

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Original Application No.251/2006

Reserved on 16.01.2014.

Pronounced on 29.1.2014.

Hon'ble Mr. Navneet Kumar, Member (J)

Hon'ble Ms. Jayati Chandra, Member (A)

1. Rashid Ahmad, son of Sultan, Presently working in Diesel Shed, North Eastern Railway, Gonda.
2. Gopal Ji Prasad, son of Ramji, Presently working in Diesel Shed, North Eastern Railway, Gonda.
3. Kailash Prasad, son of Grrakh Nath, Presently working in Diesel Shed, North Eastern Railway, Gonda.
4. Radey Shyam Dubey, Son of C.S.Dubey, Presently working in Diesel Shed, North Eastern Railway, Gonda.
5. Shiv Shankar Singh Son of Jagdish Singh, Presently working in Diesel Shed, North Eastern Railway, Gonda.
6. Banshi Ram Gupta, Son of Algoo Ram, Presently working in Diesel Shed, North Eastern Railway, Gonda.
7. Chandeshwar Thakur, Son of Jagggi Lal, Presently working in Diesel Shed, North Eastern Railway, Gonda.
8. Ram Nath, Son of Sarju, Presently working in Diesel Shed, North Eastern Railway, Gonda.
9. Jyotish Ram, Son of Sita Ram, Presently working in Diesel Shed, North Eastern Railway, Gonda.
10. Bhagwan Singh, Son of Ram Subhag Singh, Presently working in Diesel Shed, North Eastern Railway, Gonda.

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11. Ram Bihari Ram, Son of Sahdev, Presently posted/working in Diesel Shed, North Eastern Railway, Gonda.
12. Mohd. Haneef, Son of Fateh Mohd., Presently posted/working in Diesel Shed, North Eastern Railway, Gonda.
13. Hari Lal Yadav, Son of Shiv Mangal Yazdav, Presently posted/working in Diesel Shed, North Eastern Railway, Gonda.
14. Keshav Ram, Son of Ram Lakhan, Presently working in Diesel Shed, North Eastern Railway, Gonda.
15. Kishore Kumar, Son of Rameshwar, Presently working in Diesel Shed, North Eastern Railway, Gonda.
16. Radhey Shyam, Son of Ram Charan, Presently working in Diesel Shed, North Eastern Railway, Gonda.
17. Ram Gulam, Son of Kanhai, Presently working in Diesel Shed, North Eastern Railway, Gonda.
18. Sheo Pujan Shukla, S/o Late Sri Achalji Shukla, Presently working in Diesel Shed, North Eastern Railway, Gonda.
19. Sitaram Yadav, Son of Bachcha Yadav, Presently working in Diesel Shed, North Eastern Railway, Gonda.
20. Chandrama Prasad Singh, s/o late Akshay Lal, Presently working in Diesel Shed, North Eastern Railway, Gonda.
21. Majid Mian son of Ismile, Presently working in Diesel Shed, North Eastern Railway, Gonda.
22. Amiruddin s/o Aus Mohd. , Presently working in Diesel Shed, North Eastern Railway, Gonda.

-Applicants.

By Advocate: Sri Mayanker Singh.

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Versus.

1. Divisional Railway Manager (P), North Eastern Railway, Lucknow.
2. Senior Divisional Mechanical Engineer (Diesel), North Eastern Railway, Gonda.

-Respondents

By Advocate: Sri. Narendra Nath.

O R D E R

Pre Ms. Jayati Chandra, Member (A).

The present Original Application has been filed by the applicants under Section 19 of the Administrative Tribunals Act, 1985 with the following relief(s):-

“(i). That the Hon’ble Tribunal may kindly be pleased to set-aside the letter dated 13.12.2005, passed by the opposite party no.2, which is contained in Annexure No.1 to the O.A.

(ii). That the Hon’ble Tribunal may kindly be pleased to direct the opposite parties to promote the applicants on the post of Diesel Mechanic Grade-III w.e.f. from the date the juniors to the applicants have been promoted alongwith all consequential benefits.

(iii). Any other relief deemed just and proper of the case may be allowed in favour of applicants.

(iv). Allow the cost of the case in favour of the applicant against the opposite parties.”

2. The facts of the case as averred by the applicants are that all of them were initially appointed as Khalasi in the Steam Loco Shed, Varanasi in the North Eastern Railway and were appointed on various dates between 1985 to 1986. The Loco Shed at Varanasi was closed in 1993 and the applicants having been rendered surplus were transferred to Diesel Shed Gonda on the same post

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and pay-scale vide order dated 03.12.1993 (Annexure-2) and their seniority was fixed accordingly (Annexure-3).

3. In 2001, 27 juniors' persons were promoted to the post of Diesel Mechanic Grade-III. The alleged reason for such suppression was that the applicants' seniority was counted from 1993 where they had joined at Diesel Loco Shed, Gonda although they had been working earlier at Varanasi. Prior to such promotion, options were obtained from those of the Diesel Khalasi who were having the qualification of High School. As the applicants did not have the requisite qualification, they could not give their option and accordingly were not allowed to appear for the trade test. Being thus aggrieved, the applicants gave representation against promotion order dated 18.12.2000 (copy not provided) to the respondents dated 12.02.2001 (Annexure-4). Finally, after passing the trade test, result of which is annexed as Annexure-6, the applicants were given higher pay scale by order dated 07.07.2001 but they were not promoted to the post of Diesel Mechanic Grade-III. The pay-scale of Diesel Helper Mechanic is Rs.2555-3200. They were given the pay scale of Rs.2650-4000/- effectively there was no difference in the actual emoluments. The post of Diesel Mechanic Grade-III carries a pay-scale of Rs.3050-4596.

3. By the impugned letter dated 13.12.2005, the applicants were informed that they were not considered for promotion as they had not preferred their option for the same whereas, not having the qualification of High School they could not have given the option. The rule for

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promotion to the post of Diesel Mechanic does not require the qualification of High School.

5. The respondents have contested the claim of the applicants by filing their Counter reply denying all averments made by the applicants. The case of the respondents is that the exercise of filling up posts in the pay-scale of Rs.3050-4590 was undertaken in accordance with the Railway Board's letter No.RBE No.222/98 dated 28.09.1998 (Annexure-CR-2). The number of vacancies to be filled up had been specifically indicated in D.R.M. Letter dated 17.01.2001 (Annexure-CR-1). The vacancies were to be filled up from amongst those having minimum 3 years regular service in the pay-scales of Rs.2650-4000 and 2550-3200) and possessing either High School or were ITI passed. This was not a promotion, but a filling up of a post on the basis of certain eligibility benchmark. Hence the question of seniority/juniority is not relevant. Further, as the applicants were not promoted they were considered under the ACP Scheme. The applicants have not clarified which of them were given Trade Test.

6. The applicants have filed rejoinder and supplementary rejoinder. In the rejoinder, the applicants apart from reiterating the averments made in the O.A. have stated that the posts of Diesel Mechanic Grade-III in the pay-scale of Rs.3050-4590. In accordance with Railway Board letter No.222/98 dated 28.09.1998 (Annexure CR-2) are to be filled up 60% through open recruitment and 20% by promotion from amongst persons having certain qualification and 20% from

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feeder cadre for which there is no specific educational qualifications. Hence, they should be given promotion against that 20%. By the supplementary rejoinder the applicants have stated that the General Manager, North Eastern Railway vide letter dated 07.12.2006 had directed the filling up of posts of Technician Grade-III from Diesel Helper by converting direct recruitment quota to promotion quota. A Trade Test was held in compliance thereof, in which several of the applicants were declared passed by result dated 26.7.2007 (Annexure-SA-1). Several of the applicants have been promoted by order dated 30.07.2007 (Annexure-SA-2). This time around there was no requirement of the minimum educational qualification. Thus by delaying the relaxation of educational qualification from High School the applicants have been denied the promotion alongwith their juniors in 2001.

7. We have heard the learned counsel for the both the parties and perused the entire records.

8. At the outset, it is seen that the O.A. suffers from many defects. The O.A. is filed under Section 19 of the Administrative Tribunal Act, 1985 against order dated 13.12.2005 passed by Opposite Party No.2. This is wrong statement of facts. The letter No.11/D/R Letter/96 dated 13.12.2005 is not an order, but is in the nature of information given to the applicants why they were not considered for promotion alongwith 112 & 103 employees who were promoted vide notification Nos.11/281/TT/D/Gonda IV dated 27/31.1.2000 and 11/281/TT/D/Gonda/4 dated 10.8.2000. Further they

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were given assurance that they would be promoted against future vacancies.

9. The applicants were aggrieved by the order of promotion to some of their juniors in the cadre of Diesel Khalasis to that of Diesel Mechanic Grade-III. The orders were passed according to them in 2001 although no promotion order has been provided. From the "the impugned" order dated 13.12.2005, it appears that the applicants, made some kind of a representations on 03/05 against notifications No. E/11/281/T.T./D/Gonda/1 dated 27./31.1.2000 and notification No.E/11/281/T.T./D/Gonda/4 dated 10.8.2000. This representation was made after passage to 4 years. There is no disclosure of reasons for such a delay. The applicants are required under Section 21 (a) & (b) of the Administrative Tribunal Act, 1985 to move for intervention within a certain time frame which includes the period for mandatory representation/s to competent authority and a maximum period in case of no response from the same.

10. Further, the applicants have stated that 27 applicants have superseded them. A promotion is made against a fixed number of posts. In case the O.A. is allowed on merit, at least some of the persons already promoted may have to be reverted. Yet none of the 27 persons have been impleaded as private respondents. The O.A. is liable to be dismissed on this ground alone.

11. Coming to the merits, the applicants have simply prayed for a direction to promote them w.e.f. from their

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juniors. During the course of rejoinder and during the course of hearing, have taken stressed for a direction to the respondents under Proviso 5 (iii) of letter dated 28.09.1998 wherein, it is provided that 20% of posts of Diesel Mechanic Grade-III is required to be filed up by promotion.

12. The promotion orders dated 31.1.2000 & 10.8.2000 by which a total of $112 + 103 = 215$ persons were posted to the post of Diesel Mechanic Grade-III was passed in accordance with certain restructuring resulting in change of number of posts in the various pay scales. It is laid down in this letter dated 28.09.1998 that the (Para 5) of recruitment to the higher pay-scale of Diesel Mechanic Grade-III would be as follows:-

5. “In pursuance of the above changes, the revised mythology for filling up the posts of skilled Artisans in grade Rs.3050-4590 maintenance.....(Not readable).

(i). 60% by direct recruitment form successful course completed Act Apprentices, ITI pass candidates and matriculates from the open market.

(ii). 20% from serving semi-skilled and unskilled staff with three years of regular service with educational qualification as laid down in the Apprentice Act, as outlined in Railway Board's letter No.E(NG)/I/96/PM7/56 dated 2-2-1998; and

(iii). 20% by promotion of staff in lower grade as per prescribed procedure.”

The said order continues to Para 6 which provides that in order to give the benefit of grade of Rs.3050-4590 “to the existing staff with prescribed qualification” would be resorted to. The para-6 (ii) reads as follows:-

“The 60% vacancies earmarked for direct recruitment which accrue from 2-9-1998 onwards may be filled up from serving employees on roll as on 1-9-

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1998 and who possess the prescribed qualifications as in para 5 (i) above as outlined in Railway Board's letter No. E(NG)I/96/PM7/56 dated 2.2.1998 for a period upto 31.8.2002 or till such time as no such employees eligible on 1.9.98, remains awaiting placement in the grade, whichever is earlier."

Thus, this was not a routine promotion as per para-5 (iii) but under Para 5 (ii).

13. These provision have not been denied by the applicants in the rejoinder. Rather, they have taken the plea that in 2006, there was no insistence on the minimum educational criteria being High School. Therefore the same should be applied with retrospective affect. This is untenable as a rule/order/direction can only be read with prospective effect under the employees decides otherwise. Moreover, it is not made clear as to the effect that different channels of promotion would have on a common seniority list. Nor have the applicants been able to establish that procedure for promotions under Para- 5 (ii) has to be held simultaneously with procedure for promotion under Para-5 (iii). The two channels of promotion have to be held as and when vacancies under that quota arise.

14. The applicants have in their O.A. stated that they had passed the Trade Test in 2001. The document produced by them carries the names of some of the applicants not all. It is clear form the heading that this is Trade Test held under the ACP Scheme. By their own averment, the applicants, at least some of them had participated in the Trade Test held under the ACP Scheme. The relevancy of passing the Trade Test to the promotion order by which the applicants were allegedly superseded by their juniors has not been explained at all.

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15. In view of the above discussions, the applicants have failed to establish their case hence the O.A. is liable to be dismissed on account of non-joinder of necessary parties as also on merits and is so dismissed. No order as to costs.

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(Ms. Jayati Chandra)
Member (A)

VR Kapoor

(Navneet Kumar)
Member (J)

Amit/-