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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH : JODHPUR

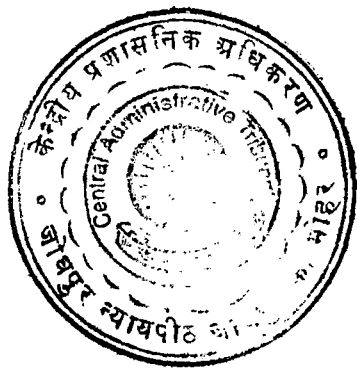
Date of Decision : 7.2.002

O.A. No. 160/2001.

1. Om Prakash Goyal s/o Shri Kishan Swaroop aged about 50 years R/O Rly quarter No. 496/G, Railway Colony, Abu Road, working as Diesel Machine II under Diesel Forman, Diesel Shed, Western Railway, Abu Road.
2. Laxman R S/o Sh. Ram Chandra, aged about 58 years, Ex Diesel Mechanic II under Diesel Forman, Diesel Shed, Western Railway, Abu Road.
3. Jagdish Prasad Kaushal S/o Sh. Kanehya Lal, aged about 51 years, R/o Railway quarter No. 406/D, Railway Colony, Abu Road, working as Diesel Machine II under Diesel Forman, Diesel Shed, western Railway, Abu Road.

... APPLICANTS.

v e r s u s



1. Union of India through, General Manager, Western Railway, Church gate, Bombay.
2. Divisional Railway Manager, Western Railway, Ajmer (Rajasthan).
3. Pratap Ram S/o Chunnilal Working as Diesel Mechanic Grade 1 under Diesel Forman, Diesel Shed Abu Road.
4. Bhanwal Lal S/o Ram Lal, working as Dioesel Mechanic Grade 1 under Diesel Forman, Diesel Shed Abu Road.

... RESPONDENTS.

Shri Y. K. Sharma counsel for the applicants.  
Shri S. S. Vyas, counsel for respondent No. 1 to 3.  
None is present for the respondent No. 4.

CORAM

Hon'ble Mr. Gopal Singh, Administrative Member.  
Hon'ble Mr. J. K. Kaushik, Judicial Member.

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: O R D E R :  
(per Hon'ble Mr. J. K. Kaushik)

Om Prakash Goyal, Laxman and Jagdish Prasad Kaushal have filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, for seeking a direction to give them promotion by way of upgradation in terms of Para 4 of the Scheme of Railway Board letter dated 27.01.1993 with all consequential benefits and restoring their seniority at original place as per Para 8 of the order dated 29.09.1999 (Annexure A-6).



2. The brief facts of the case are that there was restructuring of the Group-C and D cadre in the Railways vide Restructuring Scheme dated 27.01.1993. The General Manager issued an order dated 02.03.1993 wherein the instructions were issued for extending the benefit of promotion under cadre restructuring in skilled category on the basis of trade test. It was provided that since large number of staff will be involved, it will be necessary to draw the crash programme for conducting trade test and completion of these within a shortest possible time. A trade test was organised and the applicants as well as the private respondents Shri Pratap Ram and Bhanwal Lal amongst others were subjected to trade test for

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grant of benefit under Restructuring Scheme on the post of Diesel Mechanic Grade-I in the pay scale of Rs. 4500-7000 w.e.f. 01.03.1993. All of them failed in the trade test. Respondent No. 3 and 4 were junior to the applicants, filed the OA No. 252/94 before this Tribunal and challenged the Policy/instructions issued by the General Manager vide letter dated 02.03.1993 (Annexure A-5), so far it related to taking of the trade test for grant of benefit under Restructuring Scheme. This Tribunal vide order dated 22.09.1999 was pleased to set aside Para 3 of the Policy letter dated 02.03.1993 (Annexure A-5) and directed the respondents to extend the benefits of Restructuring Scheme by following the modified selection procedure on the basis of service record and Confidential Report as per the Restructuring Scheme issued by the Railway Board. After the setting aside the portion relating to conducting of trade test from the Policy/instruction issued by the General Manager, the applicants immediately submitted the representation to the Competent Authority and requested for considering their case also according to the Rules in force and as has been done in the case of their juniors but there has been no response in the matter. The representations remained unreplied. The Original Application has been filed on number of grounds, inasmuch as it has been

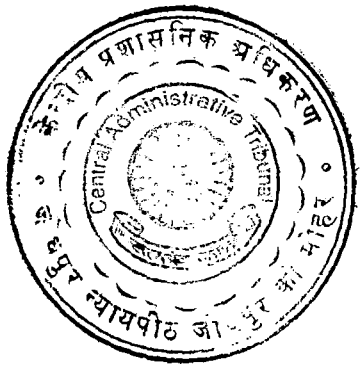


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submitted that ~~was the~~ Para 3 of the instructions issued by the General Manager has been set aside. The case of the applicants ought to have been considered as per the original policy in existence. Further it has been submitted that their number of juniors have been granted the similar benefits and their case also ought to have been considered on the similar grounds etc.

3. The Respondents have filed a detailed counter reply to the Original Application and have contraverted the facts and grounds raised in the Original Application. It has been averred that the representation as mentioned in the OA have not been received in the office of the answering respondents. The Original Application is barred by limitation as provided under Section 21 of the Administrative Tribunals Act, inasmuch as the Restructuring Scheme was given effect to from 01.03.1993 whereas the OA has been filed in the year 2001. The applicants did not choose to challenge the result of their trade test at the relevant time and the judgement delivered in another case would not give them any fresh cause of action. It has also been submitted that the applicants are not entitled for promotion by modified selection procedure and they were required to pass the trade test. It is also denied



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that Shri Bhanwal Lal who is a ST candidate is junior to the applicants. The seniority list has not been submitted so as to indicate that he is junior to the applicants. The applicants were again called to appear in the trade test in the year 1996 for promotion to the post of Diesel Mechanic Grade-I but they submitted their refusal and their conduct disentitles them to grant of any benefit.

4. The judgement which has been relied upon by the applicants was decided on incomplete facts and materials inasmuch as the circular dated 18.03.1993 was not discussed. As per the circular dated 18.03.1993 in cases where percentage have been reduced in lower grade and no new post is available as a result of restructuring as on 01.03.1993, the vacancies existing should not be filled up by modified selection procedure. Hence the case of petitioners is governed by circular dated 18.03.1993 and they were rightly subjected to trade test. The cases cited by the applicants in the OA are not applicable in the facts and circumstances of the case. Facts of the case are not similar to the one which were there in the case decided vide judgement dated 22.02.1999 and the same cannot be applied to the cases of the persons who were not the applicants in the particular OA. Further the judgement in OA



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No. 252/94 would not give a fresh cause of action and the claim of the applicant is barred by limitation. Thus the applicants are not entitled to any relief and the very OA deserves to be dismissed.

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

6. Learned counsel for the respondents have heavily and vehemently opposed the maintainability of the OA on the ground of limitation. It has been submitted that the cause of action arose to the applicants in the year 1994 when they were subjected to trade test and the judgement dated 22.09.1999 does not give any fresh cause of action. In support of his contention he has placed reliance on the following judgements.



"1. (1994) 28 ATC 20, Tamil Nadu Divisional Accountants Association and Ors. vs. UOI & Ors.

2. 1995(1) ATJ, CAT, 560, Dilip Kumar & Ors. vs. UOI & Ors.

3. (1992) 21 ATC SC 675, Bhoop Singh vs. UOI & Ors.

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4. 1994(2) ATJ FB CAT, 300 Jacob Absahand & 12 Ors. vs. UOI & Ors.

5. 1994 SCC (L&S) 182, Rattan Chandra Sammant & Others vs. UOI & Ors."

He has also placed reliance in another case of State of Bihar and Others vs. Kameshwar Prasad Singh and Another, 2000 SCC L&S 845, wherein it has been provided that non-impleadment of affected persons would render the petition liable to be dismissed unless there existed specific reasons for non-impleadment of the affected persons.



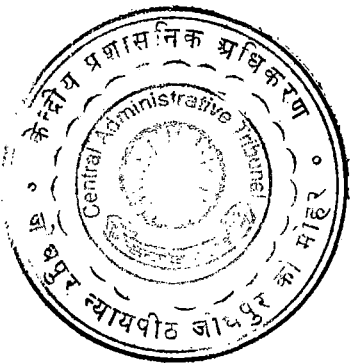
7. A support has also been sought of another case of P. L. Sahab vs. UOI & Ors. 1989 SCC L&S 223. It was a case of suspension and certain restrictions were put on the payment of subsistence allowance since there was a delay in approaching the court of law. We have perused the aforesaid judgements except in the last two judgements, it has been provided that the delay and latches would itself defeat the claim and in some cases it has been held that the persons who took recourse to the court of law after a lapse of the limitation would itself

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form a different class. Further judgement in one case would not give a fresh cause of action in another case. The general propositions of the law have been discussed in regard to their delay and latches and the applicants gave the judgements in other cases.

8. On the other hand, learned counsel for the applicants has submitted that in restructuring, the grant of benefit do not strictly fall within the definition of promotion. There is no change in the duties and responsibility and certain posts at the lower level of the cadre are reduced and the higher posts are increased. One gets the benefits of higher pay scale as per the scheme, the benefits are extended in the following manner :-



" 4. The existing classification of the posts covered by these restructuring orders as selection and non-selection as the case may be, remain unchanged. However, for the purpose of implementation of these orders, if an individual Railway servant become due for promotion to a post classified as a selection post, the existing selection procedure will stand modified in such a case to the extent that the selection will be based only on

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scrutiny of service records and confidential reports without holding any written and/or viva voce test. Similarly, for posts classified as non-selection at the time of this restructuring, the same procedure as above will be followed. Naturally, under this procedure the categorisation as 'outstanding' will not figure in the panels. This modified selection procedure has been decided upon by the Ministry of Railways as a one time exception by special dispensation in view of the numbers involved, with the objective of expediting the implementation of these orders."



In this view of the matter, there is a continuing wrong and the law of limitation is not attracted. Since the matter relating to the pay fixation, the case gives rise to recurring cause of action as has been settled by the Hon'ble Supreme Court in M.R. Gupta vs. UOI, AIR 1996 SCC 669.

9. Nextly learned counsel for the applicants submitted that GM has got the powers to frame the rules in respect of non gazetted Railway servants as per Para 124 extracted as under :-

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"General Managers of Indian Railways have full powers to make rules with regard to Railway servant in Group-C and D under their control provided they are not inconsistent with any rule made by the president or the Ministry of Railways." The General Manager in its power under the aforesaid rule issued the instructions vide order dated 02.03.1993 (Annexure A-5) and the same was quashed and set aside. The wrong policy gives rise to a continuous cause of action. Incidentally in the present case, the Policy/instructions issued by the General Manager was inconsistent with the rules laid down by the Railway Board and that was the reason same has been struck down vide judgement dated 22.09.1999.



10. The scheme circulated by the Railway Board vide their letter dated 27.1.93 provides as under :-

4. The existing classification of the posts covered by these restructuring orders as selection and non-selection as the case may be, remain unchanged. However, for the purpose of implementation of these orders, if

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an individual Railway servant become due for promotion to a post classified as a selection post, the existing selection procedure will stand modified in such a case to the extent that the selection will be based only on scrutiny of service records and confidential reports without holding any written and/or viva voce test. Similarly, for posts classified as Non-selection at the time of this restructuring, the same procedure as above will be followed. Naturally, under this procedure the categorisation as 'outstanding' will not figure in the panels. This modified selection procedure has been decided upon by the Ministry of Railways as a one time exception by special dispensation in view of the numbers involved, with the objective of expediting the implementation of these orders.

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11. There was no provision of any Trade Test but the General Manager issued instructions/policy contrary to the main policy of the Railway Board. As regard the applicability of law of limitation on the policy matters. The same gives rise to recurring cause of action We are supported in this view by the judgement of Jaipur Bench of this Tribunal in Kamlesh Jain and Anrs. vs. UOI & Ors.,

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wherein it has been sought that wrong policy is vague and it can be challenged at any time.

12. Learned counsel for the respondents has also submitted another judgement in Chandigarh Administration & Anr v. Jagjit Singh & Anr. Etc, JT 1995 (1) SC 445, and has submitted mere fact that respondent authority has passed a particular order in the case of another person similarly situated can never be a ground for issuing a writ in favour of the petitioner on the basis of discrimination- nThe order in that case may be legal or illegal but it has to be investigated and discretionary power of High Court cannot be exercised for such a purpose - Giving effect to such pleas would be prejudicial to the interest of law-High Court cannot ignore the law and High Court fell in grave error in allowing writ petition. In the present case, the respondents have also discussed and taken support of Annexure R-1, wherein it has been said that where there are only existing posts, the Restructuring Scheme shall not apply. Such is not the position in this respect Para 4.1 and 4.2 of this Scheme dated 27.01.1993 are reproduced as under :-

" 4.1 Vacancies existing of 1.3.1993 except direct recruitment quota and those arising on



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that date from this cadre restructuring including chain/resultant vacancies should be filled in the following sequence :

(i) from panels approved on or before 1.3.1993 and current on that date; and

(ii) the balance in the manner indicated in para 4 above.

4.2 Such selections which have not been finalised by 1.3.93 should be cancelled/abandoned."



It has been very clearly laid down that existing vacancies plus resultant vacancies as on 01.03.1993 shall be filled in as per the very Scheme. We are of the considered opinion that once the wording of Statute is clear, unambiguous and not capable of giving more than one meaning, no clarification is required. Letter dated 18.03.1993, so far it relates to the existing vacancies should not be filled by modified selection procedure, has no application to the present case. Not only this even the person who filed the said OA No. 252/94 before this Tribunal and the junior to the applicants have

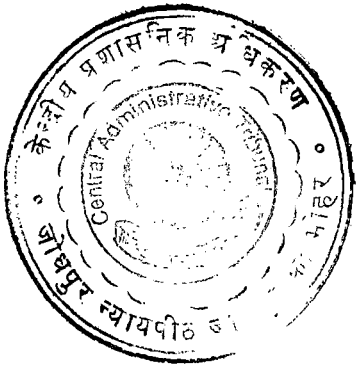
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been granted the due benefits as per the very scheme. If there was anything wrong in the judgments, respondents are well within their right to take up the matter to the High Court and once the judgement has been finalised they are estopped from making any adverse comment on the same.

13. The other contention which has been put forward by the Learned counsel for the respondents is that the private respondents Shri Bhanwal Lal who is said to be a ST candidate. It has been averred that contention regarding seniority is denied, since no seniority list has been submitted. Regarding other persons nothing has been said. Seniority is well with the respondents and they could have ascertained the correct position. However, as a ST candidate no benefit under Restructuring/upgradation are admissible by jumping the queue.

14. As regards the contention of the respondents that the affected persons have not been impleaded as party we find that two affected persons have already been impleaded as party and the relief claimed by the applicants is against the UOI. Thus, the objection of the respondents regarding non rejoinder of the parties is not sustainable. We are of the considered opinion that once the policy decision is



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involved and a judgement which settles the policy may ~~be~~ struck down certain portions of the policy or orders for upholding the policy, such judgement had to be considered as a judgement in rem and the individuals cannot be subject to discrimination on the ground that one was litigating and other was not litigating. The policy as settled by Tribunal ought to have been applied in cases of each person whoever was affected. It is strange that the respondents have taken the technical objection for denying the benefits of the policy which was not extended to the applicants due to the wrong policy framed by the General Manager which was ex-facie in contravention to the main policy framed by the Railway Board. The applicants are fully entitled to get the due benefits at par with their next juniors and the OA has force and the same deserves to be allowed.



15. In view of the foregoing discussions and the position of the law and rules in force, the OA merits acceptance and the same is hereby allowed . The applicants shall be considered for promotion to the post of Diesel Mechanic Grade-I on the basis of service record and Confidential Report and if found suitable, they would be promoted to the post of Diesel Mechanic Grade-I with effect from 1.3.93 with

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*J. K. Kaushik*  
(J. K. KAUSHIK)

Gopal Singh  
(GOPAL SINGH)

(GOPAL SINGH)

MEMBER (A)



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pays  
for sign 12/9

Part II and III destroyed  
in my presence on 24.7.02  
under the supervision of  
sect. officer ( ) as per  
order dated 14.5.02

Section officer (Rec'd)