

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, P A T N A.

O.A.No.473/96

DATE OF DECISION: 25 JULY-2000.

Surajdeo Sharma, Son of Shyam Sunder Sharma, Village :  
Gaitri Nagar Daulat, P.O.: Jamalpur, District : Munger,  
and 17 Ors. ....APPLICANTS.

By Advocate :- Shri R.K.Jha with Shri A.N.Jha.

Vs.

1. Union of India represented through the General Manager, Eastern Railway, Fairlie Place, 17-Netaji Subhas Road.
2. Divisional Railway Manager, Eastern Railway, Malda Town, Malda District, West Bengal.
3. Divisional Mechanical Engineer, Eastern Railway, Malda Town, Malda District, West Bengal.
4. The Divisional Personnel Officer, Eastern Railway, DRM's Office, Mald Town, Malda District, West Bengal, and 34 other private respondents.

....RESPONDENTS.

By Advocate :- Shri Gautam Bose.

C O R A M

HON'BLE MR. JUSTICE S.NARAYAN VICE-CHAIRMAN.  
HON'BLE MR. L.R.K.PRASAD, MEMBER (ADMINISTRATIVE).

O R D E R

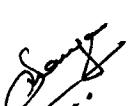
JUSTICE S.NARAYAN, V.C.:- The applicants, being 18 in number, have joined hands seeking remedy against discrimination said to have been made against them, vis-a-vis, the private respondents no.5 to 39, who ranked junior to them (applicants) in the joint cadre of Khalasi Helper while working in the Steam Shed of the Loco at Jamalpur. It has been also prayed to direct the official respondents no.1 to 4 to consider the promotion of the applicants in Diesel Mechanical Gd-III in the pay-scale of Rs.950-1500/- While <sup>the</sup> applicants and the private respondents no.5 to 39 were working as Khalasi Helper in the scale of Rs.800-1150/-, it was decided in the year 1993 that the Steam Shed of the Loco be abolished and only the Diesel Engine be commissioned



in the Mechanical Department of Maldah Devision at Jamalpur.

2. The basic facts, as pleaded by the applicants in this OA, have been practically admitted in the written statement filed on behalf of the official respondents. The private respondents have, however, not chosen to contest the claim of the applicants. In order to better appreciate the applicants' claim, we deem it necessary to proceed even on the admission in the written statement of the official respondents, and to see whether the applicants were entitled to the reliefs as sought for ?

3. The official respondents have made candid admission in the written statement that in the year 1993, Loco Shed (Steam) at Jamalpur was closed and the staff thereof were declared surplus and, accordingly, they were asked to exercise option, if they so desire, to be transferred to the Diesel Shed, Loco, Jamalpur, under the control of CWM, Workshop, Jamalpur. From the optees some junior staff were spared for Diesel Shed, but the applicants, who also had opted for the same, were not spared and retained at Loco Shed (Steam) for the reason that they were experienced for the work of accident relief train as well as fuelling points work. Hence, the applicants were not spared due to the exigency of the administration. It so happened that after three years of transfer of respondents no. 5 to 39 at Diesel Shed, Jamalpur, they have been promoted as Diesel Mechanical, Gr. III.



4. From the above facts, it has emerged on the record, as admitted truth, that the applicants and the private respondents were among those optees, who had opted for transfer from Steam Shed to Diesel

Shed, but for administrative reason the applicants, though being senior to the private respondents, were not spared rather, they were retained in the Steam Shed. This event <sup>has</sup> given rise to the situation that the private respondents, though ranking junior to the applicants in their earlier joint cadre, have been favoured with promotion available in the Diesel Shed only after three years of the transfer.

5. The situation, as noticed above, has definitely given rise to a sort of discrimination having been made against the present applicants for no fault on their part and inspite their having given option for transfer to the Diesel Shed. Thus, in any view of the matter, the administrative act on the part of the official respondents, has resulted in denial of <sup>and</sup> equity of opportunity. The official respondents were thus, answerable to the discrimination, done against the applicants.

6. By way of explanation, it was urged on behalf of the respondents that even though the applicants had opted for the transfer to Diesel Shed, they did not raise objection against the act of the official respondents while retaining them for about three years after the transfer of the private respondents. This, in our opinion, can not be considered to be a plausible and satisfactory explanation so as to deny the applicants' claim of transfer pursuant to the option exercised by them. Whereas, some juniors to the applicants were transferred in terms of their option, it was denied in the case of the applicants and, therefore, simply because of lapse of three years, it would not be necessarily presumed that the applicants had withdrawn their option of transfer. Admittedly since there was no change in the scale on account of



Diesel

of the transfer from Steam Shed to Loco Shed, the applicants, probably, continued under legitimate expectation that they would not be confronted to any sort of discrimination as compared to those who had been favoured in terms of their option, even though being junior to the applicants.

7. It was urged on behalf of the respondents that the cadre of the Diesel Shed was quite separate from that of Steam Shed and, therefore, because of the event of transfer of the surplus staff, the incumbents in the two different cadres, as per Steam Shed and Diesel Shed, can not be equated. In this context, it has to be always borne in mind that the applicants ranked senior to the respondents 5 to 39 and they (the applicants) also opted for the transfer, but they were purposely not spared by the administration. Hence, there, definitely, arises a legitimate expectation that the applicants be treated at par with those private respondents who were transferred and were being given promotion to the next higher scale because of the opportunity available in the Diesel Shed. A question of equity also does arise in the special facts and circumstance of the case which needs special attention of the Railways not to allow the applicants suffer for the act of discrimination made by the administration in the exigency then existing. Therefore, we are of the view that the applicants should be accorded similar treatment in the matter of promotion, as given to some of his juniors such as, respondents, no.5 to 39. In this context, we have preferred to put reliance on the decision of Ernakulam Bench of Central Administrative Tribunal, in the case of V.Balasubramaniam & Ors. Vrs. Union of India & Ors., reported in 1993 (24) ATC 27; and yet another decision on the line



which would strengthen the view taken by us, is from Hyderabad Bench of C.A.T. in the case of V.Brahmiah Vs. Chief Personnel Officer & Ors., reported in 1992 (2) AISLJ 204. The applicants of that case had applied for new Workshop at Tirupati, but they could not be released for administrative reasons and juniors joined earlier and promoted adhoc. It was held by the Hyderabad Bench that senior should not be only allowed to join, but also given financial protection, promotion, etc.

8. In the result, this OA must succeed and, accordingly, it is allowed. The official respondents are directed to consider the promotion of the applicants in the scale of Rs.950-1500/- so as to ensure equal opportunity to them along with the private respondents no.5 to 39, who ranked junior in the joint seniority list. It shall be open for the respondents to create promotional avenues even in the ~~Steam~~ Shed for the applicants in the special facts and circumstance of the case on the ground that they were not spared by the administration to join their corresponding post in Diesel Shed inspite of option exercised by them. Such consideration be made at the earliest possible with an appropriate order in the light of the observation preferably, above, within four months from the date of communication of this order. There shall be no order as to costs.

*prasad*  
 (L.R.K.PRASAD) 25.7.2008  
 MEMBER (A)

*Surya*  
 (S.NARAYAN)  
VICE-CHAIRMAN  
 25.7.2008