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O.A. No. 566/87.

(Judgment of the Bench delivered by Hon'ble
Sri J. Narasimhamurty, Member (Judicial))

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Date of decision: December 4, 1989.

This Application is filed by the Applicants who are working as the Electrical Cleaners in Western Railways, seeking directions to the Respondents to promote the applicants forthwith as Electrical Fitters after holding Trade Test as per the Railway Board's Guidelines and quota prescribed by the Board and grant the applicants seniority over the 19 direct recruits from the open market.

The facts of the case briefly stated are thus:

The applicants are working as the Electrical Cleaners in the grade of Rs. 210--290 (old) in the Railways since 18 to 24 years. They are all 2nd class Wiremen and some of them are Matriculates. They are at present working at Ahmedabad. The applicant Nos. 1 and 2 previously worked as Casual fitters for 3 years and $1\frac{1}{2}$ years respectively.

The next promotional post for the Electrical Cleaners is the post of Fitter in the grade of Rs. 260-400 ~~old~~. The recruitment to the post of Fitter is by three sources:

- 1) By promotion from serving employees i.e., Rankers after passing the trade test. 50%
- 2) Direct recruitment from amongst serving employees possessing requisite qualifications 25%
- 3) Direct recruitment from open market possessing requisite qualifications and age 25%

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(A)

recruitment from open market. The respondents have not followed the norms prescribed by the Railway Board. Hence this application.

The respondents have filed their counter. They contend that the application is not maintainable as the petitioners are not of one category, they are working in different categories. The applicants have not exhausted the other remedies available for them before approaching this Tribunal. The qualifications of the applicants are not in uniform. Some of them are non-Matric, some of S.S.C., standard, some of them VI, IX, X. Some of them are even 2nd standard.

The respondents state that from the present post of **senior cleaner**, the next promotional post is Senior Cleaner in the scale of Rs.196--232 and the next promotional post is Electric Fitter in the scale of Rs.260--400--950--1500. So far the recruitment to the post of Fitter is to be done under the rules in the ratio of 50 : 25 : 25. The respondents state that the rankers are promoted to skilled scale of Rs.260--400 (R) of Electric Fitter as per their seniority and turn after passing the requisite trade test of the electric fitter and till now no recruitment of electric fitter was done against 25% direct recruit quota from open market ^{after} till 1983. The applicants have not been called for trade test for promotion to fitter grade III Scale Rs.260--400 as they were not eligible as per the seniority and turn against 50% quota for rankers. The applicants were also not eligible for they have not qualification. The recruitment for fitter scale Rs.260--400 is concerned, no such recruitment is carried out so far giving 25% ~~from~~ ~~for~~ for serving employees of unskilled and semi-skilled.

(2)

In this case, the respondents selected 19 candidates by direct recruitment unskilled and semi skilled possessing requisite qualifications in the year 1983 and so far upto ~~then~~ now there ~~are~~ ^{been} no other recruitments were made. Now the applicants have come with this application with a plea that they have been waiting since long time for promotion, they are becoming over aged after having put in 18 to 24 years of service and on account of this direct recruitment, their juniors become senior to them and the respondents have not followed the guidelines issued by the Railway Board.

The respondents contend that the petitioners are not qualified for promotion as Fitters as they ~~have~~ ^{do} not possess the requisite qualifications and they have not passed the trade test. Therefore, they cannot be considered at this stage for promotion to the post of Fitters either on the basis of seniority or in turn.

The only claim of the petitioners is to direct the respondents to promote them forthwith as Electrical Fitters after holding the trade test as per the Railway Board's directions. Even for that they are not qualified.

The learned counsel for the petitioners argued that when all the posts are filled up by a particular category of employees, there is no possibility for petitioners to get their promotion in the near future, and the posts also may not be created or fall vacant in lumpsum at the earliest. In future, whenever vacancies arise, they shall be filled up simultaneously as per the Board's direction maintaining the ratio 50 : 25 : 25.

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The applicants state that though they are working as Cleaners since last 18 to 24 years and are 2nd Class Wiremen, none of them are called for Trade test for the purpose of promotion to the post of Fitter as per the policy laid down by the Railway Board. At the time of recruitment, the respondents have to follow the ratio as per the Railway Board's orders.

The respondents by Advertisement No. E/E1/890/8/6 Vol. II posts of dated 2--8--1983 made 19 direct recruitments to the Electrical Fitters. The petitioners contend that though the Railway Board clearly ~~is~~ laid down the ratio of 50 ~~x~~ 25: 25, the respondents have recruited the people without considering the Departmental Rules for promotion. By way of this direct recruitment of 19 fitters, they will become seniors to the other seniors who are to be promoted from 50% quota. The method adopted by the respondents would cause a lot of injustice to the applicants.

The applicants state that while they do not challenge the direct recruitment made by the respondents, they seek directions to the respondents that before the direct recruits are given posting as fitters, they respondents be directed to hold forthwith Trade Test of the applicants for the purpose of promotion to the post of Fitter and promote them as Fitters by giving seniority over direct recruits, as per the quota prescribed by the Railway Board. The applicants state that the direct recruitment of 19 persons from the open market is illegal for they do not possess the requisite qualifications. They have further stated that there are 13 persons who have worked as casual fitters in Rajkot Division ~~is~~ for the past 4 years. The respondents ought to have absorbed them as fitters rather than going for

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The respondents state that similar case was filed by the employees of the Electric Department of NSH against the recruitment before this Tribunal and this Tribunal by its Judgment in T.A.Nos., 610/86, 612/86 and 632/86 has dismissed the T.As., and on those lines, this application ~~as~~ also deserves to be dismissed.

The respondents state that up till now the vacancies of skilled fitters in the scale of Rs.260-400 were filled up from the rankers as per the seniority and trade test till the above recruitment of apprentice fitters is made by Notification dated 2-8-1983. Not only these applicants but the Apprentice fitters also have not been called for the trade test of electric fitters as they were not eligible according to their seniority and turn.

The respondents state that out of 19 selected apprentice fitters, 18 have been given prescribed training, 10 candidates have been given regular posting after they having passed the requisite test as per the directions of the Tribunal in the above referred T.As.

We have heard Sri R.V.Deshmukh, learned counsel for the Applicants and Sri B.R.Kyada, learned counsel for the respondents.

The Board's directions are that from the posts of Electrical Cleaners to the posts of Fitters, recruitment has to be made as per the following rules:

1. By promotion from serving employees rankers after passing the trade test. 50%
2. By direct recruitment from open market possessing requisite qualification and age. 25%
3. By direct recruitment from amongst serving unskilled and semi skilled, possessing the requisite qualifications 25%

The argument of the learned counsel seems to have some force and it has to be considered.

So far as the prayer of the petitioners is concerned, it is not possible at this stage to direct the respondents to promote them forthwith as Electrical Fitters after holding the trade test in accordance with the Railway Board's guidelines for the recruitment was over and some of the recruited candidates were regularly appointed. The petitioners ought to have approached the Tribunal/Court when the respondents issued the Notification/Advertisement for the recruitment. They have not chosen to do so. Moreover, the respondents contend that there are no qualified candidates from among the applicants to hold the trade test. The respondents state that it is not possible to promote the applicants as Electrical Fitters without holding the trade test at this stage.

According to the petitioners, the recruitment has to be done in accordance with the Railway Board's directions and guidelines maintaining the ratio of 50 : 25 : 25. The petitioners contend that they have put in 18 to 24 years service and were stagnated without any promotion.

Taking into consideration ~~of~~ the argument advanced by the learned counsel for the applicants that in future, whenever vacancies arise, they shall be filled up simultaneously as per the Board's directions maintaining the ratio of 50 : 25 : 25 and in view of the length of service of the applicants and their stagnation without any promotion, we direct the respondents that in future, whenever vacancies arise,

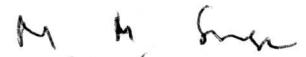
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they may be filled in in accordance with the Railway Board's directions and guidelines maintaining the ratio of 50 : 25: 25. ~~in the total number of posts in the case.~~

With this direction, the application is disposed of. There will be no order as to costs.



(J. NARASIMHAMURTY)
Member (Judicial)



(M.M.SINGH) 1391/24
(Administrative Member)

SSS.