

Date of order : 8.3.2000

1. O.A. No. 05/1996

Khaju Khan son of Shri Didar Khan aged about 37 years at present working as Jeep Driver under Inspector of Works (Construction), Head Quarter Broad Gauge Conversion, Northern Railway, Jodhpur.

... Applicant.

versus



Completed
[Signature]

1. Union of India through General Manager Northern Railway, Baroda House, New Delhi.
2. Deputy Chief Engineer (Construction), Northern Railway, Jodhpur.
3. Divisional Railway Manager, Northern Railway, Jodhpur.
4. Divisional Personnel Officer, Northern Railway, Jodhpur.
5. Divisional Engineer (Headquarter), Northern Railway, Jodhpur.
6. Chief Inspector of Works (S), Northern Railway, Jodhpur.
7. Vishambhar Dayal son of Shri Ram Kishore, Jeep Driver, C/o. Deputy Chief Engineer (Construction), Northern Railway, Jodhpur.
8. Banwari Lal, Jeep Driver, son of Shri Gyarsi Ram, C/o. DCO (S), Northern Railway, Jodhpur.
9. Poonam Chand, Jeep Driver, son of Shri Ram Kishore, C/o. DCO (S), Northern Railway, Jodhpur.
10. Hanuman Ram, Jeep Driver son of Shri Birda Ram C/o. DCO (S), Northern Railway, Jodhpur.
11. Amrit Lal, Jeep Driver, son of Shri Pema Ram, C/o. DCO (S), Northern Railway, Jodhpur.
12. Shri Srikishan son of Shri Mangal Das, Jeep Driver, C/o. DCO (S), Northern Railway, Jodhpur.
13. Shri Kishan, Jeep Driver, son of Sh. Lal Chand, C/o. IOW (P), Northern Railway, Jodhpur.

... Respondents.

Mr. N.K. Khandelwal, Counsel for the applicant.

Mr. R.K. Soni, Counsel for the respondents Nos. 1 to 6.

Mr. Y.K. Sharma, Counsel for the respondent No. 7.

None is present for respondents Nos. 8 to 13.

(20)

Vishamber Dayal son of Shri Ram Kishore aged 36 years, Jeep Driver, under Inspector of Works (Construction), Northern Railway, Jodhpur, resident of Quarter No. 2167, D.S. Colony, Jodhpur.

... Applicant.

v e r s u s

1. Union of India through General Manager, Northern Railway, Barlida House, New Delhi.
2. Deputy Chief Engineer (Construction-I), Northern Railway, Jodhpur.
3. Divisional Railway Manager, Northern Railway, Jodhpur.
4. Divisional Personnel Officer, Northern Railway, Jodhpur.
5. Divisional Engineer (Headquarters), Northern Railway, Jodhpur.
6. Divisional Superintendent Engineer (Cord), Northern Railway, Jodhpur.
7. Assistant Engineer (HQ), Northern Railway, Jodhpur.
8. Khaju Khan, Jeep Driver, under Inspector of Works (Construction), Northern Railway, Jodhpur.

... Respondents.

Mr. Y.K. Sharma, Counsel for the applicant.

Mr. R.K. Soni, Counsel for the respondents Nos. 1 to 7.

Mr. N.K. Khandelwal, Counsel for the respondent No. 8.

CORAM:

Hon'ble Mr. A.K. Misra, Judicial Member.

Hon'ble Mr. Gopal Singh, Administrative Member.

: ORDER :

(Per Hon'ble Mr. Gopal Singh)

In these two applications filed under Section 19 of the Administrative Tribunals Act, 1985, the controversy involved as also the relief sought is interlinked, therefore, both the applications are being disposed of with this common order.

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2. The undisputed facts of the case are that both the applicants, holding lien in the Engineering Department of Jodhpur Division, while working in construction organisation were trade tested on 28.11.91 and 15.11.91 respectively for the post of Jeep/Car Driver by the Senior Civil Engineer and were appointed as such vide respondent's letter dated 13/16.12.91 (Annexure A/3). The Divisional Railway Manager, Jodhpur Division, Northern Railway, had conducted the trade test in the year 1992 for the post of Jeep/Car Driver and promoted some Khallasis, junior to the applicants, as Driver in the year 1992 and further promoted them to the scale of Rs. 1200-1800 in the year 1993. Shri Vishamber Dayal (applicant in OA No. 142/96) being senior to the persons appointed as Driver and further promoted to the scale of Rs. 1200-1800 in the Division, represented to the Divisional Authorities to consider his case for appointment as Driver with effect from the date he had qualified the trade test conducted in the Construction Organisation, but to no avail. There upon he filed an O.A. 271/95 in this Bench of the Tribunal and the same was disposed of on 12.7.95 with the direction to the respondents to consider the representation of the applicant and dispose of the same by a speaking order. After due consideration of the case, the respondents accorded seniority to the applicant (Vishamber Dayal) as Driver with effect from 16.12.91 vide order dated 27.9.95 and further promoted him to the scale of Rs. 1200-1800 vide order dated 12.10.95. The respondent-department vide their letter dated 20.2.96 (Annexure A/1 in OA No. 142/96) has removed the name of the applicant from the seniority list on the ground that seniority could not be accorded to him on the basis of adhoc promotion, till he is regularised as such. This impugned order has been challenged by the applicant (Vishamber Dayal) in the present O.A. Shri Khaju Khan (applicant in OA No. 5/96) represented against the order dated 27.9.95 (Annexure A/1) according seniority to Shri Vishamber Dayal as Driver with effect from 16.12.91 on the ground that Shri Vishamber Dayal was junior to him and both of them had passed the trade test in the construction organisation together, but to no avail. Consequently, Shri Khaju Khan has filed the present application praying for setting aside the impugned order dated 27.9.95 (Annexure A/1) and for treating the applicant as promoted from the date his junior (Vishamber Dayal) was promoted and further he be promoted to the scale of Rs. 1200-1800 and Rs. 1370-2040 from the



date from which his juniors were promoted, with all consequential benefits.

3. As per the prayer for interim relief in OA No. 05/96 the operation of the order dated 27.9.95 was stayed by our order dated 3.7.96. Similarly, in OA No. 142/96, the operation of order dated 20.2.96 was stayed by our order dated 22.4.96.

4. Notices were issued to the respondents and they have filed their reply. It is the contention of the respondents that Shri Vishamber Dayal was officiating on adhoc basis with effect from 13/16.12.91 and as such he could not be accorded seniority as Driver with effect from that date and accordingly his name was removed from the seniority list. In the case of Khaju Khan, it has been stated by the respondents that the applicant remained as Khallasi in open line and in construction organisation upto 16.12.91 and the applicant has been holding the post of Driver purely as adhoc on TLA basis. It has also been pointed out by the respondents that the trade test was not conducted by the competent authority and, therefore, the applicant cannot claim any benefit out of that. Thus, it is the contention of the respondents that both the applications are devoid of any merit and deserve to be dismissed.

5. We have heard the learned counsel for the parties and perused the records of the case carefully.

6. The controversy involved in this case is whether the trade test conducted by the construction organisation is valid for appointment to the post in open line. Further, inter se seniority between the present two applicants is also in question. It has been provided in Para 214(c)(iv) of Indian Railway Establishment Manual - Volume-I (for short, IREM), that an employee who has passed the suitability test once need not be called for the test again and should be eligible for promotion as and when vacancies arise. It has further been provided in Para 226 of IREM that the staff who have already qualified in the suitability/trade test for non-selection post while in Construction/Railway Electrification Projects need not be subjected to such test on the open line and they may be promoted on the basis of their seniority as and when due in turn. It has further been provided that this concession is applicable in comparable trades only in which the lien of the



individual is kept on the open line and is applicable to only one grade higher than the one in which the lien is kept. It is a fact that both the applicants have lien on the post of Khallasi in the Engineering department of Jodhpur Division and the post of Driver is in the next higher grade which is filled up by conducting suitability/trade test from amongst the Khallasis. Thus, the applicants having qualified in the trade test for the post of Jeep/Car Driver would suo-moto be eligible for appointment to the post of Driver in the open line as and when vacancy arises, as per their seniority. Thus, the contention of the respondents that the trade test conducted in construction organisation was not by the competent authority is not tenable. Further, the Divisional Authorities had conducted the trade test and invited junior officials ignoring the claim of the applicants, who were senior in the open line. As a matter of fact, both these applicants should have been promoted to the post of Driver with effect from 16.12.91 provided vacancies were available on that date. In the case of Vishamber Dayal, the respondents have considered his case on a direction from this Tribunal and had initially given him seniority as Driver with effect from 16.12.91. This seniority was, however, withdrawn later, which has been challenged by the applicant. It may be added that Shri Khaju Khan was also senior at the time when trade test was conducted for junior officials by the Division and had already passed the trade test in construction organisation alongwith Vishamber Dayal. He should have, therefore, been accorded the same treatment by the respondent-department at par with Vishamber Dayal. Thus, in our view, Shri Khaju Khan also deserves to be treated as Driver with effect from 16.12.91.

7. In regard to seniority amongst the two applicants, it is admitted by both the parties that Shri Khaju Khan is senior to Vishamber Dayal. For this purpose, the learned counsel for the applicant has also produced before us a panel prepared after screening of casual labour/substitutes circulated by the respondents vide their letter dated 28.2/9.3.83, which has been taken on record. In this panel, name of Shri Khaju Khan appears at sl. No. 25 while that of Vishamber Dayal appears at Sl. No. 28. Rest of the private respondents are undisputedly junior to these applicants as they had entered into the grade in subsequent batches. Thus, in our opinion, Khaju Khan should be shown as senior to Vishamber Dayal in the seniority list of Drivers and



both the applicants would be entitled to promotion to the scale of Rs. 1200-1800 and higher scales earlier to the private respondents Nos. 8 to 13 in OA No. 05/96, Khaju Khan being senior to Vishamber Dayal. Shri Vishamber Dayal has already been promoted to the scale of Rs. 1200-1800, accordingly, Shri Khaju Khan should also be given that scale from the date Shri Vishamber Dayal has been granted that scale. Both the applicants would further be entitled to higher scales earlier to or at par with the private respondents Nos. 8 to 13 in OA No. 05/96.

8. Both the O.As are accordingly disposed of on the lines mentioned above. The respondents are directed to comply with these directions within 3 months from the date of receipt of a copy of this order.

9. Parties are left to bear their own costs.

SD/-
(GOPAL SINGH)
ADM. MEMBER

प्रमाणित सही प्रतिलिपि SD/-
(A.K.MISRA)
JUDL. MEMBER

10/3/2000
अनुभाग अधिकारी (न्यायिक)
केन्द्रीय प्रशासनिक अधिकरण
जोधपुर