

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 198 of 2010

Reserved on 4.9.2014
Pronounced on 25th September, 2014

**Hon'ble Mr. Navneet Kumar, Member-J
Hon'ble Ms. Jayati Chandra, Member-A**

1. Mukesh Chandra Srivastava, S/o late Tara Prasad Srivastava.
2. Vimal Kumar Gautam, S/o Sri Raj Bali Ram.
3. Hansraj Singh, S/o late Raj Bahadur Singh.
4. Pawan Jauhari, S/o Sri V.K. Saxena
5. Rakesh Agarwal, S/o Sri Narayan Agarawal.
6. Dharmesh Kumar Singh Chandel, S/o Sri Hari Shanker Singh.
7. Kamal Krishna, S/o Sri Virendra Singh.
8. Manoj Kumar Srivastava, S/o late Fateh Bahadur Srivastava.
9. Ramesh Chandra Tripathi, S/o Sri Janardan Tripathi.
10. Praveen Kumar Awasthi, S/o late R.C. Awasthi.
11. Pramod Kumar Upadhayay, S/o Sri Ram Kant Upadhayay.
12. Rakesh Singh, S/o Sri P.D. Singh.
13. Pawan Kumar Shukla, S/o Sri Komal Ram Shukla.

.....Applicants

By Advocate : Sri S.P. Singh and Sri Alok Kumar Tripathi

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 Railway, Baroda House, New Delhi.
4. Secretary (Establishment), Railway Board, Rail Bhawan, New Delhi.
5. General Manager (Personnel), Northern Railway headquarters Office, Baroda House, New Delhi.
6. Divisional Railway Manager, Northern Railway, Hazratganj, 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 S.Verma

J. Chandra

ORDER**Per Ms. Jayati Chandra, Member (A)**

This O.A. has been filed by the applicant under Section 19 of Administrative Tribunals Act, 1985 seeking the following relief(s):-

- "(i) issue order or direction quashing the impugned letters dated 8.9.2009 and 4.2.2010/decision of General Manager, Northern Railway, New Delhi and the Railway Board with regard to the verification in respect of the diploma holder apprentices the petitioners, contained in Annexure nos. 1 and 2 of the Original Application.
- (ii) issue a order to the respondents to consider the applicants for engagement/appointment as per the call letter that have been issued to them on the post of Group 'D' as Substitute against the post reserved by the Hon'ble High Court.
- (ii-a) issue order or direction quashing the impugned order, dated 26.9.2011/3.10.2011, contained in Annexure no.2-A of the Original Application.
- (ii-b) Issue order or direction to the respondents to consider engagement/appointment to the applicants in same lines as they had given appointment to Sri Ashok Kumar Awasthi and Sri Trilok Kumar Arora and also keeping in view of the circular dated 4.5.2006 and judgment and order dated 30.6.2004 passed in O.A. No. 38 of 2007, contained in Annexure no.17 to this Original Application.
- (ii-c) Issue order or direction to the respondents to give seniority and other consequences benefits to the applicant's w.e.f. 28.9.2004 i.e. verification process for engagement was stopped by the respondents and same (order dated 28.9.2004) had been quashed by the Hon'ble High Court on 14.5.2010 in Writ petition No. 626 (S/B) of 2009.
- (iii)
- (iv)".

2. At the time of final hearing of the case, it was stated by learned counsel for the applicant nos. 2, 3, 4, 9 and 13 that they do not want to press this O.A. as their grievances have already been redressed. Therefore, this O.A. is being confined only on behalf of applicant nos. 1, 5, 6, 8, 10, 11 and 12 only.

J. Chandra

3. The facts of the case, as averred by that the contesting applicants, are that they had passed Diploma courses in Mechanical Engineering and were issued with certificates of the same by Board of Technical Education, U.P. They had undergone Apprentice Training under the Apprentice Act, 1961 at Northern Railway Carriage & Wagon, Alambagh, Lucknow for one year and certificate to this effect had been issued to them. The respondents initiated the process of filling up large number of vacancies in Group 'D' post and in pursuance thereof, the applicants were called for verification of their service and to submit other documents in the month of September, 2004. However, without any explanation by order dated 28.9.2004 the verification process in respect of the applicants being Diploma holders were cancelled. Aggrieved by such notice/ order, the applicants alongwith others filed O.A. no. 509 of 2004 and 523 of 2004 before this Tribunal. Both these O.As. were clubbed together and dismissed vide order dated 20.12.2004. The said order was challenged by the applicants by means of Writ petition No. 36 (S/B) of 2005 and Writ petition No. 143 (SB) of 2005. These Writ petitions were disposed of vide judgment and order dated 2.9.2008 by remanding the matter to this Tribunal for adjudicating afresh in the light of Railway Board's circular dated 2.11.2004. During the pendency of Writ petition, the Railway Board had issued circular dated 21.6.2004 wherein the General Manager was authorized to engage the courses completed Apprentices as Substitutes in Group 'D' in administrative exigencies. This Tribunal vide common judgment and order dated 20.1.2009 disposed of O.A. nos. 509 of 2004 and 523 of 2004 alongwith two other O.As, which have been filed during the intervening period O.A. nos. 148 of 2005 and 569 of 2006. The operative portion of the order reads as under:-

"11.....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 19.2.1999. The General Manager could take a stand in the matter and refer it to the Railway Board for confirmation. The respondent no.2 i.e. Railway Board should give a specific clarification in the matter within 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."

T. Chandra

4. Some of the applicants filed Writ petition No. 626 (S/B) of 2009 before Hon'ble High Court. The applicants had also filed Contempt Petition No. 41 of 2009 for non-compliance of judgment and order dated 20.1.2009 passed in O.A. no. 509 of 2004 and others. In compliance to the judgment and order, the respondents have filed compliance report whereby it was stated that the General Manager had taken a decision that it is not in the interest for the department that the technically qualified persons such as Diploma/Degree holder in Engineering be acknowledged for Group 'D' post. They have further added to the controversy by holding that the Diploma/Degree holders constitute different categories of Apprentice under Apprentice Act, 1961 and, therefore, there cannot be any equality amongst them as their qualification mode of induction in Apprentice Training and stipend are distinct and different. This stand of the General Manager was subsequently upheld by the Railway Board vide impugned order dated 4.2.2010. This stand goes against the stated policy and practice of the respondents themselves. The applicants by way of example had quoted the recruitment notice dated 30.1.2004 by which both Diploma/Degree holders were invited for appointment to the post of Assistant Loco Pilot. However, this kind of discrimination between trade apprentice and diploma holders is against the provisions of Article 14 & 16 of Constitution of India. The Hon'ble Supreme Court in the case of Mohinder Singh Gill & Another Vs. The Election Commissioner, New Delhi & Others reported in (1978) 1 SCC 405 has held as follows:-

"The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji (1) "Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in Ms mind, or what he intended to, do. Public orders made by public authorities are meant to have public effect and are intended to effect the acting's and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

J.Chandra

Orders are not like old wine becoming better as they grow older:"

5. This decision of the General Manager is also not in tune with the recommendations of 6th CPC wherein Group 'D' employees have been given post/status of Group 'C' employee. In the meanwhile, the Tribunal vide its interim order dated 11.8.2010 in the present O.A. had directed the respondents to decide the representation of the applicants with the same line that they have proposed to take in respect of Writ petition No. 626 (S/B) of 2009. In compliance of the order, the respondents have decided the representation by passing order dated 26.9.2011/3.10.2011 which has been impugned in this O.A. as Annexure no. A-2 through amendment application. The decision of the respondents as revealed by the impugned order dated 26.9.2011/3.10.2011 is being challenged on the ground that the applicant nos. 1, 5, 6, 8, 10, 11 and 12 are not found eligible for engagement in Group 'D' on account of having become over age on 31.8.2004. This decision of the respondents is discriminatory in nature against one Sri Trilok Kumar Arora and certain others. The respondents had earlier issued letter dated 24.12.1997 by which notification had been issued for filling up Group 'D' vacancies in Technical Workshop of the Railways. The applicants applied for the same ^{1.0} qualification as the said Sri Trilok Kumar Arora. They were called for verification process alongwith one Sri Trilok Kumar Arora, who had same qualification as the applicants. Sri Arora had been engaged vide order dated 5.1.2011 (Annexure-11).

6. During pendency of this litigation, the respondents vide letter dated 4.5.2006 (Annexure -1) had given one time age relaxation upto 38 years till 3.2.2007 to all Courses completed Act Apprenticeship belonging to General, SC/ST and OBC categories. In response of this decision, the respondents have evaluated all cases and had given appointment to one Sri Ashok Kumar Awasthi, whose date of birth is 1.7.1967 and who is at serial number 22 in the trade Apprentice seniority List of 2004 (Annexure nos. 15 and 16) and to Sri Trilok Kumar Arora whose date of birth is 14.9.1962 and his name was at sl. No. 1 in the seniority list of Act Apprentices of Loco Shop, Charbagh, Lucknow.

J. Chandra

Thus, granting age relaxation to both Sri Trilok Kumar Arora and Ashok Kumar Awasthi and denying the same to the contesting applicants on the ground of being over aged, is discriminatory. Another Sri Kunwar Bahadur Singh, whose name has been mentioned in the seniority list of Act Apprentices of Loco Shop, Charbagh, Lucknow has also been given age relaxation. The Hon'ble Supreme Court in the case of K.C. Sharma Vs. Union of India & others reported in 1997 (6) SCC 721 had held that in the identical facts and circumstances of a case same relief is given to all the applicants if they are covered by the judgment.

7. The respondents have contested the claim of the applicants by filing Counter Reply. They have stated that the impugned orders dated 8.9.2009 and 4.2.2010 i.e. Ist and IIInd impugned orders have already been set-aside by Hon'ble High Court at Lucknow by means of judgment and order dated 14.5.2010 passed in Writ petition No. 626 (S/B) of 2009 (Jaideep Shukla Vs. Union of India & Others) during pendency of the instant O.A. Therefore, no further order setting aside the impugned order is to be passed by the Tribunal. In so far as the impugned order contained in Annexure no. 2-A is concerned, the respondents have stated that same does not suffer from any infirmity or illegality. By interim order dated 11.8.2010 passed in the instant O.A., the applicants were required to give their representations before the respondents and all the applicants were called for screening. Some of the applicants are also the petitioners in Writ petition No. 626 (S/B) of 2009. As a result of screening process, those who were within the cut off date of 31.8.2004 have since been engaged as Substitute in Group 'D'.

8. On the issue of common cause of action arising with certain other persons who had applied pursuant to notification dated 24.12.1997, the claim of the applicants that they had also applied cannot be verified at this stage. More-over any relief arising out of the notification dated 24.12.1997 is highly time barred. Section 21 of A.T. Act lays down the maximum period of one and half years from the date of cause of action, which in this case is alleged to be notification dated 24.12.1997. The case of Sri Trilok Kumar Arora is separate and distinct from the applicants. Sri Trilok Kumar

J. Chandra

Arora underwent the training under Trade Apprentice Act with three years, training; whereas the applicants were Technician Apprentice holding Diploma in Engineering or equivalent qualification recognized by the Government with training period of one year under Apprentice Act 1961. The applicants are also stopped from questioning their non-selection in the said screening pursuant to the said notification of 1997 on the doctrine of waiver and estoppel as no such issue was raised by the applicants in Writ petition No. 626 (S/B) of 2009, which has been decided vide judgment and order dated 14.5.2010.

9. It is not denied that certain guidelines were issued with regard to the age relaxation by the Railway Board in its order dated 4.5.2006 (Annexure no.14) (RB 57/06) authorizing the General Manager of the Zonal Railways that they could engage the courses completed Apprentices as Substitute Group 'D' provided that they otherwise fulfilled the conditions prescribed for engagement of Substitutes. The applicants cannot now challenge their exclusion from the said order as a) they never took this plea in any earlier O.As/Writ petitions; b) have not arrayed as respondents all who have been engaged in pursuance of the same. The Railway Board by its order dated 30.6.1990 had provided age relaxation in upper age limit from time to time at Apprentice upto the period under Apprentice Act The age relaxation was allowed by the Board's letter dated 4.5.2006 has a prospective applicability and not retrospective). The applicants are seeking relief in pursuance of selection process initiated in the year 2004 and, therefore, no age limit as per the relaxation granted in the year 2006 is available to them. The case of Sri Ashok Kumar Awasthi engaged in Group 'D' vide office order no. 343 dated 17.10.2006 suffers from an inadvertent error inasmuch as it has wrongly been issued by misinterpreting the relevant instructions and rules. In any case the perpetuation of a wrong on the basis a wrong precedent can not be permitted. The case of Sri Triloki Kumar Arora is separate and distinct from the case of the applicants. Sri Arora, who was direct Apprentice had not been engaged as Substitute in Group 'D' despite being called in even the subsequent notification of 2004 on the ground of being overage. Sri Trilok Kumar Arora had filed O.A. no. 38 of 2007 which was

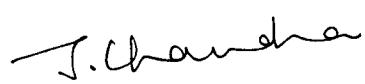
J.Chandra

decided on 30.6.2008 (Annexure no.17). Thereafter, Sri Trilok Kumar Arora filed Writ petition No. 1518 (S/B) of 2008, which was dismissed on 18.10.2008. The respondents filed SLP (C) 1615 of 2010 (Civil Appeal No. 2793 of 2011) before the Hon'ble Supreme Court and on 28.3.2011 the Hon'ble Supreme Court was pleased to remand the matter to the Hon'ble High Court. The matter is still pending before Hon'ble High Court. However, as no order staying the operation of the order dated 30.6.2008 passed in O.A. no. 38 of 2007 and CCP no. 62 of 2009 in O.A. no. 38 of 2007, Sri Trilok Kumar Arora engaged as Substitute subject to outcome of case which was pending at the relevant point of time. Thus, the engagement of Sri Trilok Kumar Arora was conditional and would be subject to outcome of Writ petition No. 1518 (S/B) of 2008. The case of Sri Kunwar Bahadur Singh is that he belongs to OBC category. Till 3.12.2010, there was no provision in the Apprentice Act 1961 providing for reservation or age relaxation for the candidates belonging to OBC who were included in the training as General category Sri Kunwar Bahadur was given the benefit of age relaxation in the face of 27% reservation for OBC candidates.

10. Rejoinder has been filed by the applicants denying the averments made in the Counter Reply and Supplementary Counter Reply and reiterating the stand taken in the Original Application.

11. We have heard the learned counsel for the parties and have also perused the pleadings on record.

12. The applicants have been aggrieved by the stand and abrupt stoppage of all procedure for enlistment as Substitutes in Group 'D' posts which was initiated in the year 2004. In 2004, the applicants and others had applied for consideration of employment as Substitutes against Group 'D' posts and they were issued call letters (Annexure no.4), but this action was stopped by impugned order dated 28.9.2004. This order was challenged variously through various litigations as has been elaborated hereinabove. However, all the controversy arising out of such action of the respondents has been laid to rest by order dated



14.5.2010 passed in Writ petition No. 626 (S/B) of 2009. The operative portion of the order reads as follows:-

"In the instant case, the petitioners are the diploma holders in the mechanical engineering but they are not getting the suitable job according to their qualification. So, they made a request to provide them Group D post, commonly known as Khallasi. The Railway Administration has denied the same by stating that they were over qualified and they will never have job satisfaction, being better qualified. But fact remains that they are the qualified persons having imagination, creativity which can be utilized for further development, and research of the railway mechanism. We are sure, if an opportunity in the form of employment will be provided to the petitioners, they will certainly make valuable contribution towards technological innovation and economic development not only for the employer i.e. railway but also for the nation.

15. In the instant case, petitioners have a history of a litigation for getting job of Group D which shows that they are eager to get the job. Needless to say that it is the interest of the State that there should be an end of litigation as per the maxim INTEREST REIPUBLICAE UT SIT FINIS LITIGUM.

16. Moreover, in the government sector including railway for a particular post, some minimum qualification is prescribed but nowhere it is mentioned that higher qualification is a disqualification. No adverse material is brought on record against the petitioner except that they are over qualified for the post of Khallasi which falls in Group D posts.

17. In view of the above and without saying much, we set aside the impugned letter written by the Railway Board as well as the impugned orders passed by the Tribunal and direct the opposite parties to consider the case of the petitioners sympathetically for the posts of Khallasi which falls in group D posts, if the petitioners are otherwise qualified as per law. A considerable time has already been elapsed in the litigation, so, we issue a mandamus to consider the candidature of the petitioners for Group D posts within a period of three months after receiving the certified copy of this order.

The writ petition is allowed. No cost."

13. The applicants did not seek to amend their relief(s) suitably in the light of such order. However, in the light of the order passed by Hon'ble High Court passed in Writ petition No. 626 (S/B) of 2009, the relief no.1 and 2 have become infructuous. The case survives only with regard to the relief no. 8.ii(a) and 8.ii(b) and 8.iii(c). Through the relief 8 (ii) (a) the applicants have prayed for quashing of the order, contained in Annexure no.2-A. It is seen that such a relief as prayed is likely to harm the interest of S/Sri

J.Chandru

Kamal Krishna, Hansraj Singh, Ramesh Chandra Tripathi and Pawan Kumar Shukla, who were earlier applicants in the present O.A. and now do not wish to contest as per statement of their respective counsel. It is not enough in the light of the relief claimed that they simply do not wish to press for the relief. There is no prayer for deleting their names from the array of the applicants. More-over, these persons would require to be impleaded as respondents. Since any order upon quashing of the same will harm their interest. The Hon'ble Supreme Court in the case of **Vijay Kumar Kaul and others Vs. Union of India and others [Civil Appeal No. 4986-4989 of 2007]** held as follows:-

"29. In *Public Service Commission, Uttarakhand v. Mamta Bisht & Ors.*[9] this Court while dealing with the concept of necessary parties and the effect of non-impleadment of such a party in the matter when the selection process is assailed observed thus: - "7. In *Udit Narain Singh Malpaharia v. Additional Member, Board of Revenue, Bihar & Anr.*, AIR 1963 SC 786, wherein the Court has explained the distinction between necessary party, proper party and proforma party and further held that if a person who is likely to suffer from the order of the Court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice. More so, proviso to Order I, Rule IX of Code of Civil Procedure, 1908 (hereinafter called CPC) provide that non-joinder of necessary party be fatal. Undoubtedly, provisions of CPC are not applicable in writ jurisdiction by virtue of the provision of Section 141, CPC but the principles enshrined therein are applicable. (Vide *Gulabchand Chhotalal Parikh v. State of Gujarat*; AIR 1965 SC 1153; *Babubhai Muljibhai Patel v. Nandlal, Khodidas Barat & Ors.*, AIR 1974 SC 2105; and *Sarguja Transport Service v. State Transport Appellate Tribunal, Gwalior & Ors.* AIR 1987 SC 88). 8. In *Prabodh Verma & Ors. v. State of U.P. & Ors.* AIR 1985 SC 167; and *Tridip Kumar Dingal & Ors. v. State of West Bengal & Ors.* (2009) 1 SCC 768 : (AIR 2008 SC (Supp) 824), it has been held that if a person challenges the selection process, successful candidates or at least some of them are necessary parties."

30. From the aforesaid enunciation of law there cannot be any trace of doubt that an affected party has to be impleaded so that the doctrine of *audi alteram partem* is not put into any hazard.

J. Chandra

31. *Analysed on the aforesaid premised reasons, we do not see any merit in these appeals and, accordingly, they are dismissed with no order as to costs."*

In view of the aforesaid, the present O.A. suffers from technical defects of non-joinder of necessary parties.

12. The applicants have claimed parity with Sri Trilok Kumar Arora who alongwith the applicants had been called for screening test notified on 24.12.1997 issued for filling up Group 'D' vacancies in Loco Workshop, Northern Railway, Lucknow. Further, the applicants were also called alongwith Sri Trilok Kumar Arora in the year 1998. Once again the applicants were never issued the engagement orders. The applicants had never challenged the proceedings consequent upon the notification dated 24.12.1997 as also verification/engagement process held in the year 1998. For the first time, the relief claimed against the alleged grievance has been sought by amendment in the O.A. dated 13.3.2012. Section 21 of the Administrative Tribunals Act, 1985 reads as under:-

"21. Limitation.—

(1) A Tribunal shall not admit an application,—

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where—

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

J.Chandra

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

In the instant case, the applicants have not stated any reason for not initiating the legal action taken against the respondents from the year 1997-1998. The case of Sri Trilok Kumar Arora in the matter of delay cannot be cited by the applicants. The engagement of Sri Arora is as per separate litigation process through filing of O.A. no. 38 of 2007 and the subsequent Writ petition No. 1518 (S/B) of 2008. The applicants in this O.A. were never applicants in O.A. no. 38 of 2007. Hence, any order passed in that O.A. cannot be applied to the present applicants.

13. The Hon'ble Supreme Court in the case of Union Of India & Anr vs M.K. Sarkar has observed that the issue which is stale cannot be agitated after lapse of considerable time. The relevant portion of the order reads as under:-

"When a belated representation in regard to a 'stale' or 'dead' issue/dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision can not be considered as furnishing a fresh cause of action for reviving the 'dead' issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches."

Similarly Chandigarh Bench of the Tribunal in O.A. no. 375/13 in the case of Yog Raj Vs. Union of India & others has held

J. Chandra

that there is a reason for fixing the limitation for filing the O.A. as a stale claim cannot be allowed to be agitated in a Court of law, which otherwise has been accepted by the employee by not challenging it at the relevant point of time. The Chandigarh Bench of the Tribunal has also relied upon the decision of Hon'ble Supreme Court in the case of Union of India & others Vs. A. Duairaj reported in JT (2011) (3) SC 254 wherein the Hon'ble Supreme Court has been reiterating the same principle.

Therefore, so far as the relief against the notification issued on 24.12.1997-1998 is liable to be dismissed on the ground of delay and latches.

14. The cause of action in the case of applicants arose from the issuance of call letters on 16.9.2004 for verification of their certificates for the purposes of empanelling them and engage them as Substitute Group 'D' employees. Although a copy of the notice has not been produced in this O.A., but the same was retrieved from the Annexure 11 and 12 produced by the applicants in O.A. no. 509 of 2004. The relevant portion reads as follows:-

"उत्तर रेलवे
कार्यालय मुख्य कारखाना प्रबन्धक, सवारी एवं माल डिब्बा कारखाना
आलमबाग, लखनऊ

पत्रांक डीसीएमई/704/डिप्लोमा/डिग्री/एवजी
नाम: राकेश अग्रवाल
पिता का नाम श्री राज नारायण अग्रवाल
पता: 247/12 यहायागंज टाट पट्टी
लखनऊ

दिनांक 16.09.2004

विषय: एक्ट अप्रेटिस कोर्स कर चुके डिप्लोमा/डिग्री धारी अभ्यर्थियों के प्रमाण पत्रों एवं अंकतालिकाओं का सत्यापन

चतुर्थ श्रेणी में एवजी के रूप में कार्य करने के लिए आयु सीमा की गणना दिनांक 31.08.2004 को की जाएगी तथा सामान्य जाति के लिए आयु 18 से 30 वर्ष के बीच होनी चाहिए। उच्चतम आयु सीमा में सभी अभ्यर्थियों को प्रशिक्षण अवधि को जोड़कर सीमा में छूट प्रदान की जाएगी तथा अनुसूचित जाति/जनजाति व ओबीरी के अप्रेटिसेज को नियमानुसार आयु सीमा में अलग से छूट प्रदान की जाएगी।

(अरुण शर्मा)
कृते मुख्य कारखाना प्रबन्धक
आलमबाग, लखनऊ

15. This notification does not lay down any provision of any of age relaxation apart from the declaration so made. The applicants

J. Chaudhary

have sought the shelter of enabling provisions contained in the letter dated 4.5.2006 (Annexure no.14). A reading of the same would show that this relaxation is applicable from the date of issue to 3.2.2007. The respondents while screening the applicants in compliance of interim order of this Tribunal had considered the age as on the cut off date of 31.8.2004 as notified in call letters dated 16.9.2004. This cut off date for the purposes of determining the age is uniform for all such persons who have been engaged in the year 2004 itself or subsequently as in the case of those persons whose claims had been kept alive through legal intervention viz applicant nos. 2, 3, 4, 9, 13 who are no longer the contesting applicants. If, however, the age relaxation as per G.O. of 2006 is given to the applicants, the same would be in the nature of discrimination to all such persons who may have had requisite qualification as the applicants and who had also applied, but were not engaged on account of maximum age as laid down in the notification dated 16.9.2004. The case of Sri Trilok Kumar Arora is covered by orders passed in O.A. no. 38 of 2007, Writ petition no. 1518 of 2008 and SLP and stands on a different footing from the applicants. The case of the applicants is also distinct from that of Sri Ashok Kumar Awasthi as the respondents have admitted that a mistake¹ has been committed in his case. Thus, while there may be a question of cancelling that order (which cannot be examined in this O.A.) but that certainly cannot be quoted in favour of the applicants. In this O.A., a distinction can also be made in the case of Sri Kunwar Bahadur Singh as age relaxation to him has been given to him on account of certain facilities available to be a person belonging to the OBC category.

16. In view of aforesaid discussion, the O.A. has no merit and is liable to be dismissed and is accordingly dismissed. No costs.

J. Chandra
(Ms. Jayati Chandra)
Member (A)
 Girish/-

Navneet Kumar
(Navneet Kumar)
Member (J)