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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.63/2002.

May 14 th, 2003.

CORAM :

**HON'BLE MR. B.V. RAO, MEMBER [J]
HON'BLE MR. R.R. BHANDARI MEMBER [A]**

1- Smt. Anjalika Das Gupta W/o Late Sh. Ajit Kumarji, aged about 54 years.

2. Miss Mukti Das Gupta D/o Late Shri Ajit Kumarji, Aged about 28 years,

Both the applicants are resident of 1/108, Dwarka Das Purohit Nagar, Madhuban Colony, Housing Board, Basni, Jodhpur, (Raj.) and are legal representatives of Late Shri Ajit Kumar S/o Late Shri Surendra Kumar R/o 1/108, Dwarka Das Purohit Nagar, Madhuban Colony, Housing Board, Basni, Jodhpur (Raj). Ex. Driver-(Passenger), retired from the Office of Senior Divisional Mechanical Engineer (Power), Jodhpur.

....Applicants.

By Mr. S.K. Malik, Advocate, for the respondents.

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1- Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.

2- Divisional Railway Manager, Northern Railway, Jodhpur, Rajasthan.

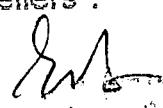
3- Divisional Personnel Officer, Northern Railway, Jodhpur

....Respondents.

By Mr. Vinay Jain, Advocate, for the respondents.

**ORDER
(PER R.R.BHANDARI, MEMBER (A))**

The Legal Representative of late Shri Ajit Kumar, Smt. Anjalika Das Gupta (widow), filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, praying for the following reliefs :-



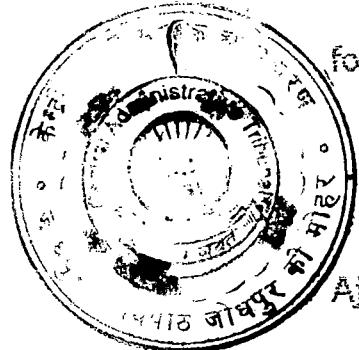
"(a) By an appropriate Writ, Order, or Directions, the respondents may be directed to give promotion to the applicant on the post of Mail Driver in the Grade of Rs. 6000-9800 P.M. w.e.f. 04.08.2000 i.e. the date from which Shri Asha Ram who is junior to the applicant has been extended the promotion with all consequential benefits including arrears of pay and allowances.

(b) By an appropriate Order, Writ or Directions, respondents may be directed to issue revised P.P.O. in respect of the applicant and re-fix his pension and other retiral benefits and show his designation as Mail Driver.

(c) By an appropriate Order, Writ or Directions, respondents may be directed to place the name of the applicant at the appropriate place i.e. at Sl. No. 1 in the selection list dated 12.06.2001 (Annexure A/16 to the Original Application) instead of Sl. No. 74.

(d) Any other relief/s which is found just and proper, may be passed in favour of the applicant in the interest of justice by the Hon'ble Tribunal."

2. A brief factual matrix of the issue involved in the case is as follows :


The deceased employee of the respondent - department, Shri Ajit Kumar, was empanelled for promotion to the post of Goods Driver and was promoted w.e.f. March 31st, 1991, thereafter, he was further promoted as Senior Goods Driver w.e.f. October 3rd, 1996 vide order dated November 15th, 2000 (Annex.A/7). This order was in pursuance to this Tribunal's order dated April 4, 2000 and the order rendered by the Rajasthan High Court in D.B.C.Writ Petition No. 3810/2000 affirming the order passed in O.A. by this Tribunal. The Divisional Personnel Officer, Northern Railway (now North Western Railway), Jodhpur, vide its order dated November 15th, 2000 at Annex. A/7, intimated Shri Ajit Kumar that his promotion to Passenger Driver (Grade Rs. 5500-9000) will be considered on passing selection and also necessary training programme and will be subjected to the final outcome of pending case No. 3810/2000. The order dated November 18th, 2000 (Annex.A/8), further mentions that w.e.f. January 7th, 1998, Ajit Kumar, is being promoted as Passenger Driver at par with Shri Ramesh Kumar, on provisional basis as per panel

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position of 1991, and his regular promotion will depend upon his getting qualified in the process of selection which included written examination, medical fitness, successful completion of training course etc. It was also mentioned that till his getting qualified in the selection, he should not be booked for working as Passenger Driver.

The husband of the applicant, late Shri Ajit Kumar, submitted his application seeking voluntary retirement from service on the ground of his physical and mental sickness, giving three months notice, to the administration which was accepted vide order dated July 6th, 2001 (Annex.A/19) w.e.f. July 15th, 2001 by the competent authority.

On the other hand, the on-going selection(s) for the post of Passenger Driver continued and vide Annex. A/20 dated August 22, 2001, 38 Drivers were called for the Viva Voce. By then voluntary retirement of Shri Ajit Kumar, became effective. The learned counsel for applicants argued that since the pay scales of Senior Goods Driver and that of Passenger Driver are the same, a person should be empanelled automatically for the post of Passenger Driver and it should not be considered as promotion. He further argued that by this logic, Late Shri Ajit Kumar be treated to have been promoted as Passenger Driver and subsequently to that of Mail Driver and that he should be compensated for the financial loss for not giving these promotions at appropriate time.

Mr. Malik, learned Advocate for the applicant cited the judgement delivered by CAT, Allahabad Bench in the case of **Gulam Mustafa and Ors. (OA No.029 of 2001)** along with **Uday Vir Singh Vs. UOI & Ors. (OA No. 859 of 2001)** decided on January 1st,

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2003. These are not at all applicable for multiple reasons. The main reason is that in these two cases, it was the category of Guard. Driver's duties are quite different than that of a Guard in Railway System and thus, not applicable.

The Calcutta Bench of Central Administrative Tribunal, in Prabir Kumar Chattopadhyay's and 44 Ors. was also cited by the Learned Advocate for the applicant, Mr. Malik, [OA No. 274/03 – decided on 27.5.2005]. This case too is not similar to the present one and, therefore, not applicable.

The husband of the applicant, late Shri Ajit Kumar, admittedly appeared in the selection but could not complete the entire process of selection(s) as he sought voluntary retirement accepted w.e.f. 15.7.2001, well before the declaration of the result.



The learned counsel for the respondents, Mr. Vinay Jain, Advocate, argued that regular empanelment for the post of Passenger Driver is through a positive act of selection and the same was on-going and during that period, husband of the applicant sought for voluntary retirement which became effective w.e.f. July 15th, 2001, therefore, there was no question of considering the case of Shri Ajit Kumar for his promotion as Passenger Driver. He further argued that there is no provision for automatic empanelment to Passenger Driver's panel on the ground that the post of Passenger Driver bears the same grade as that of Senior Goods Driver. Mr. Jain, Advocate, further, made available to us, the entire record showing process of selection including attendance-sheets, cover page of copies of the examination (s), marks obtained by the individuals etc., for our perusal and prays

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that the Original Application filed by the LRs of late Ajit Kumar be dismissed.

We have heard the learned counsel for both sides and also gone through the records and find the same in order and there appears no mala fide at any stage during the process of selection.

The respondents ~~re~~ in Para 4.12 of their Counter mentioned as *ls*

under:



"The averments made in para 4.12 are replied in the manner that the proper order's regarding the claim put by the applicant in this para was in the process and now the competent authority has sanctioned the payment. The payment will be arranged shortly."

The learned Advocate for the respondents mentioned in the open Court that the process is on and the payment will be made shortly. Hence, the respondents are directed to make the payments as averred in the afore-quoted para, to the applicants at the earliest.

Annex. A/20 dated August 22, 2001, the Office Order calling the employees for viva voce test for final selection was issued on 22nd August, i.e. after retirement of the applicant voluntarily. Non-inclusion of the name of the husband of the applicant is considered to be in order.

From the above, it could be concluded that there is no force in the Original Application, which is hereby dismissed with no orders as to the cost.

R.Bhendari
(R.R.Bhendari)
Member (A)

B.V.Rao
(B.V.Rao)
Judicial Member

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