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Reserved on 17.01.2013

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 76 of 2002

Allahabad this the 29th day of January, 2013

**Hon'ble Mr. Justice S.S. Tiwari, Sr. J.M./H.O.D.
Hon'ble Ms. Jayati Chandra, Member-A**

1. Ashok Kumar Tiwari S/o Shri H.N. Tiwari, aged about 39 years.
2. Shivbali Pandey S/o Shri Markandey Pandey, aged about 35 years.
3. Gulab Singh S/o Shri B.P. Singh, aged about 37 years.
4. Markandey S/o Shri Ram Chandra, aged about 40 years.
5. Jagidhs Babu S/o Sh. B.L. Jaiswal, aged about 43 years.
6. Asharfi Lal S/o Shri Gaji Deen, aged about 42 years.
7. Suresh Chandra S/o Shri Suraj Prasad, aged about 41 years.
8. Shakti Narain S/o Shri Shashi Kant Tiwari, aged about 39 years.
9. Luxmi Narain Tiwari S/o Shri B.P. Tiwari, aged about 41 years.
10. Sushil Kumar Mishra, S/o Shri K.P. Mishra, aged about 40 years.
11. Pradeep Chandra Srivastava S/o Late K.L. Srivastava, aged about 40 years.
12. Om Prakash Singh S/o Shri Ghanna Lal, aged about 42 years.
13. Girish Chandra Tiwari S/o Shri D.N. Tiwari, aged about 39 years.
14. Mahesh Kumar S/o Shri Mool Chandra, aged about 38 years.
15. Sher Bahadur Yadav S/o Shri J.N. Yadav, aged about 39 years.
16. Om Prakash S/o Shri Daulat Ram, aged about 41 years.
17. Lal Mani Singh S/o Shri Jokhu Ram, aged about 41 years.
18. Saudan Singh S/o Shri Jawahar Lal, aged about 37 years.
19. Ram Kumar Goyal S/o Shri R.B. Lal, aged about 37 years.
20. Amrit Lal Dwivedi S/o Shri S.N. Dwivedi, aged about 37 years.
21. Sunil Kashyap S/o Shri Lal Bahadur, aged about 36 years.
22. Devendra Pratap Singh S/o Shri Ram Singh, aged about 36 years.
23. Gopal Ji S/o Shri Bhola Nath, aged about 42 years.
24. Avesh Ahmad S/o Sh. Maqbool Husain, aged about 43 years.
25. Raj Karan S/o Shri Munni Lal, aged about 39 years.
26. Sanjay Kumar Srivastava S/o Shri P.P. Srivastava, aged about 37 years.
27. Surendra Kumar Singh S/o Shri R.N. Singh, aged about 41 years.

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28. Dashrath Lal S/o Shri Mata Saran, aged about 37 years.
29. Ashok Kumar S/o Shri Mewa Lal Jaiswal, aged about 39 years.
30. Lok Nath Singh S/o Sh. Ram Sanehi Singh, aged about 40 years.
31. Vinay Kumar Singh S/o Shri Kedar Singh, aged about 41 years.
32. Lal Mani Yadav S/o Shri Ram Khelawan Singh, aged about 36 years.
33. Lakhpati Singh S/o Shri Natha Ram, aged about 37 years.
34. Kailash Nath S/o Shri Gore Lal, aged about 39 years.
35. Bal Krishna Agarwal S/o Shri Ram Das Agarwal, aged about 36 years.
36. Ashok Kumar Gupta S/o Shri Ram Gupta, aged about 39 years.
37. Virendra Singh S/o Shri Jamuna Prasad, aged about 41 years.
38. Akhtar Parwar S/o Shri Mahboob Akhtar, aged about 39 years (TRD/Chunar).
39. Naushad Akhtar S/o Shri Abdul Nazim, aged about 38 years.
40. Prahlad Kumar Gupta S/o Sh. Dhani Ram Gupta, aged about 40 years.
41. Amrit Lal Pal S/o Shri Kallu Ram, aged about 39 years.
42. Dinesh Kumar S/o Late Hari Mohan Lal, aged about 36 years.
43. Ram Bali S/o Shri Sukh Lal, aged about 37 years.
44. Dinesh Prasad S/o Shri Baij Nath, aged about 41 years.
45. Jai Prakash Sonkar S/o Shri Chhedi Lal, aged about 44 years.
46. Niraj Kumar Sharma S/o Late Yogesh Dutt Sharma, aged about 34 years.
47. Kailash Nath Tiwari S/o Shri B.P. Tiwari, aged about 36 years.
48. Aseph Said S/o Mohd. Said, aged about 37 years.
49. Ravindra Kumar S/o Shri Lankush Ram, aged about 40 years.
50. Dhirendra Kumar Sharma S/o Shri Hari Prasad Sharma, aged about 40 years.
51. Arun Kumar Wilikinson S/o Sh. D.D. Wilikinson, aged about 41 years.
52. Shiv Kumar Mishra S/o Sh. Raja Ram Mishra, aged about 37 years.
53. Yogeshwar Prasad Singh S/o Sh. Ram T. Singh, aged about 40 years.
54. Shiv Kant Mishra S/o Sh. Jai Narain Mishra, aged about 41 years.
55. Ram Naresh S/o Shri Ganga Prasad, aged about 40 years.
56. Roshan Lal S/o Shri Hari Lal, aged about 39 years.
57. Anand Kumar S/o Shri D.N. Dass, aged about 33 years.
58. Shivji Mishra S/o Sh. Onkeshwar Mishra, aged about 35 years.
59. Daya Shankar S/o Shri Mewa Lal, aged about 35 years.

All the aforesaid applicants are working as Assistant Electrical Driver under the Senior Divisional Electrical Engineer, Northern Railway, Allahabad and in the administrative control of Divisional Railway Manager, N. Railway, Allahabad.

Applicants

By Advocate: Mr. S.S. Sharma

Vs.

1. The Union of India, through the General Manager, Northern Railway, Headquarters Office, Baroda House, NEW DELHI.

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2. The General Manager, Northern Railway, Headquarters Office, Baroda House NEW DELHI.
3. The Secretary, Railway Board, Rail Bhawan, NEW DELHI.
(Deleted vide this Order)
4. The Divisional Railway Manager, Northern Railway, D.R.M. Office, Nawab Yusuf Road, ALLAHABAD.
5. The Senior Divisional Electrical Engineer (RSO), Northern Railway, Allahabad.
6. Shri Muzib Ullah Ansari S/o Shri A.O. Ansari.
7. Shri Dilip Kumar Prasad S/o Shri H.N. Prasad.
8. Shri Nityanand Nath Tiwari S/o Shri Rameshwar Nath Tiwari.
9. Ramesh Babu S/o Shri Munni Lal.
10. Pradeep Kumar Mishra S/o Shri Dina Nath Mishra.
11. Rajeshwar Prasad S/o Shri Onkar Nath Pandey.
12. Bindeshwari Prasad Singh S/o Shri Ganga Prasad Singh.
13. Raja Ram Sahu S/o Shri Babban Sahu.
14. Shri Raj Kumar Dubey S/o Shri Ram Pratap Dubey.
15. Shri Anil Kumar Gupta S/o Shri Yamuna Sahu.
16. Shri Arun Kumar Verma S/o Shri Janaki Prasad.
17. Shri Dashrath Ram S/o Shri Phenku Ram.
18. Shri Anoop Singh S/o Shri Banke Bihari Singh.
19. Shri Amar Deep Singh S/o Shri Dharam Pal Singh.
20. Shri Awadhesh Kumar S/o Shri Rameshwar Vishwakarma.
21. Shri Ashish Kumar Srivastava S/o Shri L.N. Srivastava.
22. Shri Sanjay Kumar S/o Shri Muralidhar.
23. Shri Sanjay Kumar Gupta S/o Shri Udai Kumar Gupta.
24. Shri Vinod Kumar Dwivedi S/o Shri Kripa Shankar Dwivedi.
25. Shri Suresh Kumar Tiwari S/o Shri Deo Dutta Tiwari.
26. Shri Amrendra Srivastava S/o Shri J.C. Srivastava.
27. Shri Balram Mishra S/o Shri Munshi Lal.
28. Shri Radhey Shyam S/o Shri Banwari.
29. Shri Pramod Kumar Shukla S/o Shri Gopal Krishna Shukla.
30. Shri Ram Bali S/o Shri Jee Lal.
31. Shri Sheo Shankar Gautam S/o Shri Munshi Ram.
32. Shri Asharfi Lal S/o Shri Shri Krishna.
33. Shri Babu Ram S/o Shri Chhedi Lal.
34. Shri Mahendra Kumar Sahu S/o Shri Radha Raman Sahu.
35. Shri Upendra Kumar Sahu S/o
36. Shri Vidya Sagar Verma S/o Shri Munshi Ram.
37. Shri Ram Tapaswi S/o Shri Gangadhar Ram.

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38. Shri Dinesh Kumar S/o Shri Lallo Prasad.
39. Shri Aparbal Singh Yadav S/o Shri Tilak Singh Yadav.
40. Shri Anand Kumar S/o Shri Narendra Bahadur Singh.
41. Shri Alok Kumar Srivastava S/o Shri G.K. Srivastava.
42. Shri Gauri Shanker Prasad S/o Shri Vishwa Nath Prasad.
43. Shri Prem Shanker Sharma S/o Shri Badri Narain Thakur.
44. Shri Manoj Kumar S/o Shri Bhagwan Swaroop.
45. Shri N.K. Tripathi S/o Shri P.D. Tripathi.
46. Shri Shri Krishna Upadhaya S/o Shri S.R. Sharma.
47. Shri Raja Bhaiya Bharati S/o Shri Ramapati Tundla.
48. Shri Vimlesh Kumar Upadhaya S/o Shri Raja Ram Upadhaya.
49. Shri Ashok Kumar S/o Shri Preetam Singh.
50. Shri Sukhram Prasad S/o Shri Banshi Prasad.
51. Shri Raj Vir Singh S/o Shri Mewa Ram.
52. Shri Manoj Rawat S/o Shri M.C. Rawat.
53. Shri Sita Ram S/o Shri Tula Ram.
54. Shri Bharat Bhushan S/o Shri Jitendra Nath Sharma.
55. Shri Shantanu Kumar Srivastava S/o Shri Vijay Prakash Srivastava.
56. Shri Mohd. Noman Shahi S/o Shri Harun Rashid.
57. Shri Ajay Kumar Pandey S/o Shri Vishwa Nath Pandey.

The respondents No. 6 to 18 are working as Assistant Electrical Driver under the Chief Traction Foreman (RSO)/N. Railway, Allahabad; Respondents No. 19 to 45 are working as Assistant Electrical Driver under the Chief Traction Foreman (RSO)/N. Railway, Kanpur; Respondents No. 46 to 56 are working as Assistant Electrical Driver under the Chief Traction Foreman (RSO)/N. Railway, Tundla and Respondent No. 57 is working as Assistant Electrical Driver under the Chief Traction Foreman (RSO)/N. Railway, Mughalsarai and all are working under the control of Senior Divisional Electrical Engineer (RSO), N. Railway, Allahabad and in the administrative control of the Divisional Railway Manager, N. Railway, Allahabad.

Respondents

By Advocate: Mr. P.N. Rai

O R D E R

Delivered by Hon'ble Mr. Justice S.S. Tiwari, Sr. J.M./H.O.D.

The applicants have filed this O.A. for the following relief(s): -

(a) *That the Hon'ble Tribunal may graciously be pleased to direct the respondents to regularize the services of the applicants as Electrical Assistant/ Assistant Electric Driver in grade Rs.950-1500/- (RPS) strictly as per Railway Board's letter dated: 16.7.1991 and 15.10.91.*

(b) *That the Hon'ble Tribunal may graciously be pleased to direct the respondents to regularize the services of the applicants from the dates*

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they declared successful in PF-1 Course by the Principal, Electric Training Centre, Kanpur i.e. 24.4.93; 12.10.93 and 21.4.94.

(c) That the Hon'ble Tribunal may graciously be pleased to direct the respondents to revise seniority of the applicants i.e. to fix the seniority of applicants over direct appointees (i.e. Respondents No. 6 to 57) posted earlier, after passing PE-1 Course by the applicants and after filing O.A. No. 1157 of 1994-A.K. Tiwari & Others V/s. U.O.I. & Others in this Hon'ble Tribunal by counting applicant's one year training period also.

(d) That the Hon'ble Tribunal may graciously be pleased to direct the respondents to fix their pay in grade Rs.950-1500/- (RPS) from the dates they were sent for training (PE-1 Course) in the Electrical Training Centre, Kanpur (i.e. Batch wise on 24.4.92; 12.10.92 and 24.4.93) with payment of arrear of pay on this account with interest @ 18% per annum compounded annually.

(e) That the Hon'ble Tribunal may graciously be pleased allow all the consequential benefits to the applicants in this case.

(f) That the Hon'ble Tribunal may graciously be pleased to award heavy compensation/damages as may deem fit and proper, in favour of each of the applicants due to intentional action of the respondents in violation to the Railway Board's orders and judgment and order dated: 6.7.2000 of this Hon'ble Tribunal.

(g) That the Hon'ble Tribunal may graciously be pleased to pass any such order or direction in favour of the applicants as may deem fit and proper under the circumstances of the case.

(h) That the Hon'ble Tribunal may graciously be pleased to award heavy cost of proceedings in this case, in favour of the applicants."

2. The brief facts of the present application are that the applicants were initially appointed as substitute Loco Cleaners. Subsequently, a screening test was held in which applicants appeared, and were declared successful in January, 1992. The Senior D.E.E./RSO, Northern Railway, Allahabad vide his letter No. 230-Elect/RSO/RgSp/92/137 dated 09.01.1992 intimated the Divisional Railway Manager, Northern Railway, Allahabad about the planning to fill up the vacancies of Electric



Running Staff at Allahabad Division from the Cleaners as per Railway Board's letter dated 16.07.1991 and also requested to direct '60' Cleaners out of the panel of '163' Cleaners (who were declared successful) to attend the PE-1 Assistant Driver (Electrics) Course at Electric Training School, Kanpur w.e.f. 28.01.1992. Accordingly, in accordance with seniority they were sent for training at Electric Training School, Kanpur. After completion of the aforesaid training, the applicants were required to be posted on the post of Assistant Electrical Driver after 24.04.1993 as per Railway Board's orders dated 16.07.1991 and 15.10.1991 but they were not appointed to the promoted post of Assistant Electrical Driver in Allahabad Division. The respondents instead of promoting the applicants to the above post, appointed respondents' No. 6 to 57 immediately after completion of their training in utter violation of the aforesaid Railway Board's letters. According to the aforesaid letters, 50% of the vacancies were to be filled by lateral induction from amongst First Fireman who are at least 8th class pass and are below '45' years of age and in case of shortfall, if any, by promotion through usual selection procedure from amongst Second Fireman who are 8th class pass and are below '45' years of age. The balance 50% of the vacancies were to be filled by lateral induction of Matriculate First Fireman with minimum '3' years of continuous service and again in case of shortfall, if any, by promotion from amongst Matriculate Second Fireman through departmental examination. Even after it, in case of shortfall, if any, against the above procedures, the posts were to be filled up by departmental examination from amongst Matriculate Cleaners with minimum '5' years continuous service, and in case of shortfall, if any, by lateral induction of skilled Artisans (Diesel/Electric Fitters) subject to a maximum of 20% of the vacancies, and in the last in case of shortfall, if any, by direct recruitment through Railway Recruitment Board with minimum qualification of Matriculation



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plus I.T.I. in Electrical or Mechanical or Electrical Engineering (in lieu of I.T.I.). The applicants made representations to the respondents for their appointment before the appointment of direct recruits and for giving them seniority over the direct recruits but, it was not done, hence, the applicants filed O.A. No. 1157 of 1994 for directing the respondents to strictly follow the instructions contained in Railway Board's orders dated 16.07.1991 and 15.10.1991 for filling the post of Diesel Assistant/ Electrical Assistant which was finally disposed of with direction to the respondents to strictly comply with the directions contained in the aforesaid orders. When no action was taken by the respondents in favour of the applicants, a Civil Contempt Application No. 116 of 2001 was filed, which was also disposed of with the observation that if the applicants feel aggrieved by the action of the respondents by delaying their appointments and consequently rendering them juniors to direct appointees, they may file fresh O.A. Accordingly, the present O.A. has been filed for the relief(s), mentioned above.

3. Separate Counter Reply was filed on behalf of the respondents Nos. 1 to 5 denying the contentions of the applicants, alleging that the screening test of the substitute Cleaners was not organized for their promotion to the post of Assistant Driver but, for regularizing their services as they were substitute Cleaners. Subsequently, they were sent for training for absorption/promotion to the post of Electrical Assistant Driver in the pay scale of Rs.3050-4590 (RSRP) subject to passing the prescribed selection. The Railway Board's orders, referred to above, by the applicant were strictly followed by the respondents. The respondents Nos. 6 to 57 were directly recruited candidates before the aforesaid orders came into existence. No illegality or violation of Rules has been committed by the respondents and the O.A. deserves to be dismissed.

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4. Separate Counter Affidavit has been filed on behalf of Respondents Nos. 6, 7, 8, 11, 12, 13, 14, 15, 16, 19, 20, 22, 23, 25, 26, 27, 28, 29, 30, 31, 34, 35, 36, 37, 38, 39, 40, 42, 43, 46, 48, 49, 54 and 55 denying the allegations made in the O.A. by the applicants, and alleging that prior to 1991 large number of vacancies on the post of Diesel Assistant (about 100 vacancies) were to be filled in by direct recruitment by the Railway Recruitment Board, Allahabad vide Employment Notice No. 2/89-90 published in the Employment News dated 20-26th January, 1990. Subsequently, a large number of vacancies were increased by adding the vacancies of Electrical Assistant/First Fireman and the total numbers of vacancies were about 581. A written test was held on 28.05.1990, and psychological test was held from 26.11.1990 to 15.01.1991, and viva voce test was held from 05.04.1991 to 16.04.1991 by the Railway Recruitment Board, Allahabad and final result was declared on 21.04.1991 wherein all the answering respondents were selected to be appointed on the post of Assistant Electrical Driver/Diesel Assistant First Fireman. The respondents also received the intimation regarding their selection and merit position in June, 1991. The private respondents were allocated and posted in Allahabad Division and were ultimately appointed as Electrical Assistant Driver in the pay scale of Rs.950-1500/-. Accordingly, the Railway Board's circulars dated 16.07.1991 and 15.10.1991, referred to by the applicants, are not applicable to the case of present respondents as they were already selected against the vacancies already available in accordance with the circulars/rules applicable at that time. The respondents were sent for training in pursuance to Railway Recruitment Board, Allahabad advertisement of January, 1990 in five batches whereas the applicants, who were screened for appointment to the aforesaid posts, were working as Cleaners and they were sent for training according to the Railway Board's circular dated 16.07.1991.



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5. Learned counsel for the respondents has argued that the seniority of respondents Nos. 6 to 57 has been settled much before and after a long lapse of time of about 16 years, it should not be disturbed. Reliance has been placed on the observation made by the Hon'ble Apex Court in the case of '*G.C. Gupta and others vs. N.K. Pandey and others* AIR 1988 Supreme Court 268 in which the Hon'ble Apex Court relying on the case of '*Rabindra Nath Bose vs. Union of India* (AIR 1970 SC 470), has observed as below: -

"In this case the challenge to the seniority of the appellants which was determined by order dt. 20th July, 1956 was made in 1973 i.e. after nearly 17 years and they have sought relief for re determination of the seniority in accordance with the provisions of the aforesaid Service Rules. This cannot be permitted as it would amount to unjust deprivation of the rights of the appellants which had accrued to them in meantime. The observation that 'Every person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after the lapse of a number of years'...."

In the present case also about '16' years have already passed and now there is no justification to disturb the seniority of the respondents' No. 6 to 57 at this stage.

6. The applicants have placed reliance on the documents, which have been filed as annexures A-1 to A-17, filed by them on record including the advertisement for substitute Cleaner, provisional penal of substitute Cleaner, screening test, Railway Board's letters and various representations by the applicants for their posting and seniority.

7. No documentary evidence has been filed on behalf of the respondents Nos. 1 to 5.

8. The respondents Nos. 6 to 57 have filed annexure CA-1 to CA-3 in support of their contentions including the copy of advertisement for recruitment of Diesel Assistant and selection result of the same along with intimation letter.



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9. We have heard the learned counsel for the parties and perused the papers on record.

10. Before entering into the merits of the case, the Misc. Application of the respondents Nos. 1 to 5 is taken up for deletion of respondent No. 3 from the array of respondents, as according to them the respondent No. 3 is not a necessary or proper party for just adjudication of the case. No Objection has been filed against this Misc. Application by the applicants. Moreover, admittedly the General Manager of the concerned railway is the competent authority to represent the Railways. Accordingly, the Misc. Application is allowed and respondent No. 3 is deleted from the array of the respondents. Necessary correction be made in the O.A. accordingly during the course of the day.

11. It is relevant to mention some undisputed facts on record before discussing the merits of the case, which are as under: -

(i) The applicants were initially appointed as substitute Cleaners on provisional panel by the order of General Manager, Northern Railway, Allahabad as per annexure A-2 which is dated January, 1987 on account of the process of selection of substitute Cleaner which was held between 15.10.1986 to 31.10.1986;

(ii) The aforesaid substitute Cleaners were regularized on 06.01.1992 and were placed on the provisional panel of Loco Cleaners;

(iii) Prior to the year 1991, the Railway Recruitment Board, Allahabad published an Employment Notice No. 2/89-90 in the Employment News dated 20-26th January, 1990 advertising the vacancies of Diesel Assistant and Electrical Assistant/First Fireman and in pursuance of aforesaid news, a written test was held on 28th May 1990 and psychological test was held between 26.11.1990 to 15.01.1991 and viva voce was held between 05th to 16th April, 1991 by the Railway Recruitment Board, Allahabad and final result was declared on 21.04.1991 in which the present respondent No. 6 to 57 were declared successful for appointment on the post of Assistant Electrical Driver/Diesel Assistant/First Fireman. They were sent to complete the



training course and subsequently were posted in Allahabad division as Electrical Assistant Driver in the pay scale of Rs.950-1500/-.

The main argument advanced by learned counsel for the applicant is that after publication of RBE 130 of 91 and 131 of 91 dated 16.07.1991 and RBE No. 178 of 91 dated 15.10.1991, the respondents No. 1 to 5 had no right to send the private respondents i.e. directly recruited persons for training for promotion to the post of Electrical/Diesel Assistant Drivers as a specific mode of filling up the post of Diesel Assistant and Electrical Assistant was made and specified in the aforesaid Railway Board letters. In order to appreciate the mode specified in the aforesaid Circular No. R.B.E. No. 131/91, it is desirable to mention it below: -

" **R.B.E. No. 131/91**

Subject: Mode of filling up the post of Diesel Asstt.

No. E(NG) 1/90/PM7/34, dated, 16.7.1991

As the Railways are aware, the mode of filling up the vacancies in the categories of Diesel Assistant has been laid down in the Board's letter No. E(NG) 1/84/PM7/56, dated 3/11/87 [Bahri's R.B.O. 1987-II, 348 (RBE No. 269/87)]. In terms of these orders these vacancies are to be filled as under:

- (a) 50% of the vacancies shall be filled by lateral induction from among First Firemen who are at least 8th class pass and are below 45 years of age; in the case of shortfall, by promotion by usual selection procedure from among Second Fireman who are at least 8th class pass and are below 45 years of age.
- (b) Balance 50% of vacancies shall be filled by lateral induction of Matriculate First Firemen with minimum three years of continuous service, shortfall, if any, by promotion of Matriculate Second Fireman through departmental examination.
- (c) Shortfall, if any, against (a) and (b) above shall be made good by direct recruitment through the Railway Recruitment Board.

2. It has been brought to the notice of the Board that on account of the progressive phasing out of steam traction, adequate number of First and Second Fireman are not available on some of the Railways for filling up the vacancies of Diesel Assistant and it necessitates direct recruitment to a great extent. In this context a demand has been raised in the forum of PNM by both the Federations that serving Matriculates cleaners and Diesel Maintenance staff should first be considered for selection as Diesel Assistant before resorting to direct recruitment.

3. The matter has been considered carefully by the Board in the light of discussions in PNM Meetings with AIRF/NFIR and it has been decided in modification of Para 4 (ii) of this Ministry's letter No. E(NG)I/84/PM7/56, dated 3.11.87 that the vacancies in the category of Diesel Assistant (scale Rs.950-1500) may, henceforth, be filled as under:

- (a) 50% of the vacancies shall be filled by lateral induction from among First Firemen who are at least 8th class pass and are below 45 years of age; shortfall, if any, by promotion by usual selection procedure from amongst Second Fireman who are 8th class pass and are below 45 years of age.

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- (b) Balance 50% of vacancies shall be filled by lateral induction of Matriculate First Firemen with minimum 3 years of continuous service, shortfall, if any, by promotion from amongst Matriculate Second Fireman through Departmental Examination.
- (c) Shortfall, if any, against (a) and (b) above shall be made good by Departmental Examination from amongst Matriculation cleaners with minimum 5 years continuous service.
- (d) Shortfall, if any, against (c) above shall be made good by lateral induction of skilled artisans (Diesel/Electric Fitters) subject to a maximum of 20% of the vacancies.
- (e) If still there is some shortfall, it shall be made good by direct recruitment through Railway Recruitment Board with minimum qualification of Matriculation plus ITI in any of the specified trades of Diploma in Electrical or Mechanical or Electronics Engineering (in lieu of ITI).

R.B.E. No. 178/91

Subject: **Mode of filling up the posts of Diesel Asstt./Elect. Asstt.**

No. E(NG) 1/90/PM7/34, dated, 15.10.1991

As the Railways are aware, the mode of filling up the vacancies in the category of Diesel Assts. (Rs.950-1500) has been laid down in Board's letter of even number dated 16.7.91. It has now been decided, in supersession of all earlier instruction on the subject, that the same mode will apply for filling up vacancies in the category of Elect. Asstt. (Rs.950-1500) also.

2. It is clarified that lateral induction of skilled Artisans (Diesel/Elect. Fitters) as provided in para 3 (d) of the Board's letter of even number dated 16.7.91 will not be restricted to fitters working in Diesel Loco Sheds alone, but will include Fitters working in Elect. Loco Sheds also.

A careful perusal of R.B.E. No. 130/91 and R.B.E. No. 131/91 dated 16.07.1991 shows that 50% of the vacancies were to be filled by lateral induction from amongst First Firemen who are at least 8th class pass and are below 45 years of age, and in case of shortfall, by promotion by usual selection procedure from amongst Second Fireman who are at least 8th class pass and are below 45 years of age. It is further provided that the balance 50% of vacancies were to be filled by lateral induction of Matriculate First Firemen with minimum three years of continuous service, and in case of shortfall, if any, by promotion of Matriculate Second Fireman through departmental examination. In case of further shortfall, if any, against the aforesaid provisions, it should be made good by direct recruitment through the Railway Recruitment Board.

12. Subsequently, on modification of para-4 (ii) of Ministry's letter No. E(NG)I/84/PM7/56, dated 3.11.87, it was decided that the

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vacancies in the category of Diesel Assistant (scale Rs.950-1500) may henceforth be filled by giving chance to Matriculate cleaners with minimum 5 years continuous service and in case of shortfall, if any, against (a) and (b) above through departmental examination and lastly in case of short fall by direct recruitment.

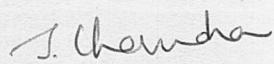
13. On the basis of aforesaid Railway Board letters, it has been contended by learned counsel for the applicants that the General Manager, Northern Railway in gross violation of Railway Board's circular dated 03.11.1987 without filling up the vacant posts of Diesel Assistant/ Electrical Assistant from surplus First Firemen/Second Firemen and Artisan staff as per Railway Board's orders, published 100 vacancies of Diesel Assistant through Railway Recruitment Board, Allahabad. In pursuance of Employment Notice No. 2/89-90 and in further gross violation of the Rules of Railway Board's circulars dated 16.07.1991 and 15.10.1991 sent the direct recruits for training and posted them on the aforesaid posts before giving appointment to the applicants. Learned counsel for the respondents has rebutted this contention of applicants' counsel, submitting that in pursuance of Employment News published in newspaper by the Railway Recruitment Board, the examination was held and candidates found successful in that examination were sent for training and subsequently they were giving appointments. When the aforesaid examination was conducted in 1990, present circulars of Railway Board i.e. dated 16.07.1991 and 15.10.1991 were not in existence. He has further pointed out that the inclusion of Matriculate Cleaners to be appointed as Diesel Assistant/Electrical Assistant was brought to light through the Railway Board's circulars dated 16.07.1991 and 15.10.1991. He has referred to para-3 of R.B.E. No. 131/91 in which last line of para-3 mention the word "henceforth to be filled as under". Learned counsel for the applicants could not show any documentary evidence on record to prove that the examination of direct

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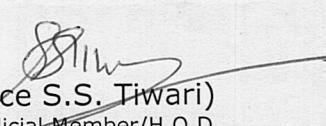
recruits which took in the year 1990 was cancelled or their selection after written test and viva voce was cancelled by the railway authorities through the aforesaid letters dated 16.07.1991 and 15.10.1991. Moreover, there is nothing on record to show that the aforesaid two letters were retrospective in operation.

14. In view of the above discussions, we are of the view that the applicants have got no case on merits. Accordingly the O.A. is hereby dismissed. No order as to costs.



(Ms. Jayati Chandra)
Administrative Member

/M.M/


(Justice S.S. Tiwari)
Sr. Judicial Member/H.O.D.