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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.622 OF 1995
Cuttack, this the 8th day of April, 1999

Rasul Khan and others Applicants

Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *Yes*

2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *No*

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(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN *2.4.99*

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 622 OF 1995
Cuttack, this the 8th day of April, 1999

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

1. Rasul Khan, aged 39 years,
son of late Bhakhar Khan
2. L.N.Ghanta, aged 39 years, s/o M.S.Ghanta
3. Ab.Sabir,aged years, son of late Ab.Hakeem
4. B.P.Patnaik,aged 34 years, son of late B.V.Rao
5. G.K.Rao-I, aged 38 years, son of late G.Nookaiah
6. N.C.Nayak,aed 38years, son of late H.K.Nayak
7. J.D.Naik,aged 33 years, son of late Nandi Naik
8. L.D.Sethy,aged 37 years, s/o late N.K.Sethy
9. Amarendra Basu,aged 38 years, s/o late N.B.Basu
10. S.C.Paikray,aged 39 years, s/o late Golak Paikray
11. D.J.Bastain,aged 39 years,s/olate S.Bastani
12. D.Narayan Rao,aged 31 years s/o late D.S.Madari
13. A.H.Ravikumar,aged 36 years, son of late A.H.Mareelini
14. B.Prasad Rao, aged 33 years,s/o B.K.Rao
15. K.Harish Chandra,aged 31 years,s/o late K.Mohana
16. V.K.Rao,aged32 years,s/o late V.Chinadu
17. B.Prakash Rao,aged 33 years, s/o B.K.Murty
18. N.B.Rao,aged 38 years, s/olate N.Appa Rao
19. D.S.Majhi,aged 33 years, s/o late J.K.Majhi
20. B.K.Moharana,aged 37 years, s/o B.Maharana
21. N.V.Rao, aged years, son of late N.Raja Rao
22. E.Malleswar Rao,aged 38 years,s/o late E.Rama Rao
23. U.K.Prasad,aged....years,s/o late T.Prasad
24. K.Rama Rao,aged 30 years, s/o late K.K.Rao
25. S.B.Rao,aged 40 years s/oS.Sreeramulu
26. Abdul Rashid,aged years, s/o Abdul Ganni
27. P.Shyam, aged 33 years, s/o P.A.R.Pattnaik
28. A.K.Mohapatra,aged 38 years, s/o late Gobardhan
Mohapatra.

29. P.V.S.Narayan, aged 36 years, s/o late P.S.Patnaik

30. P.K.Samantray, aged 36 years, s/o L.C.Samantray

31. D.V.Ramana, aged 29 years, s/o late D.A.Naidu

32. P.J.Rao, aged 38 years, s/o late P.Ramulu

33. U.Ch.Moharana, aged 36 years, s/o late Kondiri Moharana

All are working as Diesel Driver Assistants in the Loco
Shed, Khurda Road, PO-Jatni, Dist.Khurda, under the Senior
Divisional Mechanical Engineer, Khurda Road, PO-Jatni, South
Eastern Railway

Applicants

Advocates for applicants - M/s R.N.Nayak
B.S.Tripathy
P.P.Panda
D.K.Sahu
MPJ Roy
R.Rath

Vrs.

1. Union of India, represented by the General Manager, South Eastern Railway, 11, Garden Reach, Calcutta-700 043.
 2. Divisional Railway Manager, Khurda Road Division, S.E.Railway, At/PO-Jatni, District-Khurda.
 3. Senior Divisional Mechanical Engineer, South Eastern Railway, Khurda Road Division, At/PO-Jatni, District-Khurda.
 4. Divisional Personnel Officer, South Eastern Railway, Khurda Road Division, At/PO-Jatni, Dist.Khurda.
 5. Deputy Chief Personnel Officer, South Eastern Railway, Garden Reach, Calcutta-700 043.
 6. K.M.M.Rao, aged 36 years
 7. Israil Khan aged 33 years
 8. B.D.Jena, aged 51 years
 9. P.K.Bhera, aged 33 years
 10. P.Ananda Rao, aged 40 years
 11. A.P.C.Mohan Rao, aged 41 years
 12. D.S.K.Reddy, aged 33 years
 13. B.Gopal Rao, aged 30 years
 14. R.Krishna, aged 43 years
- S. S. S. S. S.*

15. A.Rama Rao, aged 41 years
16. Mustak Khan, aged 42 years
17. A.K.Swain, aged 41 years
18. S.S.Naik, aged 38 years
19. Salim Khan, aged 35 years
20. Sayed Zahruddin, aged 36 years
21. M.M.Rout, aged 37 years
22. Sayed Ali Khan, aged 33 years
23. G.Eswar Rao, aged 46 years
24. R.Ch.Swain, aged 46 years
25. N.Rama Rao, aged 42 years
26. Sridhar Sutar, aged 46 years
27. T.Venkata Sam, aged 41 years
28. K.C.Naik, aged 41 years
29. D.J.M.Rao, aged 45 years
30. D.S.Narayana, aged 35 years
31. R.Nandeswar Rao, aged 42 years
32. K.Simhachalam, aged 40 years
33. A.Gopal Rao, aged 45 years
34. K.Eswar Rao, aged 41 years
35. Md.Yasin, aged 44 years
36. B.B.Das, aged 43 years
37. K.Jagapa, aged 47 years
38. R.K.Das, aged 42 years
39. K.V.Kumar, aged 48 years
40. A.V.Ramana, aged 45 years
41. B.Birua, aged 43 years
42. J.D.Das, aged 45 years
43. S.Srichandan, aged 30 years
44. S.K.Jena, aged 33 years
45. Jalandhar Sahu, aged 32 years
46. K.C.Behera
47. A.Nayak

Sl.nos. 6 to 47 are working as Diesel Driver Assistants in
the Loco Shed at Khurda Road, South Eastern Railway under

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the Senior Divisional Mechanical Engineer, South Eastern Railway, Khurda Road, At/PO-Jatni, District-Khurda.

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Respondents

Advocates for respondents-Mr.D.N.Misra

S.C.

&

M/s Biswajit Mohanty

S.Patra

P.S.Mohanty

H.N.Panda

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the thirty-three petitioners, who have been permitted to pursue this application jointly, have prayed for quashing the common seniority list dated 23.7.1992 at Annexure-3. There is also a prayer for a direction to the departmental respondents to prepare separate seniority lists in respect of the applicants and respondent nos.6 to 47 in accordance with the Railway Board's circular and give future promotion on the basis of such separate seniority lists.

2. Facts of this case, according to the petitioners, are that they were initially appointed as Engine Cleaners in the running channel with the pay scale of Rs.750-940/- on different dates. A statement at Annexure-1 has been enclosed showing the different dates of initial appointment, the present place of posting, date of completion of departmental training, etc., in respect of the applicants. According to the applicants, the next post for promotion from Engine Cleaner is Fireman-II in the scale of Rs.820-1150/- and Fireman-I in the scale of

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Rs.950-1500/-.. The applicants successfully completed Fireman -II training in different years from 1985 to 1988 as per details at Annexure-1. After completion of training, though they were not promoted to the grade of Fireman-II, yet they were allowed to officiate and discharge their duties in the cadre of Fireman-II and Fireman-I as per instructions of higher authorities from time to time. While discharging the duties of Fireman-II and Fireman-I they enjoyed all benefits attached to the posts of Fireman-II and Fireman-I except the scale of pay. According to them, they have worked as Fireman-II and Fireman-I for more than one and half years continuously. In 1990 Steam Locomotives were abolished in Khurda Road Division and employees in the cadre of Fitters and Shed Khalasis/Helpers became surplus. These Fitters and Shed Khalasis/Helpers, according to the applicants, come under the fitting channel and these categories of staff are known as non-running staff. After abolition of Steam Locomotives, options were called for from the surplus staff to come over to the category of Diesel Driver Assistant, Assistant Station Master and Guard as per their eligibility and suitability in response to the circular dated 28.9.1992 at Annexure-2. Prior to calling for options, the applicants were deputed for Diesel Driver Assistants Training at Khurda Road for 45 days in the year 1990 which they completed successfully and were declared fit for Diesel Driver Assistants in the same year 1990. The other surplus staff who exercised option were sent for Diesel Driver Assistant Training at Kharagpur for three months. According to the applicants, the period of training for them was longer because those staff were in the non-running channel and were quite ignorant about the works of the staff appointed in running channel. After successful

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completion of training, surplus staff were directed to appear for a psychological test which is an essential requirement to be fulfilled before deployment in the running channel. The applicants have stated that they having been posted initially in the running channel as Engine Cleaners were absorbed as Diesel Driver Assistants soon after abolition of Steam Locomotives. The private respondents were assigned duty of Diesel Driver Assistant along with the applicants. But while distributing duties the private respondents were initially deployed on section running route because of their lack of experience in the line whereas the applicants were deployed as Diesel Driver Assistants as they had previous experience in the running channel and were also working against the posts of Fireman-II and Fireman-I prior to abolition of Steam Locomotives. While working as Diesel Driver Assistants after completion of the training, the applicants were given the benefit of running mileage allowance attached to the posts of Fireman-II and Fireman-I, but they continued to draw the salary of Engine Cleaner. But other surplus staff, i.e., private respondents were not given the said benefit of running mileage allowance. Thereafter the applicants along with the private respondents were promoted to the post of Diesel Driver Assistant on regular basis in the year 1992. But the applicants were working as Diesel Driver Assistants, according to them, from 1990 onwards. This is borne out by the statement at Annexure-1. Respondent nos.6 to 47, who came from non-running channel were promoted to the post of Diesel Driver Assistant in the order dated 23.7.1992 and a seniority list of Diesel Driver Assistants was prepared. This impugned order is at Annexure-3. The applicants' grievance is that while preparing the seniority list the departmental respondents

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without applying their mind to the guidelines and circulars issued by the Railway Board placed the surplus staff of non-running channel above the applicants and made them senior to the applicants in the cadre of Diesel Driver Assistant, even though there are clear instructions that for persons coming from running channel and persons coming from non-running channel two seniority lists have to be prepared so that their interse seniority is not affected. The applicants raised their grievance before the authorities and meeting of Railway Men's Association was conducted on 22nd and 23rd September 1992 and a resolution was passed which is at Annexure-4. A further representation dated 5.12.1994 is at Annexure-5. At Annexure-6 is a note prepared on 21.4.1994 and presented to General Manager, South Eastern Railway regarding fixation of joint seniority list of Diesel Driver Assistants. In this note, attention was drawn to the circular dated 9.2.1993 of the Deputy Chief Personnel Officer, S.E.Railway, in which it was indicated that as the cases of Khurda Road Division were finalised in November/December 1990 before receipt of the instructions of the Railway Board in 1991, the Engine Cleaners could not be given precedence over the surplus staff from the non-running channel while preparing the seniority list and the seniority list cannot be reopened. This letter is at Annexure-7. At Annexure-8 is a guideline dated 3.11.1994 issued by Deputy Chief Personnel Officer regarding preparation of seniority list on promotion wherein it was stipulated that separate seniority lists should be prepared. It is further stated that in all other Railway Divisions under South Eastern Railway, the Railway Board's guidelines have been followed and the Engine Cleaners have been given precedence over the other surplus

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staff coming from non-running channel, but in Khurda Road Division the guidelines have not been followed. That is how the petitioners have come up with the aforesaid prayers.

3. Out of 42 private respondents, 32 private respondents have filed counter in which they have mentioned that even though the seniority list of Diesel Driver Assistants has been challenged by the applicants, they have not filed any such seniority list as the order at Annexure-3 is not a seniority list. It is only absorption order of the private respondents and 23 applicants out of 33 applicants. The private respondents have mentioned the serial nos. of the 23 applicants whose names find places at Annexure-3 and have mentioned that the other ten applicants' names are not there in Annexure-3. It is stated that Annexure-3 indicates that like the private respondents, 23 applicants were also surplus staff and were absorbed as Diesel Driver Assistants. The applicants were never promoted to the post of Diesel Driver Assistant. It is further submitted that the applicants have not prayed for quashing the rejection order at Annexure-7 and this order being of 9th February 1993, this OA should have been filed by 9.2.1994. But it has actually been filed on 17.10.1995 and is therefore barred by limitation. It is stated that Annexure-1 is a statement prepared by the applicants themselves and is not an official document and therefore, no reliance can be placed on the facts mentioned at Annexure-1. It is stated that out of 33 applicants, 15 applicants whose serial nos. have been given, were initially appointed as Shed Khalasis in the scale of Rs.750-940/- at Loco Shed, Khurda Road. It is also stated that the 23 applicants before being absorbed as Diesel Driver Assistants never took any training at the only recognised training centre, i.e., System Training School at

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Kharagpur. The private respondents have also stated that there is no such concept of running channel under the Railways. The duty of Engine Cleaners is to clean engines inside Loco Shed and they are part of stationary staff. The private respondents have also denied that the applicants ever officiated as Fireman-II and Fireman-I. They have pointed out that no documents have been filed by the applicants in support of this contention. They have also contested the averment that next promotion from Engine Cleaner is to Fireman-II. They have pointed out that no rule or regulation has been cited by the applicants in support of the above contention. It is stated by the private respondents that prior to abolition of Steam Locomotives on 1.11.1990 in Khurda Road Division, the applicants as well as these private respondents were working under Steam Locoshed Scheme. The applicants were working as Engine Cleaners and Shed Khalasis in Group-D category in the scale of Rs.750-940/- while 18 of the private respondents, whose serial nos. have been given, were working in Group-C category in the scale of Rs.950-1500/-. Thus, these eighteen private respondents were all along at a higher footing. Similarly, another 9 private respondents, whose serial nos. have been given, were getting pay scale of Rs.800-1150/- on 1.11.1990 while the applicants were getting scale of Rs.750-940/-. Private respondent no.25 was getting the pay scale of Rs.750-940/-, but he was appointed to that scale on 24.10.1979, much prior to the appointment of all the applicants. On completion of Conversion Course Training at System Training School and System Technical Training School, Kharagpur, four private respondents were absorbed as Diesel Driver Assistants. The private respondents have filed the order dated 29.11.1990 showing that they have cleared the

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Conversion Course Training successfully from System Training School, Kharagpur. They have stated that the only recognised training centre is at Kharagpur where the private respondents took their training. There is no such institute at Khurda Road and therefore, the applicants could not have been given training at Khurda Road. The private respondents have stated that they completed the training in 1990-91 and were allowed to work as Diesel Driver Assistants immediately and were allowed running mileage allowance. Before the absorption, all the private respondents cleared medical and psychological tests by the Screening Committee as required under the circular dated 14.11.1990 at Annexure-B/6. The private respondents have denied the assertion of the applicants that they were absorbed as Diesel Driver Assistants soon after abolition of Steam Locoshed Scheme. Only 23 of the applicants who were declared surplus during 1990 were absorbed in 1992 as Diesel Driver Assistants in the order at Annexure-3. As regards the other ten applicants, it is stated that they were absorbed much later and took independent charge of Diesel Driver Assistant much after these private respondents. It is further stated that the respondents took independent charge as Diesel Driver Assistants with effect from 23.7.1992, i.e., the date of issuance of the order at Annexure-3 whereas all the applicants took independent charge much after. The private respondents have given the dates of taking over of independent charge by the thirty-three applicants and claimed that because of these dates being after 23.7.1992 all the applicants have been rightly shown junior to the private respondents. They have also denied the averment that the applicants were allowed to work as Fireman-II and Fireman-I and as Diesel Driver Assistants prior to their absorption and were allowed running mileage allowance payable to Fireman-I and Fireman-II. It is stated that the prior to absorption as

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Diesel Driver Assistants the applicants were working as Shed Khalasis and Engine Cleaners in a lower pay scale. It is also stated that the averments of the applicants are contradictory. While on one hand they are claiming that they should be shown senior to the private respondents, on the other hand they are also claiming preparation of two separate seniority lists. It is further stated that the grievance of the applicants was rejected in the order dated 9.2.1993 at Annexure-7. But thereafter the applicants have submitted a representation to respondent no.3 who is a much junior authority. So the representation at Annexure-5 has to be ignored. It is also pointed out that Annexure-6 is only a representation and is not a departmental memo and no reliance can be placed on this. Finally, it is stated that the applicants cannot be senior to the private respondents as they have not taken training at a recognised training institute till date and they took independent charge as Diesel Driver Assistants much after the private respondents. Moreover, some of the private respondents were all along working in Group-C cadre whereas the applicants were working as Group-D. On the above grounds, the private respondents have opposed the prayers of the applicants.

4. The departmental respondents have filed a detailed counter in which they have stated that in Khurda Road Division of S.E.Railway both the steam and allied services were completely closed and were replaced by diesel services. As a result, the erstwhile staff utilised in the steam and allied services became surplus due to closure of the related activity. In order to redeploy such surplus staff, a task force was framed jointly by the Railway Administration with two representatives of two recognised trade unions, S.E.Railway Men's Congress and S.E.Railway Men's Union. Due to conversion of steam traction to diesel traction, there was additional requirement of crew in the

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different running categories of Mechanical Department. The Diesel Drivers Assistant being the initial recruitment category had the element of direct recruitment quota. As per the policy decision all steam surplus staff, viz., Fireman-I and Fireman-II were absorbed as Diesel Driver Assistants first after giving them Conversional Course Training. The residual vacancies in this category of Diesel Driver Assistants had to be filled up by other surplus steam and carriage/wagon staff after necessary screening, diesel conversion course training, medical test, psychological test, etc. Such categories of surplus staff were Fitter, Boiler Maker, Crane Driver, Engine Cleaner, Khalasi and Khalasi Helper of steam and carriage wagon wing. A total of 161 of such staff were screened and redeployed as Diesel Driver Assistants after fulfilling other conditions applicable in those cases. Seniority of such staff had to be maintained on interse seniority basis as per the decision of the General Manager in the circulars dated 14.11.1990 and 9.7.1992 which are at Annexures R/1 and R/2. In accordance with these circulars, Fitters, Boiler Makers, Khalasi Helpers and Caretakers being in a higher scale of pay than Engine Cleaners and Khalasi as on 1.11.1990 were treated as seniors in all respects. The departmental respondents have further stated that in the process the applicants were benefited because from the scale of Rs.750-940/- they immediately got the Group-C scale of Rs.950-1500/- without having gone through other intermediate Group-D grades like Rs.775-1025/-, Rs.800-1150 and Rs.825-1200/-. The private respondents 6 to 47 despite their higher scale of pay and higher status on the date of absorption were also absorbed as Group-C on the same date. It is further stated that the decision was taken by competent authority with regard to seniority in consultation with the recognised trade unions and therefore, the applicants cannot be allowed to agitate the

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question of seniority after lapse of six years. The departmental respondents have stated that none of the applicants was initially appointed as Engine Cleaner. They have also pointed out that the post of Engine Cleaner is not in the running channel. It is further stated that the statement at Annexure-1 has been prepared by the applicants themselves and cannot be relied upon. The departmental respondents have further stated that the applicants were trained for Fireman-II post which is the next promotion from Engine Cleaner. But due to reduction of activity in Fireman-II category, the applicants could not be given promotion to Fireman-II. The departmental respondents have specifically mentioned that no Railway authority allowed the applicants to officiate as Fireman-II and Fireman-I. It is further stated that the steam and allied services were completely closed down on 1.11.1990 and many categories of staff became surplus due to closure of steam service. In addition, in many other fields, there was reduction of activity which resulted in surrendering posts like Fitter, Boiler Maker, Machinist, Crane Driver, Khalasi Helper, Engine Cleaner, Shed Khalasi, Running Room Bearer, Box Boy, Masalachi, etc. in Mechanical Loco and Carriage Department. After closure of steam traction and reduction of activity in the allied fields, with a view to redeploy the surplus staff in other suitable fields, the departmental respondents called for options, based on the age, ability, educational qualification, medical standards etc. and the optees were absorbed as Goods Guards, Assistant Station Masters and Diesel Driver Assistants after their screening and suitability test for the posts. As regards the redeployment of surplus mechanical staff, the Chief personnel Officer issued instructions at Annexures R/1 R/2, R/3 and R/5 and accordingly the surplus staff were absorbed. The departmental respondents have further stated

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that all the screened staff, who were declared suitable for absorption as Diesel Driver Assistants, had to undergo the training for the post and accordingly they passed the training vide Annexure-R/6 which contains the names of 161 surplus staff as mentioned earlier. The contention of the applicants that they should get early benefit due to their early training is not in accordance with the rules. The departmental respondents have also stated that the differentiation between running and non-running channel made by the applicants is for the purpose of getting undue privilege and for misrepresenting the facts before the Tribunal. It is further stated that the applicants except serial no.11 were Engine Cleaners at the time of closure of steam traction. Applicant no.1 became an Engine Cleaner on 5.8.1992, i.e., after the order dated 23.7.1992 at Annexure-3. The departmental respondents have further stated that the averment that the applicants were deployed as Diesel Driver Assistant independently from 1990 before respondent nos.6 to 47 is fully refuted. Except applicant no.11, all the private respondents and other applicants were deployed as Diesel Driver Assistants on 23.7.1992. The departmental respondents have further stated that the seniority list at Annexure-3 has been correctly prepared basing on instructions at Annexures R/1, R/2, R/3, R/4 and R/5, and the interpretation given by the applicants is absolutely without any merit. It is further submitted that the grievance of the applicants vide Annexure-5 against the seniority list published under Annexure-3 was examined fully and was rejected after the prayer of the applicants was put up through S.E.Railway Men's Congress through Annexure-6, in the order at Annexure-7. In view of the above facts, the departmental respondents have opposed the prayers of the applicants.

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5. We have heard Shri B.S.Tripathy, the learned counsel appearing for the applicants, Shri D.N.Misra, the learned Standing Counsel appearing for the departmental respondents, and Shri B.Mohanty, the learned counsel appearing for the private respondents, and have also perused the records. The learned counsel for the petitioners has filed written note of submissions with copy to the other side. The private respondents have filed a reply to the written note of arguments of the applicants with copy to the other side. In these written notes, the applicants and private respondents have reiterated their submissions and facts mentioned in their pleadings. The counsel for the applicants has referred to some circulars of the Railway Board which, according to the private respondents, have not been made part of the pleadings in the OA and a prayer has been made to ignore new facts urged in the written note of submissions.

6. The point made by the learned counsel for the private respondents that the applicants have not filed the seniority list is to be rejected in view of the admission in the counter of the departmental respondents that Annexure-3 is the order of absorption according to seniority. Thus, Annexure-3 is the seniority list of the surplus staff absorbed as Diesel Driver Assistants.

7. The departmental authorities have pointed out that none of the applicants was recruited initially as Engine Cleaner. Obviously, they were recruited in other grades and it is admitted by the departmental authorities that on 1.11.1990 when the steam traction was abolished, these applicants were working as Engine Cleaners in the scale of Rs.750-940/- The departmental authorities have specifically denied that the applicants ever were allowed to officiate or work as Fireman-II and Fireman-I. The

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applicants have not shown any document in support of their contention that they had worked as Fireman-II and Fireman-I. The departmental authorities, on the other hand, have pointed out that even though the applicants were trained for Fireman-II post, due to reduction of activity in Fireman-II category, the applicants could not be promoted as Fireman-II. In view of the above assertion and in the absence of any supporting evidence given by the applicants, it is held that the applicants did not work or officiate as Fireman-II and Fireman-I.

8. Thus, the position is clear that on the date of abolition of steam traction, these applicants were in the scale of Rs.750-940/- . The departmental respondents have pointed out in their counter that some surplus staff other than the applicants like Fitter, Boiler Maker, Caretaker, etc., were in higher scale of pay than the Engine Cleaners. The private respondents in their counter have pointed out that on 1.11.1990, eighteen of the private respondents were working in Group-C category with scale of pay of Rs.950-1500/- . Similarly, another 9 private respondents whose serial nos. have also been indicated, were getting pay scale of Rs.800-1150/-, i.e., a scale higher than what the applicants were getting on that day. As regards respondent no.25 it has been mentioned by the private respondents in their counter that even though he was getting the scale of Rs.750-940/-, he was appointed in that scale on 24.10.1979 much prior to the appointment of the applicants to that grade. These averments in the counter of the private respondents have not been denied by the applicants. From this, it is clear that most of the private respondents were at a higher scale on 1.11.1990.

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9. The departmental respondents have pointed out that after abolition of the steam traction, for absorption of the surplus staff of steam and other allied activities, a task force was set up with representatives from the two Unions of the Railway workers. It is further stated that the absorption and fixation of seniority were done on the basis of the circulars issued at Annexures R/1, R/2, R/3, R/4 and R/5. In the circular at Annexure-R/1 it has been laid down that Engine Cleaners who possess the minimum educational qualification as prescribed in Railway Board's letter dated 9.1.1990 and the 25 Steam surplus Loco Fitters who give option should be considered. They should be found suitable by a duly constituted Screening Committee and should be medically fit and should be subjected to psychological test. They should also successfully complete the prescribed training for the post of Diesel Assistant. Such of the Engine Cleaners and surplus Steam Loco Fitters who were found suitable by the Screening Committee, psychological and medical tests, should be sent for training in the System Training Centre at Kharagpur. It is further laid down that all the existing Fireman-I and Fireman-II should be subjected to the suitability test and selection for the post of Diesel Assistant, and those Firemen-I and Firemen-II who were found suitable should first be sent to the training at Kharagpur and only thereafter suitable Engine Cleaners and Steam surplus Loco Fitters should be sent for training. It is further laid down that the existing Firemen-I and Firemen-II should rank senior to those Engine Cleaners and Steam Loco Fitters who were found suitable and sent for training. From this it is clear that for absorption as Diesel Driver Assistant preference was ordered to be given

to Fireman-I and Fireman-II and they were to be sent for training first and only after such Firemen-II and Firemen-I are absorbed, the cases of Engine Cleaners and surplus Steam Loco Fitters are to be taken up. We have already held that the applicants' contention that they were working as Fireman-I and Fireman-II is incorrect for reasons indicated earlier and therefore, the applicants cannot claim the benefit of prior absorption on the ground of their having worked as Fireman-I and Fireman-II, a claim which has been held as not established. The above position about giving preference to Fireman-I and Fireman-II has been reiterated in the circular dated 9.7.1992 at Annexure-R/2 in which it has been mentioned that Fireman-I and Fireman-II trained for the post of Diesel Driver Assistant should be promoted as Diesel Driver Assistant first and then, if vacancies are available, such vacancies should be filled in by surplus staff who have already been found suitable and found medically fit and have passed psychological test and have completed the training in the Zonal Training School at Kharagpur. It was indicated that such filling up of the vacancies after adjustment of Fireman-I and Fireman-II would be based on interse seniority of such staff of Carriage & Wagon and Loco Wings, as was maintained on 1.11.1990 and not on the basis of merit order of the successful candidates indicated by the System Training School at Kharagpur. It is, therefore, clear on a reading of the circulars at Annexures R/1 and R/2 that existing regular Firemen-I and Firemen-II are to be absorbed as Diesel Assistants first and thereafter the remaining vacancies are to be filled up by the surplus staff of Carriage & Wagon and Loco Wings on the basis of their interse seniority as on 1.11.1990. As we have

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already held that the applicants never worked as Fireman-I and Fireman-II, they have no right to get absorbed earlier than other surplus staff.

10. In the circular dated 14.11.1990 in paragraph 4 it has been mentioned that in the notification calling for option from the Engine Cleaners as also the surplus Loco Fitters, it was clearly mentioned that their seniority in the category of Diesel Assistants would be reckoned from the date of taking over of independent charge as Diesel Assistant after training maintaining, however, the interse seniority as per the merit list given by the Training School. This condition of fixing seniority as per the merit list given by the training school was changed in the circular dated 9.7.1992 in which it was stated that their absorption should be based on interse seniority as was maintained on 1.11.1990 and not on the basis of merit order of successful candidates. From the above, it becomes clear that between the Engine Cleaners (the applicants) and the other surplus staff, i.e., the private respondents, seniority is to be determined on the basis of their taking over independent charge as Diesel Driver Assistants maintaining the interse seniority amongst them as on 1.11.1990. The applicants have claimed that they were trained at Khurda Road for 45 days and immediately after training they took over independent charge as Diesel Driver Assistants. The circular at Annexure-R/1 speaks of training at System Training School, Kharagpur and it was indicated that only after such training the surplus staff have to be absorbed. The departmental respondents have enclosed Annexure-R/6 in which the details of all the 161 surplus staff including the applicants, private respondents and others have been given. In this Annexure-R/6, the dates of training of all the 161 surplus staff including the applicants and private

respondents have been given. On a reference to this, we find that many of the applicants have been trained along with the private respondents. To give two examples, applicant nos. 1 and 2; Rasul Khan and L.N.Ghanta have been shown as having been trained on 10.1.1991 along with Jalandhar Sahu (respondent no.45) and K.M.M.Rao (respondent no.6) who were also trained on 10.1.1991 as per Annexure-R/6. The claim of the applicants that they were trained for Diesel Driver Assistant prior to the private respondents is not borne out by Annexure-R/6. The departmental respondents have also fully refuted the contention of the applicants that right from 1990 they were allowed to work independently as Diesel Driver Assistants. The applicants have not produced any document to show that they have been working as Diesel Driver Assistants from 1990. This is also not believable because according to the circular at Annexure-R/1, only after the screening, medical test, psychological test and conversational course training, the surplus staff would be deployed as Diesel Driver Assistants. This contention of the applicants is, therefore, held to be without any merit and is rejected.

11. The applicants have stated that the seniority list at Annexure-3 has been prepared violating the instructions of the Railway Board. They have relied upon the circular dated 28.9.1992 at Annexure-2 in which it has been mentioned that direct recruitment in the category of Diesel Assistants should not be resorted to so long as any steam surplus staff to be redeployed as Diesel Assistants are available. If the steam surplus staff are not available in the same seniority unit but are available in any other unit, preference should be given to their re-deployment before direct recruitment is resorted to. To

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ensure this, it has been provided in this circular that before making direct recruitment, the cadre controlling authority should give a clear certificate at the time of initiating direct recruitment that the vacancies cannot be filled from amongst First/Second Firemen, Matriculate Cleaners, Skilled Artisans (Diesel/Electrical Fitters) and Steam surplus staff. This circular does not say anything about seniority of the surplus staff who are absorbed as Diesel Driver Assistants and therefore, this is of no help to the case of the applicants. The applicants have referred to Annexures 4 and 6. These are the notes prepared by the employees for discussion with the Railway authorities. The applicants represented for placing them above the other surplus staff in the seniority list, but this was rejected by South Eastern Railway Headquarters in their letter at Annexure-7 which states that Board's instructions were received in April 1991 for giving precedence to Engine Cleaners whereas case of Khurda Road Division was finalised in November and December 1990 and as such the issue cannot be reopened. The applicants have relied upon this rejection order indicating that the Board's circular provides for giving them higher seniority. Unfortunately, the applicants have not enclosed any circular of the Railway Board which speaks of giving them higher seniority over the other surplus staff. The Board's circular merely provided that the steam surplus staff should be absorbed first and in the balance vacancies the surplus staff of other allied activities who have also become redundant on abolition of steam locomotives in Khurda Road Division should be absorbed. According to the respondents, in Khurda Road Division 161 staff of Locoshed, Carriage & Wagon Unit and Steam Locoshed Unit were rendered surplus and their cases of

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absorption were taken up in accordance with the circulars at Annexures R/1 and R/2. It is also seen that while the applicants were in Group-D with the scale of Rs.750-940/-, some of the surplus staff in the other wings were in higher scale and some of them were already in Group-C category of posts. In view of this, we do not find anything illegal in giving such staff higher position in the seniority list at Annexure-3.

12. To put in another way, the instructions provided that Fireman-I and Fireman-II should be absorbed first as Diesel Driver Assistants and question of absorption of other surplus staff should be taken up thereafter. The applicants have stated that they were officiating as Fireman-I and Fireman-II. This has been denied by the respondents and we have also held that the applicants have not been able to prove that they were working as Fireman-I and Fireman-II. The departmental respondents have also stated in page 2 of the counter that Fireman-I and Fireman-II were absorbed as Diesel Driver Assistants first after giving them conversional course training, but the applicants not being Fireman-I and Fireman-II could not come within that group. Secondly, the instructions provided that seniority would count from the date of assumption of independent charge as Diesel Driver Assistant. This has been mentioned in paragraph 4 of the circular dated 14.11.1990 at Annexure-R/1 as modified in the circular dated 9.7.1992 at Annexure-R/2. The applicants have asserted that they were given independent charge of Diesel Driver Assistants from 1990. This has been fully refuted by the departmental respondents in page 6 of the counter. We have held that the applicants have not been able to prove that they have been given independent charge of Diesel Driver Assistant from 1990.

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13. From the above it is clear that the surplus staff including the applicants and private respondents were absorbed in order of seniority in the order at Annexure-3. Both the groups were absorbed in the same order and while assigning them seniority, their interse position as on 1.11.1990, which is the date of abolition of steam locomotives, was taken into account. In view of this, we find nothing illegal in the order at Annexure-3. The prayer of the applicants to quash Annexure-3 is held to be without any merit and is rejected.

14. The applicants have also prayed for preparation of two seniority lists, one for the applicants and the other for respondent nos. 6 to 47. This claim of theirs is based on Annexure-8. On a careful reading of this circular dated 3.11.1994 which came much after the absorption order dated 23.7.1992, it is clear that this circular speaks of creation of supernumerary posts for absorption of surplus staff so that there is no loss of emoluments for them. It is also provided that such surplus staff should be shown against supernumerary posts and put in the productive occupation as a separate group and their seniority and emoluments would be duly protected in the supernumerary posts. This circular does not provide that separate seniority lists should be prepared for the surplus staff of the steam locoshed and the other surplus staff of other allied activities.

15. In consideration of all the above, we hold that the applicants have not been able to make out a case for any of the reliefs claimed by them. The Original Application is, therefore, held to be without any merit and is dismissed, but, under the circumstances, without any order as to costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

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(SOMNATH SOM)
VICE-CHAIRMAN
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