

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH,
JODHPUR

Date of Order 27-3-2002

1. O.A.No. 32/2001
2. O.A.No.195/2001

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1. Chagan Lal (SC) S/o Shri Kishan Lalji, aged about 46 years, R/o Railway Qtr. No. 27L, Loco Line, Abu Road, District Sirohi (Rajasthan).

2. Hosi D S/o Shri Dharb Shah, aged about 41 years, Resident of Parsichal Bagicha Colony, Abu Road, Distt. Sirohi.

3. Kukesh Kumar S/o Shri Bhajanlalji, aged about 42 years, R/o Madan Lakhpati Ki Building, Dhobi Gali, Zuni Kharadi, Abu Road, District Sirohi.

4. Devi Lal S/o Shri Shanker Lal (SC), aged about 46 years, R/o Nr. Gandhi Nagar School, Plot No. 100, Abu Road, District Sirohi.

5. Mohan Lal (S.C.) S/o Shri Rajaji, aged about 40 years, R/o Behind Power House, Near Hanuman Temple, Gandhi Nagar, Abu Road, District Sirohi.

Ibrahim Khan S/o Shri Azim Khan, aged about 43 years. R/o Behind Gandhi Nagar School, Abu Road, Distt. Sirohi.

Anwar Khan Khan S/o Shri Fakir Mohammed, aged about 45 years, R/o Qtr. Out-House 82 LA, Mataghari, Abu Road, District Sirohi.

Mohan Lal S/o Shri Hukam Chand Sharma, aged about 42 years, Resident of Old Ramlila Maidan, Dhabighat, Abu Road, District Sirohi.

Maruti Ram D S/o Shri Dhani Ramji, aged about 43 years, R/o Railway Qtr. 356D, Dhabighat, Abu Road, District Sirohi.

Girdhari Lal S/o Shri Ram Lalji (S.C.), aged about 46 years, R/o R.P.F. Colony, Abu Road, Distt. Sirohi.

All the applicants are presently working on the post of Sr. Electric Khalasi (Diesel) under Senior Electric Foreman (Gen. Diesel) Western Railway, Abu Road, District Sirohi.

versus

.....Applicants.
(OA NO. 32/2001)

1. Union of India through the General Manager, Western Railway, Church Gate, Mumbai.
2. Divisional Railway Manager, Western Railway, Ajmer (Raj).

3. Sr.Divisional Personnel Officer, Western Railway, Ajmer (Raj).
4. Shri Ajay Kumar S/o Shri Phool Chandji
4. Shri Ghanshyam S/o Shri Bhanwar Lalji
5. Shri Satya Narain S/o Shri Ram Sahai
6. Shri Vinod Kumar S/o Shri Ramanandji
7. Shri Hari Babu S/o Shri Puran Chandji
8. Shri Gopal Lal S/o Shri Ganesh Lalji
9. Shri Pratap Singh Chouhan S/o Shri Ram Chanderji
10. Shri Suresh Chand Mishra S/o Shri Puran Chandji Mishra
11. Shri Rajendra Kumar S/o Shri Chunilalji
12. Shri Ashok Kumar Chouhan S/o Shri Johari Lalji Chouhan

(Respondents No.4to13 are presently working on the post of Senior Electric Khalasi (Diesel) in the Office of Senior Electric Foreman (Gen.Diesel),Western Railway, Abu Road,Dist.Sirohi(Raj). are residents of Railway Colony,Abu Road,Distt.Sirohi.

.....Respondents.

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Hem Chand S/o Shri Gammaji, aged about 45 years, R/o Railway Quarter R.P.F. Ground, Abu Road, District Sirohi (Rajasthan). Presently working on the post of Senior Electric Khalasi (Diesel), under Senior Electric Foreman (Diesel), Western Railway, Abu Road, District Sirohi (Rajasthan).

.....Applicants
(OA No.195/2001)

versus

Union of India through the General Manager, Western Railway, Church Gate, Mumbai.

Divisional Railway Manager,
Western Railway, Ajmer (Rajasthan).

3. Senior Divisional Personnel Officer
Western Railway,
Ajmer (Rajasthan)
4. Shri Bhagilal S/o Shri Dhula Bhai,
Senior Electric Khalasi (Diesel),
C/o Senior Electric Foreman (Diesel),
Western Railway,
Abu Road, District Sirohi.

.....Respondents.

CORAM :

Hon'ble Mr. Justice O.P.Garg, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member

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Mr. S.K.Malik, Counsel for the applicants in OAs.

Mr.Kamal Dave,Counsel for respondents 1 to 3 in the OAs.

Mr.B.Khan,Counsel for respondent No. 6 in OA No.32/2001.

None is present for respondents No. 4,5 and 7 to 10 in OA No.32/2001

None is present for respondent No. 4 in OA No. 195/2001

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PER HON'BLE MR.GOPAL SINGH :

The controversy involved and the relief sought in both these cases is the same and, therefore, both the applications are being disposed of by this common order.

2. By way of our interim order dated 27.2.2001 in O.A. No. 32 of 2001, the respondents were directed to conduct a trade test provisionally for the applicants subject to the result of that application. The result was, however, to be kept in a sealed cover awaiting further orders of this Tribunal.

3. In both the applications under section 19 of the Administrative Tribunals Act, 1985, a prayer has been made to quash and set aside the impugned order dated 4.9.2000, Annex.A/1 (in OA No. 32/2001) and impugned order dated 18.5.2001, Annex.A/1, and order dated 4.9.2000, Annex.A/2 (in OA No. 195/2001). It has also

been prayed by the applicants that the eligibility list for upgradation in the pay scale of Rs. 3050-4590, be prepared strictly in accordance with the seniority and the applicants be extended the consequential benefit of upgradation at par with their juniors.

4. All the applicants are working on the post of Senior Electrical Khalasi (Diesel), in the pay scale of Rs. 800-1150. 27 posts of the Senior Electrical Khalasies have been upgraded to the scale of Rs. 3050-4590. For filling up these upgraded posts, the respondent-department has prepared a eligibility list on 4.9.2000 for calling the eligible officials for trade test for grant of the upgraded pay scale. Applicants' case is that though, they were senior to many of the officials called for trade test, they were not called and their cases have been ignored. It has, therefore, been prayed by the applicants that the eligibility list be prepared strictly in accordance with the seniority of all the officials.

5. In the Counter, the respondents have denied the case of the applicants. It is pointed out by the respondents that the upgraded posts of Senior Electrical Khalasies were required to be filled up as per the eligibility conditions specified in para 5 of the Railway Board's Circular dated 28.9.1998 (Annex.R/1). It is also pointed out by the respondents that none of the applicants fulfilled the eligibility conditions and, therefore, they were not called for the trade test. It is also stated that many of the applicants were informed about their in-eligibility for the said post vide respondents letter dated 20.10.2000. ~~XXXXXXXXXXXXXXXXXXXX~~
This letter has not been challenged by the applicants. It has,

therefore, been urged by the respondents that applicants have no case and both the applications are liable to be dismissed.

6. We have heard the learned counsel for the parties and perused the record of the case carefully.

7. The upgraded posts of Senior Electrical Khalasi were required to be filled up according to para 5 of Railway Board's Circular dated 28.9.1998. We consider it appropriate to extract below Paras 5 and 6 of the Railway Board's Circular dated 28.9.1998:

"5. In pursuance to the above changes, the revised methodology for filling up the posts of skilled Artisans in grade Rs. 3050-4590 in diesel/electric/EMU maintenance trades will be as under :

(i) 60% by direct recruitment from successful course completed Act Apprentices, ITI pass candidates and matriculates from the open market.

(ii) 20% from serving semi-skilled and unskilled staff with three years of regular service with educational qualification as laid down in the Apprentice Act; as outlined in Railway Board's letter No. E(NG)I/96/PM7/56 dated 2.2.1998; and

(iii) 20% by promotion of staff in the lower grade as per prescribed procedure.

6. With a view to give the benefit of the grade Rs. 3050-4590 to the existing staff with the prescribed qualification stated in para 5(i) above in a reasonable time, the following procedure of filling up the posts in

grade Rs. 3050-4590 is laid down for the present :

(i) The additional posts in the grade Rs. 3050-4590 becoming available in terms of these orders will be filled up by the employees possessing the prescribed qualification indicated in para 5(i) above and who are on roll as on 1.9.1998, on passing the prescribed trade test.

(ii) The 60% vacancies earmarked for direct recruitment which accrue from 2.9.1998 onwards may be filled up from serving employees on roll as on 1.9.1998 and who possess the prescribed qualifications as in para 5(i) above as outlined in Railway Board's letter No. E(NG)I/96/PM7/56 dated 2.2.1998 for a period upto 31.8.2002 or till such time as no such employees eligible as on 1.9.98, remains awaiting placement in the grade, whichever is earlier."

The learned counsel for the applicants submits that applicants cases could have been covered under 5(i) i.e. 60% by direct recruitment from successful course completed Act Apprentices, ITI pass candidates and matriculates from the open market. The learned counsel for the applicants further relies upon Railway Board Circular dated 2.2.1998 which deals with procedure for filling up the posts of Skilled Artisans against 25% quota. We have carefully gone through the Railway Board's Circular dated 2.2.1998 and find that the same is not applicable in the instant case. The upgraded posts were required to be filled up from amongst the successful course completed Act Apprentices, ITI pass candidates and matriculates from the open market. The applicants did not possess any of these qualifications and, therefore, they were not called for

the trade test. This was also conveyed to some of the applicants vide respondents letter dated 20.10.2000. Contention of the applicants that they could have been provided training for filling up the upgraded posts in terms of Railway Board's Circular dated 2.2.1998, is not relevant at this stage. Therefore, the question of preparing the eligibility list strictly in accordance with the seniority, does not arise. Firstly, a candidate has to fulfil the eligibility conditions and only then his seniority would be looked into. It is not that the upgraded posts will be filled up from amongst the Khalasies on the basis of seniority. The learned counsel for the applicants has also cited the case of Union of India Vs. V.K. Sirothia, reported in 1999 SCC (L&S) 938, in support of his contention that upgradation is not promotion and, therefore, does not attract reservation. The cited judgement does not help the applicants.

8. In view of above, we are of the opinion that both the applications are devoid of any merit and deserve dismissal. Both the applications are accordingly dismissed with no order as to costs. The interim direction dated 27.2.2001 passed in O.A. No. 32/2001 stands vacated.

Sd/-
(Gopal Singh)
Adm. Member

mehta

Sd/-
(Justice O.P.Garg)
Vice Chairman

मानित रहे प्रतिलिपि
01/4/2002
न्युआग प्रधिकारी (दायित्व)
उच्चाय प्रशारनिक दायित्व
नोएम

Recd Com
[Signature]

Recd Com
[Signature]

Part III and III destroyed
in my presence on 10.5.07
under the supervision of
Section officer (1) as per
order dated 10.5.07
Section officer (Record)