

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JATPUR BENCH, JATPUR.

OA 541/2001

DATE OF ORDER : 27-11-02

1. Pooranmal Yadav son of Shri Cherangi Lal Yadav resident of Badyalpur Khurd, Bandikui, at present employed on the post of Diesel Mechanic in western Railway, Jaipur Division, Phulera.
2. Ashok Kumar son of Shri Sunder Singh, aged about 36 years, resident of 447 A, Railway Colony, Phulera, at present employed on the post of Diesel Mechanic in Western Railway, Jaipur Division, Phulera.

....Applicants.

VERSUS

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager (Estt.), Western Railway, Jaipur Division, Jaipur.
3. Deputy Chief Mechanical Manager (D), Western Railway, Jaipur Division, Jaipur.

....Respondents.

Mr. Shiv Kumar, Counsel for the applicant.

Mr. R.G. Gupta, Counsel for the respondents.

CORAM

Hon'ble Mr. H.O. Gupta, Member (Administrative)

Hon'ble Mr. M.L. Chauhan, Member (Judicial)

ORDER

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

Applicants, two in numbers, are aggrieved of the action of the Railway Administration whereby their names have not been included in the eligibility list (Annexure A/1) whereas the names of some of the junior persons to the applicants have been included in that list. They have filed

the present application thereby praying for the following reliefs :-

- "(i) That the impugned order dated 1.9/10.2001 (Annexure A/1) eligibility list for promotion to the post of Diesel Mechanic Grade II pay scale Rs. 4000-6000 may please be declared illegal, arbitrary and the same be modified by interpolating the name of applicants at appropriate place in accordance with their seniority position. further the respondents may be directed to consider the case of the applicants for promotion to the post of Diesel Mechanic Grade II pay scale Rs. 4000-6000 with all consequential benefits.
- (ii) Any other/directions/reliefs may be passed in favour of applicants which may be deemed fit, just and proper under the facts and circumstances of this case.
- (iii) That the cost of this application may be awarded."

2. The case of the applicants is that the Railway Administration vide notification dated 1.9/10.2001 (Annexure A/1) had prepared the eligibility list showing the names of persons who were eligible to appear in the trade test for the category of Diesel Mechanic Grade II in the scale of Rs. 4000-6000. The names of certain persons who were junior to the applicants in the category of Sr. Artisan Khallasi grade Rs. 2650-4000 appeared in the eligibility list (Annexure A/1) at sl. no. 13 to 35 in list 'A' and there are 25 names in list 'B' whereas the names of the applicants who were otherwise eligible did not find mention in the said list. It is further the case of the applicants that eligibility list for the purpose of conducting the trade test for the post of Diesel Mechanic Grade II has to be prepared on the basis of seniority cum suitability and the trade test for the said post is going to be held from 19.11.2001 to 21.11.2001 and if the applicants are not allowed to appear in the selection, this will completely jeopardise their carrier and number of junior persons will supersede the applicants. On the basis of these facts, when the matter was listed before this Tribunal on 20.11.2001, this Tribunal passed an ex-parte order that the applicants be allowed to appear provisionally in the

selection test but the result of the said selection test may not be declared without the leave of this Tribunal.

The applicants have also filed separate representations against their non inclusion in the eligibility list (Annexure A/1) vide their letter dated 12.10.2001 and 9.10.2001, copy of which has been annexed as Annexures A/2 & A/3. Since nothings was heard from the respondents, the applicants have filed this application, thereby praying for the aforesaid reliefs.

3. The respondents have contested the case by filing the reply to the OA and simultaneously also filed an MA for vacation of ex-parte stay order, which was registered as MA No. 160/2002. The main case of the respondents which has been submitted in the reply is that on the recommendations of the Fifth Central Pay Commission report and after examining all aspects of the matter, the Ministry of Railways with the approval of President has decided to upgrade the 50% posts of Sr. Artisan Khallasi in the pay scale of Rs. 2650-4000 to that of Skilled grade in the pay scale of Rs. 3050-4590. Consequently 55 additional posts of Diesel Mechanic Grade III were created in the grade of Rs. 3050-4590. The method for filling up these additional posts has been stipulated in the Railway Board letter dated 28.9.98 (Annexure R/1). According to Para 6 of this letter, the additional posts in the grade of Rs. 3050-4590 becoming available in terms of order were required to be filled up by employees possessing the prescribed qualifications indicated in Para 5(i) of the said letter. According to this Para, the prescribed qualification was Act Apprentices, ITI Pass and matriculation. Steps were taken to fill these additional posts and the names of employees who possessed the requisite qualification were included in the eligibility list and they were called for the trade test. After passing the trade test, they were promoted to the scale Rs. 3050-4590. Since the applicants did not possess the requisite qualification, their names were not included in the elibility list as such they could not appear in the trade test and thus were not promoted in the grade Rs.

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3050-4590 alongwith other qualified persons though they were senior to some of these employees in the lower grade of Sr. Aritsan Khallasi. As some of additional posts in the grade Rs. 3050-4590 still remained unfilled as no candidates with requisite qualification were available, these posts were required to be filled in the manner as prescribed in Para 5 of letter dated 28.9.98 viz. 60% by direct recruitment from persons fulfilling the requisite qualification, 20% from LDCT having requisite qualification and 20% from rankers quota. Since the applicants lack the requisite qualification, they were called for the trade test under 20% ranker quota and were subsequently promoted to the post of Diesel Mechanic Grade III on 1.10.2001 and thus the applicants became junior to such employees who were promoted to the additional posts of Diesel Mechanic Grade III in the scale of Rs. 3050-3490 on 19.10.2000.

4. In MA No. 160/2002, application for vacation of stay order, the respondents have taken a similar stand, as in reply to original application. It has also been stated in this MA that the applicant has obtained ex-parte stay order by showing the seniority list of Sr. Aritsan Khallasi which was not relevant and the relevant seniority list for the purpose was that of Diesel Mechanic Grade III and as such stay as granted by this Tribunal may be vacated. On 7.5.2002, when the case was listed before this Tribunal, this MA was dismissed as not pressed on the ground that the matter may be heard finally at the admission stage. Accordingly the matter was fixed for hearing on 31.5.2002. The opportunity was also given to the learned counsel for the applicant to file rejoinder. The matter was thereafter adjourned on number of occasions. Finally the matter was listed on 17.9.2002, when this Tribunal passed the following order as the necessary documents were not annexed by the parties with the application or with the reply.

"Learned counsel for the applicant submits that he does not want to file rejoinder and on the prayer of both the parties, the case is heard today.

Heard the learned counsel for the parties. The contention of the learned counsel for the respondents is that the persons shown in the eligibility list as per Annexure A/1 were holding Grade III post w.e.f. 19.10.2000 whereas the applicant was holding this post w.e.f. 1.10.2001 and as such applicant is junior. Since he does not fulfil the requisite eligibility as laid down in Annexure R/1, his name was not shown in the eligibility list.

Learned counsel for the applicant submits that he wants to file certain documents showing therein that the applicant was senior. Only two days is granted to file the relevant documents through an MA giving a copy to the other side."

Subsequently in compliance of the said order, two MAs were filed which were registered as MAs Nos. 414/2002 and 430/2002.

5. MA No. 414/2002 has been filed by the applicant whereby annexing seniority list dated 20.5.99 pertaining to the category of Sr. Artisan Khallasi grade 2650-4000. It has been mentioned in this application that the persons at sl. Nos. 17 to 22 and 32 to 35 of the eligibility list (Annexure A/1) are junior to the applicants and names of these persons appears at sl. nos. 35, 40, 41, 45, 58, 61, 33, 34, 36, 37 in the seniority list (Annexure MA/1) whereas the name of applicant no. 1 appears at sl. No. 32 and that of applicant No. 2 at sl. no. 43.

6. MA No. 430/2002 has been filed by the respondents whereby placing on record the copy of letter dated 19.10.2002 (Annexure R/2) whereby 38 persons were promoted as Diesel Mechanic Grade III in the scale of Rs. 3050-4590, copy of order dated 1.10.2001 whereby applicants were promoted to the post of Diesel Mechanic Grade in the scale of Rs. 3050-4590 (Annexure R/3), copy of letter dated 27.11.2001 whereby representation of the applicants (Annexures A/2 & A/3) were

considered and rejected ~~and~~ (Annexure A/4) ^{and} letter dated 16.1.2001 whereby seniority list in respect of 26 categories belonging to Group 'C' and 'D' staff of Diesel Cell, Phulera were circulated including the category of Diesel Mechanic Grade III and Sr. Artisan Khallasi (Annexure A/5).

7. These MAs came up for consideration before this Tribunal on 1.11.2002 and after hearing learned counsel for both the parties, these MAs were allowed and documents were taken on record. We also heard the learned counsel for both the parties. The learned counsel for the applicant basing his claim on the basis of seniority list dated 20.5.99 (Annexure MA/1) belonging to the category of Sr. Artisan Khallasi in the grade of Rs. 2650-4000, argued that applicants being senior to persons whose names figured at sl. Nos. 35, 40, 41, 45, 58, 61, 33, 34, 36 37 of the seniority list (Annexure MA/1) [whereas name of applicant no. 1 find mention at sl. 32 whereas name of applicant no. 2 find place at sl. no. 43 of the said seniority list], their names should have been figured in the eligibility list (Annexure A/1) at a suitable place especially when names of the aforesaid junior persons have been incorporated in the aforesaid list. Thus according to the learned counsel, the action of the respondents in not considering the case of the applicants for promotion to the post of Diesel Mechanic Grade II by omitting the names in the eligibility list is illegal, arbitrary and the same is violated ~~of~~ Article 14 & 16 of the Constitution of India especially when the present post is to be filled on seniority cum suitability basis.

8. On the other hand learned counsel for the respondents argued that for the purpose of preparing seniority list for conducting the trade test to the post of Diesel Mechanic Grade II in the scale of Rs. 4000-6000, the seniority in the grade of Sr. Artisan Khallasi is not relevant and for that purpose, seniority list of Diesel Mechanic Grade III scale Rs. 3050-4590 is a determining factor. Since the so called junior persons were promoted to the post of Diesel Mechanic grade

III in scale of Rs. 3050-4590 vide order dated 19.10.2000 (Annexure R/2) whereas the applicants were promoted to the said grade only by order dated 1.10.2001 (Annexure R/3) as such applicants cannot be said to be senior in the category of Diesel Mechanic Grade III as such their names were rightly not included in the eligibility list prepared for the purpose of conducting the trade test to the post of Diesel Mechanic Grade II vide Annexure A/1 as the applicants were promoted on 1.10.2001 and prior to that date they were not the member of Diesel Mechanic Grade III.

9. We have considered the rival contentions of both the parties. It is not disputed that on the recommendations of Fifth Central Pay Commission and after examining all aspects of the matter and with the approval of competent authority, it was decided to upgrade 50% posts of Sr. Artisan Khallasi in the grade of Rs. 2650-4000 to that of skilled grade in the scale of Rs. 3050-4590. Consequently, 55 posts of Diesel Mechanic Grade III in the scale of Rs. 3050-4590 were created. The method for filling of these additional posts is stipulated in Railway Board's letter dated 28.9.98 which has been placed on record (Annexure R/1). para 6(i) of this letter is reproduced as below:-

"the additional posts in the grade 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 1.9.98 on passing the prescribed test."

10. In order to fill up these additional posts, the Railway Administration issued the eligibility list of those employees who possess the requisite qualification with Act Apprentice, ITI Pass and Matriculation as per Para 5(i) of letter dated 28.9.98 (Annexure R/1). As such employees were called for the trade test and after passing the trade test, they were promoted as Diesel Grade III in the scale of Rs.

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3050-4590 vide order dated 19.10.2000 (Annexure R/2). Since both the applicants did not possess the requisite qualifications, their names was neither shown in the eligibility list nor they were called for the trade test and thus they could not be promoted to the post of Diesel Mechanic Grade III, scale Rs. 3050-4590.

11. The applicants have neither challenged the eligibility list whereby they were ignored as they did not fulfil the requisite qualification for the promotion to the post of Diesel Mechanic Grade III in the scale of Rs. 3050-4590 nor they have challenged the letter dated 16.1.2001 whereby the seniority list in respect of employees belonging to Group 'C' and Group 'D' working in Diesel Cell, Phulera ^{was} ~~were~~ circulated. Copy of this letter has been placed on record as Annexure R/5. Perusal of this letter makes it clear that vide this letter seniority list of 26 categories in different grades were circulated. Reading of Note 2 makes it clear that in case any employee has any grievance regarding his seniority list, he may file objection within one month. Here we are concerned with the category of Diesel Mechanic Grade III in the scale of Rs. 3050-4590. It find place at sl. no. 8 of the said letter and Sr. Artisan Khallasi in the scale of Rs. 2650-4000 find mention at sl. no. 25 of the said letter. We have perused the seniority list of Diesel Mechanic Grade III, enclosed with this letter dated 16.1.2001. This seniority list contains names of 61 persons. The name of persons from sl. nos. 2 to 37 find mention in list 'A' whereas persons from 38 to 61 find mentioned in list 'B' of the eligibility list prepared for the purpose for conducting the trade test for the post of Diesel Mechanic Grade II scale Rs. 4000-6000 (Annexure A/1). Thus the eligibility list for the purpose of conducting the trade test to the category of Diesel Mechanic Grade II scale Rs. 4000-6000 has been strictly prepared on the basis of this seniority list. The names of the applicants do not find mention in the said seniority list. The applicants have not chosen to challenge this seniority list as such we cannot examine the validity of this seniority list. However, the name of applicant no. 1

find mentioned at sl. no. 5 and that of applicant no.2 at sl. no. 7 of the seniority list to the category of Sr. Artisan Khallasi. Since both these seniority list were circulated vide same letter dated 16.1.2001 (Annexure R/5), the applicants have not challenged the seniority list. Thus it can safely be concluded that the applicants did not figured in the cadre of Mechanic Grade III as per the seniority list circulated vide letter dated 16.1.2001. They belong to the cadre of Sr. Artisan Khallasi in the lower grade of Rs. 2650-4000 as per the seniority list ^{issued} ~~vide~~ letter dated 16.1.2001 (Annexure R/5).

12. Thus from the facts stated above, the position which has emerged is that the applicants were senior to some of the respondents in the category of sr. Artisan Khallasi grade Rs. 2650-4000 but so far as the post of Diesel Mechanic Grade III in the scale of Rs. 3050-4590 is concerned, some of junior persons have been promoted vide order dated 19.10.2000 but the applicants were promoted on 1.10.2001. The so called junior persons were promoted as they possess the requisite qualifications as prescribed in Para 5(i) of letter dated 28.9.98 (annexure R/1) and they were promoted strictly in accordance with Para 6(i) of the said letter which has been reproduced above. The applicants have not challenged this letter (Annexure R/1) on the basis of which qualified persons were promoted earlier. The applicants who were not qualified were promoted subsequently against some of the additional posts which remained unfilled against 20% of Ranker quota meant for such persons who lack requisite qualification. Further the applicants have not challenged the eligibility list on the basis of which the trade test for the post of Mechanic Grade III scale Rs. 3050-4590 was held and persons were promoted vide order dated 19.10.2000. In absence of any challenge to the eligibility list and subsequently the promotion order made vide order dated 19.10.2000 (Annexure R/2), it cannot be said that the promotion of persons who were admittedly junior to the applicants in the cadre of Sr. Artisan Khallasi are illegal. Further the applicants have also not chosen to challenge the seniority list as circulated vide letter dated 16.1.2001 (Annexure R/5) so far ^{up}

as it relate to the category of Diesel Mechanic grade III where the names of the applicants did not figure. Admittedly the eligibility list for the purpose of appearing in the trade test to the category of Mechanic Grade II, scale Rs. 4000-6000, (Annexure A/1) has been prepared strictly according to the seniority list of Diesel Mechanic Grade III (Annexure R/5). The eligibility list was prepared on 1.9/10.2001 whereas the applicants were not the member of Diesel Mechanic grade III prior to 1.10.2001. They were promoted as Diesel Mechanic Grade III only vide order dated 1.10.2001. It is not disputed that Diesel Mechanic Grade III is a promotional post from the post of Sr. Artisan Khallasi. It is also not disputed that eligibility list for the purpose for conducting the trade test to the higher post of Diesel Mechanic Grade II has to be prepared on the basis of seniority in the cadre of Diesel Mechanic Grade III. In that view of the matter, until & unless, it is established that the applicants were promoted to Diesel Mechanic Grade III earlier to that of so called persons who were junior to the applicants in the cadre of Sr. Aritsan Khallasi or that so called junior persons were erroneously promoted to the post of Diesel Mechanic Grade III, the question of applicants gaining seniority over so called junior persons does not arise. In the absence of any specific rule holding that the continuous length of service would be the basis for seniority in a particular grade, entry into the grade is a normal rule. Applying that rule, the persons who were junior to the applicants in the lower grade of Sr. Aritsan Khallasi were promoted vide order dated 19.10.2000 (Annexure R/2) whereas the applicants were promoted vide order dated 1.10.2001. Similarly the seniority list as circulated vide letter dated 16.1.2001 pertaining to cateogory of Diesel Mechanic Grade III has not been challenged and as such we cannot examine the validity of said seniority list since the eligibility list (Annexure A/1) dated 1.9.10.2001 has been prepared based on the seniority list Annexure R/5. As such the applicants cannot have any grievance that their names have not been included in the eligibility list (Annexure A/1).

13. In view of what has been stated above, we see no merit in the present application, which is accordingly dismissed with no order as to costs. Interim stay order granted on 20.11.2001 shall stand vacated.


(M.L. CHAUHAN)

MEMBER (J)


(H.O. GUPTA)

MEMBER (A)

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