

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 10-4-2003

OA 18/96

Mangal Singh, Senior Khalasi, Train Lighting S.E.F. T.L., Western Railway, Ajmer.

... Applicant

Versus

1. Union of India through General Manager, W/Rly, Churchgate, Mumbai.
2. Divisional Electrical Engineer, W/Rly, Ajmer Division, Ajmer.
3. Divisional Railway Manager, W/Rly, Ajmer Division, Ajmer.

... Respondents

CORAM:

HON'BLE MR.H.O.GUPTA, ADMINISTRATIVE MEMBER

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER

For the Applicant ... Mr.S.K.Jain

For the Respondents ... Mr.U.D.Sharma

O R D E R

PER HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER

In this application, the applicant has prayed for the following reliefs :

- "i) by an appropriate writ, order or direction the respondents be ordered to promote the applicant and similarly situated persons against the 50% quota of promotion on the post of Fitter Grade-III (T.L.) in the pay scale Rs.950-1500 forthwith atleast against 37 vacancies and more, if the vacancies were exist and give the seniority and pay fixation alongwith the arrears of salaries from the date the direct recruitments have been done with all consequential benefits to them;
- ii) the respondents be further directed not to hold the selection in pursuance to the Annexure A/6"

2. The case of the applicant is that prior to 1985 there was no direct recruitment to the post of Fitter Grade-III in the pay scale of Rs.950-1500. The Railway Board vide its circular RBE No.1/85 vide No.E(NG)1-83-PM-7-45 dated 3.1.95 for the first time provided for the quota of direct recruitment. According to the said circular, 50% of the posts in the category of Fitter Grade-III/Skilled Staff were to be filled in by way of direct recruitment and 50% by way of promotion from rankers (Helper Khalasis in the grade of Rs.800-1150). Out of the 50% posts meant to be filled in by direct recruitment, 25% of the posts were

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to be filled from open market, whereas remaining 25% of the posts were to be filled in from rankers quota by way of written examination. Further case of the applicant is that in pursuance of the above circular, in the year 1985, 10 persons were recruited from open market and in the year 1989 three persons were further appointed from open market. Similarly, vide order dated 7.3.94, 11 persons have been selected for appointment to the post of Fitter Grade-III against the open market quota for direct recruitment. It is further alleged that these persons were subsequently promoted to the post of Fitter Grade-II in the scale of Rs.1200-1800 and Fitter Grade-I in the pay scale of Rs.1300-2040. The grievance of the applicant is that against 25% quota of direct recruitment from open market, no equal number of posts have been given for promotion till date and thus the 50% quota of promotion has remained unfilled to the best of the knowledge of the applicant. It is pertinent to point out here that the applicant is claiming promotion from the category of rankers quota where the promotion has to be made on the basis of seniority, subject to passing of trade test and not by way of competitive examination either from open market or through written test prescribed for the rankers quota. Thus, according to the applicant, the respondents have appointed 15 persons by way of direct recruitment from open market and 22 persons by way of direct recruitment from rankers quota, totalling to 37 posts in the Fitter Grade-III in the pay scale of Rs.950-1500 and no resultant appointment/promotion have been made against 50% quota meant for rankers category inspite of the fact that the applicant and other similarly situated persons are eligible to be promoted to the post of Fitter Grade-III. It is on these basis that the applicant has filed this OA thereby claiming the aforesaid reliefs.

3. The respondents have controverted the allegations made by the applicant in the OA by filing a detailed reply. By way of preliminary submissions, it has been stated that the applicant alongwith 46 officials had earlier filed OA 240/92 before this Tribunal under the title 'Bharat Kumar Jha & Ors. v. Union of India & Ors.', whereby the applicant had prayed for quashing the two notifications dated 18.5.92, by which applications had been invited for filling up certain number of posts as mentioned in the said notifications against the 25% quota of direct recruitment as well as 25% direct quota from serving employees and had further prayed that the respondents may be directed to fill up 50% quota by the mode of promotion from the serving employees based on seniority-cum-suitability through trade test before resorting to the direct recruitment. In the said OA, the name of the applicant find mention at S.No.23 in the array of the applicants. The said OA was

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heard at length by the Tribunal on 22.12.95. However, during the course of arguments, the learned counsel for the applicants sought permission to withdraw the OA and the permission was granted by this Tribunal with the result that the OA was dismissed as withdrawn vide order dated 22.12.95. Copy of the said order has been annexed with the reply as Ann.R/1. No liberty was sought by the applicants nor such liberty was given by the Tribunal to the applicants to file a fresh OA. Thus, according to the respondents, the present OA is hit by the principle of res-judicata and is not maintainable and deserves to be dismissed. On merit, it has been stated that vacancies in the 25% direct recruitment quota from open market, 25% direct rankers quota by written examination and 50% ranker promotion quota are filled up as and when vacancies occur in the respective quotas and the said vacancies have no relation with the vacancies in other quota. Appointment to the post of Fitter Grade-III was made strictly in conformity with the quota meant for different categories. It is further stated in the reply affidavit that in respect of direct recruitment quota from open market, which is conducted either departmentally or through RRB, the process of filling up the vacancies takes quite sufficient time in case where recruitment is made through RRB starting from requisition being made through headquarter office Mumbai, issuance of public notice by the RRB holding written examination and viva-voce subsequently and declaration of the final result culminating into the recommendations made by the RRB to the headquarter office, which is thereafter transmitted to the local office. Thereafter, the selected candidates are sent for three years prescribed training and only thereafter formal letter of appointment are issued to such of the candidates who cleared the said training. Thus, according to the respondents, the year in which appointments are made cannot be correlated with the vacancies in other quota as per their prescribed percentage. Similarly, in respect of the vacancies pertaining to 25% rankers quota, after the number of vacancies in the quota is assessed, a notice is issued inviting applications for the feeder category fulfilling the eligibility conditions and on receipt of such applications an eligibility list is issued of such candidates who are considered eligible for appearing in the written examination and viva-voce and after conducting the written examination and viva-voce the selected candidates are sent for one year prescribed training and only after clearing the said prescribed training they are appointed as Fitter Grade-III. Thus, according to the respondents, this procedure also takes quite sufficient time and as such year of appointment cannot be correlated to the other 50% rankers promotion quota, where the appointments are usually made after passing the trade test by the persons based on seniority, which process is not time consuming as

compared to the appointment to be made against direct recruitment quota. It is further submitted that the claim of the applicant for promotion to the post of Fitter Grade-III falls within the 50% rankers promotion quota and he has been given promotion according to the seniority list issued on 12.10.89 (Ann.R/2) in the category of Helper (scale Rs.800-1150), wherein his name figures at S.No.47. According to the respondents, the applicant could be promoted only vide order dated 24.4.98 (Ann.R/5) and no person junior to the applicant has been given promotion ignoring his claim except persons who were promoted against reserved vacancies. It is further stated that the applicant has projected his grievance for his non-promotion against 50% quota for rankers upto the year 1994 and the present OA is barred by limitation even though the fact is that as per his placement in the seniority list of Helper Khalasi he was not coming up in the zone of consideration as and when the recruitment was made.

4. The respondents have also filed additional reply, pursuant to the order passed by this Tribunal on 2.1.2003, indicating the position of persons recruited by way of direct recruitment vis-a-vis promotees in terms of the circular of the Railway Board, 1985 thereby explaining the entire position. The respondents have also annexed various documents to show the number of vacancies filled up from 1987 to 1996 against 50% of rankers quota.

5. We have heard the learned counsel for the parties and gone through the material placed on record.

6. The main case of the applicant is that against 25% quota of direct recruitment from open market and 25% quota of direct recruitment from rankers quota through written examination, no equal number of posts were given to the persons belonging to rankers quota where the promotion was to be made based on seniority subject to passing of trade test. In other words, the applicant contends that the appointment made against direct recruitment quota could not have been made in excess of the vacancies meant for direct recruits and such action on the part of the respondents tantamounts to making the appointments in violation of the rules/policies governing the field, as reproduced in para 4(iii) at page-6 of the OA. In order to decide this point it may be noticed that there is no dispute between the parties regarding mode of appointment to be made to the post of Fitter Grade-III in the scale of Rs.950-1500. The applicant in para 4(iii), at page-6 of the OA, has reproduced the relevant provisions which stipulate that 25% of vacancies were to be filled by direct recruitment from open market from persons fulfilling

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the requisite qualifications, 25% of the vacancies were to be filled in by departmental examination from amongst the serving employees/rankers fulfilling the requisite qualifications mentioned therein through departmental examination, whereas the remaining 50% vacancies were to be filled in by promotion from serving employees/rankers in the lower grade based on seniority-cum-suitability through trade test. The applicant belongs to third category where the promotions were to be made based on seniority-cum-suitability through trade test. The respondents have also placed on record the seniority list of Helper Khalasis, at Ann.R/2, wherein the name of the applicant find mention at S.No.46. It has also come on record that upto the year 1994 the applicant could not have been promoted against 50% quota meant for the promotees as his name was far below in the seniority list. Even in the year 1996, 16 Helper Khalasis who were promoted to the post of Fitter Grade-III were senior to the applicant except the persons who belong to reserved category. No person junior to the applicant has been promoted and the applicant could be promoted to the post of Fitter Grade-III only in the year 1998 vide order dated 24.4.98. In order to ascertain as to how the vacancies in different quotas were filled, this Tribunal vide order dated 2.1.2002 directed the respondents to submit a chart of directly recruited candidates as well as promotees in the light of provisions of the rules/circulars of the Railway Board. The respondents have filed an affidavit and alongwith the affidavit they have annexed Ann.R/7. From the perusal of the vacancy position, as indicated in Ann.R/7, the contention of the applicant that 37 vacancies were filled by way of direct recruitment from open market and no equal number of posts have been given for promotion till 1996 cannot be accepted.

7.4 We have considered the matter on the basis of the material placed on record and we are of the view that the applicant is not entitled for any relief for more than one reasons. Firstly, the steps were taken by the respondents for filling up the posts from the category of direct recruitment against 25% quota meant for direct recruitment through open market and 25% direct rankers quota through competitive examination immediately after coming into force the rule of the Railway Board dated 3.1.85 and in fact after notifying the vacancies and making selection the persons were also appointed between the period 1985 till 1995. In case, the applicant was aggrieved by the action of the respondents vis that they have not adhered to the quota as prescribed under the rules meant for direct recruits vis-a-vis promotees, he should have challenged the advertisements by which the vacancies were notified. The applicant failed to make challenge to the advertisements so issued by the respondents from time to time. Not only this, pursuant to the

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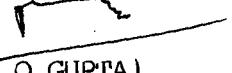
advertisements so made, the selection was conducted, the direct recruits were also sent for training which was for the period of three years in the case of recruitment made from open market and one year in the case of such direct recruits belonging to rankers quota who had qualified the written test and it was only thereafter that they were appointed against the post meant for them as per position reflected in Ann.R/7. The applicant has not challenged the appointment of such direct recruits made by way of direct recruitment in the category of Fitter Grade-III. Not only this, some of them have further been promoted to the higher grade of Fitter Grade-II and also to Fitter Grade-I. The applicant has neither chosen to challenge those appointment orders nor these persons have been impleaded as party in these proceedings. Secondly, it has also come on record that name of the applicant in the category of Helper was at S.No.46, as per seniority list Ann.R/2. The applicant was not in the zone of consideration till 1994. In the year 1996, the persons senior to him were promoted except those who belong to the reserved category and the turn of the applicant came in the year 1998 and he was promoted vide order dated 29.4.98 (Ann.R/5). Thus, no person junior to the applicant in the rankers quota was promoted prior to the said date. Even if it is assumed that ratio between direct recruits and promotees was not strictly followed, in that eventuality it was those persons who were promoted in the rankers quota vide orders dated 4.11.87, 30.3.89, 30.6.89, 6.11.89, 15.12.94 and 18.12.96 who could have legitimate grievance regarding their promotion from earlier date when the vacancies were fallen in their quota. These persons have not made any grievance regarding non filling up the vacancies in accordance with the statutory rules as per quota prescribed therein. The applicant cannot expose the cause of other similarly situated persons who have not chosen to make any grievance regarding non filling up the vacancies as per quota prescribed in the rules. Thus, no such direction as prayed for by the applicant can be given in this OA which will unsettle the settled position between the various groups who are not before this Tribunal. Lastly, the applicant is also precluded from filing the present OA and seeking the relief as prayed for in view of filing of the earlier OA 242/92, Bharat Kumar Jha & Ors. v. Union of India & Ors., which was dismissed on 22.12.95 without reserving any liberty to the applicant for filing the same OA again. Copy of the order of this Tribunal has been placed on record as Ann.R/1. The respondents have also placed the relevant pages of OA 242/92 with additional reply as Ann.R/12 and R/13. The name of the applicant figures at S.No.23 in the array of applicants. One of the prayer made by the applicant in the OA was that; "the respondents may please be directed to fill up the 50% of promotion quota by Skilled Artisan before

reverting to direct recruitment and consider the candidature of the applicant as per rule and law and allow all consequential benefits." The grievance of the applicant in this OA is also the samewhich he alongwith other applicants had projected in the earlier OA 242/92 and as such the present OA is also hit by the principle of res-judicata. The matter is also squarely covered by the ratio as laid down in the decisions of the Apex Court in the cases of Sarguja Transport Service v. State Transport Appellate Tribunal, Gwalior & Ors., AIR 1987 SC 83, and Avinash Nagra v. Navodaya Vidyalaya Samiti & Ors., 1997 SCC (L&S) 565, whereby the Apex Court has held that second petition on the same cause of action is not maintainable whereby the earlier petition has been withdrawn without permission to institute fresh petition.

8. For the reasons stated above, we are of the view that the applicant has not made out any case so as to require our interference in the present proceedings and the OA is dismissed with no order as to costs.


(M.L. SURI)

MEMBER (J)


(H.O. GUPTA)

MEMBER (A)