

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 21 DAY OF April, 2011)

Hon'ble Dr.K.B.S. Rajan, Member (J)

Hon'ble Mr. D.C.Lakha, Member (A)

*Conveyed to Mr. D.C. Lakha
dated 8.8.2011. M.A.*
Original Application No.348 of 2007

(U/s 19, Administrative Tribunal Act, 1985)

*Mr. Har Singh Yadav
8.8.11*
1. Hon'ble Mr. Har Singh Yadav,
Sr. Diesel Asstt., N.E.Rly., Varanasi.

2. Surendra Nath Tiwari,
Shunter, N.E.Rly., Varanasi.

3. Udai Nath,
Sr. Diesel Asstt.,
N.E.Rly., Varanasi.

4. Azimullah,
Sr. Diesel Asstt.,
N.E.Rly. Varanasi.

5. Sshahbuddin,
Sr. Diesel Asstt.,
N.E.Rly., Varanas.

6. Ram Babu,
Sr. Diesel Asstt.,
N.E.Rly., Varanasi.

7. Om Praqkash Vishwakarma,
Sr. Diesel Asstt.,

N.E.Rly., Varanasi.

8. Ram Adhar,
Sr. Diesel Asstt.,
N.E.Rly., Varanasi.
9. Anup Kumar Mukherjee,
Sr. Diesel Asstt.,
N.E.Rly., Varanasi.
10. Rama Nand Pandey,
Shunter, N.E.Rly., Mau.
11. Jagdish Pandey, Shunter,
N.E.Rly., Chhapra.
12. Sanjay Nandan Sen Gupta,
Sr. Diesel Asstt.,
N.E.Rly., Chhapra.

..... **Applicants.**

Present for Applicant : Shri R. Verma, Advocate.

V E R S U S

1. Union of India, through the General Manager, N. E. Railway,
Gorakhpur.
2. The General Manager (P)/Chief Personnel Officer, N.E.Rly.
Gorakhpur.
3. The Divisional Railway Manager (P),
N.E. Rly., Varanasi.
4. Shri Karan Singh,
Passenger Train Driver,

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N.E.Rly., Varanasi Diesel Lobby, Varanasi.

5. Shri Vishwa Nath Singh,
Senior Goods Train Driver,
N.E.Rly., Varanasi Diesel Lobby,
Varanasi.
6. Shri Shiv Dutt Sharma,
Passenger Train Driver,
N.E.Rly., Varanasi Diesel Lobby,
Varanasi.
7. Shri G.J.Pears,
Senior Goods Train Driver,
N.E.Rly., Varanasi Diesel Lobby, Varanasi.
8. Shri Kuldeep Kumar,
Senior Goods Train Driver,
N.E.Rly., Varanasi Diesel Lobby, Varanasi.
9. Shri Ram Sahai,
Sr. Goods Train Driver, N.E.Rly., Varanasi Diesel Lobby,
Varanasi.
10. Shri Mohd. Anis, Shunter,
N.E.Rly. , Varanasi Diesel Lobby,
Varanasi.
11. Shri Anil Kumar,
Senior Goods Train Driver,
N.E.Rly, Varanasi Diesel Lobby,
Varanasi.
12. Shri Asif Hussain,
Sr. Goods Train Driver,
N.E.Rly., Varanasi Diesel Lobby,
Varanasi.

13. Shri Ram Ugrah Singh,
Sr. Goods Train Driver, N.E.Rly.,
Mau Diesel Lobby, Mau.
14. Shri Ganesh Narain Gautam,
Senior Goods Train Driver,
N.E.Rly., Mau Diesel Lobby, Mau.
15. Shri Mohd. Aslam Ansari,
Passenger Train Driver, N.E.Rly.,
Chhapra Diesel Lobby, Chhapra.
16. Shri Surendra Singh,
Passenger Train Driver, N.E.Rly.,
Chhapra Diesel Lobby, Chhapra.
17. Shri Ram Chandra,
Passenger Train Driver, N.E.Rly.,
Chhapra Diesel Lobby, Chhapra.
18. Shri Mahesh Chandra,
Sr. Goods Train Driver, N.E.Rly, Chhapra Diesel Lobby,
Chhapra.

..... **Respondents**

Present for Respondents : Shri Anil Kumar, Advocate

O R D E R

(Delivered by Hon. Dr. K. B. S. Rajan, Member-J)

The case has a long history. The applicant had earlier approached the Tribunal in OA No. 957 of 2002 and prayed for correct fixation of seniority in the grade of Fireman Gr. I and consequential benefits. After acrimonious litigation of writ

petition and contempt petitions, ultimately, the respondents had granted due seniority in the grade of fireman Gr. I and also promoted the applicant to the grade of goods driver and senior goods driver (pay scale 5,500 – 9000). So far so, good. The next promotion is passenger train Driver, for which, according to the applicant there is no need for him to undertake the written test since the post carries the same pay scale as that of Senior Goods Driver, coupled with the fact that the Railway Board had dispensed with the written test by way of modified selection vide order dated 06-09-2005, while the respondents have contended that the applicant has to face the examination as did his juniors, who have, on qualifying in the written test, been promoted to the post of Passenger Train Drivers. Order dated 17-10-2006 of the respondents in this regard reads as under and the same is under challenge through this O.A.:-

“माननीय कैट इलाहाबाद में दाखिल वाद सं 957/2002 हरिहर सिंह यादव व अन्य बनाम भारत संघ में न्यायालय के निर्णय के अनुपालन स्वरूप इज्जतनगर मण्डल के कर्मचारी जो चयन प्रक्रिया के तहत वर्तमान में सवारी गाड़ी चालक (5500–9000) के पद पर कार्यरत है, से ऊपर वरीयता/प्रपत्र वेतन का लाभ दिया जाना है चूंकि कनिष्ठ कर्मचारी चयन की लिखित परीक्षा में सफल पाये जाने के बाद चयन प्रक्रिया पूर्ण किये जाने के फलस्वरूप पैसेन्जर (5500–9000) के पद पर पदोन्नत किये गये हैं। फलतः माननीय न्यायालय के निदेशानुसार कनिष्ठ के सापेक्ष प्रपत्र वेतन निर्धारण का लाभ देने के लिए चयन प्रक्रिया के लिखित परीक्षा में शामिल होना आवश्यक है। अतः कुल 12 पद के लिए चयन प्रक्रिया प्रारम्भ की जा रही है। जिसमें शामिल होने वाले कर्मचारी की सूची संलग्न है।

जो कर्मचारी लिखित परीक्षा सहित चयन प्रक्रिया में सफल पाये जायेंगे उन्हें उनके कनिष्ठ के सापेक्ष पदोन्नति पर प्रपत्र वेतन निर्धारण का लाभ दिया जायेगा। असफल होने की स्थिति में मौखिक चयन प्रक्रिया के माध्यम से केवल तत्काल प्रभाव से ही पदोन्नति का लाभ देय होगा।

लिखित परीक्षा 11.11.2006 एवं अनुपस्थित लिखित परीक्षा दिनांक 18.11.2006 के मण्डल रेल प्रबन्धक कार्यालय, वाराणसी में प्रातः 10.00 बजे से होनी निश्चित की जाती है। अनुपस्थित लिखित परीक्षा में केवल

उसी कर्मचारी को समिलित किया जायेगा जिन्हें परिस्थिति विशेष में समिलित होना उनके सक्षमता के परे है एवं इसकी सूचना वह अपने पर्यवेक्षक को तीन दिन पूर्व ही दे दे।"

2. The prayer in the OA reads as under:-

- i. *to issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 17.10.2006 passed by the Respondent No. 3 herein initiating selection against 12 posts of Passenger Train Driver in the pay-scale of Rs. 5500-9000 calling thereby the petitioners herein to appear in the written test scheduled on 11.11.2006 and 18.11.2006 at the Office of the Respondent No. 3 herein (Annexure A-I to the compilation No. 'I' of the O.A.).*
- ii. *to issue a writ, order or direction in the nature of mandamus directing the Respondent Nos. 1 to 3 herein to promote the petitioners herein as Passenger Train Driver, placing them at par with their juniors i.e. private respondents Nos. 4 to 23 herewith all consequential benefits, on the basis of the modified procedure and selection i.e. on the basis of seniority and viva-voce test as the petitioners have already passed the prescribed promotional course pursuant to and in implementation of the Railway Board Circular dated 06.09.2005 addressed to all the General Managers of all Indian Railways which includes the official respondent Nos. 1 & 2*

herein, within a period as may be fixed by this Hon'ble Tribunal.

- iii. To issue a writ, order of direction in the nature of mandamus directing the Railway Board to take suitable action against the Respondent Nos. 2 & 3 herein for violating the instructions contained in the Circular dated 06.09.2005 passed by it with a view to give undue advantage ignoring/site tracking the legal position and instructions for their own personal ill motivated gain, within a period as may be fixed by this Hon'ble Tribunal.
- iv. To issue any other suitable writ, order or direction in the facts and circumstances of the case which this Hon'ble Tribunal may deem fit and proper.

3. Respondents have contested the O.A. and emphasized that written test is a must for promotion to the post of Passenger Train Driver, which is a safety category. Applicant having filed the rejoinder, supplementary counter has also been filed.

4. As many private respondents had retired, in respect of serving respondents, steps were taken by the applicant for service of notice but no counter has been filed on behalf of the private respondents.

5. We have heard Shri R. Verma, learned counsel for the applicant and Shri Anil Kumar, learned counsel for the respondents and also perused the documents.

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6. The contention of the applicant is that there is no need to undergo the ordeal of written test when order dated 06-09-2005 is specific that mere viva voce would suffice. However, the contention of the respondents is that it is essential as the individual's promotion to the post of Passenger Train Driver was to be considered right from 18-07-2003 when his immediate junior had been promoted and at that time, the said order was not in existence.

7. In our order dated 27-11-2005 in M.A. No. 5264 of 2005 in CCP No. 219 of 2003 in OA No. 957 of 2002 we had already discussed and held that the order dated 06-09-2005 would apply to the case of the applicant and the decision of the DRM that the applicant should qualify the written test vide his order dated 17-10-2006 cannot override the decision of the Board unless the said order of the DRM is with the approval of the Board. Against the same, the respondents have moved the High Court and the High Court gave liberty to the applicant either to appear for the test or to contest the same before the Tribunal through a fresh application and the applicant has chosen the latter.

8. That the entitlement of the applicant to the fixation of seniority in the grade of Fireman Gr. I and consequential benefits thereof had been decided by order dated 27 March, 2003 in OA No. 957 of 2002. This decision was agitated by the respondents through Civil Writ Petition No. 44833 of 2003 in which notice was issued on

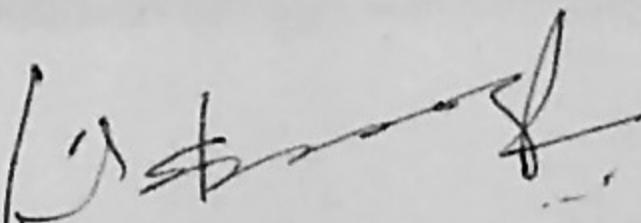
01-10-2003 and ultimately the writ petition was dismissed by order dated 08-11-2005. Thus, the above order of the Tribunal dated 27-03-2003 became final only with the dismissal of the writ petition on 08-11-2005. By the time this order has been issued, the requirement of qualifying in the written test for promotion to the post of Passenger Train Driver had already been done away with, vide order dated 06-09-2005. Had there been no such exemption, there is no option for the applicant save to qualify in the test. Since, however, the written test has been dispensed with, notwithstanding the fact that earlier the same was in existence in the earlier part of time when the applicant was to be considered for promotion, under the peculiar circumstances of the case that the case of the applicant for promotion from 2003 had been decided only after the dismissal of the writ petition in November, 2005, the applicant is entitled to be considered for promotion on the basis of the modified selection i.e. *viva voce* and on his qualifying the same, his promotion as Passenger Driver shall be effective from the date his juniors had been promoted and the pay in the promotional post from the date of promotion till the date of actual holding of the responsibility shall be notional and from the date of actual holding the same shall be actual.

9. Thus, order dated 17-10-2006 is quashed and set aside. It is declared that the applicant is entitled to be considered for promotion on the basis of the modified selection procedure and once he

[Signature]

qualifies in the same he should be promoted in the post of Passenger Train Driver from the date his junior had been promoted i.e. 18-07-2003 but the pay shall be notional till such time the applicant assumes the higher responsibility. The applicant is entitled to the annual increment due after 2003 and also replacement scale from 01-01-2006. Respondents are directed to take suitable action in regard to holding of the viva vice and take further action on the basis of the result of the viva voce test.

10. The **OA is allowed** to the above extent. This order shall be complied with, within a period of three months from the date of communication of this order. No cost.


Member (A)
Member (J)

RKM/-