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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH JODHPUR.**

**Original Application Nos. 195/2003 & 197/2003
With Misc. Application Nos. 107/03 and 108/03**

Date of Decision: 02.08.2004

The Hon'ble Mr. J K Kaushik, Judicial Member,

The Hon'ble Mr. M K Misra, Administrative Member.

Madhu Sudhan Sharma S/o Shri Vishnu Dutt Sharma aged about 70 years, retired as A Diesel Mechanic Gr.II under Diesel Foreman, Diesel Shed North West Railway, Abu Road.

Applicant In O.A No. 195/2003

Prem Prakash Yadav S/o Shri Mahavir Singh Yadav aged about 63 years, resident of H. No. 74-K Police Line, Sirohi, retired as Diesel Mechanic Grade II under Diesel Foreman Diesel Shed Western Railway Abu Road.

Applicant In O.A No. 197/2003

Rep. By Mr. Y.K. Sharma, : Counsel for the applicants.



VERSUS

1. Union of India through General Manager, North Western Railway Jaipur (erstwhile General Manager, Western Railway Church Gate, Bombay.)
2. Divisional Railway Manager, North Western Railway (erstwhile General Manager, Western Railway Church Gate, Bombay.)
3. Pratap Ram S/o Shri Chunni Lal working as Diesel Mechanic Gr. I under Diesel Foreman Diesel Shed, North West Railway Abu Road,
4. Bhanwar Lal S/o Shri Ram Lal working as Diesel Mechanic Gr. I under Diesel Foreman, Diesel Shed, North West Railway Abu Road,
5. Madan Lal S/o Ram Lal Retd. as Diesel Mechanic Gr. II Diesel Shed, North West Railway Abu Road, R/O near Anandeshwar Temple Abu Road.

Respondents.

Rep. By Mr. K.K. Vyas, Counsel for respondents 1 & 2
None present for respondents 3 to 5.

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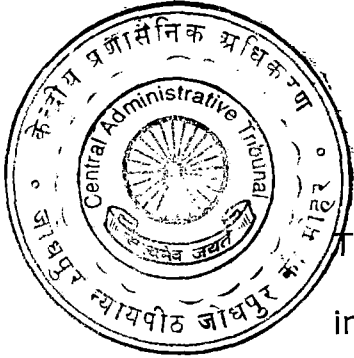
ORDER

Mr. J K Kaushik, Judicial Member.

Original Application No. 195/03 and M.A. No. 107/03 have been filed by one Shri Madhu Sudan Sharma. O.A. No.197/03 and M.A. No.108/03 have been filed by one Shri Prem Prakash Yadav. In both these OAs, common question of fact and law are involved and therefore they are being decided through this common order.

2. In both these OAs the following relief has been prayed for

" that the respondents may kindly be directed to give promotion by way of upgradation to the applicant in terms of para 4 of the Scheme of Railway Board letter dated 27.01.93 with all consequential benefits w.e.f. 01.03.93 restoring seniority at its original place as per para 5 of orders dated 22.09.1999 of Annex. A/4."



The material facts necessary for resolving the controversy involved in the instant cases are that the applicants are holding the post of Diesel Mechanic Gr. II in the scale of pay Rs. 4500-7000 under the Diesel Foreman, Diesel Shed, Abu Road. Both of them have since retired from service with effect from 31.07.93 and 31.07.96 respectively. The further case of the applicants is that they were entitled to get the benefits of upgradation under the restructuring scheme dated 27.01.93 and the scheme was to be given effect to from 01.03.93. The benefits were to be given on the basis of modified selection, which was to be based on service records. In case one was entitled for upgradation to one post irrespective of its classification, may be that the post is a selection post or non-selection post. However, in cases, where one was entitled for upgradation to two posts and the second

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being a selection post, one was to be subjected to selection for the second post. In the instant cases, the applicants were entitled to only one post that too the post of Diesel Mechanic Gr. I, which was a non selection post and one was required to pass the trade test as per normal avenue of promotion. However, they have not been given the same on the pretext that they have not qualified in the trade test. Some of the similarly situated employees challenged the same before this Bench of the Tribunal by filing O.A. No. 252/94 and this Bench of the Tribunal was pleased to accept the pleas of applicants therein and thereafter, they have been extended the benefits without giving any cognizance of the result of the trade test. However, the applicant has not been given the said benefits. The O.A has been filed on number of grounds mentioned in para 5 and its sub-paras.



3. The respondents have contested the case and have filed a detailed reply. It has been averred that there has been bifurcation of the Railways and a new zone known as North West Railway Zone at Jaipur has been created and therefore the applicant should have made amendments in the O.A, (which they have done accordingly). It has been averred that the O.A is barred by limitation and there is no good and sufficient reason to extend the period of limitation and hence the O.A should not be entertained. It is also averred that a notification came to be issued on 05.07.93 for filling up 29 posts under restructuring scheme and the remaining posts will be filled through trade test. The persons in whose favour the orders passed by this Bench of

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the Tribunal have preferred their OAs much earlier and the applicant in O.A. No. 195/03 had retired from service earlier to the declaration of the results. Thus the applicant in O.A. No. 195/03 was not entitled to get any relief.

4. M.A Nos. 107/03 and 108/03 have been filed for condonation of delay in both the OAs

5. We have heard the learned counsel for both the parties and perused the papers. While the learned counsel have reiterated their facts and grounds mentioned in their respective pleadings the learned counsel for the applicants brought to our notice a judgement dated 02.07.2002 in O.A. No.160/2001 [**Om Prakash Goyal and two others vs. UOI and others.**] and has submitted that the controversy involved in the instant case have been exhaustively dealt with and adjudicated upon. He has submitted that the said decision squarely applied to the facts of this case and the issue does not remain res integra.



6. On the contrary the learned counsel for the respondents did not dispute the position as brought out by the learned counsel for the applicants and has submitted that as regards the judgement of this Bench of the Tribunal, it is for the Hon'ble Tribunal to consider the proposition of law and it needs no comment from him.

7. We have gone through the judgement cited by the learned counsel for the applicants in **OM Prakash Goyal's case**

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(supra), to which one of us (J K Kaushik) was a party and find that the same covers the controversy in its entirety. Therefore we find no need for fresh discussion in the matter and place on record a copy of the said judgement to be read as part of this order. We have absolutely no hesitation in following the said decision and in deciding these OAs on similar lines.

8. In view of the foregoing discussion, the OAs merit acceptance and the O.As are allowed. The applicants shall be considered for promotion to the post of Diesel Mechanic Gr. I on the basis of service records and confidential reports and if found suitable, they would be promoted to the post of Diesel Mechanic Gr. I with effect from 01.03.93 with all consequential benefits, (including revision of pensionary benefits,) as envisaged in the cadre restructuring scheme but the arrears on this count shall be payable only for a period from one year prior to the date of filing of these O.As. In view of the order passed in the O.As both the M.As stand disposed of accordingly. No costs.




(M K Misra)
Administrative Member

jsv


(J K Kaushik)
Judicial Member.

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