

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH: JODHPUR

J/K
2/25

ORIGINAL APPLICATION NO.238,264 & 265/2004

Date of decision: 24-2-05

Krishan Kanhaiya & ors.... Applicants

Mr. S.N. Trivedi ... Advocate for the Applicants
Mr. Nitin Trivedi



VERSUS

Union of India &
Others.

..... Respondents.

Mr. J.P. Joshi, Sr. Railway counsel
along with Mr. Manoj Bhandari ... Advocate for Respondents.

CORAM:

Hon'ble M. J.K. Kaushik : Judicial Member.

Hon'ble Mr. M.K. Mishra : Administrative Member.

1. Whether Reporters of local papers may be allowed to see the judgement? *yes*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *yes*
4. Whether it needs to be circulated to other Benches of the Tribunal? *yes*

M.K. Misra
(M.K. Misra)

Administrative Member

J.K. Kaushik
(J K Kaushik)

Judicial Member.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH; JODHPUR

Original Application Nos. 238,264 &265/2004

Date of Order: 24-2-05

Coram

HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER.

HON'BLE MR. M.K. MISRA, ADMN. MEMBER.

OA No. 265/2004

1. Krishan Kanhaiya Tanwar S/o Sh. M.L. Tanwar, by caste Mali, resident of Opp. Pandit Dharamkanta Bhagat Singh Colony, Bikaner.
2. Prem Prakash Kachhawaha S/o Sh. D.R. Kachhawaha by caste Mali, resident of Behind Prakash Chitra Cinema, Bikaner.
3. Santosh Kumar Dube S/o Sh. Hari Shrangar Dube, by caste Dube, resident of Rampura Bas, Gali No. 2, Lalgarh, Bikaner.



O.A. No. 238/2004

1. Vijay Srivastava, S/o Shri Prem Chand by caste Srivastava, aged 31 years, r/o5/115, Mukta Prasad Nagar, Bikaner.
2. Manish Kumar Sharma, S/o Shri Kailash Chand Sharma, by caste Brahmin, r/o Stareet No. 5 Rampura Basti, Lalgarh, Bikaner.
3. Abhi Ram Gaur, S/o Shri Om Dutt Gaur by caste Gaur Brahmin, r/o Shiv Mandir, Rampura Basti, Lalgarh, Bikaner.
4. Sanjay Swami S/o Shri Pyare Lal by caste Swami, r/o Street No. 2 Rampura Basti, Lalgarh, Bikaner.
5. Atul Bhatnagar, S/o Shri Pramod Kishan by caste Bhatnagar, r/o 3-Gha-30 Pawanpuri Bikaner.
6. Akhtar Beg S/o Shri Fakrudeen C/o Unique Computer, Bikaner
7. Devendra Dubey S/o Shri Laknath Dubey, by caste Brahmin, r/o near Deepji Ki Bari, Rampura Basti, Lalgarh, Bikaner.

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O.A. No. 264/2004

1. Salim Malik, S/o Sh Sultan Khan aged 25 years, r/o OPP Munna Printing Press, Gali No. 2, Rampura Basti, Lalgarh Bikaner.
2. Shailendra Singh, S/o Shri Pratap; Singh aged 29 years, H. 1/218, M.P. Nagar, Bikaner.
3. Sri Ram Chouhan, S/o Shri OM Prakash Chouhan, aged 27 years, r/o H. No. 1/101, M.P. Nagar, Bikaner.
4. Kanhaiya Lal Suthar S/o Shri Ram Lal Suthar, aged 28 years, Binnani Chowk, Daga Mohalla, Sutharo Ki Chhoti, Guwar, Bikaner.

: Applicants.

Rep. By- Shri S.N. Trivedi & Nitin Trivedi ---Counsel for the applicants..

VERSUS

1. Union of India through the General Manager, North Western Railway, Headquarter Buildings, Jaipur.
2. The Divisional Railway Manager, North Western Railway, DRM's Office, Bikaner.
3. The Divisional Personnel Officer, North Western Railway, Bikaner.

: Respondents.

Rep by-Mr. J P. Joshi Sr. Railway counsel along with Mr. Manoj Bhandari: Counsel for the respondents.

1. Girdhar Gopal Sharma S/o Shri Sampat Raj Sharma, aged 29 years, r/o 9/37, Chopasani Housing Board, Jodhpur.
2. Nirmal Kumar Berwal S/o Shri Laxman Singh r/o 19/36, Jalkari Nagar, Ajmer.
3. Roshan Lal, S/o Shri Sita Ram r/o 145-V Sadulganj, Bikaner.

Interveners- respondents.

Rep by-Mr. G.K. Vyas : Counsel for the Interveners_

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2/18**ORDER****Mr. J.K. Kaushik, Judicial Member**

Shri Krishan Kanhaiya & Ors, Vijay Srivastava & ors and Salim Malik & Ors, have filed their respective OA Nos. 265/2004, 238/2004 and 264/2004, under section 19 of A T Act 1985 on identical set of facts and grounds for seeking similar reliefs. The common question of law is involved in all these cases hence they are being decided through a single order.

2. We have heard the elaborate arguments advanced by Mr. S N Trivedi and Mr. N Trivedi representing applicants in all these OAs, Mr. J P Joshi Sr. Railway Counsel along with Mr. Manoj Bhandari Railway Panel Lawyer representing official respondents and Mr. G K Vyas representing interveners in OA No.238 /2004, and have given our anxious thought to the pleadings and records of these cases. The official respondents have also made certain records available.

3. For the purpose of adjudication of these cases, we are taking notice of the facts narrated in OA. No. 265/2004. The applicants have undergone the apprenticeship Training course from various I T I institutes at Bikaner in different trade, under Apprenticeships Act 1961. All the applicants have successfully qualified apprenticeship examination and have obtained the National Trade Certificate form National Council for Vocational Training (for brevity NCVT). It is further averred that the Railway Administration invited applications in the prescribed

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format for the purpose of recruitment to the post of Fresh Face substitute in Group D in Bikaner Division vide communication-dated 10.9.2004 (A/8). The said recruitment is restricted to the candidates from amongst the course act apprentices who have been given apprenticeship Training in respective Divisions/Workshop of the Railways as indicated in the impugned order dated 30.8.2004 (A/1-A). The National certificate of Training is issued by NCVT to all the candidates on passing the common examination. There is no mention in the notification-dated 10.9.2004 as regards the requirement of undertaking the said training from Railway establishments only.



4. The applicants have, inter alia, have challenged the policy decision dated 30.8.2004 (A/1) and have sought for its setting aside with further direction to the respondents to consider their candidature also for the purpose of engagement to the post of Fresh Face substitute in Group D and provided with appointment with all consequential benefits. The OA has been grounded on diverse grounds enumerated in para 5 and its sub-paras, which we shall deal in later part of this order.

5. The respondents have contested the claim of applicants and have files a detailed and exhaustive counter reply to the OA. It has been averred that the impugned order is a policy decision taken to engage the fresh faces substitutes as a time gap arrangement purely on temporary measure till regular selection takes place. If the applicants' grievances is to be redressed, it

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will become a direct recruitment which is otherwise within the domain of the Railway Recruitment Board (for brevity RRB), to whom the indents have already been placed. The very purpose of engagement of Apprentice Trainees, who have taken the training in the Railways is as a time gap arrangement, would be rendered as redundant. Therefore, on this preliminary objection itself, the OA cannot be sustained. The further objection regarding maintainability of the OA as set out in the reply is that G M has framed the policy in accordance with the power conferred by the Railway Board vide letter dated 21.6.2004. There are instructions, which envisage that the course completed act apprentice in Railway Establishment can be given preference over the course completed act apprentice in establishments other than railways. Thus no legal right of the applicants has been infringed and challenge of the impugned policy is not justified.



6. There is yet another preliminary objection that it is not a case of direct recruitment but is an engagement of the casual labour as fresh face substitutes on temporary basis and the incumbents shall have no right to regularisation. A clear declaration to this effect is required to be submitted by the candidates. But the applicants are on the premises as if a direct recruitment to the group D post were being made ignoring their candidatures. Therefore the OA is not maintainable. The communication-dated 10.9.2004 is issued to each candidate who

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is course completed act apprentice of the Railways. But the case projected is as if it was a case of direct recruitment and thereby a misstatement of facts has been made. This bench of the Tribunal does not have any jurisdiction to decide the disputes pertaining to the engagement of fresh face substitutes and has jurisdiction only pertaining to Government/civil services. They have efficacious alternative remedy under I D Act. Hence, the OA is liable to be dismissed for want of jurisdiction.

7. On facts, it has been averred that applicants have neither submitted their particulars nor shown any common cause; hence joint application is not maintainable. The applicants do not fulfill the eligibility criterion since they have not undergone training from any of the Railway Establishment of Bikaner Division and Bikaner Workshop as per the policy issued by the GM. The whole exercise is being taken as per the circular issued by the Railway Board on dated 21.8.2004. The policy decision taken by the railways in administrative exigencies cannot be permitted to be assailed. The course completed act apprentices in railway have been specially trained in the railways for safety. There is no requirement to hold direct recruitment for recruiting the substitute purely on temporary basis. The further defence as set out in the reply is that course completed act apprentice trained in Railway establishments are much better to deal with contingency occurring in the Railway as far as workers are concerned. Such candidates can be preferred on whom the



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Railways have also spent certain amount of money so that they can be trained according to their needs. The moment, direct recruitment takes place the applicants shall have opportunity to compete with all candidates including the course completed act apprentice in Railways establishments. There is also no question of back door entry. The applicants have miserably failed to demonstrate to show as to in what way the policy decision is inconsistent to the instructions of Railway Board. The grounds enunciated in the OA have been denied by repeating the factual aspects as noticed above.



8. Mr. S N Trivedi, the learned counsel for the applicants has reiterated the facts and grounds mentioned in the pleadings of the applicants and has strenuously contended that the respondents are resorting to recruitment in the garb of engagement as fresh faces. Such candidate would acquire certain rights with the passage of time and the vacant posts of group D are intended to be filled in from amongst the course completed act apprentice trained in Railway establishments. Once the posts are filled in, the applicants in particular and other course completed act apprentices trained in other than Railway establishments in general shall be deprived from the race of employment. There is no distinguishing feature in the course completed act apprentice trained in Railway establishments and that of candidates trained in other institutions. Finally all have to pass same examination conducted by NCVT and obtain the

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National Trade Certificate. There can be no separate reasonable classification amongst the same class but the respondents are endeavoring to make separate sub-class for no good reason except to give employment to the favorites of the respondents.

9. He has next contended that the respondents are striving to fill up large number of vacancies and the same can not be said to be simple engagement without adopting some equitable method so to satisfy the equality clause by providing due opportunity to the similarly situated persons. He has submitted that the respondents are resorting to back door entry in the garb of policy which has no rational nexus with the object sought to be achieved. Even the so-called instruction issued by the Railway Board on 21.6.2004 does not contemplate that only the course completed act apprentices trained in Railway establishments are to be engaged; rather it unequivocally stipulates that the course completed act apprentices can be so engaged. The so-called policy issued by the GM on dated 30.8.2004 is inconsistent to the instruction issued by the Railway Board (for brevity R/Bd) vide letter dated 21.6.2004, in so far it restricts the engagement as substitutes only to the course completed act apprentices trained in Railway establishments. The action of the respondents is most arbitrary and visits the applicants with hostile discrimination, offending the equality clause. He has also drawn out attention towards para 179 of IREM Vol-I wherein the procedure has been laid down.





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10. Mr. J P Joshi, the learned senior counsel for the respondents has vociferously reiterated the defence of the respondents as narrated in the reply and noticed above. He has very humbly submitted that the G M has full power to take decision in the exigencies to make policy as per the circular issued by the R/Bd on dated 21.6.2004. In his wisdom, he has framed the policy keeping in view the administrative urgency. The same was necessitated primarily for the reason of convenience since the persons trained in the railways establishment would be best suited to meet the emergent situation since they are familiar with the working of the Railways. Such the course completed act apprentices trained in Railway establishments can be easily identified and lot of time can be saved in the process by engaging such persons; they being readily available. He has further contended that the same would also satisfy the functional consideration.



11. The learned counsel for the respondents has categorically asserted that the respondents are not resorting to any recruitment at all and they are only engaging the fresh face substitutes purely on temporary basis with clear stipulation that they shall have no right for regularisation and shall have to make room for the regularly selected candidates. He has next contended that the GM has otherwise no power to make recruitment on regular basis which is the job exclusively entrusted to RRBs. He was confronted with a query as to what

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are the instructions relating to resorting to such course. He submitted that it only the instructions issued by the GM vide impugned order. When his attention was drawn towards the master circular issued by the R/Bd, he tried to persuade that action of the respondents was in consonance with the same. Regarding the details of any emergent requirement, it was submitted that the applicants did not raise such pleas.

12. Mr. G K Vyas learned counsel for the interveners has submitted that he would adopt the argument advanced by Mr. J P Joshi Sr. Railway Counsel with the addition that the circular dated 21.6.2004 came to be issued at the instance of some of the Zonal Railways and must have been in respect of the Course completed Act Apprentices in Railway Establishment only. He was requested to substantiate the same with some supportive document(s) for which inability was expressed.

13. We have considered the rival submissions and contentions put forth at the bar by all the learned counsel. There was absolutely no argument advanced on the numerous preliminary objections raised on behalf of the respondents. Otherwise also, we find that the preliminary objections are almost repetitions of facts and grounds adduced and pleaded on behalf of respondents in the reply and the same can be dealt with while examining the various issues involved in these cases. Hence we would straight way advert to the factual and legal aspect of the case. As far as factual aspect is concerned there is hardly any dispute except



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that we have to ascertain as to whether the engagement of fresh face substitutes is recruitment as contended by the applicants or a temporary arrangement as per the rules in force according to the version of respondents. Certain other factual aspects of the matter as gathered from the records produced by the respondents are also being taken into consideration for doing the complete justice to the parties.

14. At the very threshold, we would examine the status of Substitutes in Railways and under what circumstances they can be engaged. We may point out that the submissions on this point were quite scanty from either side but we have taken the judicial notice of relevant rules and case laws on the same. The following consolidated instructions have been issued in this respect (only relevant portion):



"R B E No. 3/2001:- **Subject: Engagement of Substitutes on Railways-need for exercising control-guidelines regarding.**

[No. E (NG) II-2001/SB/2, dated 4.1.2001.]

The Railway Board have issued detailed instructions on the subject of engagement of Substitutes from time to time. Consolidated instructions were reiterated to the Railways vide Board's letter No. E (NG)II/90/SB/10/Master Circular, dated 29.1.1991 (i.e. Master Circular No. 20/1991) (Bahri's 12/91, p.14) as modified vide letter of even number dated 4.11.1992 (Bahri's 85/92, p. 203).

2. "Substitutes" refer to persons engaged in Railway Establishments against posts falling vacant because of absence on leave or otherwise of Railway servants, which cannot be kept vacant.

3. Ordinarily, occasions should not arise for engagement of substitutes, as adequate leave reserves have been provided in practically all categories of Railway servants. Situations may, however, arise at times, when owing to abnormally high rate of absenteeism, the leave reserve posts become inadequate or ineffective due to heavy sickness etc., or where it is not possible to provide leave reserve, like at a way side station. In such situations, it may temporarily become necessary to engage substitutes for short duration, as Railway services may otherwise get adversely affected.

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4. Instructions have been issued by the Ministry of Railways from time to time that the occasion to engage substitutes should be few and far between.

5. In the year 1992, the matter was further reviewed and a need was felt to have a strict control on engagement of substitutes and therefore, instructions were issued vide letter No. E(NG)II/90/SB/10/MC, dated 4.11.1992 which stipulate as under:-

(i) Any new face substitute should be appointed only with prior personal approval of the General Manager, even where such practice is not already in vogue;

(ii) Strict control should be exercised on the number of substitutes engaged and a serious attempt should be made to bring down their numbers drastically; (iii) Strict control on maintenance of leave records and absenteeism should be enforced.

5. However, General Manager do not have unfettered discretion to engage Substitutes. The discretion to engage Substitutes may be exercised with caution only in the following circumstances:-

(i) To fill regular vacancies of unskilled and other categories of Group 'D' staff requiring replacement, for which arrangements cannot be made from within the existing leave reserve posts;

(ii) To fill a chain vacancy in the lower category of Group 'D' staff, arising because of the incumbent in a higher Group 'D' category being on leave, where it is not possible to fill the post from within the existing leave reserve and where otherwise Railway services shall get affected;

(iii) -----

(iv) To fill vacancies arising on account of the Railway Territorial Army Unit personnel being called up by the Army for training or for military duty in emergency of 30 days duration or more;

(v) Against vacancies in any other circumstances, as specified by the Ministry of Railways from time to time.

6. It needs to be emphasised that engagement of substitutes, if at all required, may be made only by way of exception and that too purely on functional considerations. It must be clearly understood that there is a need to ensure that all such engagements are linked to the posts which cannot be kept vacant until regular persons become available."

The apex court in case of **Prabhavati Devi v. Union of India and others** [AIR 1996 SUPREME COURT 752] have observed that according to the definition given in Rule 2315 of the terms and conditions applicable to 'substitutes' in temporary service, they are persons engaged in the Indian Railway Establishments on regular scales of pay and allowances applicable to posts against which they are employed. These posts may fall vacant on account of a



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railway servant being on leave or due to non-availability of permanent or temporary railway servants and which cannot be kept vacant.

15. The coherent reading of the aforesaid provisions amplifies that the 'substitutes' are basically engaged to meet out emergent situations and they are employed against posts due to the incumbents being on leave, unusual absenteeism or against regular vacancies which cannot be kept vacant. The 'substitutes' are on a better footing than the casual labourers in as much as they are entitled for grant of temporary status on completion 120 days service are paid in regular pay scales and are also entitled to the pensionary benefits on their regular absorptions by counting the substitute service in full. Their widows are entitled for family pension since 'substitutes' are employed against the posts. It may also be noticed that initially they may be engaged on the basis of a contract but the same gets converted into a status by operation of law. In other words they are in pari materia with the temporary railway servant as per their rights and privileges are concerned after they attained the temporary status, which is granted on rendering 120 days of service by operation of law.

16. Now we would advert to the sequence of events, which are gathered from the office file relating to engagement fresh face 'substitutes'. A letter dated 17.06.2004 was originated by the national president of All India Railway Act Apprentices Organisation addressed to the General Manager, North West

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Railway to consider appointment of course completed Act Apprentices as 'substitutes' on the ground that in other Railways such apprentices have been regularized in Group 'D' after taking viva voce. The matter was taken up with such zonal railways vide letter dated 18.06.2004. On the other hand, the Railway Board issued a letter-dated 21.06.2004 in the following terms:

" Some of the Railways, have in past, approached the Board to clarify as to whether Course completed Act Apprentices can be engaged as 'substitutes' in Group 'D'. It is clarified that Course completed Act Apprentice can be engaged as 'substitutes' in Group 'D' under G.M.'s power in administrative exigencies subject to their fulfillment extant instructions prescribed for such engagements. "

17. A demand was projected by the C.M.E. through a note at page 12 of the relevant file for providing 250 'substitutes' for deployment at various depots at Jaipur, Jodhpur, Ajmer and Bhagat Ki Kothi and Abu Road. In the meanwhile, vide communication-dated 24.08.2004 the Railway Board withdrawn the ban on engagement of Course completed Act Apprentices as 'Substitutes' in Group 'D' in workshops/PUs. There is also a reference of a letter originated by Shri Hardayal Singh, Sr. P.S. to Opposition Leader, Rajya Sabha, along with a representation of Course completed Act Apprentice vide communication dated 20.08.2004 (at page 38 of the same file). Thereafter, the impugned order came to be issued. We find that there is absolutely no demand for filling up the vacant posts by engaging fresh face 'substitutes' by using the extra ordinary/exceptional channel. There seems to be more anxiety of the group of course completed Act Apprentices through the political channel.




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However, the official respondents were directed to make available the relevant file regarding the engagement of fresh face 'substitutes', but we find that the file, which has been produced before us, seems to have constituted by picking up the letters from here and there even the exhibits serial numbers have not been placed at the appropriate place. For e.g. in N.P. 8 draft letter was supposed to be at Sl. No. 117, but the same is placed at pages 34-33. We fail to understand as to why the respondents have resorted to such surreptitious method with the court of law; may be to conceal/withhold some material information. However, a decision has been taken for engagement 335 course completed Act Apprentices as 'substitutes' in Group 'D' posts.

18. As per letter dated 06.10.2004 at page 181 of the file relating to indent for direct recruitment in Group 'D', an indent has been placed to the R.R.B Ajmer for filling up the vacant Group 'D' posts in respect of Bikaner Division/Workshop in addition to other divisions. At the time of argument it was submitted on behalf of the official respondents that the regular recruitment shall take about six month's time. However, the file that has been submitted contents the noting upto 03.12.2004 and there is no indication regarding the latest position of the direct recruitment against Group 'D' posts. If the version of the respondents has been taken as true, the regular Group 'D' employee would be available by the end of March 2005.


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Therefore, in absence of any administrative exigencies; there being no indication of any anxiety from the Bikaner Division/Bikaner Workshop, we are not persuaded that any situation has arisen where the 'substitutes' should be engaged. As per the above instructions issued by the R/Bd the General Managers do not have unfettered discretion to engage Substitutes. Such course is to be adopted only in case where the arrangements cannot be made from within the existing leave reserve posts. We do not find ant such plea in the pleadings.

19. Now, we would adjudicate upon the issue as to whether the proposed engagement of the course completed Act Apprentices in railway establishments as fresh face 'substitutes' in group 'D' posts falls within the term recruitment requiring sponsorship of candidates from employment exchange and through public notification or else the same is not a recruitment; requiring following of no such procedure. While the stand of the applicants has been that it is the recruitment and lot of benefits are attached to such posts, the stand of the respondents is otherwise and as per them it is not a recruitment but only a temporary arrangement extending no benefits to such incumbents who are to give way the moment the regularly selected candidates replaced them. We find that in para 'c' of the preliminary objection it has been averred that it is not a case of direct recruitment against Group 'D' posts but is an engagement of the casual labourers as fresh 'substitutes' which



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is purely on temporary basis and these incumbents shall have no rights for regularisation in the railway service. In para 11 of the reply it has been mentioned that there is no requirement to hold the direct recruitment for recruiting the 'substitutes' purely on temporary basis. We also notice from the very impugned order dated 30.08.2004 that a committee comprising of officers of junior scale/ assistant scale will be nominated with the approval of D.R.M. keeping in view the representation of SC/ST/ OBC and minority as per extant instructions. In other words, the percentage of SC/ST/OBC is also required to be adhered to while engaging the candidates, since the requirement of the representation of such officers is only in cases where the candidates belonging to these communities are to be engaged. A bare reading of these factors conjointly compels us to arrive at a concrete conclusion that the respondents are definitely resorting to recruiting the candidates may be on casual basis as 'substitutes'. Thus the stand of the respondents that in the present cases they are not resorting to any recruitment is groundless and can be aptly termed as misconceived and misconstrued.



20. We would now clear the position of the circular dated 21.6.2004. As per the records, the same came to be issued in reference made by some of the zonal railways where they had proposed for engagement of fresh face substitute from amongst Course completed Act Apprentice in Railway Establishment. The

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R/Bd have clarified the position but the words 'Course completed Act Apprentice' have only been used. The same contains the qualifying words that Course completed Act Apprentices can be engaged as 'substitutes' in Group 'D' under G.M.'s power in administrative exigencies subject to their fulfillment extant instructions prescribed for such engagements. The instructions do not envisage that the Course completed Act Apprentices from Railway Establishments alone are to be engaged as substitutes. Incidentally, it may be pointed out that the GM has neither framed any policy vide letter 30.8.2004 as such nor any rule made by the Railway vide letter dated 21.6.2004 which only as answer to a reference and nothing more. As a matter of fact, there was a ban on engagement as substitute which has been lifted only on 24.8.2004 as indicated above but the same seems to be not linked while issuing the clarification on dated 21.6.2004 which could not have been so issued had the communication gap not been there. Otherwise, also the GM has no power to frame any rule in respect of non-gazetted railway servants, which is inconsistent to the rules framed by the R/Bd or the rules framed by President of India (Para 123 and 124 of IREC Vol-I 1985 Edn refers).

21. We shall now take up the most vital issue regarding the separate classification and hostile discrimination. Much has been said that as per rules the Course completed Act Apprentices from Railway Establishments are to be given preference and there is




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nothing wrong in the impugned policy. We shall trace the existing rules and instructions on this matter. Recently a consolidated circular has been issued in this regard by the R/Bd that provides as under:

"19. Absorption of Course Completed Act Apprentices

19.1 In terms of para 10 of Schedule V of the Apprenticeship Rules, 1991 notified on 15.7.1992 by the Ministry of Labour, it shall not be obligatory on the part of employer to offer an employment to the apprentice on completion of period of his apprenticeship training in his establishment nor shall it be obligatory on the part of the apprentice to accept an employment under the employer.

19.2 In pursuant to the Hon'ble Supreme Court judgments dated 12.1.1995 in the case of U.P. State Road Transport Corporation and Others v. U.P. Parivahan Nigam Shikshuk Berozgar Sangh and Others, the following instructions have been issued:

19.2.2. For recruitment to the posts of: -

- Skilled Artisans,
- Group 'C' posts for which Engineering Degree and Engineering Diploma are the qualifications,
- Diesel Electric Assistants,
- Group 'D' posts

Other things being equal between two candidates the candidate who is course completed Act Apprentice trained in Railway Establishment will be given preference over the candidate who is not such an apprentice. However, there would be no change in the procedure of the recruitment and the selection for recruitment will be in accordance with the merits of the eligible candidates."

The bare perusal of the aforesaid provisions reveals that course completed Act Apprentices in Railway establishment are only to be given preference over other apprentices and nothing more. The preference only extended when other things are equal i.e. in case the candidates have got the same merits, the course completed Act Apprentice are to be preferred and that

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does not mean that the such course completed Act Apprentice can be ignored altogether.

22. The law on classification is fairly well settled by the apex court and for that purpose the decision in case of **D S Nakara v. Union of India** [AIR 1983 SC 130] is instructive where their lordships of Supreme have held as under:

"though Art. 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled, viz. (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and (ii) that differentia must have a rational relation to the objects sought to be achieved by the statute in question

Such a discretionary powers which is capable of being exercised arbitrary is not permitted by Article 14 of the Constitution of India. While Article 14 permits a reasonable classification having a rational nexus to the objective sought to be achieved, it does not permit the power to pick and choose arbitrarily out of several persons falling in the same category.

The State, therefore, would have to affirmatively satisfy the Court that the twin tests have been satisfied. It can only be satisfied if the State establishes not only the rational principle on which classification is founded but correlates it to the objects sought to be achieved."

In the instant case the respondents have failed to discharge their obligation in as much as the classification cannot be based on the convenience, which is misconceived as indicated in the succeeding para. Thus the impugned order cannot be sustained.

23. We may notice here that the so-called engagement being resorted is only against the of group D posts which is certainly not against any skilled job. The contention regarding convenience also does not appeal to the reason since both the course completed Act Apprentices i.e. whether trained in Railway



establishments or else where are out of employment and are required to be traced. Some of them, of course, may be already in employment and the way the respondents intend to move may result in anomalous situation in as much as some of them may leave their present job and may choose to prefer railway job. That may result in deploying the persons who otherwise may not be so intending. The episode does not end up here, the possibility can not be ruled out that the majority of the course completed Act Apprentices trained in Railway establishments may be the ward of Railway servants itself and the intention may be to oblige them for obvious reasons.



24. We would do well to refer to one of the celebrated constitution bench decision of the Apex Court in case of **State of Himachal Pradesh vs. Suresh Kumar Verma & Anr.** [AIR 1996 SC 1565 = JT 1996 (2) SC 455] wherein their Lordships have held as under:

"The vacancies require to be filled up in accordance with the rules and all the candidates who would otherwise eligible are entitled to apply for when recruitment is made and seek consideration of their claims on merit according to the Rules for direct recruitment along with all the eligible candidates. The appointment on daily wages cannot be a conduit pipe for regular appointments which would be a back-door entry, detrimental to the efficiency of service and would breed seeds of nepotism and corruption. It is equally settled law that even for Class IV employees recruitment according to rules is a pre-condition. Only work-charged employees who perform the duties of transitory nature are appointed not to a post but are required to perform the work of transitory and urgent nature so long as the work exists."

In case of **Union of India v. Hargopal,** [AIR 1987 S.C. 1227], their Lordships of Supreme Court have observed as under:

"Even where an ad hoc or temporary employment is necessitated on account of the exigencies of administration, he should ordinarily be drawn from the employment exchange unless it cannot brook delay in which case the pressing cause must be stated on the file. If no candidate is available or is not sponsored by the employment exchange, some appropriate method consistent with the

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requirements of Article 16 should be followed. In other words, there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly."

The ratio of aforesaid decisions fully applies to the facts of instant case and examining these cases from all angles, we do not find that the action of the respondents could be construed as justified by any stretch of imagination and the same shall have to be declared as arbitrary, discriminatory and offending the equality clause as enshrined in Articles 14 and 16 of the Constitution.

25. The upshot of the aforesaid discussion leads us to an inevitable conclusion that the Original Application Nos. 265/2004, 238/2004 and 264/2004 have ample force and the same must succeed which we order, accordingly. The impugned order dated 30.8.2004 in all these cases and all subsequent proceedings thereof are hereby quashed and set aside but without any order as to costs. It is scarcely necessary to mention that this order shall not preclude the respondents to take recourse to engage the services of substitute against group D posts, in case the same are considered emergent in service exigencies keeping in view the relevant instructions/rules in force and our observations in this order.


(M K MISRA)

ADMINISTRATIVE MEMBER

jsv


(J K KAUSHIK)

JUDICIAL MEMBER



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