

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Original Application No: 1677 of 1992

S.K.Dubey & Ors. Applicants.

Versus

Union of India & Ors. Respondents.

Hon'ble Mr. S.Das Gupta, Member-A

Hon'ble Mr. T.L.Verma, Member-J

(By Hon'ble Mr. T.L.Verma, J.M.)

This application under Section 19 of the Administrative Tribunals Act has been filed for issuing a direction to the respondents to appoint applicants on the post of Electrician/Electrical Khalasi with retrospective effect.

2. A test for selecting candidates for Apprenticeship Training under the Apprentices Act was held. The applicants successfully passed the said test and were then given Apprenticeship Training at Electrical Loco Shed Kanpur in the trade of Electrician from 28.8.1987 to 19.8.1990. They successfully passed the prescribed trade test on the conclusion of their training and were accordingly awarded Provisional National Apprenticeship Certificate (Annexure A-13-A).

3. It is stated that the batch of apprentices which passed out in 1979 was absorbed by giving regular appointment on the post of Fitter, to those who were found fit for the said post and on the post of Khalasi who were not found fit for appointment as Fitter (Annexure A-14 & A-15). The applicants,

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it is stated, have not been given the benefit as was given to the 1979 batch. Not only that, respondent No. 2 sent requisition for sending the names of ITI trained/Diploma holders for appointment on Group 'D' posts in Traction Mortor Shop and Electric Locoshed Kanpur vide Annexure A-16. Notices issued under Annexure A-16, however, has since been cancelled after the applicants ~~lodged~~ protest against the appointments of outsiders.

4. It is stated that although a large number of vacancies are available, but the applicants are not being appointed although respondent No. 2 vide his letter dated 7.8.1991 (Annexure A-17) and letter dated 8.8.1991 (Annexure A-18) has sought permission of the General Manager of the Railways for appointment of the applicants against the existed vacancies. No reply from the General Manager has so far received. The applicants have also filed representations for their appointment vide Annexure A-19 to A-20. As the representations filed by the applicants have yielded no result, this application has been filed for the reliefs mentioned above.

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5. The respondents have contested the claim of the applicants and have averred that completion of the apprenticeship training only makes them eligible to apply and to appear in the selection held from open market against 25% Direct Recruitment Quota. The proper course for the applicants, it has been stated, is to apply against employment notices which may be issued by the Railway as and when requirement shall exist.

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6. We have heard the rival contentions and perused the record. The learned counsel for the respondents has stated that the apprenticeship trainees of 1979 batch had applied for appointment against open market recruitment and that such of those who did not find place in the list of successful candidates were engaged as substitutes/casuals against the requirement as existed at that time. Similar benefits, it was stated, has not been given to the applicants because of want of requirements/vacancies. The applicants have ~~made~~ not been able to bring to our notice if the respondents have made any appointment against 25% Direct Recruitment Quota from open market. after they become eligible for appointment. The learned counsel for the applicant, however, pointed out that the respondents have made appointment against 23 posts out of 31 meant for 25% direct recruitment quota by untrained candidates on compassionate ground without notifying the vacancies. It is also stated that some of the appointees are being imparted apprenticeship training by the respondents. We find nothing wrong in making appointment ^{on compassionate} of the wards of railway employees who die in harness because such appointments are consistent with the instructions issued by the railway board in that behalf. We however, have no comments to make as to the manner in which these appointees are ^{being} imparted apprenticeship training because it is absolutely within the ~~payment~~ domain of the respondents to take decision in that regard.

As regards the

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7. The argument of the learned counsel for the applicant that appointment of 23 persons as against 31 total vacancies on compassionate ground is arbitrary and discriminatory and as such should be quashed. We are unable to accept this argument in view of the principles enunciated by the Supreme Court in Sushma Gosain's case reported in AIR 1989 page 1976. In that case it was held that "the ~~the~~ purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant eligible for ~~the~~ ~~next~~ such appointment." It would thus appear that there is no restriction on the number of posts on which appointment on compassionate ground can be made. The number of post to be filled up by compassionate appointment will depend on the number of the employees dying in harness in a particular year. Appointment on compassionate ground obviously has to be made against direct recruitment quota. It is not the case of the applicants that the 23 persons who have been appointed on compassionate ground are not the wards of the Railway employees who died in harness. That being so, the eligibility of such appointees for appointment on compassionate ground is not in dispute. Hence the appointment on compassionate ground cannot be said to be illegal, arbitrary or ~~or~~ unconstitutional on this ground.

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8. It was next argued that appointment on the post of Skilled Artisans can be made only if the candidate is ITI trained or is an ACT Apprentice. Those who have been appointed, ^{it was stated,} are not either ITI trained or ACT Apprentices ^{, it was urged,} ~~are~~. That being so, their appointments are illegal and arbitrary. It may be pointed out that appointments on the post of Skilled Artisans are made only after completing the ^{apprenticeship} training and passing the prescribed trade test or ^{the} of candidates ~~are~~ are ITI trained. It appears that such of the appointees on compassionate ground who do not possess the requisite technical qualification are receiving training under Apprentices Act at the cost of the railways. The appointment of these candidates obviously according to rules will be made only after they complete their training and pass the prescribed trade test. ~~and~~ That being so they can ^{not} be said to ~~be~~ have been appointed on the posts of Skilled Artisans. Their appointment will follow as stated above only after they acquire necessary technical qualification. Stating it broadly the policy ^{regarding} manner ^{of} of selection for appointment on technical post from among the candidates eligible for appointment on compassionate ground is within the exclusive domain ^{and} ~~and the~~ of the executives. It is not for the judicial bodies to sit in judgement over ^{the} wisdom of the executive in choosing the mode of recruitment in that regard.

9. It was stated by the learned counsel for the applicant that 8 posts of Skilled Artisans were vacant from before and some more posts ~~for~~ have fallen vacant in the meantime. The applicants, it was stated had appeared at the test for selecting candidates for Apprenticeship Training on the understanding and belief .

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that they will be appointed on the available post after they successfully complete their training and pass the prescribed trade test. The delay on the part of the respondents to fill up the existing vacancies and appoint the applicants on the recommendation of respondent No. 2 vide Annexures A-17 and A-18 is clear breach of the promise held out by the respondents.

10. The respondent No. 2 in his letter (Annexure A-17) has made a request to the General Manager, Personnel Northern Railway to obtain the approval of G.H. and communicated for engagement of the applicants as Substitute Khalasis in grade Rs. 750-900/- (RPS) against existing vacancies. Similar request has been made by respondent No. 2 in Annexure-18. From the contents of Annexure A-17 & A-18, it is clear that the requirement is there and the applicants who are Act Apprentices have been recommended for such an appointment. We cannot however issue a direction to the respondent to make an appointment of the applicants on the existing post. We can however, in the circumstances of the case, issue a direction that decision may be taken on the recommendation made by respondent No. 2 for appointment of the applicants as Substitute Khalasis and ^{immediatly} also to take steps for regular appointment against existing vacancies against 25% direct recruitment quota and consider the case of the applicants for appointment if they are otherwise eligible.

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11. In the facts and circumstances of the case discussed above, we deem it fit and proper to dispose of this application with a direction to the respondents to take appropriate decision on the recommendation of respondent No. 2 to appoint the applicants as Substitute Khalasis and to take steps for filling up 25% of the vacancies by direct recruitment at the earliest. There will be no order as to costs.

J. M. Sharma
Member-B

J. R.
Member-A

Allahabad Dated: 27.6.94

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