

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO./11/90
T.A.NO.

DATE OF DECISION 28/8/98

Virendra K & ors. Petitioner

Mr.P.H.Pathak Advocate for the Petitioner [s]
Versus

Union of India & ors. Respondent

Mr.N.S.Shevde Advocate for the Respondent [s]

CORAM

The Hon'ble Mr. V.RAMAKRISHNAN : VICE CHAIRMAN

The Hon'ble Mr. P.C.KANNAN : MEMBER (J)

JUDGMENT

- 1, Whether Reporters of Local papers may be allowed to see the Judgment ?
- 2, To be referred to the Reporter or not ? *Y*
- 3, Whether their Lordships wish to see the fair copy of the Judgment ?
- Whether it needs to be circulated to other Benches of the Tribunal ? *Y*

- 1) Virendra K.
- 2) B.D.Giri
- 3) Gaharvar A.L.
- 4) Pathan Yusuf I
- 5) Satish V.Parab
- 6) Jayandra Ramanlal
- 7) Pradeep Kashyap
- 8) Jamunaprasad V.
- 9) Ramesh S.Mahavar
- 10) Suresh T.Pande
- 11) Bachan Mishra
- 12) Prajapati Magilal
- 13) Dilipbhai Varsing
- 14) Neta Chhagan
- 15) Mahavar Raju R
- 16) B.D'souza
- 17) Shyam Narayan Singh
- 18) Nawaya V.A.
- 19) Guman Madia
- 20) Himatsingh D Chauhan
- 21) Amar Bahadur Singh
- 22) Savant Balvantra V.
- 23) P.R.Jala
- 24) A.K.Singh
- 25) Ranajit
- 26) Pravin K.Pachal

: APPLICANTS :

ADVOCATE

MR.P.H.PATHAK

VERSUS

- 1) Union of India, Through :
The General Manager,
W.Rly., Churchgate,
Bombay.
- 2) Divisional Railway Manager,
W.Rly., Ratlam Division,
Ratlam.
- 3) Deputy Chief Mechanical Engineer,
Western Railway,
Dahod.

: RESPONDENTS :

ADVOCATE

MR.N.S.SHEVDE

(19)

J U D G M E N T
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O.A.No.11 of 1990

DATE: 28/8/98

PER HON'BLE MR.V.RAMAKRISHNAN : VICE CHAIRMAN

The applicants are working in Sports Clubs Officers clubs and Co-operative Credit Societies in Dahod Railway Work-shop. They were serving as employees of such institutions for about five years when they filed the present O.A. Their grievance is that despite their being screened in May 1987 and found suitable, the Railway Administration had not taken action to absorb them as Railway employees. in May 1987.

2. The case of the applicants is that the practice in the Railways is to absorb employees working in Co-operative Societies, Clubs, etc. after they have put in some years of service and when they took up such jobs it was their expectation that they would be absorbed in regular Railway service. They contend that as per the practice followed by the Railways they were also screened in May 1987 and found suitable for regular absorption. But the Railways have chosen not to take further action in this regard. They allege that while they had undergone a screening process and were placed in a panel, the Railways instead of absorbing them have chosen to fill

up the posts by outsiders. They further submit that vacancies are available at the appropriate level in Dahod Workshop were they could have been absorbed but the General Manager has imposed a ban on filling up such posts. They dispute the stand of the Railways that there are no openings available against which they could be absorbed.

3. The respondents have taken the stand that the applicants are not Railway employees. They do not agree that the institutions where they were working are under the administrative and financial control of the Railway Authorities. According to them, these are managed by their own members through the Managing Committees which are quite independent of the Railways and the management of such institutions is free to engage labour as per their requirement to maintain their day to day work and their wages are paid directly by the said institutions from their own income.

The Railways also do not agree that if such employees serve in these institutions for more than 180 days, they are required to be conferred with quasi-permanent status for eventual absorption in regular service. It is also their submission that provision for temporary status under the Indian Railway Establishment

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Manual relates to casual labourers/substitutes and are not applicable to employees of these institutions when they have not been engaged by the Railway Administration. They deny giving any assurance that such employees will be eventually be regularised in Railway service.

They bring out that there is a provision for conferring temporary status for eventual absorption in respect of casual labourers and substitutes and there are instructions in 1977 that quasi Railway employees such as those of co-operative institutions, clubs etc. could be considered for regular absorption after eligible casual labourers and substitutes have been considered ~~on~~ if vacancies are available and that in the list of screening they will be below all casual labourers and substitutes. Accordingly, when the screening was undertaken in May 1987, the applicants were also considered but they were placed below the substitutes and the casual labourers. While all substitutes who were found suitable were absorbed, among the others who were similarly situated as the applicants, only one person who was the first in the panel in the list of quasi-railway employees and belonging to the general category was absorbed. Two others belonging to the S.C. were absorbed against reservation quota and that no person who is junior to the applicants has been given regularisation. The

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Railways further contend that in view of the weeding out of ~~steam~~ locomotives, the main work-load of Dahod Workshop was gradually coming down and the General Manager has ordered through an Inspection Note dated 12.2.1988, that there should be no in-take of man-power in Dahod Workshop. In view of the ban imposed by the General Manager, the Workshop did not continue to operate the panel in respect of the quasi-railway employees. It is also argued that the panel is current for one year which can be extended in exceptional circumstances by one more year. As such, the life of the panel is long over and the applicants do not have any case for regular absorption. The Railways further contend that there has been no further intake in Dahod Workshop except by way of compassionate appointment and mutual transfers and Scouts and Guides quota, which is outside the purview of the ban. There is a reference to the scheme prepared as per the Supreme Court's direction in Indrapal Yadav's case that casual labourers should be given priority.

4. We have heard Mr.Pathak for the applicants and Mr.Shevde for the respondents.

5. Mr.Pathak says that Railways have prepared a panel in May 1987 and operated part of the panel leaving out others even though vacancies were available

against which the applicants could have been accommodated. He says that it is not open to the Railways to operate the panel only in part. He does not agree that there is any contraction in the work load of Dahod Workshop. The panel has been prepared on the basis of an assessment of the number of vacancies and such vacancies were available against which the applicants could have been absorbed. The Railways, however, have started operating the panel and have absorbed casual labourers/substitutes and have chosen to disregard the other employees including the applicants except for three. He says that the General Manager's orders imposing a ban is not justified when vacancies are available and a panel has been already prepared. He submits that no justification has been furnished by the Railways for not operating the panel in force. He does not agree that the life of the panel cannot extend beyond the maximum period of two years. He states that in respect of previous batch of quasi-railway employees- appointments ^{are} given in some cases more than two years after they were screened and placed on the panel. He refers to the decision of the Gujarat High Court in the case of Dilipbhai Kuberdas Patel Vs. Vice Chancellor, Gujarat Agriculture University, Banaskantha, (1992(1) G.L.H.(U.J.) 11 and says that applying the principle laid down in the case, the currency

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of the panel cannot be taken to have expired when it could not be operated on account of the ban imposed by the General Manager.

Mr. Pathak also states that the contention of the Railways that on account of fall in work-load, there is a reduction of about 200 employees in each financial year as claimed ^{in the reply} /statement is not factually correct. The Railways have been bringing in other people to this work-shop and have also entertained direct recruits even though they belonged to Scouts and Guides quota. He also refers to the letter written by the General Manager to a Member of Parliament where according to Mr. Pathak, the General Manager has given an assurance that thirty per cent quasi railway employees would be considered for engagement at the appropriate time. He says that if there were no vacancies against which the applicants could have been accommodated, the General Manager would not have stated as above to the Member of Parliament. This would show that the contention that there are not vacancies against which the applicants could be accommodated is not substantiated. Mr. Pathak says that Railways have not disclosed all the facts and there is no reason why the present applicants who have already been screened should not be absorbed in Railway service.

6. Mr. Shevde, Standing Counsel resists the O.A. He brings out that the applicants are not Railway employees and refers in this connection to the Supreme Court's decision in Subaiah's case. He also draws attention to the Master Circular of the Railway Board dated 19.9.1990 particularly to para-8 and para-11 thereof. He says that there is no quota ear-marked for employees of Clubs, Co-operative societies etc. and they can at best compete with other direct recruits. He says that the applicants cannot claim parity with the casual labourers who were directly engaged by the Railways and such casual labourers/substitutes have a superior claim for absorption as compared to the applicants who were employees of clubs/co-operative societies and who were engaged by the Management of such institutions which is quite distinct from the Railways. It is also his stand that with the preparation of the scheme for project casual labourers in accordance with the directions of the Hon'ble Supreme Court in Inder Pal Yadav's case, such casual labourers have to be considered for absorption and they will get precedence over employees of Clubs and Co-operative Societies. The Standing Counsel says that a screening was held on 14.5.1987 and 15.5.1987 and the result thereof was announced in two parts. The first part consists of casual labourers and substitutes and the second part was that of quasi-railway employees.

He says that this has been done in the context of the instructions of the Railway Board dated 26.8.1977 which says that staff of clubs/co-operative societies can be considered only after eligible casual labourers and substitutes have been accommodated. While the Railways have absorbed all the ^{eligible} casual labourers/substitutes in the first part of the panel, they have done so only in respect of three persons from the second part. Of these, one belongs to the general category who is at the top of the list and two others belong to S.C. who have been absorbed against the reservation quota. Mr. Shevde says that no person who is junior to the applicants in the General Category and who are employees of clubs/ co-operative societies has been given regular appointment by the Railways.

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The Standing Counsel also goes on to submit that the panel does not confer an automatic right for absorption. The currency of the panel is for one year and in exceptional circumstances, it can be extended by one more year. The panel was prepared in May 1987 and has therefore lapsed in any case in May 1989. Mr. Shevde says that the main reason for non-absorption of the applicants is on account of the ban imposed by the General Manager after he inspected the Dahod Workshop. The General Manager had noted that the work-load in steam locomotives workshop was coming down with the

weeding out of the steam system. In view of the reduction in work-load, he directed that there should be no intake of manpower in the workshop. Mr. Shevde says that the approach of the General Manager is entirely justified as firstly there is reduction in the work load of the Dahod Workshop and besides with the preparation of a scheme by the Railways for absorption of project casual labourers pursuant to the directions of the Hon'ble Supreme Court in Inder Pal Yadav's case such casual labourers have to be given precedence over quasi-railway employees. According to him, the action of the Railways in this regard is just and not arbitrary.

Mr. Shevde submits that the Railways have not adopted any discriminative practice and had not inducted ineligible persons to the workshop. He says that subsequent to the preparation of the panel and ^{after} imposing the ban only those persons coming on mutual transfer were taken in Dahod Workshop besides those who were given compassionate appointment being eligible words of the former railway employees. Some direct recruitment was made only under the Scouts and Guides quota as the Railway Board had taken a decision that the ban on filling up of posts will not apply in respect of such categories. He shows a copy of the Railway Board's letter issued in January 1996 lifting the ban on recruitment in respect of the Scouts and Guides quota.

Mr. Shevde says that the contention of the Railways that there has been reduction in the work load at Dahod Workshop has been substantiated. The figures furnished by the Railways on 25.7.1978 shows that staff strength had been coming down. He also contends that while the Chief Works Manager had sent an indent for direct recruitment of 37 for Group 'D', these were the vacancies in the direct recruitment category of Group 'D' but in fact they were not actually recruited.

As regards the letter sent by the General Manager to an M.P., Mr. Shevde says that it is in the nature of routine correspondence which only informed the M.P. that the engagement of quasi railway employees would be considered at the appropriate time. It does not constitute any commitment to absorb them when there are no ^{openings} available against which they could be accommodated.

7. We have carefully considered the submissions of both the counsel.

8. The applicants at one time have referred to the decision of the Madras Bench upheld by the Supreme Court that employees of co-operative societies are also to be taken as railway employees. There is also a submission that there is no rationale for treating the applicants

on an inferior footing as compared to casual labourers/ substitutes. It is true that the Madras Bench of the Tribunal had taken a view that employees of the co-operative Societies in Railway complex should be regarded as railway employees. This was initially confirmed by the Supreme Court but the matter was considered again by the Supreme Court in the case of Union of India Vs. Sabaiah decided on 15th December 1995, We may in this connection extract the relevant portion of the observations of the Supreme Court in this regard.:-

" In view of the above discussion and in view of the legal setting referred to hereinbefore, we are of the considered view that the Bench had not laid down any law except approving the reasoning and conclusion reached by the Madras Bench of the CAT. The Madras Bench had merely referred to the provisions in the Manual and proceeded on the premises that they gave rise to a legal base to treat the employees of the store as the Railway employees. The reasoning is wholly illegal and unsustainable for the reasons stated above.

52 The principle of equality enshrined under Art.14 of the Constitution, as contended for the respondents, does not apply since we have already held that the order of the CAT, Madras Bench is clearly unsustainable in law and illegal which can never form basis to hold that the other employees are individually discriminated offending Art.14. The employees covered

by the order of the Madras Bench may be dealt with by the Railway Administration appropriately but that could not form foundation to plead discrimination violating Art.14 of the Constitution.

We, therefore, have no hesitation to hold that the officers employees and servants appointed by the Railway Co-operative Stores/Societies cannot be treated on par with Railway servants under paragraph 10 B of the Railway Establishment Code nor they can be given parity of status, promotions, scales of pay, increments etc. as ordered by the CAT, Hyderabad Bench.

The appeals are accordingly allowed and the DAs stand dismissed but, in the circumstances, without costs."

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The General Manager in his speaking order has referred to the judgment. It is therefore now well settled that such employees of institutions/clubs and co-operative societies cannot claim parity with the railway employees. So far as the casual labourers/substitutes are concerned, they are actually engaged by the Railway and in the light of the provisions in the Railway Rules and in the context of the scheme prepared pursuant to the directions of the Hon'ble Supreme Court in the case of Inder Pal Yadav, such casual labourers/substitutes whether open line or project casual labourers have precedence over

employees of co-operative societies/clubs etc., who are engaged by the Managing Committee of such institutions and not directly by the Railways. They cannot therefore claim parity with the Railway servants or casual labourers. In the light of this position, the instructions of the Railway Board dated 26.8.1977 which have been followed earlier and which provides that such staff can be considered only after the eligible casual labourers and substitutes and that in the list of screening they will be below casual labourers and substitutes , cannot be held to be discriminatory.

Casual labourers whether the open line or project casual labourers and substitutes constitute a separate and distinct category as compared to employees of railway officers' clubs/Co-operative Societies etc. and the classification adopted by the Railways in this regard is reasonable.

9. The applicants have submitted that the Railway Administration had made an assessment of the vacancies available for absorbing casual labourers and quasi-railway employees and then proceeded to screen them and prepared a panel. It is contended that once such a panel has been prepared and vacancies exist, it is not open to the General Manager to impose a ban on

filling up of the posts. It is also their stand that after having started operating the panel for the casual labourers and also for some of the quasi-railway employees, the respondents ought to have completed the process of accommodating the eligible employees who are included in the panel against vacancies and that it is not open to them to operate only a part of the panel.

The position that inclusion of the name in the panel does not confer an automatic right for appointment is now well settled. We may in this connection refer to the decision of the Constitutional Bench of the Hon'ble Supreme Court in the case of Shankarsan Dash Vs. Union of India, 1991 S.C.C., L&S 800. We may extract para-7 of the judgment in this regard as below :-

It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting

in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana Vs. Subhash Chander Marwaha, Neelima Shangla Vs. State of Haryana, or Jatendra Kumar Vs. State of Punjab."

This position is also reiterated by the Supreme Court in the case of Union Territory of Chandigarh Vs. Dilbagh Singh and others, 1993 SCC (L&S) 144. In this case, the Hon'ble Supreme Court has referred to the Constitutional Bench Decision in Shankarasan Dash case and made the following observations in para-12 which is reproduced below:-

"If we have regard to the above enunciation that a candidate who finds a place in the select list as a candidate selected for appointment to a civil post, does not acquire an indefeasible right to be appointed in such post in the absence of any specific rule entitling him for such appointment and he could be aggrieved by his non-appointment only when the Administration does so either arbitrarily or for no bona fide reasons, it follows as a

necessary concomitant that such candidate even if has a legitimate expectation of being appointed in such posts due to his name finding a place in the select list of candidates, cannot claim to have a right to be heard before such select list is cancelled for bona fide and valid reasons and not arbitrarily.

Applying this principle, it is clear that the applicants even though they might have some expectation of being absorbed in the Railway Administration, after having undergone the screening process do not acquire any indefeasible right to be appointed to such posts. There is also no statutory rule which gives them any such right. The Railway Administration circular which is in the nature of executive instructions issued in 1977 had stated that staff of co-operative societies/clubs vendors, departmental canteen etc. can be considered after eligible casual labourers and substitutes have been considered. This circular was issued in 1977 and various developments have been taken place since then, particularly with regard to the scheme prepared by the Railway Administration in the context of the directions of the Supreme Court in Inder Pal Yadav's case. The Railway Board on 19.9.90 issued a Master Circular on the subject of Railway Institute/Clubs. We may extract para-8 and para-11 of the circular as below:-

" Para-8 : The Membership of the Institute/

club is optional. The running of the institute/clubs are to be managed by a committee, representing its members. The committee engage such staff as are required and meet the cost of their wages and allowances. The cost of running the institute/clubs is met from funds at the disposal of the Institutes Management Committees derived from membership fees and grants from the Staff Benefit Fund. In view of the limited funds available at the disposal of the Managing Committee, they should employ only part-time workers and the whole-time workers should be engaged only when absolutely necessary in which case they should be paid adequate wages in consonance with such market conditions, (No.E(W) 86- ISI-1, dated 21.1.87, No.(E (W) 80/ISI/1 dated October 1980 and No.E55 LRI/4 dated 25.4.56."

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Para-11 :- It has been decided that where direct recruitment to Group 'D' post is made from the open market in the Workshop or in Electrical /Diesel Loco Sheds, as permissible under extant instructions, persons employed in Railway Institutes attached independently to a Workshop(not to the Division) may apply direct provided they possess the educational qualification prescribed for the said direct recruitment. Applications of such persons can be considered by the Railway

Administration along with other applications. Such candidates can also be allowed age concession to the extent of five years or service rendered in the Institutes, whichever is less for absorption in class-IV categories and appearing before Railway Recruitment Board for selection to class-III categories. (Nos. E(NG)III73-RR1-27 dated 30.10.73 and E (NG)II/87-RR4/5 dated 23.8.88"

We, therefore, do not agree with the contention that the applicants have an automatic right for appointment when they have been placed in the panel only because ~~for~~ some vacancies were available at the relevant time in the work-shop.

10. The submission that it is not open to the Railway Administration to operate only part of the panel is also without any merit. We may in this connection refer to the decision of the Supreme Court in Babita Prasad and Others Versus State of Bihar and others, 1993 SCC (L&S) 1076, particularly Head Note thereof which is reproduced below :-

" Appointment- Procedure- Panel of indefinite life- Right of candidates included in such panel- Held no right exists when there is automatic inclusion in the panel after successfully undergoing a prescribed training- Such panel cannot be equated with the panel which is prepared by following selection process after taking into consideration the existing vacancies and the vacancies to arise in near future.

Appointment-Panel-High Court declaring panel invalid after a part of it had been utilised by appointing the candidates-Appointments of all those who had already been appointed saved but panel abandoned by State Government for further recruitment- Held, equity accrued in favour of those already appointed and they formed a class distinct from those who were yet to be appointed-Further operation of panel was discontinued for valid reasons- Hence, there was no violation of Art.14 of the Constitution in not appointing rest of the candidates included in the panel-Equity-Function of-Held reforms and moderates the rigour of law-Constitution of India, Art.14.

Consstitution of India-Art.14- Rule against arbitrariness and classification rule-If action is proved to be arbitrary then notwithstanding any classification it would offend Art.14"

In the present case, the Railway Administration had absorbed one candidate, who was on the top of the list and two others belonging to S.C. category candidates against the reservation quota, in respect of quasi railway employees. Before they could absorb other persons in the panel of quasi-railway employees including the applicants, an inspection was carried out by the General Manager, who directed that there should be no fresh intake of manpower in the workshop at Dahod as is seen from the extract of his Inspection Note dt.12.2.1988. The fact that the panel has been operated in part does not confer a vested right to others in the panel for

appointment if the Railway Administration can establish that this action had become necessary on account of valid and reasonable considerations.

11. As has been highlighted by the Hon'ble Supreme Court, while placement in the panel does not confer an indefeasible right for appointment, nevertheless the decision to stop operating the panel at a certain stage should have been taken for good and sufficient reasons and there should be no arbitrariness in this regard. As held in Dilbagh Singh's case, a person in the panel can be aggrieved by his non-appointment only when the Administration does so arbitrarily or for no bona fide reasons. The learned counsel for the applicants has contended that the decision not to absorb the applicants in Railway service has been taken arbitrarily. According to ^{him,} the Railway's stand that there is a contraction in the work-load of the Dahod Workshop has not been substantiated. He also says that the Railways have proceeded to make fresh appointments in the same workshop by intake of others while overlooking the claims of the applicants who have already been screened and placed in the panel. He also refers to the letter from the General Manager to an M.P., which is dated 1.3.1993 where ~~it~~ according to him is in the nature of an assurance to absorb the applicants in Railway service.

12. It will be useful in this connection, to refer to the M.As filed by the applicants at different times and the reply of the respondents to the said M.As.

The applicants have filed M.A./838/95 stating that there was need for filling up of sixty vacancies in the workshop and as they are already in the panel of persons selected for employment in 1987, they should be considered by relaxing the ban. The Tribunal by its order dated 11.22.12.95 had directed the General Manager to consider the advisability of continuing the ban or lifting it so that the panel can be operated by extending its life, if necessary. There was a further submission by the applicant's counsel that the Madras Bench of the Tribunal had held that such employees are also Railway employees and this decision was upheld by the Hon'ble Supreme Court. The Tribunal on 6.3.96 directed the General Manager to consider this judgment and take a decision in the matter in pursuance to the Tribunal's earlier directions dated 22.12.95. In compliance with the such directions, the General Manager has issued a speaking order. We may reproduce the relevant portion as below:-

" The entire papers have been gone into and the present workload of Dahod Workshop has also been assessed. At present there is no sustained workload for Dahod workshop. Further the panel,

which is normally valid for a period of one year, has actually been formed in 1987 and the currency has already expired and the panel is no longer valid. The applicants were not engaged by the Railways and they were not being paid from government exchequer. They were casual labourers engaged by Co-operative Societies and Clubs and as such they are not eligible for absorption under the normal channels against regular vacancies. Presently there is a long list of casual labourers available on live register of the adjoining division and whenever defreezing of posts at Dahod is done, these casual labourers are to be given precedence for regular absorption.

Notwithstanding the above, the claim of the applicants has also been examined in the light of the directions of the Hon'ble CAT, Madras, in O.A.No.305 of 1988 and the dismissal order of the SLP filed in this case before the Hon'ble Supreme Court. The Advocate for applicants had failed to apprise the Hon'ble CAT about the subsequent decision of the Hon'ble Supreme Court

in Civil Appeal No.12148 of 1995, Union of India Vs. J.V.Subbaiah and others, on 15.12.95. This decision of the Hon'ble Supreme Court is by a larger Bench, while the disposal of the SLP filed against the Madras judgment was by a 2 Judge Bench. While disposing of the SLP, the larger Bench had observed that the reasoning given by the Madras Bench of the CAT is wholly illegal and unsustainable for the reasons indicated in the body of the judgment. The Hon'ble Supreme Court has further held that the officers, employees and servants appointed by the Railway Co-opeartive Stores/Societies cannot be treated on par with railway servants ~~xxx~~ under para. 10(b) of the Railway Establish-ment Code nor they can be given parity of status, promotions scales of pay, increments etc. as ordered by the Hon'ble CAT, Hyderabad Bench.

In view of the above position, there is no justification for regular absorption of the present applicants and as such their request is rejected. The ban will be contin-ued for the present and whenever ~~is~~ is lifted, the induction to group D posts will be in accordance with the laid down policies and priorities.

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The stand of the General Manager that there is no sustained work-load in Dahod work-shop was disputed by the applicants and they have referred to a letter dated 20.7.1995 issued by the Chief Work Manager, Dahod

addressed to various divisions in the Western Railway calling for volunteers for filling up the vacancies of Group 'D' staff, Khalasis in the scale of Rs.750-940/- against 40% intake, 10% intake etc. The Railway Administration was asked to clarify the position and they have filed an affidavit dated 4.2.1998 clarifying that intake for 40%,10% was available only to those employees who were in regular cadre of Group 'D' category and in the scale of pay of Rs.750-940/- and not to others. They also enclosed a copy of the Railway Board Circular dated 14.4.1988 in support of their stand. The relevant portion of the circular reads as follows:-

" Taking into consideration the above aspects and to expedite the process for filling up class IV vacancies in the workshop, it has been decided that the following procedure should be adopted:-

- i) 10% of the vacancies should be filled in from amongst Gangman, stores Khalasis, and Safaiwalas of all Depts. ;
- ii) 40% of the vacancies should be filled in from amongst the volunteers of the other Depts., who may like to come to the workshop in bottom seniority.;
- iii) 50% of the vacancies should be filled in from amongst the casual labourers of the

workshop if any and then from surplus staff of the divisions in which the workshop is situated. If vacancies still remain unfilled, then efforts should be made to fill up the same by absorption of the course completed Act Apprentice and the existing casual labourers and substitutes of the nearest divisions/units having minimum qualification of VIIIth standard pass, after due process of their screening by a Screening Committee, as the strength of casual labourers and substitutes on this Railway is required to be reduced to the extent possible.

- iv) If adequate number of Volunteers from other departments are not available, vacancies to that extent may be filled up as per item No. III above."

Subsequently a letter issued from Dahod Workshop dated 12.3.1998 calling up 30 persons to appear for consideration for selection against ^{Group} ~~Group~~ 'D' category fixed on 6.4.1998 was shown to the Tribunal and it was contended that this would indicate that there are vacancies available in the Workshop against which the applicants could have been absorbed. The Railways have filed an affidavit on 11.6.1998 where they have stated that the letter dated 12.3.1998 relating to Recruitment/ Selection of Group 'D' category posts was against Scouts and Guides quota. This selection/recruitment is being done by the Railway Administration as per the guide lines on

the subject issued by the Railway Board which are out of the scope of the ban. There was a further submission statement by the applicants referring to a / from the Chief Workshop Manager, dated 3.12.1993 for direct recruitment of 37 posts in Group 'D' and it was argued that this would show that the Department was filling up the posts through outsiders ignoring the claims of the applicants who had been screened and placed in the panel. The Tribunal then directed the Railways to clarify the position and also indicate the staff strength from 1993 onwards. The Railways have given such figures in this regard which is reproduced below:-

<u>YEAR</u>	<u>Staff Strength</u>
1993	2533 + 120
1994	2625
1995	2568
1996	2624
1997	2575 + 03
1998	2546 + 09

NU The Railways have also clarified that the figure of 37 for direct recruitment posts in Group 'D' was in respect of the vacancies in the direct recruitment categories of Group 'D' but not recruited.

13. From the above narration, it is clear that the stand of the Railways that there is contraction in cadre in the Dahod workshop is not without substance. While there is no contraction to the extent of 200 persons in every financial year, there has been some decline in manpower in every year ~~except~~ from 1993 except in 1996 where there was a marginal increase.

14. Some vacancies would have been available on account of normal wastage such as retirement, promotion etc. It is alleged by the applicants that outsiders are being recruited against such vacancies ignoring the claim of the applicants implying that ineligible persons have been recruited. We find from the various averments that such vacancies have been filled up interalia in accordance with the provisions of the Railway Board's circular dated 14.4.1988 which provides for filling up of such vacancies from among gangman, stores khalasis, volunteers from other departments, who are ~~serving as~~ railway employees besides casual labourers. Such persons in any case have a better claim as compared to the applicants. We are also informed that some vacancies have been filled up by compassionate appointment given to eligible wards of ex-railway employees. We find from the Master Circular dated 19/9/1990 that

there is provision for direct recruitment for group 'D' posts from open market in the workshop or in electrical/diesel loco sheds as permissible under the extant instructions. The Railways have not made such recruitment excepting to fill up the scouts and guides quota where the Railway Board has lifted the ban for direct recruitment in respect of scouts and guides quota. Presumably the Railways have taken the decision that quota for scouts and guides may be filled up in order to encourage youth to join such Organisations and we cannot fault them for adopting such a method. The allegation that ineligible persons have been accommodated against the vacancies is thus without any basis.

A reference is made to the letter written to an M.P. by the General Manager ^{1st March} in February 1993. This letter merely says that the case of engagement of the 30 quasi-railway employees will be considered at the appropriate time. It is quite vague and does not constitute any commitment. The absorption or the engagement of the employees can be considered only when there is a need for increase in the manpower and after considering all the other eligible categories.

15. We, therefore, hold that the decision of the

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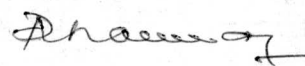
respondents in not operating the panel of quasi-railway employees who were screened in May 1987 has not been done arbitrarily but has been taken for bona fide reasons.

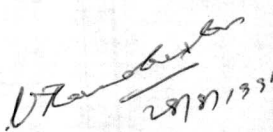
16. Mr. Pathak has also raised the issue of the currency of the panel and has disputed the claim of the respondents that such panel is valid only for one year and in exceptional circumstances for two years. He says that the Railways have operated such a panel beyond two years in some cases. He has also referred to the Gujarat High Court ruling in the case of Dilipbhai Kuberdas Patel referred to earlier and says that when the panel could not be operated on account of the ban imposed by the General Manager, it cannot be taken to have expired.

This issue will become relevant only if the Railways decide to revive the earlier practice to absorb quasi-railway employees belonging to Railway clubs/ co-operative societies etc. The General Manager in his Inspection Note dated 12.2.1988 has suggested introduction of other useful and productive activities in Workshop in view of excellent infra structure available and had constituted a Committee to make an indepth study. We do not know ^{the} follow up ^{taken} action ⁱⁿ this

regard and also whether the Railways propose to equip the Dahod workshop to take on functions relating to diesel/electrical locomotives etc. It is possible that in such a situation the manpower required in the workshop may increase. Again while it is stated that there is backlog in respect of absorption of casual employees in the workshop and also of surplus staff in the divisions in which the workshop is located, the extent of such backlog and the time it will take to wipe out the backlog is not known. If at any time in future, the ban on recruitment is lifted and if all the other eligible categories such as casual labourers/ substitutes, serving railway employees etc. who have a better claim have been accommodated and the Railways propose to revive the earlier practice of considering the quasi-railway employees for absorption, we direct that they shall not disregard the claims of the present applicants who have already been screened and placed on the panel only on the ground that the panel had expired.

17. Subject to the observations in Para-16, we dismiss the present O.A. without any order as to costs.


(P.C.KANNAN)
MEMBER (J)


(V.RAMAKRISHNAN)
VICE CHAIRMAN