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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH : JODHPUR

Date of order : 30.3.2000

O.A. No. 297/1996

Mool Chand son of Shri Megh Raj Darji, Metador Helper Khallasi, Store Depot, Mechanical Worksho, Northern Railway, Bikaner, resident of Punrasar Hanumanji Temple, Outside Sheetla Gate, Bikaner (Rajasthan).

... Applicant.

v e r s u s

1. Union of India through the General Manager, Northern Railway, Headquarters Baroda House, New Delhi.
2. District Controller of Stores, Now Deputy Controller of Stores, Northern Railway Stores, Jodhpur.
3. Assistant Controller of Stores, Stores Depot Mechanical Workshop, Northern Railway, Bikaner (Rajasthan).
4. Mool Chand Mali son of Shri Babu Lal Mali Shashi Bharti, Secondary School-Ke-Pass, Ex-M.L.A., Surja Ram-Ke-Maken-Ke-Pass Sarvoday Basti, Bikaner, Ticket No. S-95.

... Respondents.

Mr. Bharat Singh, Counsel for the applicant.
Mr. V.D. Vyas, Counsel for the respondents Nos. 1 to 3.
None is present for respondent No. 4.

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman.
Hon'ble Mr. Gopal Singh, Administrative Member.

: O R D E R :

(Per Hon'ble Mr. Justice B.S. Raikote)

This application is filed for a direction to quash the notices dated 31.7.96 (Annexure A/1) and 22.3.96 (Annexure A/2) of the respondents requiring Heavy Vehicle Driving Licence from the

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Regional Transport Authority for the purpose of applicant's promotion on the post of Lister Vehicle Driver. The applicant has further prayed for a direction to the respondents not to promote the other persons to the post of Lister Motor Vehicle Driver without considering the case of the applicant by not requiring the Heavy Vehicle Driving Licence.

2. From the relief prayed for, it is clear that the applicant's case for promotion to the post of Lister Vehicle Driver would be considered without insisting on any driving licence. The learned counsel appearing for the applicant submits that so far as Lister Vehicle Drivers are concerned, the existing system does not prescribe the driving licence. He relied upon the letter dated 6.1.89 (Annexure A/3) addressed to the Secretary, URMU (W/shop) Branch, Bikaner. The learned counsel for the applicant submits that in view of the note annexed to the said letter regarding channel of promotion, particularly Note No. 1, a driving licence is prescribed only for driving Heavy Vehicles, like Crane drivers and Motor drivers. He states that no such driving licence is prescribed for Lister Driver.

3. As against this argument, the learned counsel appearing for the respondents (Railway-department) contended that possession of the driving licence for Heavy Vehicles is made compulsory vide Annexure A/2 dated 22.3.96. He brought to our attention to the letter dated 25.8.97 issued by the Asstt. Controller of Stores, Bikaner, to the District Controller of Stores which we now propose to mark as Annexure R/1. From this letter, it is clear that both the Unions had agreed for prescribing the driving licence to the Lister driver in view of the fact that the Lister is also made to be assigned duties of driving other vehicles , like Matador, truck etc. This proposal made by the Union has been agreed to by the Management. The learned counsel for the respondents brought to our notice the note dated 27.5.96 stating that the proposal should be accepted and implemented. Thus, he submits that prescribing possession of driving licence for the post of Lister has been accepted as a matter of policy and now the promotion is sought to be made from the persons who possess the driving licence to the post of Lister. As against this, the learned counsel for the applicant submits that since it is a matter of policy, that should be uniformally applied to all the Departments of the Railway and as

such, the action of the respondents would be contrary to the judgement of Hon'ble the Supreme Court recported in 1979 SCC (L&S) 141, Union of India & Ors. vs. Shanti Swarup and Others.

4. We have given anxious consideration to the arguments of both the sides. We think it appropriate to extract the letter dated 6.1.89 (Annexure A/3) written by the District Controller of Stores to the Secretary, URMU (W/shop) Branch, BIkaner and NRMU (W/shop) Branch, Bikaner, as follows:

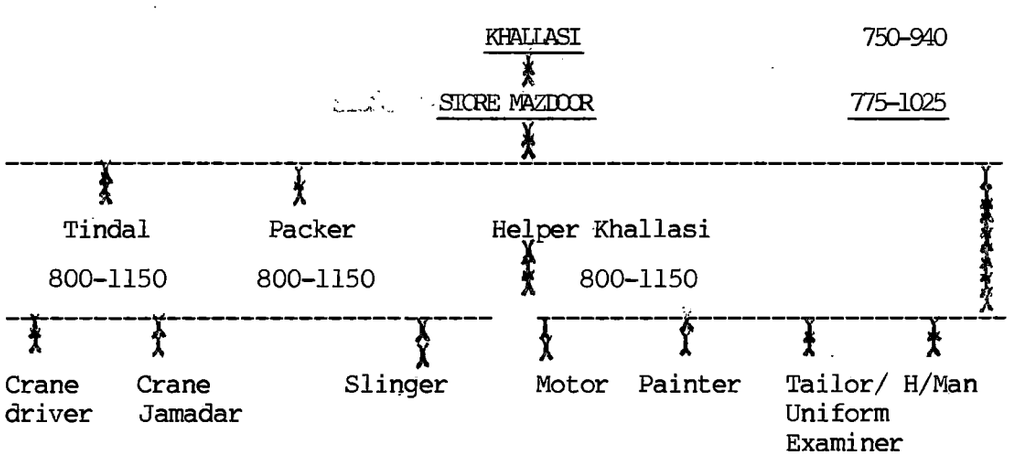
"Sub: Channel of promotion of Artisan staff of Bikaner Depot.

...

The Channel of promotion of Artisan staff of Bikaner Depot is given on Annexure 'A'.

Post	Sanctioned cadre
Crane Driver	01
Crane Jamadar	01
Crane Slinger	04
Truck/Motor driver	02
Lister Driver	01
Painter	01
Uniform/Examiner	01
Hammerman/Smith	01
Helper Packer Khallasi	04

CHANNEL OF PROMOTION



Note :-

1. Heavy vehicle, driving licence is necessary for Crane Driver and Motor Drivers.

2. Further distribution of upgraded post will be made gradewise in the following groups.

   i) Crane staff.
   ii) Motor and Lister Driver.
   iii) Trilor/Smith, Painter and Uniform Examiner.

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From the Annexure 'A' annexed to the said letter, it is clear there are some posts to be filled up by promotion and one of the posts to be filled up by promotion is Lister Driver. So far as the post of Lister Driver is concerned, there is only one post according to this letter and the note No. 1 in the said lette provides that Heavy Vehicle Driving Licence is necessary for Crane Drivers and Motor Drivers only. The Note No. 2 further provides that the distribution of upgraded posts will be made gradewise in certain groups, like Crane staff, Motor and Lister Drivers, Tailor, Smith, Painter and Uniform Examiner etc. From the note, it is clear that further distribution of upgraded posts is possible in the Motor and Lister Driver, like Crane staff, tailor etc. So far as the upgradation is concerned, vide (ii) of para 2 of the Note, it is regarding Motor and Lister Drivers in one category.

5. However, the argument of the learned counsel for the applicant is that so far as the Lister Driver is concerned, no driving licence is required. He relied upon the clause 18 of the definition of the Motor Vehicles Act, 1939 (for short, the Act), and submitted that the Lister vehicle is the one contemplated in clause (18) of Section 2 of the Act. It is argued that the Lister is one, which is not included in the definition of "Motor Vehicle". There is no material on record to show that the Lister vehicle is one specifically designed in terms of clause 18 of the Act so as to exclude it from the definition of "Motor Vehicle", as defined. Unless it is proved that the Lister is one exclusively designed for use in a factory or in enclosed premises, it has not excluded from the category of Motor Vehicle. Moreover, on the basis of the letter dated 6.1.89 (Annexure A/3), further upgradation is possible for the post of Motor/Lister Driver. It is clear from the Note 2(ii) of the Annexure attached to the letter dated 6.1.89 that Motor and Lister Driver are classified into one category. If that is so, to say that the licence is required for Motor Driver and no licence is required for Lister Driver would be unreasonable and against the principles of law. Apart from that, there is an agreement between the two Unions and the Department (Railway) which is referred to as Annexure R/1, that the Lister Driver is also made to be assigned duties of driving other vehicles, like Matador, Crane etc., and for that purpose the driving licence is necessary. It is not in dispute that the Lister is mechanically propelled vehicle and if an untrained driver drives the vehicle, there is a possibility of

accident taking place in the factory premises. It cannot be disputed that the driving involves the skill and to allow a person to drive a vehicle without driving licence can be risky and that may cause accident in the factory premises. Therefore, prescribing the driving licence even for the Lister driver is quite reasonable and it would be in the interest of general public. In this view of the matter, prescribing condition of licence for the Lister Driver, there is nothing unreasonable. The judgement of Hon'ble the Supreme Court cited by the learned counsel for the applicant does not apply to the situation of this type. We are of the opinion that the said judgement is distinguishable from the facts of the case. In other words, the department is perfectly justified in prescribing driving licence for the Lister Driver.

6. In this view of the matter, we pass the order as under:-

"Application is dismissed. But in the circumstances, no order as to costs.

(Gopal Singh)
Adm. Member

(B.S. Raikote)
Vice Chairman

cvr.