

Open Court.

Central Administrative Tribunal,  
Allahabad Bench, Allahabad.

Dated: Allahabad, This The 3rd Day of March, 2000.

Coram: Hon'ble Mr. S. Dayal, A.M.  
Hon'ble Mr. Rafiq Uddin, J.M.

Original Application No. 1797 of 1992.

1. Sri Kamala Prasad Dubey  
aged about 38 years  
son of Sri R.S. Dubey,  
R/O C.S.P. Railway Colony,  
Quarter No. 9-A, Khalispur,  
Distt. Varanasi.
2. Sri Virendra Prasad  
aged about 35 years  
son of Sri Sita Ram,  
R/O 3/263, Village Rampur  
Post Ram Nagar,  
Distt. Varanasi.

. . . Applicants.

C/A Sri A.K. Roy, Adv.

Versus

1. Union of India through Chief Engineer (T.S.P.)  
Baroda House, New Delhi.
2. Dy. Chief Engineer (C.S.P.) Northern Railways,  
Khalispur, Distt. Varanasi.
3. Senior Engineer (C)/C.S.P.  
Northern Railway, Khalispur,  
Distt. Varanasi.

. . . Opp. Parties.

C/R Sri A.K. Gaur, Adv.

Order (Open Court)

( By Hon'ble Mr. S. Dayal, Member (A.) )

This O.A. has been filed seeking the relief  
of setting aside order dated 30.11.92 by

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which the regularisation of the applicants has been cancelled. A direction has also been sought that the respondents should not interfere in the working of the applicants on the posts they were holding after due regularisation of their services.

2. The facts as stated by the applicants are that they were engaged as Khalasis on adhoc basis on 20.9.81 and 24.7.83 in the Concrete Sleeper Plant Khalispur. The applicant No.1 was promoted to Class III as Store Clerk against 40% quota in permanent existing vacancy in the grade of Rs.950-1500 on adhoc basis on 22.9.86 while the applicant No. 2 was so promoted on 7.2.87, The applicants were continuously holding the promotional posts from these dates onwards. The respondents held departmental written test for regularisation on 31.10.87 and 24 candidates were called for written test. The result of written test was declared on 13.7.89 and thereafter Viva Voce test was held and a selected list of eight successful candidates was prepared. The applicants names on the selected list at serial No. 4 and 5. The services of the applicant No. 1 were regularised by order dated 26.6.1990/1.1.91. The applicants have mentioned that there were 14 posts of Clerks in Concrete Sleeper Plant and out of which 40% quota was to be filled up by departmental candidates. Thus six posts were required to be filled up and candidate No.1 on the panel had retired by time the respondents passed orders for regularisation. The regularisation of the applicants was however cancelled after a period of nearly two years by order

The cancelled sentence has been replaced by the following by order dated 27.7.2000.

"The services of the applicant No.1 and 2 were regularised by order dated 26.6.90 and 18.12.90/1.1.91.

J.M.

A.M.

Nafees.

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dated 30.11.92. The applicants have challenged this order in the O.A.

3. We have heard the arguments of Sri A.K. Roy for the applicant and Sri A.K. Gaur for the respondents. We have also perused the pleadings on record.

4. The learned counsels mentioned that the controversy was limited to the question as to whether only four posts were to be filled out of the panel drawn or whether six or more posts were to be filled up on the basis of this panel.

5. Initially the respondents had taken the plea that the result of written test was not declared and therefore the regularisation of Sri Jagdish Prasad, Sri Rajoo Verma and Sri Bechan Ram <sup>which</sup> / was done as a result of promotion test for 40% promotion quota <sup>was not correct</sup> / It has been mentioned that the promotion of the applicants was converted from regular to adhoc and no notice was necessary in such case. It is ~~strange~~ <sup>significant</sup> that the respondents have admitted the facts narrated in paragraph 9 of the O.A. in their paragraph 11 wherein it was claimed that the result of both written and Viva Voce was declared and the selected list was formed.

6. Later on, in supplementary reply, the respondents have mentioned that there were 12 posts of Office Clerks which comprised of five temporary posts sanctioned by Railway Board and seven work charge sanctioned by General Manager. It was contended that the post of Depot Store

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Keeper Grade-II could not be counted for the purpose of departmental selection from Group-D staff. It was also mentioned that only  $33\frac{1}{3}$  % vacancies were to be filled up by promotion by selection of specified Group-D staff and therefore the number of posts which were to be filled up only four. It is also contended that selection committee conducted the selection of four posts out of which one was reserved for Scheduled Caste and one for Scheduled Tribe. Hence only three candidates belonging to unreserved categories could be promoted (one against Scheduled Tribe candidate who was not available). The approval of panel of 8 persons and regularisation of two more persons till December 1990 was an administrative error which was rectified by the impugned orders in this case. The respondents have annexed strength of supervisory office staff working under Khalispur Plant as Annexure -1 to their C.A. in which they have given the details of only seven posts out of which four are said to be vacant while they have admitted that there were 12 posts of Office Clerks. They have also annexed Annexure-3 in which they have shown that a panel of 8 candidates was approved and that out of those 8, one Sri Shankar Prasad who was at serial No. 1 in the Panel had retired and therefore, he could not be brought in the Panel. This Panel appears to have been revised on the basis of a note of Dy. C.E. on the ground that there were only 4 vacancies and there were representations of the employees that why more than three general category candidates were regularised without conducting fresh selection as failed persons are fit for consideration after six months.

7. The respondents in their supplementary C.A. stated that there were 12 posts of Office staff and only  $33\frac{1}{3}$  % vacancies were to be filled up by promotion by process of selection of specified Group-D staff. Thus only four posts should have been filled up but six posts have been actually filled which was incorrect.

8. The learned counsel for the respondents vehemently argued that provisions of para 174 of Establishment Code required  $33\frac{1}{3}$  % vacancies to be filled up by selection of specified Group-D staff. The learned counsel for the applicant contested this statement. We have seen a copy of the Railway Board's letter No. E(NG)1-81-CFP/15(PNM-AIRF) dated 19.5.84 in which it has been laid down in paragraph 3 as follows:-

" The matter has been carefully considered by the Ministry of Railways. It has now been decided that in these promotion grounds which approximately more than 50% of posts of Tool Checker/Fuel Issuers have been upgraded to the scale of Rs. 260-400 the quota for promotion of Group-D staff to the category of Office Clerks may be increased from the existing 33% to 40%. Such promotion group may be identified on each Railway/ Production Unit with the approval of officer in level/Level II grade."

The respondents in their counter reply had referred to selection against 40% vacancies to be filled up by promotion of specified Group-D staff. The learned counsel for the applicants has shown in Annexure R.A.-1 and Annexure R.A.2 to supplementary rejoinder No.2 that the promotion quota had been increased to 40% and had been accepted ~~for~~ <sup>by</sup> ~~by~~ <sup>for</sup>

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implementation by Khalispur Plant. The contention of learned counsel for the respondents that the learned counsel for the applicants had not shown that the post existed in those groups in which more than 50% posts of Tool Checkers and Fuel Issuers had been upgraded <sup>is there but this</sup> ~~The~~ issue of reduction from 40% to 33% has been raised by the respondents himself and it is against the annexures furnished by learned counsel for the applicants regarding applicability of 40% quota for promotion. The contention of the respondents is contrary to the pleadings on record.

7. In the light of above findings we hold that impugned order dated 30.11.92 of regularisation is not sustainable and has to be set aside. We find that the applicants have been continuing as Office Clerks till date and had been regularised by the respondents who now claimed that it was due to error. Such a plea can not be accepted. The applicants shall continue to hold the post of Junior Clerks on the regular basis from the date of earlier order. There shall be no order as to costs.

*Rafiquddin*  
Member (J.)

*Maqsood*  
Member (A.)

Nafees.