

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ADDL. BENCH,  
ALLAHABAD

DATED THE 13 TH MAY OF 1997

CORAM : Hon'ble Dr. R.K.Saxena, J.M.  
Hon'ble Mr. D.S.Baweja, A.M.

ORIGINAL APPLICATION NO. 629 OF 1993

1. Raghwendra Kumar Ram, Khalasi,  
Air Conditioned Coach Shed,  
North Eastern Railway, Gorakhpur  
S/o Sri Ram Sahay Pandey, aged about  
28 years, resident of 604B, Dairy Colony,  
Gorakhpur.
2. P.Saran Kumar, Khalasi,  
Air Conditioned Coach Shed,  
North Eastern Railway, Gorakhpur  
S/o P.N.Mohan Rao, aged about  
27 years, resident of Dhsrampur,  
Gorakhpur C/o Dr. Vijay Kumar Srivastava.

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Applicants

C/A Shri Shyamal Narain, Advocate.

Versus

1. The Union of India through the  
Ministry of Railways, New Delhi.
2. The Divisional Railway Manager (Electrical)  
North Eastern Railway, Lucknow.
3. The Chief Electrical Engineer,  
North Eastern Railway, Gorakhpur.
4. The Chief Personnel Officer,  
North Eastern Railway, Gorakhpur.

.... Respondents

C/R Shri A.K.Gur, Advocate.

ORIGINAL APPLICATION NO.655 OF 1994

1. Kailash Nath Misra, son of Shri Triveni Prasad Misra, Resident of village Bhagwanpur, Post Mirzapur, District Gonda, working as Helper Khalasi, under Electric Foreman Office A.C.C. N.E. Rly Gorakhpur.

2. Gaya Prasad, son of Sri Baldev Prasad, resident of Marhpurwa Bazar, Sidhuwa, Ramkola, Deoria, Working as Khalasi helper under Electric Foreman Office A.C.C. N.E. Rly, Gorakhpur.

... Applicants

C/A Shri Bashisht Tewari, Adv.

Versus

1. Union of India, through General Manager (2) N.E.Railway, Gorakhpur.

2. Senior Electric Foreman A.C.C. N.E.Rly Gorakhpur.

3. Assistant Electric Engineer N.E.Rly.Gorakhpur.

4. Raghwendra Kumar Rahi R/o 604B Dairy Colony, Gorakhpur.

5. P.Saran Kumar, R/o Dharampur Gorakhpur.

... Respondents

C/R Shri Amit Asthalker, Adv.

JUDGMENT

BY HON'BLE DR.R.K.SAXENA, J.M.

These are two cases which are being disposed of by one common judgment. We shall discuss the facts of each case separately.

O.A.No.655/1994

2. The applicants Kailash Nath Misra and Gaya Prasad have filed this O.A. to seek directions to the respondents to give the benefit of restructuring in the scale of

Rs.950 - 1500 with effect from 1.3.1993 and to set aside the notifications dated 17.11.1993 and 16.2.1994 which were issued by the respondents with respect to initiation of selection process.

3. The brief facts of the case are that the applicants were working as Helper Khalasi in the scale of Rs.800-1150 under the Electric Foreman, N.E.R. Gorakhpur. Their contention is that the Railway Board had issued a circular dated 27.1.1993 regarding the restructuring of the cadre and to give benefit to the employees who were working in Group 'C' and 'D.' The circular further provided that the vacancies as on 1.3.1993 and also arising out of the restructuring of the cadre, should be filled in according to the procedure prescribed in the said circular dated 27.1.1993 (Annexure-A3). The normal selection process will be applicable to those vacancies which occurred on 2.3.1993 and thereafter. It was further contended that in pursuance of the said circular of restructuring of the cadre, 17 vacancies as mentioned in Annexure A-5 had occurred because those 17 persons were placed in higher grade. As a result, the applicants claimed that those vacancies should have been taken into consideration on 1.3.1993 and the benefit should have been given to other employees including the applicants.

4. The grievance of the applicants is that the Assistant Electrical Engineer had issued a notification Annexure-A1 on 17.11.1993 inviting the applications from amongst the employees of Group 'D' who had completed two years service and who were having I.T.I. certificate or had passed High School with Science. The case of the applicants therefore is that the said notification was illegally and in violation of the circular letter dated 27.1.1993, was issued. Not only this, it is also averred that

Assistant Electrical Engineer further issued a list of 17 persons Annexure-A2 on 16.2.1994 indicating them to be eligible to appear in the test. The applicants have challenged this notification as well as the list on the ground that holding of test for promotion, was not at all necessary and legal.

5. The applicants also challenged the promotion of the respondents nos.4 and 5. It is contended that because the respondents have not treated vacancies which occurred on 1.3.1993 as a result of restructuring of the cadre, the process of selection in a normal course had been adopted but the same is illegal. Hence this Original Application has been filed.

6. The respondents have opposed Original Application on the ground that the circular dated 27.1.1993 was applicable only in two grades, namely, Rs.1400 - 2300 and Rs.1320 - 2040. It is admitted that the benefit of restructuring was given <sup>and</sup> 18 posts had fallen vacant. Since one post was filled in by a person who was appointed ~~compensated~~ <sup>compassionate &</sup> <sup>&</sup> ~~compensated~~ ground, there remained 17 posts but they had occurred only on 2.3.1993 and, therefore, the normal ~~selection was seizure~~ <sup>procedure</sup>, was required to be followed. It is, therefore, contended that the notification which was issued for inclusion from amongst group 'D' employees, was quite legal. Similarly the preparation of the list of eligible candidates Annexure-A2 has also been justified. The contention of the respondents ~~says~~ <sup>is that</sup> for the post of skilled grade of Rs.950 - 1500 in A.C.C. section trade test is provided <sup>15 &</sup> ~~and~~ those Helper Khalasis who <sup>and</sup> are in the grade of Rs.800 - 1150 <sup>are eligible</sup> ~~undertake~~ to appear in the test, <sup>undertake</sup> They will have to indicate the test as is prescribed. It is, therefore, contended that the

applicants are not entitled to any relief. Other respondents nos.4 and 5 did not file any counter-reply although they were impleaded on their own request. Similarly the applicants did not prefer to file any rejoinder.

O.A.No.629 of 1993:

7. This Original Application has been filed by Raghwendra Kumar Rahi and P.Saran Kumar to seek the relief that the respondents be directed to conduct selection against the vacancies ear-marked for 50% direct recruitment quota in the skilled cadre Grade-III from amongst <sup>trained</sup> <sub>^</sub> qualified serving employees; direction to the respondents <sup>is sought</sup> <sub>^</sub> not to fill the vacancies by any other method till such time as the existing backlog of vacancies for direct recruit <sup>was</sup> <sub>or</sub> filled in; and a direction to the respondents not to implement the scheme of restructuring in a manner which may prejudice the claim of the applicants.

8. The facts of the case are that both the applicants were employed under the respondents. They had undergone the apprentice training and had passed the requisite test. The applicant no.1 joined services at Izat Nagar as Khalasi in April 1990 whereas the applicant no.2 was appointed as an electrical khalasi on 3.12.1991. At the time of filing Original Application, they were working in the grade of Rs.750 - 940. It is claimed that the vacancies in the category of skilled artisans Grade -III in the pay scale of Rs.950 - 1500 are required to be filled in from three sources. The vacancies upto 25% were to be filled in from amongst the employees who had done apprentice training and had a diploma from I.T.I. or were metriculate; 25% of the posts were required

to be filled in ~~or~~ serving ~~the~~ semi-skilled and un-skilled employees, and 50% were required to be filled in by promotion from the staff in the lower grade.

9. It is contended on behalf of the applicants that the respondents did not take any step to recruit as against the vacancies of 50% quota. The applicants claimed that from ~~the years~~ <sup>1989 to 1991</sup> there were 31 posts ~~and~~ <sup>back</sup> on 1.2.1993 16 posts were lying vacant. The applicants stated that the representations were made but with no results. In the meantime, came the scheme of restructuring of the cadre belonging to Group 'C' and 'D'. The implementation of this scheme of restructuring would mean a change in the number of posts in a particular category and the applicants may be put to ~~an~~ <sup>a dis-</sup> advantageous position. It is specifically pointed out that the possibility of reduction of total number of vacancies in the skilled cadre Grade III ~~could not~~ be ruled out. The applicants, therefore, claimed that no restructuring should be allowed in the Air Condition Coach Shed of North Eastern Railway, Gorakhpur only <sup>to</sup> such time that the existing vacancies including the back-log as against 50% quota is not filled in. It is for this reason that the present original application already has been filed along with the reliefs which have been disclosed. The respondents have filed counter-reply. It is pointed out that the applicants were straight-away transferred to Air Condition Shed Gorakhpur. They were working as Khalasis in the grade of Rs.750-940. The contention of the respondents is that to get the cadre of skilled artisans in the scale of Rs.950 - 1500, <sup>be in the</sup> one is required to <sup>be in the</sup> cadre of Khalasi Helper which is a post of semi-skilled artisan in the scale of Rs.800 - 1150. It is pointed out that the Railway Board by its letter

dated 6/7.1.1982 had banned the filling in of vacancies of 25% of artisan Grade-III from open market and the percentage of the vacancies to be filled in from amongst the employees who had apprentices certificate or Diploma from I.T.I., remained 25% and was never raised to 50%. It is also averred that selection of vacant posts continued from time to time according to the availability of the candidates.

10. Controverting the contention of the applicants that there had been several vacancies, it is stated that there were only 8 vacancies in February 1993. ~~All~~ Of them, 5 vacancies of general categories and 3 were of the Scheduled Tribes. The respondents informed that the promotion of the applicants as against the vacancies of 25% of quota was under consideration. It is also stated that in view of the Railway Board's letter dated 9.2.1987 only the applicant no.1 was eligible for promotion because he had completed two years service on the post of Khalasi in the scale of Rs.750 - 940. It is, therefore, urged that the original application deserves dismissal.

11. The applicants did not prefer to file Rejoinder affidavit.

12. We have narrated the facts of the two cases. It emerges from these facts that while the applicants in O.A.No.655/1994 seeks a direction to implement the ~~scheme 4~~ of restructuring the cadre and further seeks the ~~2~~ interpretation as to how the vacancies would be ~~carried~~ <sup>counted</sup> as on 1.1.1993; whereas the applicants in O.A.No.629 of 1993 are seeking directions that the ~~fallacies~~ <sup>scheme 2</sup> of restructuring skilled should not be given effect to

until and unless the existing vacancies and backlog as against 50% quota, was filled.

13. We have heard Shri Bashisth Tiwari counsel for the applicant in Original Application No.655 of 1994 and Shri Amit Sthelkar counsel for the respondents and Shri A.K.Gaur counsel for the respondents in Original Application No.629 of 1993. None appears for the applicants in Original Application No.629 of 1993. We have also perused the record.

14. The question ~~for~~ determination in O.A.No.629 of 1993 and 655 of 1994 is whether the applicants have suffered any injury, and are they entitled to ~~any~~ relief. When we examined ~~from~~ from this angle, we find that a direction be given to the respondents to conduct the selection as against the vacancies relating to 50% direct recruitment quota in the skilled cadre Grade.III. The second direction sought was that the respondent should not be allowed to fill up the vacancies in the skilled cadre Grade-III at the Air Coach <sup>Conditioned</sup>. ~~and the relief sought is also that~~ <sup>Conditioned</sup> ~~in~~ that the respondents be restrained implementing the scheme of restructuring. In this way, we find that no relief has been sought by the applicants for themselves.

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15. When <sup>we</sup> take up the O.A. No. 655 of 1994, the same situation is obtainable. The first relief sought is that the respondents be directed to give the benefit of restructuring in the grade of Rs.950-1500 with effect from 1.3.1993 to the applicants but it was not disclosed as to how the applicants were entitled to the said benefit and it was denied to them. The second relief sought is that the respondents be directed not to proceed with the selection process for which notifications were issued on 17.11.1993 and 16.2.1994. It may be mentioned that an employee who feels aggrieved by any order which also includes any action <sup>is h</sup> on the part of the employer, may seek remedy before the Tribunal. It means that if an employee is not aggrieved by any order or he cannot be deemed aggrieved in any manner by an order or any <sup>action</sup> of the Government, he or they cannot be allowed to agitate the matter in the shape of public interest litigation. What we find from the facts of the two cases is that they have been instituted more in the shape of a public interest litigation rather than feeling in any manner personally aggrieved by any such order. For this reason the Original Applications do not remain maintainable.

16. It is contended on behalf of the applicants in O.A. No. 655 of 1994 that the interpretation of the circular letter dated 27.1.1993 has not been correctly made by the respondents. Their contention is that those vacancies which existed on 1.3.1993 or which occurred on 1.3.1993 because of restructuring of the cadre, they should be filled in according to the procedure prescribed in the same circular of 27.1.1993. In this connection,

we may refer to para 4.1 of the said letter dated 27.1.1993 (Anexure-A3). It has been made quite clear that the vacancies which existed on 1.3.1993 (excluding the quota of direct recruitment) and thus arising on that date, which means 1.3.1993, as a result of cadre restructuring including chain or resultant vacancies, should be filled in from the panel which was concurrent on that date and approved on or before 1.3.1993, and the balance in accordance with the procedure which was laid down in para 4. The procedure which was laid down in para 4 was that the selection would be based only on the scrutiny of the service record and confidential records without holding any written or viva-voce tests. In our opinion, there is the calculation of vacancies which had occurred on 1.3.1993 need no interpretation. The provisions of the restructuring scheme are quite clear.

17. The applicants in the O.A. No. 629 have undoubtedly come with the plea that the implementation of restructuring scheme should be stopped but we find no reason to give such a direction. We may, however, add that the respondents should fill in the quotas in accordance with the extant rules and circulars. With these observations the Original Applications are disposed of and dismissed. No order as to cost.