

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 651 of 2001.

Dated this Wednesday the 14th day of January, 2004.

CORAM : Hon'ble Shri S. G. Deshmukh, Member (J).

1. B. G. Wagh.
2. R. A. Shivalkar.
3. L. G. Shukla.
4. N. M. Chaudhary.
5. D. B. Pandagale.
6. R. D. Thakur.

... Applicants.

[Applicant No. 1 to 5 are working as Sr. Technicians (officiating as Junior Engineer-II Ad hoc) and Applicant No. 6 is working as Technician under Chief Workshop Manager, Parel Workshop, Central Railway, Parel, Mumbai - 400 012].

(By Advocate Shri G. S. Walia)

VERSUS

1. Union of India through
The General Manager,
Central Railway,
Headquarters Office,
Mumbai C.S.T.,
Mumbai - 400 001.
2. Chief Workshop Manager
Central Railway's Parel
Workshop, Parel,
Mumbai - 400 012.

... Respondents.

(By Advocate Shri V. D. Vadhavkar)

O R D E R

PER : Shri S. G. Deshmukh, Member (J).

On a difference of opinion between the Learned Judicial and the Administrative Member constituting the Division Bench on a point whether the rule of quota has to be applied against the total number of posts available in the cadre or against the vacancies which arise during the recruitment year, this came up

before me for hearing and resolving the difference on the said point.

2. The present O.A. is filed for directing the respondents to distribute Apprentice Mechanics numbering 26 in proper proportion and ratio depending upon the total number of posts in various trades under Chief Workshop Manager, Parel and for a declaration that 8 posts cannot be allocated to Diesel Transmission Trade to the utter prejudice to the applicants and for a declaration that the same is null and void.

3. The applicants no. 1 to 5 are working as Junior Engineers Grade-II (ad hoc) and applicant no. 6 is working as Senior Technician. The applicants were initially appointed as Transmission Fitters Grade-III and have been promoted on ad hoc basis as Junior Engineers Grade-II which was formerly called as Chargeman Grade 'B'. It is contended that the post of Junior Engineer Grade-II i.e. Chargeman Grade 'B' is filled in on the following basis in a given Recruitment year

- (a) 50% direct recruitment with qualification of diploma in engineering.
- (b) 25% by departmental Apprentice Mechanics, who fulfil qualification of matriculation and are below 45 years of age.
- (c) 25% by promotees on the basis of selection.

4. It is contended that the applicants are entitled to be promoted as Chargeman Grade-II in accordance with the categories 'B' and 'C'. It is contended that there were 14 posts of Junior Engineer Grade-II in Diesel Transmission Trade prior to 01.03.1993, which was reduced to 12 after 01.03.1993 while restructuring the cadre. The applicants are entitled to be promoted in the normal course by virtue of category 'C' above in

the trade of Diesel Transmission only. It is contended that at present there are 26 Apprentice Mechanics direct recruits who are undergoing training and they are about to complete their training and they will be absorbed in the aforesaid trades. It is contended that Apprentice Mechanics who are recruited directly can be posted in any of the various trades after completion of their training of two years. It is contended that there are about 15 posts of Junior Engineer Grade-II falling vacant in the cadre of Diesel Mechanics as against sanctioned strength of 25. Each of the trade is having fixed cadre. However, the respondents are not filling up those posts according to their proportion. The respondents want to fill up 8 posts by absorbing 8 Apprentice Mechanics against 7 vacancies in the Diesel Mechanics, thereby giving no chance to the promotees - serving employees, which is beyond and in excess of quota. It is contended that in every recruitment year quota of the direct Apprentice Mechanics cannot exceed the 50% of the total number of vacancies. It is contended that with the absorption of the said Apprentice Mechanics in the Diesel Transmission Trade in excess of quota, the Applicants will be badly prejudiced and they will be reverted from the present post with the absorption of directly recruited Apprentice Mechanics. The action of the respondents is against the rules and in violation of Articles 14 and 16 of the Constitution of India. It is contended that 26 Apprentice Mechanics ought to have been distributed in proportion of vacancies of Junior Engineer Grade-II amongst various Trades of Parel Workshop. The applicants submitted the representation on 23.08.2001 and brought out their grievances to the notice of the respondents. It is also contended that distribution of the Apprentice Mechanics to the various trades must depend upon the total number of posts available in that particular trade. It cannot be disproportionate to the number of posts available. The

absorption of Apprentice Mechanics should be strictly in the proper ratio of the total number of posts available in the trade and, thus, this O.A.

5. The respondents filed their counter affidavit and contended that applicants' promotion as Junior Engineers Grade-II Transmission Fitter is purely on ad hoc basis in exigencies of service and that too for a period of 90 days. It is contended that allotment of the trade to Apprentice Mechanics (Diploma Holder) was made on being selected by the Railway Recruitment Board. They are required to undergo training of 18 months. Part of the training is trade-wise depending upon the trade to which the candidate will be ear-marked. The allotment of trades to the Apprentice Mechanics whose training period commenced from 01.03.2000 and trade has been allotted to them in the year 2000 itself on 08.04.2000 and thus, the O.A. is time barred. It is contended that the applicants are working as Junior Engineer Grade-II on ad hoc basis against 50% Apprentic Mechanics (Diploma Holder) quota in transmission Fitter Trade in exigencies of service on temporary basis till regular Apprentice Mechanics are made available from the Railway Recruitment Board. It is contended that an indent of 67 posts were placed to R.R.B. through Headquarters, C.S.T.M., in the year 1995 for recruitment of 50% Apprentice Mechanics (D/H) which was made available by R.R.B. in the year November/December, 1999 and 26 candidates were inducted to 18 months training on 01.03.2000. On successful completion of training 26 are due for absorption in September, 2001. While allotting trade to 26 Apprentice Mechanics, 8 posts were allotted as per technical qualification and trade preference in the cadre of Transmission Fitter. It is contended that in the year 1999 a special drive was launched on Central Railway for filling up vacancies against 50% (D/H) quota calling applications *mv* from technically qualified serving railway employees from various

departments. 70 candidates were selected, out of which 13 employees were absorbed in Parel Workshop including one candidate, Shri Prámód Kumar Singh, in the Transmission Fitter Trade against 50% Apprentice Mechanics (D/H) quota on 03.10.2000. On date 8 Apprentice Mechanics are to be absorbed as per Trade allotted to them. The selection for filling up vacancies for 25% quota was conducted on 11.04.1997 for 3 General Posts wherein applicants No. 1 to 3 and 5 were brought under the zone of consideration and Applicants No. 1, 2 and 3 qualified for viva-voce but they were not placed on the panel since seniors to the applicants were found suitable. Further, it is contended that selection for 25% departmental quota was conducted on 20.05.1998 wherein Applicants No. 1 and 2 were brought under the zone of consideration and only the applicant at sl. no. 2 qualified for viva-voce. Shri R. G. Gawand, senior to applicant no. 2 was found suitable and was placed on panel. It is contended that the respondents are conscious of their duties to promote departmental candidates. The 26 Apprentice Mechanics (D/H) have been allotted to various trades on the basis of their acquired Technical Qualification preference and available relevant trade in Parel Workshop. It is contended that the operation of quota, whether from serving employees to be taken on as Intermediate Apprentices/Rankers Quota or departmental promotees or direct recruits namely Apprentice Mechanics (D/H), is a continuous process and little variation is inescapable/unavoidable. The decision to absorb 8 Diploma Holders duly trained now available for posting in Transmission Fitter Trade is made purely by the Technical Qualifications possessed by these direct recruits and in the interest of general efficiency of services. It would not have been prudent to divert them to some other trade. It is contended that availability of direct recruits is not a regular feature and when qualified

candidates having proficiency in the particular trade are available, little variations are resorted to overall interest. It is also contended that due to non-availability of specialised candidates and direct recruits, the departmental candidates also benefit during such periods. Thus, the little variations may not be viewed as encroachment on the rights of the candidates coming through another channel.

6. It is contended that against direct recruitment quota of 7 candidates, one is already working. Departmental promotee quota - 4, against which 4 regularly selected candidates are already working. Besides 7 ad hoc departmental promotees including 5 applicants, Apprentice Mechanics Rankers Quota is 3 against which only two are working. Thus, 7 employees on ad hoc working in the Transmission Fitter Trade as Junior Engineer Grade-II are occupying six slots belonging to Open Market Direct Recruit Quota. 1 Slot belonging to Direct Recruit Quota for serving railway employees, normally referred to as Apprentice Mechanics Rankers Quota. It is contended that promotee quota of 4 in Transmission Fitter Trade JE-II is not being touched by the posting of Trained Direct Recruit from Open Market. It is contended that adjustment of quota is a fluctuating scenario and it is not possible to adhere to exact percentage at any given point of time. Thus, on direct recruits being available duly trained having particular qualification, if little variation take place in particular trade at a given point of time the same may not be interpreted to mean as a violation of right of departmental candidates who are not losers going by the strength in question and thus, the particular situation may not call for judicial intervention. It is contended that if the O.A. is allowed even partially and posting of these 8 direct recruits in the Diesel Transmission Trade is nullified, these direct

recruits will be the affected parties. The applicants who are aware of the names of these direct recruits have not made them party-respondents. Thus, the O.A. is bad for non-joinder of necessary parties. They denied that the allotment of post in the Transmission Fitter cadre is wrong, illegal, unwarranted or to the prejudice of the applicants. Thus, the respondents pray for dismissal of the O.A.

7. The applicant has filed a rejoinder and reiterated the averments.

8. Heard the Learned Counsel, Shri G. S. Walia, for the applicant. The Learned Counsel relied on the following decisions:

- (i) K. K. Tiwari & Others V/s. Union of India & others 2001 [SC (ALL.)] 1549 decided on 09.08.2001 by the Division Bench of Allahabad High Court.
- (ii) State of Punjab & Others V/s. Dr. R.N. Bhatnagar & Others [1999 SCC (L&S) 513].

9. Heard the Learned Counsel, Shri V. D. Vadhavkar, on behalf of the respondents.

10. In K. K. Tiwari's case the Division Bench of Allahabad High Court has held that the post of Executive Engineer in the Indian Defence Service of Engineers has to be filled by promotion from amongst Assistant Executive Engineers and Assistant Engineers. 66.2/3% post are to be filled from the grade of Assistant Executive Engineers and 33.1/3% posts have to be filled from grade of Assistant Engineers. This ratio has to be maintained every time whenever selection is made - Indian Defence Service of Engineers (Regulations and Conditions of Service) Rules, 1991 - Rule 7, Schedule III. It has been observed that in R. K. Sabharwal's case [1995 (2) SCC 745] the question for

consideration related to reservation for Scheduled Castes and Scheduled Tribes. The import of the said decision has been explained in All India Federation of Central Excise V/s. Union of India [1991 (1) SC 622] wherein in para 13 of the reports it has been observed that reliance by the petitioners is placed upon R. K. Sabharwal's case that deals with the principle that the posts vacated by an officer recruited from SC/ST category must be filled in only by the same reserved category. This is because of the special provision in Article 335 of the Constitution of India relating to adequate representation of the SC/STs in the services. The birth marks there remain even on promotion inasmuch as a particular number of posts in the promotional category are reserved to be filled in only from among SC/STs. On the other hand, so far as normal quota rule between two feeder channels for recruitment or promotion is concerned, be it between direct recruit and promotees or promotion by a quota between different feeder groups, the relevant precedents are Paramjit Singh & Others V/s. Ram Rakha & Others [1982 (3) SCC 191] and State of Punjab & Others V/s. Dr. R. N. Bhatnagar & Another [1998 (6) Scale 642]. In Paramjit Singh's case which related to recruitment from among promotees and direct recruits, it has been pointed out that if a quota rule between direct recruits and promotees were treated as a rule of reservation, then because of the frequent retirements, most vacancies in the promotional posts would repeatedly go to the aged promotees leaving little scope for direct recruitment. It is clarified that what the Court meant while saying that when a quota rule is prescribed for recruitment to a cadre, it meant that quota should be co-related to the vacancies which are to be filled in. Who retired and from what source he was recruited may not be very relevant because retirement from service may not follow the quota rule. Promotees who come to the service at an advanced age may retire early and

direct recruit who enter the service at a comparatively young age may continue for a long time. If, therefore, in a given year larger number of promotees retire and every time the vacancy is filled in by referring to the source from which the retiring person was recruited, it would substantially disturb the quota rule itself. Therefore, while making recruitment, quota rule is required to be strictly adhered to. Once the recruitment was made from two channels, the birth marks got erased. In 1999 SCC (L&S) 513 .. State of Punjab & Others V/s. Dr. R. N. Bhatnagar & Another, it is held that the quota of percentage of departmental promotees and direct recruits has to be worked out on the basis of Roster point taking into consideration the vacancies that fall due to a given point of time. As stated earlier, as the roster for three promotees and one direct recruit moves forward, there is no question of filling up the vacancy created by the retirement of a direct recruit by a direct recruit or the vacancy created by a promotee by a promotee, irrespective of the identity of the person retiring, the post is to be filled by the onward motion of three promotees and one direct recruit.

11. In S. G. Jaisinghani V/s. Union of India & Others [AIR 1967 SC 1427] the Lordships of the Apex Court held that the quota rule were not merely an administrative direction to determine recruitment from two different sources in the proportions stated in the rule but was a statutory provision made under the rules of service which was binding on the Government.

12. In Dr. Bhatnagar's case the Apex Court observed that it is well settled that once recruitment is made from two sources i.e. departmental promotees and direct recruitment from the Open Market and once the candidates concerned enter into any cadre through entry point reserved for them, they get fused and blended into one single cadre and their birthmarks get obliterated. The

quota fixed in respect of direct recruits and promotees of J.E.-II in particular recruitment year is applicable against total number of vacancies in that recruitment year and the same has no relevance with total number of posts. There are only 7 vacancies in the cadre of J.E.-II of Diesel Transmission Cadre of Parel Workshop and therefore only 3 to 4 posts can be filled in by appointing direct recruitment against 50% direct recruitment quota. Every recruitment year the quota of direct Apprentice Mechanics cannot exceed 50% of the total number of vacancies. There were 14 posts of Junior Engineer Grade-II in Diesel Transmission Trade prior to 01.03.1993 which were reduced to 12 after 01.03.1993. There are only 7 vacancies in Diesel Transmission. It appears from the counter affidavit of the respondents that respondents want to fill up 8 Apprentice Mechanics against 7 vacancies, thereby leaving no chance to promotees.

13. Having fixed quota under rules, it is not open to the respondents to alter the quota on account of particular situation. There is no discretion left with the Government to alter the quota according to exigencies of the situation or to deviate from quota in a particular year at its own will. Only 3 to 4 posts can be filled by appointing direct recruit against 50% direct recruitment quota. The quota is applicable in respect of vacancies in recruitment year and not to the total number of posts available in the cadre. The quota rule is linked with the seniority rule and unless the quota rule is strictly observed in practice, it will be difficult to hold the seniority rule. The Apex Court has held that the quota rule is not merely an administrative direction to determine recruitment from two different sources in the proportions stated in the rule but is a statutory provision made under the rules of service which is binding on the Government. There is nothing to show that quota

rule can be relaxed. The rules do not permit the Government to relax the provisions fixing the ratio so there is no question of carrying forward the vacancies. The Apex Court has held that there cannot be relaxation of recruitment rules in the matter of appointment. As per verdict of the Apex Court, strict conformity with recruitment rules for both direct recruits and promotees is required. There can be no relaxation of the basic or fundamental rules of recruitment in the matter of appointment. The quota fixed in respect of various sources is applicable to vacancies in a given recruitment year and not against the total number of posts. Thus, there is no question of carrying forward the vacancies. The respondents cannot apply the quota system against the total strength of service i.e. quota system of post based system which is against the law laid down by the Apex Court in Dr. R.N. Bhatnagar's case. It has been observed in K. K. Tiwari's case by their Lordships that if the rules are silent on any point the Government can fill up the gaps and supplement the rules and issue instructions consistent with the rules already framed. But they cannot run contrary to statutory provisions or whittle down their effect.

14. The stand taken by the respondents is against the law laid down by the Apex Court, as the respondents have to apply the rule of quota against the vacancies which arise during the recruitment year and not against the total number of the posts available in the cadre. The respondents cannot allocate 8 posts to the Diesel Transmission Trade.

15. Let the papers be now placed before the Division Bench for appropriate further order in the case.


(S. G. DESHMUKH)
MEMBER (J).

PT

as 14/10/04
In view of the order
as passed by referred Judge,
case is ordered to be taken
up before D.O. on
27/11/04
In form the police
with other's copy

to
D.O. 27/11/04

8.

27-1-04

Present: Sh. R S Walia for applicant
Sh. V D Vardha for opposite.

Vide separate order, CA
is allowed.

(S.K. Vats)
MIA)

(12/11/04)
(M.D.)

(S.K.)

Central Administrative Tribunal, Mumbai Bench

OA No.651/2001

Mumbai this the 27th day of January, 2004

Hon'ble Mr. Kuldip Singh, Member (J)
Hon'ble Mr. S.K. Naik, Member (A)

1. B.G. Wagh
2. R.A. Shivalkar
3. L.G. Shukla
4. N.M. Chaudhary
5. D.B. Pandagale
6. R.D. Thakur

...Applicants

(Applicants No.1 to 5 are working as Sr. Technicians (officiating as Junior Engineer-II Ad hoc) and applicant No.6 is working as Technician under Chief Workshop Manager, Parel Workshop, Central Railway, Parel, Mumbai-400 012)

By Advocate: Shri G.S. Wallia.

Versus

1. Union of India through
The General Manager,
Central Railway,
Headquarters Office,
Mumbai CST,
Mumbai-400 001.
2. Chief Workshop Manager,
Central Railway's Parel
Workshop, Parel,
Mumbai-400 012.

..Respondents

By Advocate: Shri V.D. Vadhavkar.

ORDER (ORAL)

Hon'ble Mr. Kuldip Singh, Member (J)

This OA has been filed by the applicants seeking following reliefs:-

- (a) To order and direct the respondents to distribute Apprentice Mechanics numbering 26 in proper proportion and ratio depending upon the total number of posts in various



trades, under Chief Workshop Manager, Parel.

(b) It may be declared that 8 posts cannot be allocated to Diesel Transmission Trade to the utter prejudice to the applicants and the same be declared null and void.

2. This OA was heard by a Division Bench comprising one of us (Hon'ble Shri Kuldip Singh, Member (J) and Hon'ble Shri Shankar Prasad, Member (A). Since both of us had recorded separate opinions and had disagreed with each other on the aspect of allocation of 8 posts to Diesel Transmission Trade, the matter was placed before the Hon'ble Chairman to refer it to Larger Bench or a Third Member so that a majority opinion could be obtained.

3. Accordingly the matter was referred to the Third Member, who recorded his opinion on 14.1.2004. Hon'ble Member (A) has also stated that the stand taken by the respondents is against the law laid down by the Apex Court in the case of State of Punjab and Others Vs. Dr.R.N. Bhatnagar and Another (1198)(6) Scale 642, so the respondents have to apply the rule of quota against the vacancies which arise during the recruitment year and not against the total number of vacancies/posts available in the cadre and thus respondents cannot allocate 8 posts to the Diesel Transmission Trade.

4. After the Third Member's opinion had been received, the matter has been placed before this Division Bench.

5. We have heard the learned counsel for the parties and gone through the records of the case.

6. Shri V.D. Vandhavkar, the learned counsel for the respondents did submit that the views as expressed by the Hon'ble Member (A) Shri Shankar Prasad particularly with regard to





should be gone into,
carry forward of posts/so for that ~~purpose~~ the Division Bench
should give its opinion how to adjust.

7. We have considered this contention.

8. In our view this contention of the learned counsel for the respondents has no merits because it is the function of the executive to abide by the law as laid down by the Hon'ble Supreme Court and the decisions given by the Tribunal. In this case we find that the majority of us has found that the allocation of 8 posts to the Diesel Transmission Trade is in violation of the law laid down by the Apex Court in Dr. R.N. Bhatnagar's case (Supra) and because of that we have to quash the impugned order and allow the OA.

9. Accordingly, the impugned order is quashed and the OA is allowed, as the allocation of 8 posts to the Diesel Transmission Shed is in violation of the quota rule. The respondents are directed to allocate the posts in accordance with law, rules and judicial pronouncements on the subject particularly in Dr. R.N. Bhatnagar's case (Supra). This may be done as early as possible but not exceeding 6 months from the date of receipt of a copy of this order. No costs.


(S.K. Naik)
Member (A)


(Kuldip Singh)
Member (J)

Rakesh