

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Dated this the 23rd day of November, 2001

Coram: Hon'ble Mr. Justice Birendra Dikshit - Vice Chairman  
Hon'ble Mr. B.N. Bahadur - Member (A)

ORIGINAL APPLICATION NO. 790 of 2001

Rajesh Kumar,  
Assistant Diesel Driver,  
O/o Divisional Railway Manager,  
Central Railway, Mumbai, CST.  
(By Advocate K.B. Talreja)

- Applicant

VERSUS

1. Union of India,  
through the General Manager,  
Central Railway, Mumbai, CST.
2. The Divisional Railway Manager,  
Central Railway, CST.  
(By Advocate Shri S.C. Dhawan)

- Respondents

ORAL ORDER

Shri B.N. Bahadur, Member (A).

The applicant in this case comes up to this Tribunal seeking the relief that he be allowed to work as Assistant Driver (Diesel/Electrical) in any place in Mumbai Division and for a direction to the respondents to pay him wages for the period July, 2001 to date.

2. The learned counsel Shri Talreja, appearing for the applicant, was heard earlier on 21.11.2001 at which stage notice was accepted by Shri S.C. Dhawan for Respondents. We had asked learned counsel Shri Dhawan to seek instructions and apprise us orally of the facts of the case early. Shri Dhawan is prepared with the facts and is also able to place before us records

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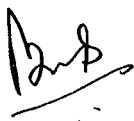
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today ( 23/11/2001).

3. We have heard learned counsel of both sides. It transpires that the matter is now in the short compass. We are therefore, taking up the case for disposal of the case at the admission stage only, without waiting for the filing of the written statement by the respondents.

4. The learned counsel Shri Talreja made the point that the applicant had been recommended for selection by the Railway Recruitment Board and had completed all the formalities. He had later on, at the stage of interview submitted a certificate from the Tahsildar of Jhansi to the effect that he belonged to a certain caste/community by virtue of which he was a member of the OBC. The Railway administration has however now come to the conclusion that he was not a member of the OBC, and as such had discontinued the utilisation of his services. Shri Talreja stated that the applicant was facing immense hardships. We have also gone through the record produced by Respondents with a view to prima facie ascertain the justifiability of the request for interim orders made by Shri Talreja today. However, during the course of hearing, learned counsel Shri Talreja made the point that in fact the applicant appeared as an open category candidate only and it was his contention that he had <sup>Bomb</sup>also qualified as a General candidate. The learned counsel Shri Talreja, acting on the instructions of the applicant who was present, categorically stated that his case may therefore be considered on this ground only i.e. as an open category candidate. In the light of this

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statement of Shri Talreja, issued on instructions from the applicant, we are therefore not considering this matter on the stand taken earlier regarding his being qualified for selection as an OBC. We are now therefore restricting the consideration of the case for determining his rights as an Open Category candidate only.

5. We had asked learned counsel Shri Dhawan today only to check the record to let us know as to whether the applicant makes a grade as Open Category candidate. Despite efforts the clear position could not emerge as full record understandably was not immediately at hand. It is understandable that certain records of the Railway Recruitment Board which may be in possession of the Central Railway or which may have to be obtained from the Railway Recruitment Board may have to be gone into this to ascertain the actual position. One thing is clear to us and undisputed that in case the applicant makes the grade as Open/General candidate, his cannot be discontinued. This will be his right and this is undisputed.

6. In the light of this and the above discussions, we feel that it will be just and proper to dispose of this OA with a direction to the respondents to ascertain the factual position in this regard and to appoint the applicant immediately, in case he is seen to have come in merit even as a General category candidate.



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7. Accordingly, this OA is hereby disposed of with the following directions/orders:-

O R D E R

" The respondents will forthwith examine the claim of applicant Shri Rajesh Kumar, and in case it is found that he eligible to be appointed even as an Open Category candidate on merits, he shall be appointed forthwith and in any case within four weeks. In case the applicant comes to be so appointed, the period from which he is discontinued till the date of his appointment again shall be treated as leave due and admissible including extraordinary leave if necessary. However, if extraordinary leave needs to be granted it shall be 'extraordinary leave without break in service'."

8. There shall be no order as to costs.

B.N. Bahadur  
(B.N. Bahadur)  
Member (A)

B. Dikshit  
(Birendra Dikshit)  
Vice Chairman