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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

**ORIGINAL APPLICATION NO. 264/2005
JODHPUR THIS DAY 23 July, 2010**

CORAM:

**HON'BLE MR. JUSTICE SYED MD. MAHFOOZ ALAM, JUDICIAL MEMBER
HON'BLE MR. V.K. KAPOOR, ADMINISTRATIVE MEMBER.**

1. Khem Chand S/o Shri Som Pal, aged about 52 years, by caste Kohli (S.C.), R/o Rajiv Colony, Sojat Road, District Pali. Presently working as Goods Driver at Abu Road.
2. Narsingh Lal S/o Shri Ramdev, aged about 49 years, by caste Balali, R/o 279-A, Railway Colony, Abu Road. Presently working as Goods Driver at Abu Road.
3. Anil D. Massey S/o Shri E.D. Massey, aged about 43 years, by caste Christian R/o 372-A, Paanch Bungalow, Railway Colony, Abu Road. Presently working as Goods Driver at Abu Road.
4. Chela Ram S/o Shri Panna Ji, aged about 47 years, by caste Meghwal, R/o T-127-C, Near G.P.O. office, Railway Colony, Abu Road. Presently working as Goods Driver at Abu Road.
- Surendra Kumar B. S/o Shri Bal ishan, aged about 33 years, R/o House No.427-E, Railway Colony, Abu Road. Presently working as Goods Driver at Abu Road.
6. Fateh Singh S/o Shri Bhagirath Singh, aged about 35 years, R/o House No.323-B, Mata Nagar, Railway Colony Abu Road. Presently working as Goods Driver at Abu Road.
7. Tej Singh S/o Shri Khuba Ram, aged about 35 years, R/o house No.L-170-A, Near Ground, Railway Colony, Abu Road, Presently working as Goods Driver at Abu Road.
8. Naresh Kumar S/o Shyam Lal, aged about 48 years, R/o Abu Road. Presently working as Goods Driver at Abu Road.
9. Kanti Lal S/o Bal Mukund, by caste Kohlli, R/o Railway Colony, Abu Road. Presently working as Goods Driver at Abu Road.
10. Chunni Lal S/o Shri Vena Ji, R/o Railway Colony, Abu Road. Presently working as Goods Driver at Abu Road.
11. Sunil Kumar S. S/o Shri Sukanlal, aged about 49 years, R/o House No.54/LB, Railway Colony, Abu Road. Presently working on the post of Shunter at Abu Road.
12. Dinesh Chand C. S/o Shri Chudamani, aged about 48 years, R/o 45-B, Bali Rana Pratap Nagar, Udaipur. Presently working as Goods Driver at Udaipur.





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All applicants are working under the respondent No.2.

.... Applicants

For Applicants : Mr. Narpat Singh, Advocate.

VERSUS

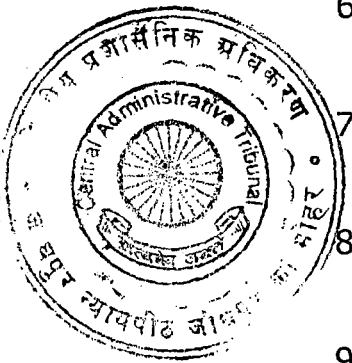
1. Union of India through General Manager, NW Railway, Jaipur.
2. The Divisional Railway Manager, NWR, Ajmer Division, Ajmer.
3. Ram Lal S/o Shri Heera Lal, presently working as ad-hoc goods driver at N.W. Railway, Abu Road.
4. Bhagwan Singh Rathore S/o Shri Arjun Singh, presently working as Diesel Assistant at N.W. Railway, Udaipur City.
5. Anil Kumar Sharma S/o Shri Vishweshwar Nath, presently working as Diesel Assistant at N.W. Railway, Udaipur City.
6. Jethmal S/o Shri Bhanwar Lal, presently working as Diesel Assistant at N.W. Railway, Abu Road.
7. Surendra Singh Chauhan S/o Shri Panchu Lal, presently working as Diesel Assistant at N.W. Railway, Udaipur City.
8. Jeevan Ram S/o Shri Sada Ram, presently working as Diesel Assistant at N.W. Railway, Abu Road.
9. Nouratman Tanwar S/o Shri Bhanwar Lal Dhanka, presently working as Diesel Assistant at N.W. Railway, Udaipur City.
10. Bhanwar Lal Khukhadia S/o Shri Jaga Ram, presently working as Diesel Assistant at N.W. Railway, Abu Road.
11. Bhagwati Prasad Bhura S/o Shri Achleshwar Prasad, presently working as Diesel Assistant at N.W. Railway, Abu Road.
12. Kishan Lal S/o Shri Loomba Ram, presently working as Diesel Assistant at N.W. Railway, Abu Road.
13. Jeeva Bhai S/o Shri Kapura Ji, presently working as Diesel Assistant at N.W. Railway, Abu Road.
14. Vinod Kumar S/o Shri Hari Shanker, presently working as Diesel Assistant at N.W. Railway, Udaipur City.
15. Om Prakash Panwar S/o Shri Kalyanmal, presently working as Diesel Assistant at N.W. Railway, Udaipur City.

.... Respondents.

For Respondents 1 & 2 : Mr. Salil Trivedi, Advocate.

For Respondents 4 to 15: Mr. J. K. Mishra, Advocate.

Yours



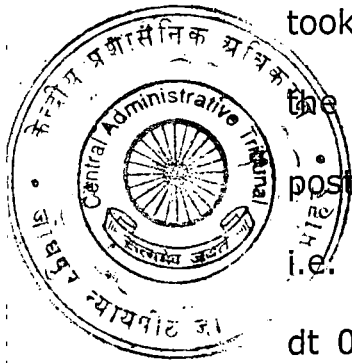
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(Per Mr. V.K. Kapoor, Administrative Member)

Shri Khem Chand & 11 others have filed the present OA against the orders of respondents dt 24.8.2005 (Ann.A-1a) & 25.8.2005 (Ann.A-1). The applicants have sought the reliefs that are as follows:-

- "(a) by an appropriate order or direction, the impugned order dated 25.8.2005 may kindly be declared illegal and quashed and set aside with all consequential benefits.
- (a)(i) by an appropriate order or direction, the impugned order dated 24.8.2005 may kindly be declared illegal and quashed and set aside and extent of affecting the rights of the applicants with all consequential benefits.
- (b) any other relief, which this Hon'ble Tribunal deems fit and proper in the fact and circumstances of the application, may kindly be passed.
- (c) that the cost of this application may be awarded."

2. The case in brief is that the applicants were working as goods drivers, promoted on the said post from 2001 to 2004. The respdts took the test for promotion, but they were given ad hoc promotion on the post of goods drivers in scale of Rs.5000-8000 from Shunters' posts (Ann.A-2). The applicant 1 was issued card of highest standard i.e. the white card (Ann.A-3). The respondent 2 issued a notification dt 04.8.2003 for promotion to goods drivers' posts (Rs.5000-8000); vide letter dt 23.7.2003. The Railway Board issued an order dt 09.10.2003 for restructuring of certain group C & D, but where partially modified by order dt 06.01.2004 (Ann.A-4, Ann.A-5). The respdts vide order dt 25.8.2005 reverted applicants from the posts of goods driver (Rs.5000-8000) to the lower post of loco pilot (Shunting) & Asstt drivers (Rs.4000-6000/3050-4590). No notices were given to applicants before reversion; the official respdts gave promotions to similarly situated person at par with applicants vide order dt 16.4.2005; even though they failed in the test (Ann.A-6, Ann.A-7). In regard to restructuring of gr. C & D cadres, the respdts have not considered applicants' case. The present vacancies of goods drivers do



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not require written test; criteria for seniority & suitability are completely ignored. The persons junior to applicants were given promotion vide order dt 24.8.2005, thereby ignoring the seniority & suitability of applicants (Ann.A-10). The applicants have prayed to declare the orders dt 24.8.2005 (Ann.A-1a) & 25.8.2005 (Ann.A-1) illegal, and requested to quash & set aside the same.

3. The official respondents (1 & 2) in amended reply have stated that the promotion orders are rightly issued in furtherance of panel dt 24.8.2005 for successful candidates. All the applicants appeared in the selection/exam on loco pilots' goods posts vide notification dt 04.8.2003, result was declared on 23.12.2003. The applicants could not pass the test/exam, now they cannot be permitted to assail the validity of panel dt 24.8.2005. Being unsuccessful in this written exam, all the applicants were rightly reverted back to their substantive posts. The contentions of applicants are misconceived & misleading that recent vacancies of goods drivers are required to be filled under restructuring scheme that do not require written exam. In filling up vacancies, all eligible candidates whether senior or junior in zone of consideration can appear. The applicants failed in selection/written exam, they cannot be permitted to challenge the panel of successful candidates. None of the grounds alleged by applicants is sustainable.

4(a). Learned counsel for the applicants in arguments has stated that applicants were working on loco pilots' goods/goods drivers' posts on adhoc basis. They took assignment seriously and effectively, white card was issued to the applicant 1. There were no complaints against the applicants, but they could not pass the written exam for selection;

Agreed



Yes

whereas under the garb of restructuring scheme, similarly situated persons were given advantage of promotion; but reverted applicants on their substantive positions. The restructuring was done from 01 Nov, 2003, selection was made under the modified procedure without any written exam or viva voce test. In OA 38/2007, Lahari Lal vs. UOI & ors; Lahari failed in selection, so he was reverted to the substantive position. The Hon'ble High Court in writ petition 2566/2008, in order 04 May, 2010 gave directions that pay protection be not given to Lahari. In OA 164/2004, similarly situated persons got promoted. The respdts have resorted to arbitrary exercise of power & discrimination.

4(b). Learned counsel for official respondents (1&2) in arguments have stated that the cadre strength is given as per record; the restructuring of certain group C & D are shown vide Railways (NWR, Ajmer) vide dt 31.10.2003; for promotion post as loco pilots, grade of Rs.5000-8000 was there, earlier for this category of goods driver 80% seats were there, later cadre strength was reduced to 73%. The vacancies created by restructuring be filled up by promotion w.e.f. 01.11.2003. For normal vacancies existing on 01.11.2008, the junior employees be posted by modified selection procedure; the rules of normal selection procedure would apply. In OA 38/2007 Lahari did not pass selection test, he was reverted. The High Court in DB civil writ pet 2566/2008 justified the reversion order of Tribunal; but for adhoc work pay protection was also quashed and OA was dismissed in toto. By way of written exam, the respdts (3 to 15) were got selected, applicants failed to compete in this examination. As official respdts 1 & 2 got regular selected candidates & applicants could not succeed in written test; thus applicants were rightly reverted to their substantive



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positions. The increased posts were filled by the modified selection process under restructuring scheme. As applicants were reverted to the original position in substantive cadre, no right accrues to them in this regard. The OA 164/2005 is not applicable in the present case.

5. The applicants are discharging the duties of goods driver, they were promoted on the said post from 2001 to 2004. The applicants, before giving adhoc appointments on the post of goods drivers; the official respondents took the test of applicants for giving promotion on the post of goods driver but all these applicants could not clear/pass this test. The applicants were earlier working on the post of shunter in pay scale of Rs.4000-6000, posted on adhoc basis as goods drivers in pay scale of Rs.5000-8000 (Ann.A-2). As per applicants, they discharged their services with efficiency in the department, applicant 1 was issued white card (Ann.A-3). The respondent 2 issued notification dt 04.08.2003 in regard to selection of 145 employees in the panel and list of 341 eligible employees for the post was notified for promotional posts of goods drivers in pay scale of Rs.5000-8000. Incidentally, applicants could not pass the written exam organized by the department, their appointment being adhoc, they were reverted back to their substantive position vide order dt 25.8.2005 on the post of loco pilot (shunting) (pay scale of Rs.4000-6000) and loco pilots (assistant driver) (pay scale of Rs.3050-4590). The result of written exam was declared by official respdts, thus they were not selected, reverted to substantive positions. In the case of Lahari Lal vs. Union of India & Anr. of CAT Jodhpur Bench OA 38/2007, Lahari did not pass exam conducted by the deptt, thus reversion of Lahari was maintained in OA 38/2007 vide order dt 31.12.2007. The Tribunal took recourse to




the case of Badri Prasad & anr. vs. Union of India Ors AIR 2005 SC 2531. The applicant Lahari was found entitled to pay protection of last drawing post at the time of his reversion in view of having worked for 08 years in deptt. This order of Tribunal was challenged before Hon'ble High Court Rajasthan in DB Civil Writ Petition 2566/2008 vide judgment date 04 May, 2010, the writ petition was allowed and the judgment passed by Tribunal was quashed, the OA No.38/2007 shall be treated to have been dismissed in toto. This is apparently clear by Rajasthan High Court dictum that Lahari failed in written examination so his reversion was justified but the applicant Lahari worked for more than 08 years on adhoc basis on a promoted post, the basic pay protection was also not allowed by the High Court. This OA squarely applies in the present case, where applicants and similarly situated persons could not clear/pass the departmental examination, thus reversion was the only alternative in view of Hon'ble Rajasthan High Court's verdict. Accordingly, they were not entitled to the basic pay & emoluments while working on the adhoc promoted post, thus the contentions of applicants cannot be sustained. The OA 162,163,164, 230/2004, the decision of CAT Jodhpur Bench dt 26.8.2008 is not directly applicable in the present case as their contents are different.

6. It is worthwhile to submit that private respondents 3 to 15 got selected in written exam, thus, there is no question of seniority & uniformity as claimed by applicants. The respdts 3 to 15 alongwith other eligible employees faced the test in which only above mentioned private respondents got regularly selected. In view of department's policy the restructuring of gr.C & D employees was made, posts of goods drivers (Rs.5000-8000) from 80% was reduced to 73%, some



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other like changes were made. Later, because of increase in vacancies of goods drivers in the said scale, the policy of restructuring for gr. C & D employees was resorted to. Therefore, modified selection under the restructuring scheme was carried out. Applicants' objection is that in view of non-selection in the written exam, they were reverted back to their substantive positions. On the other hand, private respdts 3 to 15 were given promotion to similar situated post of goods driver. As regards restructuring the objection is made because candidates under the modified selection scheme were not to pass written examination or viva voce test. In case of similarly situated persons, the objection raised is that promotion of said staff was a clear case of discrimination against applicants and arbitrary misuse of power on the part of the official respdts. To reiterate, the claim & contention of applicants cannot be accepted that selection in the posts like goods drivers/loco pilots (Rs.5000-8000) under modified selection process was an arbitrary and colourful exercise of power.

7. In the light of observations/deliberations made above, no case is made out applicants' favour. Accordingly, no interference is called for in the impugned orders dated 24.8.2005 (Ann.A-1a) and 25.8.2005 (Ann.A-1). Resultantly, the present O.A fails and the same is hereby dismissed. No order as to costs.


[V.K. Kapoor]
Administrative Member


[Justice S.M.M. Alam]
Judicial Member

/Rss/

दिनांक 17/12/15 के आदेशानुसार
पेरी उपस्थिति में दिनांक 11/12/16
को भाग-II अ III नष्ट किए गए ।

अनुमानित अधिकारी
केंद्रीय प्रशासनिक अधिकरण
जोधपुर न्यायपीठ, जोधपुर

R/c
Sankar
26/7/16