

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.996/1999.

Date of decision :

Mahadev Bajiraw Gadre & Ors.

Applicant.

Shri L.M.Nerlekar

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri Suresh Kumar

Advocate for
Respondents.

CORAM :

Hon'ble Shri Anand Kumar Bhatt, Member (A),
Hon'ble Shri S.G.Deshmukh, Member (J).

(1) To be referred to the Reporter or not?
(2) Whether it needs to be circulated to
other Benches of the Tribunal?
(3) Library.


(ANAND KUMAR BHATT)
MEMBER (A)

B.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, MUMBAI.

ORIGINAL APPLICATION NO.996/1999.

Dated: 6.4.04

Hon'ble Shri Anand Kumar Bhatt, Member (A),
Hon'ble Shri S.G.Deshmukh, Member (J).

1. M.B.Gadre,
2. S.T.Kamble,
3. Jeevan Bachai,
4. Vithoba K.Joshi,
5. Ramdular R.,
6. Deelip Patil,
(All working as Helper-Khalasi
Under Sr. Divisional Mechanical Engineer,
Diesel Shed, Kurla.
(By Advocate Shri L.M.Nerlekar) ...Applicant.

Vs.

1. Union of India,
Through General Manager,
Central Railway, C.S.T.,
Mumbai - 400 001.
2. Divisional Railway Manager,
Central Railway, C.S.T.,
Mumbai - 400 001.
(By Advocate Shri Suresh Kumar) ...Respondents.

: ORDER :

{Anand Kumar Bhatt, Member (A)}

The applicants are working as Helper Khalasi in Group 'D' cadre in the Railways in the grade of Rs.2,650-4000. They have requested for promotion under the departmental promotion quota to the next higher grade of Diesel Mechanic in the grade of Rs.3,050-4,590.

2. The facts, as narrated by the applicants, are that the Railway Board vide their letter dt. 28.9.1998 raised the minimum qualification for direct recruitment to the post of Artisan Khalasis to Matriculate with desirable qualification of Apprenticeship pass under Apprentice Act or Diploma in I.T.I.

being an additional desirable qualification. The letter also distributed the posts under various grade as follows :

S1. No.	Scale	Existing Percentage	Revised Percentage
1.	Rs.3050-4590	NIL	50
2.	Rs.2650-4000	80	30
3.	Rs.2550-3200	20	10
4.	To be surrendered		10

The letter further stated that the posts in the grade of Skilled Artisan Rs.3050-4590 will be filled up 60% by direct recruitment from successful course completed Apprentices, ITI passed candidates and Matriculates from the open market; 20% from serving semi-skilled and unskilled staff with 3 years' regular service with educational qualifications as above and 20% by promotion from the lower grade. According to applicants 26 employees including applicants were called for trade test. However, their results have not been declared and they have not been promoted to the higher scale of Rs.3050-4590. The applicants are entitled to be considered for promotion to the post of Diesel Mechanic in the grade of Rs.3050-4590 on year to year basis against the quota reserved for departmental promotion on the basis of suitability-cum-seniority. Even though applicants were called for trade test for promotion in May, 1999 no further action has been taken. Thus, the relief sought is that the result of the trade test held on 4.5.1999 be declared

and the applicants be promoted to the higher grade by calculating the vacancies on year to year basis against the quota reserved for departmental promotion.

3. In the oral submissions, Shri Nerlekar for the applicants argued that in 1986 60% of the posts were available for the departmental candidates, while in the year 1998 the percentage was reduced to 20% and subsequently it is 10%. The applicants are working from 1984 (1, 2), 1996 (3,5) and 1992 (4, 6) onwards and they have not been considered for promotion till today.

4. In the reply filed on behalf of the respondents, they have stated that no trade test was held on 4.5.1999. The promotion to the employees has been granted in accordance with the letter of Railway Board dt. 28.9.1998 (Exhibit R-1). The respondents have stated that the averment made by the applicants about the changes made by letter dt. 28.9.1998 in the minimum qualification and in the percentage prescribed for the various grades is correct. Additional posts were added in the grade of Rs.3050-4590 and revised methodology was introduced. They have stated that it was decided to conduct trade test for Group 'D' staff and 25 employees were listed out including Applicants No.1, 2 and 6. However, no trade test was conducted for not fulfilling the conditions stipulated in the Railway Board Circular dt. 28.9.1998. Another list of eligible employees who were on roll as on 1.9.1998 and possessing requisite qualifications was prepared and those who were found successful were promoted vide order dt. 20.1.2000 w.e.f. 1.9.1998. Those who did not fulfil the eligibility conditions prescribed under letter dt. 28.9.1998 were not called for the trade test and were not promoted w.e.f.

1.9.1998. The respondents have further stated that in the 20% departmental promotion quota Applicant No.1 M.B.Gadre (SC) and Applicant NO.2 Shivaji T.Kamble (SC) were promoted w.e.f. 20.12.2000 in SC quota. None was promoted from the original list of 25 employees. The vacancies were calculated which accrued from 2.9.1998 for the period upto 31.8.2000 as directed in the said letter dt. 28.9.1998. Shri Suresh Kumar, the Learned Counsel for the respondents in the oral submissions stated that as two of the six applicants have already been promoted, the application becomes infructuous in regard to them. No details have been given by the applicants in support of their demand for clubbing of vacancies. The Railway Board circular dt. 28.9.1998 was challenged in OA No.23/2000. The Tribunal had dismissed the application for non-prosecution. He stated that the case was also heard by the Apex Court and in Technical Employees' Association of Railways and Another Vs. Ministry of Railways and Ors. ((2000) 9 SCC 412}, the Circular dt. 28.9.1998 was held valid and it was stated that it was permissible for the Railway Board to prescribe higher qualification for promotion from the post of Khalasis in view of maintaining efficiency of service in higher positions. The question of clubbing of vacancies can be challenged by aggrieved eligible person only, whereas the four remaining applicants are not eligible to be considered for promotion. He stated that if the request of the applicants is acceded to, all promotions made upto now will be set aside. However, the affected parties have not been impleaded and therefore, the applicants cannot get that benefit. He stated that those employees who were ^{not} possessing requisite qualifications

in terms of para 6 of the said Railway Boards letter were not considered eligible for trade test for promotion to Diesel Mechanic/Technician Gr.II. Such employees who did not fulfil the eligibility conditions laid in the said letter were not called for trade test nor they were promoted w.e.f. 1.9.1998.

5. Shri Nerlekar, in rebuttal, has stated that prior to 1998 no qualification was prescribed and the applicants should have been promoted as per Rules existing at that point of time.

6. We have considered the case. The respondents in para 16 (a) of their reply have categorically stated that in accordance with the Railway Board's letter dt. 28.9.1998 the vacancies which accrued from 2.9.1998 to 31.8.2002 were calculated for conducting trade test for promotion. The applicants have not been able to prove specifically that vacancies were not filled up as per rules, in addition to this which accrued as a result of increased quota in the scale of Rs.3050-4590 as per the said letter dt. 28.9.1998. The respondents have stated that they have acted according to the instructions of the said letter contained in para 6, which is as follows :

"With a view to give the benefit of the grade Rs.3050-4590 to the existing staff with the prescribed qualification stated in para 5(i) above in a reasonable time, the following procedure of filling up the posts in grade Rs.3050-4590 is laid down for the present:

(i) The additional posts in the grade Rs.3050-4590 becoming available in terms of these orders will be filled up by the employees' possessing the prescribed qualification indicated in para 5(i) above and who are on roll as on 1.9.1998, on passing the prescribed trade test.

(ii) The 60% vacancies earmarked for direct recruitment which accrue from 2.9.1998 onwards may be filled up from serving employees on roll

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as on 1.9.1998 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 as on 1.9.1998, remains awaiting placement in the grade, whichever is earlier."

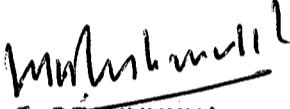
It is apparent that the additional post which accrued as a result of an increase in percentage in the grade of Rs.3050-4590 were to be filled up by employees possessing prescribed qualifications which have been mentioned in para 5 (i). The applicants have never averred that they possessed any of the qualifications which had been prescribed in the said letter for the higher grade. The validity of the said circular has been upheld by the Supreme Court in the cited case. We do not agree to the contention of the applicants that it is for the respondents to point out year to year vacancies and promote the applicants against the vacancies according to the existing rules. The applicants should have agitated their grievances when they became due for promotion and when there were vacancies and/or they were filled up in the post in the absence of such action, the inference to be drawn is that there is no inaction on the part of the respondents in respect of the applicants. Apparently, in the past the applicants did not make any representation in regard to their non-promotion as they might not have become eligible for such promotion in accordance with the existing rules. The respondents have categorically denied that there was a trade test held on 4.5.1999 and therefore, the relief sought in this regard cannot be given. The relief sought by the applicants in para 8 (a) of the O.A. is as follows :

"8. (A) That the Respondents be directed to declare the results of the trade test held on 4.5.1999 and to promote the Applicants to the post of Diesel Mechanic, Grade

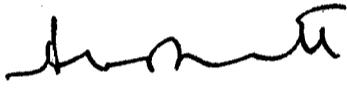
Rs.3050-4590 by calculating the vacancies on year to year basis against the quota reserved for departmental promotion."

Without any further substantiation or documentary evidence, no relief can be granted on the basis of general statement of this nature. The burden is on the applicants to point out as to when they were denied promotion and that should have been made within the limitation prescribed in the A.T. Act which has not been done by the applicants. The respondents have also pointed out that two of the applicants have now been promoted in the SC quota and their application becomes infructuous.

7. No ground has been made out to give any relief to the applicants. The O.A. is dismissed. No costs.


(S.G. DESHMUKH)

MEMBER (J)


(ANAND KUMAR BHATT)

MEMBER (A)

B.