

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
A L L A H A B A D

O.A. ~~xxx~~ No. 655 of 1989

DATE OF DECISION 28/2/96

Zahid Hussain and others...

PETITIONER(S)

Sri P.N.Khare

ADVOCATE FOR
THE PETITIONER(S)

VERSUS

The Union of India and others.

RESPONDENTS


Shri A.K.Gaur.

ADVOCATE FOR THE
RESPONDENT(S)

C O R A M :-

The Hon'ble Mr. S. Das Gupta, Member (A)
The Hon'ble Mr. T. L. Verma, Member (J)

1. Whether Reporters of local papers may be allowed to see the judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether to be circulated to all other Bench ?


(SIGNATURE)

VKE/-

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
A L L A H A B A D

Dated : Allahabad this the 28th day of February 1986.

CORAM : Hon'ble Mr. S. Das Gupta, Member-A
Hon'ble Mr. T. L. Verma, Member-J

ORIGINAL APPLICATION NO. 655 of 1989

1. Zahid Hussain son of Mohd. Husain, working as Fitter in Carriage & Wagon Department, Northern Railway, Moradabad.
2. Virendra Kishore Sharma son of Sri R. M.K. Sharma, Working as Fitter in C & W, N.R. Moradabad.
3. Arvind Prasad Bhatnagar son of S. P. Bhatnagar, Working as Fitter in C & W, NR Moradabad.
4. Ravi Verma son of Mata Prasad Varma, working as Khalasi Helper in C & W, N.R. Moradabad. Div. Moradabad.
5. Jagdish Singh son of Naubat Singh, working as Khalasi Helper in C & W, N.R. Moradabad.
6. Ajai Kumar Gupta son of P. K. Gupta, working as Fitter in C & W NR Moradabad, Division, Moradabad.
7. Devi Dutt son of Kanti Ballabh Working as Fitter in C & W, N.R. Moradabad Division, Moradabad.
8. Heera Singh son of Sardar Singh, Working as Fitter C & W, N.R. Moradabad Division, Moradabad.
9. Satya Pal Singh, s/o. ~~W~~ Kundan Singh
10. Ramesh Kumar S/o. Ram Chander Lal
11. Mahipal Singh S/o. Ram Charan Lal
12. Girhari Lal s/o. Sita Ram
13. Chander Pal Singh S/o. Bholoo Singh
14. Shamsuddin S/o. Gulam Noor
15. Laiq Ahmad, S/o. Shaukat Ali
16. Harswaroop S/o. Budhsain
17. Chandra Shekhar Kaushik S/o. Vishambhar Nath

18. Harish Chandra Sharma S/o. Chdammi Lal
19. Anil Kumar Sharma S/o. Ram Ratan
20. Palakdhari S/o. Setoo Prasad
21. Mohd. Mohsin S/o. Aziz Ahmai
22. Sunder Shyam S/o. Nirmal Dass
23. Girish Chander S/o. Angan Lal
24. Bankey Lal Saini S/o. Netram
25. Inder Prakash S/o. Bhoop Singh,

All working as Fitters in Garriage & Wagon Deptt.
Norther Railway, Moradabad.

26. Sudama Verma S/o. Ram Lagan Varma, working as
Fitter in Garriage & Wagon Department, Norther Railway,
Najibabad, Bijnor.
27. Ashok Kumar S/o. Jagdish Saran, Working as Painter
in Garriage & Wagon Deptt. Northern Railway, Moradabad.
28. Sajid Hussain S/o. Mashabid Hussain, working as Khalasi
Helper in Garriage and Wagon Deptt.
Northern Railway, Hapur, District Ghaziabad.
29. Syed Riasat Mian, S/o. Babban Mian, Khalasi Helper,
in Garriage and Wagon Deptt. Northern Railway,
Moradabad.
30. Onkar Nath Misra s/o. Vidya Prasad Misra, Khalasi
Helper Garriage and Wagon Deptt. Northern Railway,
Moradabad.

.....Applicants.

(BY ADVOCATE SHRI P.N. KHARE)

Ver~~y~~sus

1. Union of India through General Manager,
Northern Railway Head Quarter, Baroda House,
New Delhi.
2. Chief Personnel Officer, Northern Railway,
Baroda House, New Delhi.
3. Divisional Railway Manager, Moradabad Division,
Moradabad.
4. Sr. Divisional Personnel Officer,
Northern Railway, Moradabad Division,
Moradabad.

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5. Surendra Pal Singh S/o. Raj Pal Singh

6. Pati Ram S/o. Durjan

Working as Fitters in Garriage & Wagon Deptt.
Northern Railway, Shahjahanpur.

7. Abdul Qadir S/o. Abdul Wahid, Fitter in Garriage &
Wagon Deptt. Northern Railway, Najibabad, Bijnor.

8. Laxman Singh S/o. Dev Narain Singh

9. Ram Gopal S/o. Bulley Singh

Nos. 8 and 9 working as Fitters in Garriage & Wagon
Department, Northern Railway, Haridwar.

12. Shamshad Hussain S/o. Dildar Husain

18. Mohammad Sharif S/o. Kifayat Hussain, working as Fitter
in Garriage & Wagon Deptt. Northern Railway, Bareilly.

.....Respondents.

(BY ADVOCATE SHRI A.K.GAUR)

O R D E R

(By Hon. Mr. S. Das Gupta, Member-A)

The challenge in this application, filed under Section 19 of the Administrative Tribunals Act, 1985 is to an order dated 10.7.1989 passed by General Manager (F), Northern Railway, Headquarter by which the Divisional Railway Manager was directed to promote Safaiwalas, Khalasis and Skid Porters in their own discipline i.e. within their own seniority group. The applicants have prayed that the said order be quashed and the respondents be directed to grant seniority to the applicant Nos. 1, 2, 3, 6, 7 and 8 in skilled grade of Fitter over and above Sri Surendra Pal Singh and others. A further relief sought is a direction to the respondents to promote applicant Nos. 4 and 5 in the skilled Grade of Fitter and fix their proforma seniority at appropriate place over and above Sri Surendra Pal Singh and others. The applicants have also prayed for that they may be permitted to appear in the

written examination for next higher post for Intermediate Apprentice (T.X.R.) treating them as ^{if} they completed three years of service in the skilled grade of Fitter. Initially 8 applicants had joined to file this application and they had impleaded only official respondents. By a subsequent amendment, the array of applicants has been extended to 30 by addition of 22 more names. Similarly 14 persons were also added to the array of respondents on the ground that they would be affected in case the relief was granted to the applicants. Later the names of 6 of which respondents were deleted on the request of the applicants.

2. The facts of the case are ~~squarely~~ ^{required to be} stated in some ~~xxx~~ detail in order to properly appreciate the controversy.

3. The applicants as well as the private respondents belong to un-skilled category of the Carriage and Wagon Department of Northern Railway. Three such categories are involved in this controversy. These are ; the Khalasis, Skid Porters and Safaiwalas. The applicants belonged to the category of Khalasis. The Railway Board vide its letter dated 13.11.1982 (Annexure-1) had issued instructions to the effect that 50% of the existing strength in the un-skilled artisan category in the open line establishment should be allotted the semi-skilled Grade. The Senior Divisional Personnel Officer, Moradabad implemented this order by allotting the Semi-Skilled Grade to the three different categories on the basis of their respective strengths treating them as 3 different categories. The applicants did not get ungradation to the Semi Skilled Grade as a result of ~~and~~ the separate allocation of percentage of higher post to the three categories. Subsequently the percentage of the posts of un-skilled categories to be allotted to Semi Skilled

category was increased from 50% to 70 % by Railway Board's letter dated 10.7.1985 (Annexure-3). The applicants also were granted the Semi -Skilled Grade based on the higher percentage of posts in 1986. They~~was~~ however, represented^{to} the respondents that the upgradation to the Semi Skilled Post should have been made on the basis of the Combined seniority list of all the three categories and in such a combined list they would have ranked much senior. It appears that the matter was also taken up by the Uttari Railway Mazdoor Union which is a recognised Union of the Railway Employees (hereinafter referred to as the U.R.M.U.)

It appears that the Divisional Railway Manager considered the matter on the basis of the representation by U.R.M.U. and decided that the promotion to the Semi-Skilled post ~~from~~ the un-skilled category should be made on the basis of the combined Seniority list of all the categories namely Safaiwalas, Khalasis and Skid Porters. A decision was taken in the meeting of P.N.M. (a negotiating machinery in the ~~State~~ Railways) that those employees who could not be promoted earlier on the basis of the separate seniority list should be given notional seniority if they were senior in the combined seniority list. ~~As per~~ An extract of this P.N.M. decision is at Annexure-4. Meanwhile, however, those employees who had already got promotion in the other categories based on the separate seniority had been promoted one step further to the skilled post of Fitters. However, on the basis of the decision of the P. N. M., the applicants were granted notional seniority ~~both~~ in the Semi Skilled grade. They were to be granted notional seniority in the ~~same~~ skilled Grade ^{at the} but at this point of time, another recognised Union namely Northern Railway Men's Union (N.R.M.U.) being ^{dis}satisfied with the decision of the Divisional Railway Manager taken in the P.N.M.

meeting represented the matter to Divisional Railway Manager Moradabad. The Divisional Railway Manager referred the matter to the General Manager (P) Northern Railway, New Delhi who in turn communicated the decision by the impugned ~~ix~~ order dated 10.7.1989 that promotion from un-skilled categories to the Semi-Skilled categories should be made separately in their own discipline.

4. An examination was to be taken by the respondents for promotion to the post of Intermediate Apprentices (T.X.R.). Promotion to this post is open to Fitters who have already completed three years service as Fitters. Some of the applicants who are Fitters were not eligible for appearing in that examination as they had not completed three years service. Moreover, their position as Fitters in the Seniority list have not been refixed up-wards in accordance with the P.N.M. Decision. The applicants, therefore, filed this O.A. seeking the quashing of the impugned order dated 10.7.89 and also a direction to permit them to appear in the examination for Intermediate Apprentices (T.X.R.). During the pendency of the O.A. the aforesaid examination was notified and by an interim order the applicants were permitted to appear at the examination and by a subsequent interim order, it was also provided that the results in respect of the applicants shall also be declared but said results shall remain subject to the final order passed in the O.A.

5. The case of the applicants is that in terms of Railway Board's letter dated 13.11.1982, 50% of the combined strength of Safaivalas, Skid Porters and Khalasis should have been allotted to Semi Skilled Grade and the ~~promotion~~ promotion to upgraded post should have been made

on the basis of the combined seniority list of all the three categories and they should have been designated as Helper Khalasis on such promotion. The action of the respondents in allocating the posts category-wise and giving promotion also separately in ^{each} his category was in contravention of the Railway Board's instructions. They have also relied on a clarificatory letter dated 2.12.1982 circulated by the General Manager (P) vide his letter dated 15/17.10.83 (Annexure-2) which inter-alia, indicates that the Safaiwalas in Carriage and Wagon Department of Railways are traditionally treated as part of the Artisan Category. This clarification was in reply to a query as to whether the Safaiwala in Carriage and Wagon Department are also to be considered for reclassification from un-skilled to semi-skilled.

6. In their written reply, the respondents have taken ^a stand that as per the Railway Board's letter dated 13.11.1982, un-skilled Artisan Category ~~were~~ were to be given the higher grade as Helpers in their own seniority unit. It has been asserted that the separate seniority ~~was~~ ^{was} being maintained in the category of Safaiwala, Skid Porters and Khalasis and as such there ~~are~~ ^{was} no reason to disturb the percentage of any unit and combine ~~them~~ them into one unit for the purpose of promotion as Helper Khalasi. They have denied that there are any instructions in the circular dated 13.11.1982 by which all the aforesaid categories are to be treated as single unit for being ^{v. allotted} 50% higher post. They have, however, admitted that based on a decision taken in the P. N. M. Meeting with U.R.M.U., a combined seniority list of Khalasis, Safaiwalas and Skid Porters was prepared ~~for~~ and the same was challenged by N.R.M.U. The case was ~~then~~ then referred to the General Manager (P) for a decision and the latter after examining the matter in detail, issued the impugned order dated 10.7.1989. Thus the
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decision taken by the Divisional Railway Manager in consultation with the U.R.M.U. ~~stand~~ superseded by the decision of the General Manager (D).

7. The contention of the respondents have been controverted by the applicants by filing a rejoinder-reply. They have reiterated that the combined seniority of Safaiwalas, Skid Porters and Khalasis should have been taken into consideration for appointment ^{to} of semi-skilled Grade and ~~on~~ ~~upgradation~~ they should have been designated as Khalasis Helper. In this regard they have relied on Northern Railway Headquarters letter dated December 1983 (Annexure-R-1), Memorandum addressed to the Divisional Personnel Officer, Moradabad by Divisional Mechanical Engineer (C & W) New Delhi (Annexure-R-2) and a D.O. letter dated 15.12.1989 from the Assistant Personnel Officer, (II) Allahabad addressed to Assistant Personnel Officer (III), Northern Railway, Moradabad (Annexure-R-3).

8. There are no disputes in regard to the facts of the case. The controversy which falls for our determination is whether for ~~the purpose~~ ^{and} implementation of the Railway Board's order, contained in their circular dated 13.11.1982, the respondents should have prepared a combined seniority list of all three un-skilled categories viz. Khalasis, Skid Porters and Safaiwalas for the purposes of promotion to the Semi-skilled grade on the basis of 50% of combined ~~seniority~~ strength of all these categories.

9. We have heard the learned counsel for the parties and have ~~a~~ carefully perused the record.

10. *2* Para 2(iii) of the Railway Board Circular dated /---

13.11.1982 which deals with the allotment of Semi Skilled Grade to the Artisen Category reads as follows :-

"2. The Ministry of Railways have accordingly decided as under :-

(i)

(ii).....

(iii) 50% of the existing strength in un-skilled artisen categories in the Open Line Establishments (all departments) and RDSO (to the extent applicable) should be allotted the semi-skilled grade Rs. 210-290) and designated as Khalasi-Helper."

As regards their designation such as upgradation, para 3 of the aforesaid letter appears to be relevant, which reads as under :-

"3. While upgrading unskilled trades to semi-skilled grade under these orders, those who assist skilled artisan staff either by working directly alongwith them or help them in the upkeep of the material, securing stores, cleaning of components etc. should be upgraded to the semi-skilled job as Khalasi-Helpers within the percentages laid down. Even after such upgradation these staff will continue to perform un-skilled functions of simple manual work like loading and un-loading, sweeping of ~~flame~~ and transportation of material etc. in their respective trades. These guidelines should be borne in mind while upgrading any un-skilled trade to semi-skilled grade under these orders."

Letter issued by the Railway Board, circulated by Northern Railway Headquarters by their letter dated 15/17.10.1983 indicates that Safaiwalas in C & W Departments are traditionally treated as part of the Artisan category. From the above we find that the Railway Board's letter dated 13.11.1982 does not give any specific instructions as to

whether or not the various un-skilled categories like Safaiwalas, Khalasi and Skid Porters should be clubbed together both for the purpose of working out of number of posts to be upgraded and also for effecting promotion on the basis of their combined seniority, nor is there any specific instruction that all such categories on their promotion to the Semi-skilled grade shall be called Helper Khalasi. The stand of the respondents is that the Railway Board's instructions did not lay down that a combined seniority list has to be maintained nor that all the upgraded workers in all the categories should be designated as Helper Khalasis. We are in agreement. At the same time, however, the clarification given by Railway Board circulated by Northern Railway Headquarter letter dated 15/17.10.1983, is indicative of the fact that at least in the department in which the present applicants are working, the Safaiwalas are treated as part of the Artisan Category. This does not necessarily means that they are to be combined with other Artisan categories like Khalasi or Skid Porters. In fact this clarification was given only with reference to the query as to whether the Safaiwalas would be entitled to the benefit of upgradation from un-skilled to semi-skilled. Thus, this clarification which has been relied upon by the applicants does not also give any conclusive indication in their favour.


11. It is however, an admitted fact that on consideration of various orders of the Railway Board and after consultation with the recognised union, the Divisional Railway Manager of the Division had come to a decision that all the un-skilled categories should be combined for the purposes of working out the percentage of post in semi-skilled grade and that promotion should also be made from a combined seniority list of all the un-skilled categories. No doubt, this decision was subsequently negated by a higher authority namely General Manager (P),

Northern Railway, Headquarters. We can not, however, ignore the fact as it appears from Annexures-R-1, R-2 and R-3 to the rejoinder-reply that in several other Divisions of Railways, promotion of several un-skilled categories to the Semi-skilled grade was being made on the basis of combined seniority. It would, thus appear that there is no uniformity amongs the various divisions of the Railways even within the same Zone. It is such lack of informity which is a potent cause for dis-satisfaction of employees and anomolies in fixing inter-se-seniority. As the Railway Board's circular dated 13.11.1982 is not specific on whether or not the promotion from un-skilled category to semi-skilled grade is to be made on the basis of the combined seniority and since the different Divisions of the some Zonal Railways appear to be following different modes in this regard, we consider it appropriate that this controversy be placed before the Railway Board itself as being the author of the instructions under which the upgradation from un-slilled category to semi-skilled grade was to take place, they are the appropriate authority to give clarification in this regard. We do not, however, see any inherent injustice either in the method of promotion on the basis of combined seniority list or in such promotion being made separately on separate category-wise seniority list. In view of this we see no reason to adjudicate this matter but, leave it to be interpreted by the Railway Board itself.

12. In view of the foregoing we direct that the respondent No.1 shall place the matter before the Railway Board within a period of one month from the date of communication of this order and based on the decision of the

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Railway Board, further action in the matter shall be taken by the respondent Nos. 3 and 4 with regard to the applicants. The parties shall bear their own costs.


(Member-J)


(Member-A)

(Pandey)