees who were promoted against promotional quota, hence the case of the present applicants is on different footings.

18. For the reasons mentioned above we are of the opinion that the respondents were justified in revising the seniority list dated 01st December, 2004 because earlier in pursuance of the letter dated 28th September, 1998 the promotional benefits were given

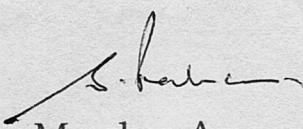
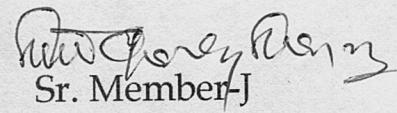
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to the applicants and private respondents, but no provision was made that how this seniority will be determined and in the year 2002 the seniority in scale of Rs.3050-4590/- was considered and given to the applicants and private respondents without following procedure which became essential as a consequence of development in pursuance of the letter issued by the Railway Board on 28th September, 1998, but later on certain employees/trade union made representations for fixing seniority of the applicants who were promoted and persons who were given benefit, because these persons were possessing the minimum qualifications and the interest of the applicants was going to be affected hence show cause notice was issued to the applicants. In our opinion it is most justified and judicious. If seniority ~~is~~ ^{is} fixed vide order dated 01st April, 2002 is revised without giving any show cause notice and without providing opportunity of hearing then these applicants have the grievance that opportunity has not been provided to the applicants of being heard. The applicants ~~are~~ ^{were} required to file representation in this matter and applicants' submitted representation and the same was considered and subsequently letters were issued by the respondents on 01st November, 2004 as well as final seniority list dated 01st December, 2004 and vide this letter seniority was

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revised and it was held that it was done in view of the Railway Board's letters regarding restructuring and those applicant who were on the roll of the respondents as on 01st September, 1998 and were possessing the required qualification they will be given the benefit of the scale of Rs.3050-4590/- on proforma basis. In our opinion in the present case nothing is illegal or unconstitutional and the respondents considered the entire case as per provisions of the Railway Board and different circular letters and the Railway Board has got the right to issue such circular letters so as to govern the service condition of the applicants/employees. In our opinion respondents were justified in revising the seniority list, O.A. lacks merits and liable to be dismissed.

19. O.A. is dismissed. No order as to costs.


Member-A
Sr. Member-J

/Dev/