

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
ALLAHABAD

Dated : Allahabad the, 20th July, 1995.

Original Application No. 1282 of 1988

Hon'ble Mr. S. Das Gupta, Administrative Member,  
Hon'ble Mr. T. L. Verma, Judicial Member.

Virendra Kumar Agarwal, Son of Shri  
G. D. Agarwal, House No. 41, Mohalla Manik  
Chauk, Jhansi. .... applicant.  
(By Advocate Shri H. P. Chakrabarty)

Versus

1. Union of India through the  
General Manager, Central Railway,  
Jhansi.

2. Divisional Railway Manager,  
Central Railway, Jhansi.

.... Respondents.

(By Advocate Shri A. K. Gaur)

(BY Hon'ble Mr. T. L. Verma)  
Judicial Member

1. This application under Section 19 of the  
Administrative Tribunals Act, 1985 has been filed  
for issuing a direction to the respondents to  
absorb the applicant as Jamboo Driver and

quash the letter dated 12.5.1988 whereby the applicant has been informed that he cannot be absorbed as Driver after changing his cadre.

2. The applicant was initially appointed as Khalasi on 28.7.1976. Thereafter, in 1979 he was promoted as Jamboo Driver in Grade- Rs. 210-290 which was subsequently revised to Rs. 260-400. He was sent for Diesel Electric Fitter Training with effect from 24.1.1983 to be absorbed in grade Rs. 260-400. It is stated that the applicant had declined the offer for being sent for training for Diesel Mechanical/T & C Fitter and that he was sent for training against his wishes. On completion of his training, he was absorbed as T & C Fitter in Grade Rs. 260-400 and was posted as T & C Fitter and his pay was fixed at Rs. 260/-

3. According to the applicant, he was holder of substantive appointment as Jamboo Driver and as such he could not have been denied the benefit of being absorbed in the said grade. The denial of the said benefit has put the applicant to financial loss as also his prospect of promotion has been adversely affected. Not only that, Sarv Sri Mhd. Khan and Kishan Chand who were juniors to the applicant and had been allowed to continue as Jamboo Driver are drawing pay at higher rate in a higher scale of pay i.e. Rs. 380-560 as against the applicant who is working in the grade of Rs. 260-400/- . The representation submitted by the applicant for change of cadre as Jamboo Driver has not been given favourable

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consideration and that the same has been rejected and the order rejecting his representation has been communicated by letter dated 12.5.1988 (Annexure-A-1) The decision of the respondents in not allowing the representation of the applicant for the change of cadre to Jamboo Driver, it is stated, is arbitrary, illegal and against the principle of natural justice.

4. The respondents have contested the claim of the applicant, inter-alia, on the ground that the applicant, not having been regularised as Jamboo Driver, was not entitled to be absorbed on the said post after his return from Diesel Electrical Fitter Training.

5. We have heard the learned counsels for the parties and perused the record. We are constrained to observe that the pleadings of the parties are vague and are hardly of any assistance to us in arriving at a correct conclusion in the case. It appears from the representation submitted by the applicant on 9.11.1984 to the Divisional Mechanical Engineer, Jhansi Central Railway that while the applicant was undergoing training of Diesel Mechanical /T & C Fitter, the post of Jamboo Driver was upgraded. Consequently, the applicant was also given the benefit of upgraded scale for the period from 1979 to 21x8 23.1.1983 during which the period he had worked on the said post.

6. The applicant has averred in the application that he had refused the offer of the respondents for absorption as Diesel Electrical Fitter on his return from training and that he was deputed for training notwithstanding his refusal, the respondents have denied the assertion of the applicant and have also denied having received any letter of refusal from the applicant. The applicant has filed Annexure-A-2 purporting to be the carbon copy of receipt of refusal application dated 22.2.1983, submitted by the applicant in support of this contention. The receipt is dated 25.6.1983. We are unable to attach any weight to this receipt because the same, admittedly, has been received long after the completion of training and absorption of the applicant as T & C Fitter. Had the applicant declined the offer of the respondents, in that case, the refusal application in the normal course, would have been submitted before he was forced to go for training on 24.1.1983. At the time, the applicant was sent for training, both the post of T & C Fitter and Jamboo Driver were in grade Rs. 260-400/-. There was no extra benefit to continue as Jamboo Driver. The upgradation of the post of Jamboo Driver appears to have caused change of mind of the applicant and his greed for working on a post of higher grade appears to have had the better of him. The story of having refused the offer, in the above context, appears to be after thought.

7. In addition to the above, the post of Jamboo Driver admittedly was an ex-cadre post. For that reason, the applicant could not have staked his claim to continue on the said post, so long he was not regularised on the said post. The applicant, admittedly has not been regularised as Jamboo Driver hence, no right to hold the said post had accrued to him. The learned counsel for the applicant admitted in course of arguments that the post of T & C Fitter is the post in the normal chain of promotion of the post of Khalasi. In the normal course, he would have expected promotion to the post of T & C Fitter after completing his training.

8. The learned counsel for the respondents has argued that the claim of the applicant is barred by limitation inasmuch as he was sent for Diesel Electrical Fitter Training on 24.1.1983 after being absorbed on the post of T & C Fitter. The cause of action for challenging the action of the respondents in deputing him for training against the respondents has arisen on 24.1.1983. The case challenging the validity of the said order should have, in the normal course been filed within one year from 24.1.1983.

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In reply to the above argument Sri H. P. Chakravarty counsel for the applicant has stated that the applicant had filed a representation dated 24.4.1984 for his absorption as Jamboo Driver followed by another representation in November, 1984 and that it was only after the said representation was rejected and communicated by order dated 12.5.1988, cause of action for filing this application arose. The application

was in 1988 itself hence, this application is not barred by limitation.

9. We have perused the representation dated 29.8.1984 (Annexure-A-3) filed after the applicant was reverted to his parent department and absorbed as T & C Fitter. In this representation all that the applicants has requested for his fixation of pay at Rs. 266/- p.m. in the scale of Rs. 260-400/-. Similar request has been made in his representation dated 9.11.1984 (Annexure-A-6). It would thus appear that the applicant in his representations which were filed immediately after his reversion to his parent department and absorption on the post of T & C Fitter that no request for absorption of the applicant as Jamboo Driver had been at that point of time. It was only in the year 1987 the applicant by his representation dated 14.12.1987 had requested for his transfer from the post of Jamboo Driver (Auto Truck). It is ~~at~~ this representation which have been rejected by the respondents by impugned order dated 12.5.88. The impugned order may save the limitation so far as it relates to the prayer of the applicant for his transfer to the post of Jamboo Driver (Auto Truck), absorption. But, so far as his representation as T & C Fitter is concerned, it became final, after the same was not challenged within one year from the date of his absorption, <sup>in 1984</sup> before an appropriate forum. In this view of the matter, the representation filed by the applicant in 1987 from his present post to the post of Jamboo Driver had lost its relevance. Rejection of said petition, therefore, does not revive the <sup>issue of</sup> absorption of the applicant on the post of T. & C Fitter in

1984 so as to give further lease of life for filing this case.

10. In the facts and circumstances discussed above, we find no merit in this application and dismiss the same. There will be no order as to costs.

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J.M.

*W.R.*

A.M.

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