

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Dated: This the 8th day of April 2011

Original Application No.1301 of 2003
(U/s 19, Administrative Tribunal Act 1985)

Hon'ble Mr. Justice S.C. Sharma, Member (J)

Hon'ble Mr. S. N. Shukla, Member (A)

1. Sanjay Kumar Gupta, S/o Shri R.S.P. Shah, R/O Quarter No.12/79-A, Manas Nagar, Mughal Sarai.
2. S.K. Singh, S/o Shri P.N. Singh, R/o Village Kauria, P.O. Hardia, District Bhojpur (Bihar).
3. Chandra Bhan Singh, S/o Late Sudarshan Singh, R/o Quarter No.1177, Shastri Colony, Mughal Sarai.
4. Munna Prasad S/o Subhash, R/o Manas Nagar, Mughal Sarai.
5. Ashit Kumar Dey S/o Shri G.C. Dey R/o New Mahal, Mughal Sarai.
6. Vijya Pratap Singh S/o Shri R.B. Singh, R/o Manas Nagar, Mughal Sarai.
7. Virendra Pratap Singh S/o Shri R.B. Singh, R/o Ravi Nagar, Mughal Sarai.
8. N.K. Misra S/o Shri Basant Misra, R/o New Mohal, Mughal Sarai.

..... Applicants.

By Advocate: Sri S.K. Dey
Sri S.K. Mishra

V E R S U S

1. The Union of India through the General Manager, East Central Railways, Hajipur (BIHAR).
2. The Chief Personnel Officer, East Central Railways, Hajipur (BIHAR).



3. The Divisional Railway Manager, East Central Railways, Mughal Sarai.
4. Narain Prasad Fitter Grade-III, U/Sr.D.EE/TRS/E.C. Railway, Mughalsarai, Varanasi.
5. Ali Hussain, Fitter Grade III, U/Sr.DEE/TRS/E.C. Railway Mughalsarai, Varanasi.
6. Md. Hshique Fitter Grade-III, U/Sr.DEE/TRS/E.C. Railway Mughalsarai, District-Varanasi.
7. Ainul Huda, Fitter Grade III, U/Sr.DEE/TRS/E.C. Railway Mughalsarai, District-Varanasi.
8. Ab.Khalique, Fitter Grade-III, U/Sr.DEE/TRS/E.C. Railway Mughalsarai, District-Varanasi.
9. Gautam Kumar Chakravarty, Fitter Grade-III, U/Sr.DEE/TRS/E.C. Railway Mughalsarai, District-Varanasi.
10. Dharendra Kumar, Fitter Grade III, U/Sr.DEE/TRS/E.C. Railway Mughalsarai, District-Varanasi.
11. Bashistha Narain Pandey Fitter Grade-III, U/Sr.DEE/TRS/E.C. Railway Mughalsarai, District-Varanasi.

..... Respondents.

By Advocate: Shri K.P. Singh

ORDER

Hon'ble Mr. S.N. Shukla, Member (A)

1. Under dispute is an interim seniority list dated 11.9.2003 (Annexure A-1). The seniority list relates to Electrical Technician-III in the Grade of ₹ 3050-4590. The applicants have been placed below respondent Nos.4 to 11 in the seniority list and hence the OA. It is submitted that the root cause of the litigation goes back to the time of appointment of the applicants as Act Apprentice or I.T.I. Pass Class in TRS Section of Electrical Branch of Mughalsarai Division of Eastern Railway. Based on

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recommendations of the Vth Pay Commission regarding scales of pay for Khalasis in Diesel/Electrical Loco/EMU Shed the Chief Personnel Officer, Eastern Railway issued a circular dated 28.10.1998 (Annexure A-2). In term of the circular Group 'D' Staff serving against skilled post in the Electric Loco Sheds were to be promoted on a percentage basis against class III Technical Posts in the grade of ₹ 3050-4590. The revised methodology for filling up of the posts in the grade of ₹ 3050-4590 was laid down in para 5 thereof. The relevant guidelines being as under:-

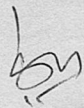
- i) 60% by direct recruitment from successful course completed Act Apprentices, ITI pass candidates and matriculates from the open market.
- ii) 20% from serving semi-skilled and unskilled staff with three years of regular service with educational qualification as laid down in the Apprentices Act, as outlined in Railway Board's letter No.E(NG)I/96/PM7/56 dated 2.2.1998 and
- iii) 20% by promotion of staff in the lower grade as per prescribed procedure."

2. The scale grade of ₹ 3050-4590 was to be filled up to the extent of revised 60% (?) by Act Apprentice, ITI pass and Matriculation from the open market. Thus, the aforementioned three streams contributed for filling up the class III skilled post in the grade of ₹3050-4590.

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3. In the aforementioned circular (Annexure A-2) there was no mention to fill up the Class III skilled post of grade Rs.3050-4590 by Matriculates in skilled or semi skilled Group 'D' posts. It was also not provided as to how the staff so selected from different streams will share the inter-se seniority.

4. It is submitted that in pursuance of any specific guidelines the inter-se seniority should have been determined on the basis of date of appointment, length of service or grades of the candidates promoted to the grade of ₹ 3050-4590. This was not done in the impugned seniority list dated 11.09.2003. What was actually done was that the group 'D' promotee employees (other than Act Apprentice and ITI pass candidates) were placed senior en-masse over other candidates. These promotee serving Group 'D' employees were only High School pass staff and, therefore, did not deserve any priority over other candidates in the matter of seniority. It was also submitted that the applicants holding qualification of High School with 177/Act Apprentice are only eligible to be considered for promotion in the skilled grade ₹ 3050-4590 and they were called for trade test vide letter dated 31.5.1999 (Annexure-A). The High School Pass candidates made representation to consider for promotion in the skilled grade but their prayer was rejected and it was held that High School



with ITI/Apprentice alone is eligible vide order dated 11.6.1999 (Annexed with the OA). The respondents issued a promotion order vide order no.910/99 dated 11.11.1999 in violation of previous order dated 11.6.1999. In the said order non eligible Khalasis who were bare Matriculates were considered for promotion in skilled grade for which only Matriculation with ITI/Apprentice alone are eligible should have been considered for skilled grade as laid down in office order no.910/99 dated 11.11.1999 (Annexure-C to the OA). Accordingly, respondent Nos. 4 to 11 were not eligible to be promoted in skilled grade as Fitter III and in no case eligible to be placed above applicants in the impugned seniority list dated 11.9.2003.

5. It is averred that because of this anomalous situation the respondent no.3 had sought an opinion from respondent no.2 vide letter dated 24.7.2000 regarding reversion of non eligible persons having been promoted in the skilled grade of Fitter which remains un-replied and unresolved before issue of impugned draft seniority list dated 11.9.2003 (letter dated 24.7.2000 at Annexure-D to the OA).

6. Subsequently, it appears that the respondents at serial Nos.4 to 11 were also called for a trade test for further up-gradation to the post of Fitter Grade II on the teeth of protest

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by the applicant. It is, therefore, submitted that the respondents at serial Nos.4 to 11 have been conferred double advantage over the applicants.

In that without eligibility for promotion to the skilled grade they have been promoted and also placed en-masse over the applicants, without any provision or qualification to this effect. Aggrieved the applicants filed representations (Annexure A-4 & 5). The representations were disposed of by rejecting the contentions of the applicants (Annexure A-6 & 7).

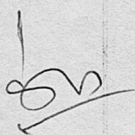
7. On notice counter affidavit have been filed by official respondent. As regards private respondents, no CA has been filed even on notice to private respondents reference be made to NOR, dated 18.08.2004, NOR dated 11.5.2006 and NOR dated 15.12.2010. The submissions of official respondents are as under:-

- (i) The eligible candidates were called for trade test held on 22.09.1999 and after selection promoted to the post of Technician Grade III (Fitter). Their seniority were prepared on the basis of joining in Grade 'D' and all selected candidates come from Grade 'D' post. Further that the applicant were remitted as per Act Apprentice Act of 1961. As per the instant rules trained Act Apprentice are not Railway employees even while they were given

training at the cost of Railway. They become Railway employees only when they are appointed against permanent vacant post. The applicants came as substitutes and not a regular Group 'D' staff and, therefore, their claim is not sustainable as per extant rules.

8. As regards the eligibility it is submitted that the Eastern Railway on a reference clarified that ITI, Act Apprentice, as also Matriculates are eligible vide circular No.101 of 1995 and 203/1998. The submission of the applicant that 'in service Matriculates' were not eligible to be considered was disputed. It was also clarified that coming into effect of revised procedure for filling up the post in the grade of ₹ 3050-4590, direct recruitment in the grade of ₹ 2250-3200 is to be amongst persons with 8th class pass qualification and sanctioned cadre strength as on 01.09.1988 according to serial no.203/1998 and subsequent qualification regarding educational qualification the post of grade III have been filled up correctly.

9. Heard counsel for the parties and perused the pleadings on record. The issues to be adjudicated upon by us are as follows:-



- (a) Whether 'in house matriculates' were eligible to be considered for promotion to the skilled grade of ₹ 3050-4590.
- (b) Whether their en-masse seniority over the applicants is in order.

10. We have perused Annexure-B (page 45 D to the OA) being a clarification dated 11.6.1999. On an application from candidates it was clarified that in terms of circular no.203/1998. The essential qualification for Fitter Khalasi in the scale of ₹ 3050-4590 is Matric and in addition I.T.I./Act Apprentice (both). Promotion will be granted to the candidates who fulfill these conditions. Text reproduced below:-

सं० ई०इले०/टी०आर०एस०/क्लास/४/ट्रेड-टेस्ट/मुगल०/९९ मुगलसराय दि० ११-०६-९९ श्री बी के सिंह ख० हे०/टि०नं०८०४
अधीन ब०अनु०अभि०/कचष्टा/मुगलसराय ।
विषय - टी० आर० एस० शेड /मुगल० के अधीन गुप डी तकनीकी कर्मचारी को गुप सी वे० मा० रू० ३०५० -४५९० आर एस आर बी में पदोन्नति देने के सम्बन्ध में ।
संदर्भ - आप का आवेदन पत्र पर सहानुभूति पूर्वक विचार किया गया और यह पाया गया कि मु०का०अधि०/कलकत्ता के परिपत्र सं० २०३/९८ के तहत फिटर खलासी वे०मा० रू० ३०५०-४५९०/- के पदोन्नति के लिये मैट्रिक के साथ साथ टी० आई० /एक्ट अप्रेंटिस उत्तीर्ण होना आवश्यक है । इस शर्तों को पूरा करने वाले कर्मचारी को ही उक्त पद पर पदोन्नति दी जायेगी ।
आप को सूचनार्थ प्रेषित ।

सहायक कर्मिक अधिकारी
पूर्व रेलवे मुगलसराय ।

11. We have also perused a letter dated 01.07.1999 (Annexure A-3) [of a later date issued after reply dated 11.6.1999 [Annexure-B page 45 D]. In this communication from CPO Eastern Railway addressed to D.R.M. Eastern Railway Mughalsarai in which it has been clarified as under:-


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"This is to confirm that ITI or course completed Act Apprentices of Matriculates are all eligible for the promotion as per Sl. No.101/95 & 203/98.

This issues with the approval of CPO(A)."

12. The applicants have also filed a Railway Board circular dated 02.02.1998 in support of their contention and also a Eastern Railway letter serial no.18/2000 dated 31.05.2000 on the subject of minimum educational qualification for Direct Recruitment for the post of Skilled Artizen. In this circular it has been held that the matter has been reviewed by the Board and it has been decided that the minimum educational qualification for direct recruitment to the post of Skilled Artizen and (including that of Diesel Electrical Loco EMU 3050-4590) will be "Course completed Apprentice/ITI pass relevant trade".

13. Obviously, this clarification from the Railway Board predates the impugned seniority list and would appear to support the case of the applicant that the private respondents did not possess necessary qualification. A reasonable force is also found in the applicant's submissions that a clarification sought by D.R.M. Mughalsarai from SPO, Eastern Railway Calcutta vide letter dated 24.07.2000 (Annexure-D page 45-K) wherein reference has been invited to letters/clarification dated 28.9.1998, 14.02.2000 and 01.07.2000 and instructions were sought regarding the treatment to be given to the candidates who were not qualified but stand promoted. It




seems the impugned seniority list has been issued without obtaining necessary clarifications.

14. Learned counsel for the respondents does not have much to submit on the above contention. Under these circumstances, we are firmly of the view that the respondents at serial Nos.4 to 11 do not possess requisite qualification for being promoted to the grade ₹ 3050-4590. Under these circumstances, they cannot be en-masse Senior to the applicant.

15. Accordingly, the impugned order (Annexure A-1) stand quashed and to be recast. In that the respondents are directed to assign the seniority to the applicants above private respondents at Sl. No.4 to 11. Similarly, for the same reasons of lack of qualification of the private respondents the impugned letter dated 5.2.2004 for the trade test for the post of Fitter Grade II seniority list also stand quashed and is to be recast in view of directions given by us in the order within three months of receipt of this order.

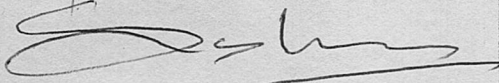
16. We need to clarify that the applicants in are have prayed for protection of their interest and not to deny promotion to private respondents. Hence our findings in this OA should not be construed in any manner as an order adverse to the

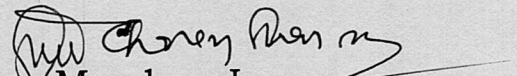


scale/post currently held by them. It relates only in respect of seniority of the applicants in grade of ₹3050-4590 vis-a-vis impugned seniority list at Annexure A-1.

17. Since at the interlocutory stage vide order dated 09.07.2004 in case any promotion is made on the basis of impugned seniority list the same was abide by the result of this OA. Accordingly, the seniority list wherever required to be recast will be done by the respondents in compliance of this order.

18. OA is allowed. No Costs.


Member-A


Member-J

/ns/