

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No 569/2006, 148/2005, 509/2004 & O.A.

523/2004

This the 21 day of January, 2009

**Hon'ble Mr. M. kanthaiah, Member (J)
Hon'ble Dr. A. K. Mishra, Member (A)**

O.A. 569/2006

Pawan Kumar Shukla, aged about 28 years, S/o Sri Komal Ram Shukla, C/o Sri Raj Kumar Shukla, R/o Mohammad Safi National Inter College, Post Hanswar, District-Ambedkar Nagar, U.P.

Applicant.

By Advocate : Sri S.P.Singh

Versus

1. Union of India through the Secretary to the Government of India, Ministry of Railway, New Delhi.
2. Chairman, Railway Board, Rail Bhawan, New Delhi.
3. General Manager, Northern Railways, Baroda House, New Delhi.
4. Secretary (Establishment) Railway Board, Rail Bhawan, New Delhi.
5. General Manager (Personnel), Northern Railway Headquarters Officer, Baroda House, New Delhi.
6. Divisional Railway Manager, Northern Railway, Hazaratganj, Lucknow.
7. Chief Medical Superintendent, Northern Railway Hospital, Lucknow.
8. Chief Works Manager (C&W Workshop), Alambagh, Lucknow.
9. Chief Works Manager (Loco Workshop), Charbagh, Lucknow.

Respondents.

By Advocate: Sri B.B.Tripathi for Sri M.K.Singh

O.A. 523/2004

1. Kamal Krishna, aged about 32 years, S/o Sri Virendra Singh, R/o Matiyari, Chinhat, Lucknow.
2. Rakesh Agarwal, R/o 247/12, Yahiyaganj, Lucknow.
3. Dinesh Kumar, aged about 35 years, S/o Sri Khushi Ram R/o Vill. Baburiha Khera, Post Bachrawan, Distt. Railbareilly.
4. Manoj Kumar Srivastava, aged about 34 years, S/o Sri Fateh Bahadur Srivastaqva, R/o 288/197, Arya Nagar, Lucknow.
5. Pawan Jauhari aged about 30 years S/o Sri V. K. Saxena, R/o 427 Rajendra Naga Lucknow.
6. Hansraj Singh aged about 32 years S/o Sri Raj Bahadu Singh R/o Pitamber Kheda, Rajajipuram, Lucknow.

Applicants.

By Advocate Sri S.P.Singh

Versus

1. Union of India through the Secretary to the Government of India, Ministry of Railway, New Delhi.
2. Chairman, Railway Board, New Delhi.
3. General Manager, Northern Railways, New Delhi.
4. Secretary (Establishment), Railway Board, New Delhi.

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5. General Manager (Personnel), Northern Railway Headquarters Office, Baroda House, New Delhi.
6. Divisional Railway Manager, Northern Railway, Hazaratganj, Lucknow.
7. Chief Medical Superintendent, Northern Railway Hospital, Lucknow.
8. Chief Woks Manager (C&W Workshop), Alambagh, Lucknow.
9. Chief Works Manager (Loco Workshop), Charbagh, Lucknow.

Respondents.

By Advocate Sri N.K.Agrawal

O.A. 509/2004

1. Jaideep Shukla, S/o Sri Vishnu Chandra Shukla, aged about 32 years, R/o H.N. D-50, Sector-D, LDA, Colony, Krishna Nagar, Kanpur Road, Lucknow.
2. Viay Nigam, aged about 34 years, S/o Sri J.M. Nigam, R/o 58/6, Old Aishbagh Colony, Lucknow.
3. Amit Majumdar, aged about 30 years, S/o Sri M.M. Majumdar, R/o 569 Cha/612, Premnagar, Alambagh, Lucknow.
4. Atul Dwivedi, aged about 37 years, S/o Sri Ram Dev Dwivedi, R/o 554 Kha/16-Ga, Vishweshwa Nasgar, Alambagh, Lucknow.
5. Rakesh Singh, aged about 36 years, S/o Sri P.D. Singh, R/o 47/48-D, Sector D, LDA Colony, Kanpur Road, Lucknow.
6. Arun Kumar Sharma, aged about 27 years, S/o Sri Raja Ram Shama, R/o 548 Gha/53, Teji Khera, Manak Nagar, Lucknow.
7. Dharmesh Kumar Singh Chandel, aged about 34 years, S/o Sri H. S. Singh, R/o C/o Sri K.K. Singh, H., No. A-63/C, Chalish Quarter, Alambagh, Lucknow.
8. Sushil Kumar Singh, aged about 33 years, S/o Sri Surya Pratap Singh, R/o 6/6, Purani Colony Aioshbagh, Lucknow.
9. Goverdhan Lal, aged about 33 years, S/o Sri B.D. Agnihotri, R/o 50/5, Purani Colony Aishbagh, Lucknow.

Applicants

By Advocate: Sri S.P.Singh

Versus

1. Union of India through the Secretary to the Government of India, Ministry of Railway, New Delhi.
2. Chairman, Railway Board, New Delhi.
3. General Manager, Northern Railways, New Delhi.
4. Secretary (Establishment), Railway Board, New Delhi.
5. General Manager (Personnel), Northern Railway Headquarters Office, Baroda House, New Delhi.
6. Divisional Railway Manager, Northern Railway, Hazaratganj, Lucknow.
7. Chief Medical Superintendent, Northern Railway Hospital, Lucknow.
8. Chief Woks Manager (C&W Workshop), Alambagh, Lucknow.
9. Chief Works Manager (Loco Workshop), Charbagh, Lucknow.

Respondents.

By Advocate Sri B.K.Shukla

O.A.No. 148/2005

1. Mukesh Chandra Srivastava aged about 37 years son of Sri Tara Prasad Srivastava, r/o Quarter No. L.D. 105-B, RDSO Colony, Manak Nagar, Lucknow.
2. Ramesh Chandra Tripathi, aged about 30 years son of Sri Janardan Tripathi R/o Vill- Post Somali, District- Padrauna, U.P.
3. Krishna Kumar aged about 35 years son of Sri Kedar Ram, 559 Kh/68, Shrinagar, Alambagh, Lucknow.



4. Praveen Kumar Awasthi, aged about 36 years son of late R.C. Awasthi, r/o 102, Nala Fateh Ganj, Lucknow. 18.
5. Vimal Gautam, aged about years son of Sri Raj Bali r/o C/o Smt. Jageshwari Devi, II-74 D, Sleeper Ground, Alambagh, Lucknow.
6. Pramod Kumar Upadhyay aged about 36 years son of Sri Rama Kant Upadhyay r/o 6/198, Sector 6, Vikas Nagar Colony, Lucknow.
7. Ganga Charan, aged about 37 years son of Sri Kalloo Sahu (Tailor) r/o Village and Post- Banthra, Lucknow.

Applicant

By Advocate: Sri C.B. Pandey/Sri S.P.Singh

Versus

1. Union of India through the Secretary to the Government of India, Ministry of Railway, New Delhi.
2. Chairman, Railway Board, New Delhi.
3. General Manager, Northern Railways, New Delhi.
4. Secretary (Establishment), Railway Board, New Delhi.
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9. Chief Works Manager (Loco Workshop), Charbagh, Lucknow

Respondents.

By Advocate: Sri N.K.Agrawal

ORDER

HON'BLE DR. A.K. MISHRA, MEMBER (A)

Since the subject matter and the relief sought for in the Application Nos. **569/2006, 148/2005, 509/2004 & O.A. 523/2004** are the same, all these applications are heard together and the judgment passed in O.A. No. 569/2006 will apply in respect of all the applications.

2. O.A. No. 569/2006 has been made against the order dated 28.9.2004 issued on behalf of Respondent No. 8 postponing the process of verification of certificates of diploma/degree holders apprentice for empanelment and engagement as Group D substitute workers with a prayer to set aside the impugned order dated 28.9.2004 and also to issue a direction for quashing the appointments of Trade Apprentices already made and further to prepare a common panel from amongst all

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the applicants both belonging to Trade Apprentice as well as the diploma/degree holder categories on the basis of seniority.

3. The applicant is a diploma holder in Mechanical Engineering and he successfully underwent Apprentice Training under the Apprentice Act 1961 at Loco Workshop, Charbagh, Lucknow of Northern Railway. It is stated that the certificate of proficiency in respect of diploma holders apprenticeship is issued by the Board of Apprenticeship Training whereas, the certificates issued by the National Council for Vocational Training under the Ministry of Labor, Government of India are given to ITI passed candidates/freshers who completed the apprenticeship training under the category, 'Trade Apprentice'.

4. The General Manager, Northern Railway gave approval for engagement of substitutes against Group D vacancies available in all the Mechanical Work Shops. The Chief Works Manager of Northern Railway invited applications from persons who possessed certificates from National Vocational Centre after having successfully qualified as Trade Apprentices. The diploma holders made a representation on 19.2.99 against such a decision and a reference was made to the Railway Board whether the diploma holders could be considered for engagement as substitute Khalasi against Group D posts. Besides, the Board of Apprentice Training Northern Region clarified that diploma holders having certificates from the Board need not be asked to produce proficiency certificates issued by the National Council for Vocational Training. The Railway Board in their letter dated 21.6.2004 (Annexure-9) gave a clarification that the "Course Completed Act Apprentices" could be engaged as substitutes in Group D under GM's powers in administrative exigencies subject to following the same instructions prescribed for such engagement. This clarification did not answer the specific query which was made in the letter dated 19.2.99 and did not

clarify whether the diploma and degree holders apprentices could be considered for lowly substitute jobs of Group D Khalasies. However, the matter was left to the GM who was to exercise his discretionary authority in the administrative exigencies.

5. Such an issue was brought before this Tribunal in the O.A. 523/2004 where the rival contentions of the present applicant and the respondents have been examined. A reference has been made to the letter dated 6.4.2000 of the Railway Board in this judgment, which says that preference should be given to diploma holders and graduate engineers who have completed training under Apprenticeship Act over others in the matter of recruitment to Group C posts for which diploma/degree in engineering has been laid down as prescribed qualification. The General Manager in a letter dated 27.9.2004 had asked that documents of only trade apprentice either of fresh candidates or ITI qualified candidates were to be verified until a clarification of the Railway Board was received in the matter. In compliance of the orders of the General Manager, the verification process for Diploma /Degree holder apprentices has been postponed.

5.1. Relying on the earlier clarification dated 21.6.2004 of the Railway Board, it was held in O.A. No. 523/2004 that the Course Completed Act Apprentices could be engaged only when the General Manager gave approval for the purpose. In the absence of his specific approval, no one was entitled to be engaged as substitutes against Group D post. It went on to hold that the degree holder apprentice, the diploma holders apprentice and the trade apprentice are three distinct categories and the candidates belonging to these three categories are not similarly placed or circumstanced. Therefore, there was justification for applying different criteria in respect of these categories separately. It held that the instructions of the General Manager for postponement of verification

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of diploma/degree engineers apprentice could not be held unreasonable or illegal or violative of Articles 14 and 16 of the Constitution of India.

6. The applicants in that O.A. filed Writ Petition No. 36(SB) 2005 before the Hon'ble High Court which admitted the petition and directed by way of interim relief that in case any further vacancies were to be filled in through apprentice trainees, either the case of the petitioners should be considered as per rules or the vacancies to the extent of the number of petitioners should not be filled up until further orders of the Hon'ble High Court. Seven other petitioners filed Writ Petition No. 8251/SS/2005 seeking direction from the Hon'ble High Court on similar issue. The Hon'ble High Court took cognizance of the fact that this Tribunal had already decided the issue on merits, but, at the same time, held that the mere fact that the High Court had entertained the Writ Petition against the judgment and order passed by the Tribunal deciding the O.A. on merits should not stand in the way of other applicants moving the Tribunal in the matter. Accordingly, this application has been filed.

7. The main ground taken by the applicant is that his case will come within the scope of definition of "Course Completed Act Apprentices" and he would be entitled to be considered along with others for empanelment in terms of the letter dated 21.6.2004 of the Railway Board. As has been remarked earlier, the clarification given by the Railway Board in the aforesaid letter has further confused the position. A specific clarification was sought for whether the diploma/degree holder apprentices would be considered for engagement as substitute against Group 'D' posts and no clear cut answer to this query has been provided in this letter of the Railway Board. From the judgment in O.A. No. 523/2004, it is seen that the General Manager in a letter dated 27.9.2004 had advised that documents

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only of Trade Apprentices (either fresh candidates or ITI qualified candidates) were to be verified till a clarification from the Railway Board was received. In other word, a proper clarification in the matter was still required from the Railway Board.

8. The applicant further contends that earlier call letters had been issued to others belonging to the category of diploma holder apprentices for interview and the present decision to withhold the verification of certificates of such candidates was discriminatory in nature. He has cited instances of cases of other similarly placed diploma holders who had been called for interview in the past. Therefore, the present action of the Railway Management, according to him, was not fair and amounted to unequal treatment of equals.

9. The respondents have strenuously contended that the phrase "Course Completed Act Apprentices" referred only to the Trade Apprentices. They have explained that there were three categories of apprentices:-

- i) Trade Apprentices; they could be either be fresh candidates or ITI qualified candidates;
- ii) Technician Apprentices ; Diploma holder apprentices belonged to this category;
- iii) Graduate Engineer Apprentices

10. Whereas apprentice certificate in respect of Trade Apprentices are issued by the National Council for Vocational Training under the Ministry of Labour, Govt. of India, the diploma holders get their certificates from the Board of Apprenticeship Training, Ministry of Human Resource Development. Further, the scales of stipend given to these three categories are completely different; whereas in the first year, the Trade Apprentices get stipend @ Rs. 840/- per month,

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Technician Diploma Holders get @ Rs. 1400/- whereas Graduate Degree holder apprentices get @ Rs. 1970/-. They have also placed reliance on the instructions of the Railway Board that preference should be given to degree/ diploma holders apprentices only in respect of Group 'C' posts. By implication, it is held by them that such preference should be given to Trade Apprentices in respect of Group 'D' posts. Therefore, the General Manager in his letters dated 18.8.2004, 27.9.2004 directed that the documents of Trade Apprentices only should be verified. This position was further reiterated in the order of the General Manager dated 1.11.2004 (vide paragraph 6 of the Counter Reply filed by respondent No. 8). It was forcefully argued by the Learned Counsel for the respondents that limiting the zone of consideration to Trade Apprentices for the purpose of empanelment of substitutes of Group 'D' Posts constituted a reasonable classification. It was contended that Degree/ Diploma holders would be over qualified for the unskilled jobs and were not suitable for the purpose. Law does not permit to compel the employer to repeat a mistake committed in the past.

11. It is clear that the confusion is primarily on account of absence of clarify in the use of the phrase 'Course Completed Apprentices' made by the Railway Board in its letter dated 21.6.2004. However, we would agree with the interpretation made by this Tribunal in its judgment in O.A. No. 523/2004 that a discretion has been given to the General Manager to prepare panels of apprentices to be engaged as substitute workers against Group 'D' posts. It is clear that Group 'D' posts do not require technical education of the level of diploma / degree in engineering. Group 'C' and above posts are meant for such candidates. It was therefore, perfectly reasonable for the General Manager to limit the verification of certificates only to Trade Apprentices for preparing the panel

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until a specific clarification was received from the Railway Board in the matter. However, we would observe that the Respondent No.3 (General Manager) should follow up with the Railway Board for a specific answer to the query made in this letter dated 19.2.99. The General Manager could take a stand in the matter and refer it to the Railway Board for confirmation. Respondent No.2, i.e. the Railway Board should give a specific clarification in the matter with in three months.

12. In the result, we do not see any merit in the present application for interference in the interim arrangement made by the respondents.

13. All these applications are disposed of with the above observations. No costs.

Mishra 20/1/09
(Dr. A. K. Mishra)
Member (A)

M. Knthaiah
(M. Knthaiah)
Member (J)

20-01-2009

V.