

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 661 of 2001

Jabalpur, this the 15<sup>th</sup> day of June, 2004

Hon'ble Shri M.P. Singh, Vice Chairman  
Hon'ble Shri Madan Mohan, Judicial Member

Shri Moongalal, S/o. Shri Laxman  
Singh, Aged 42 years, R/o. RB-1,  
M-8, Habibganj Railway Colony,  
Bhopal. ... Applicant

(By Advocate - Kum. P.L. Shrivastava on behalf of Smt.  
S. Menon)

V e r s u s

1. Union of India,  
through : General Manager,  
Central Railway, Mumbai.
2. Chief Personnel Officer,  
Central Railway,  
Mumbai.
3. Divisional Railway Manager,  
Central Railway, Bhopal.
4. Senior D.E.N.(N),  
Central Railway, Bhopal.
5. Shri Balwant Singh,  
S/o. Shri Dal Singh, Khalasi/  
Motor Driver, O/o the Works  
Inspector, Bhopal. ... Respondents

(By Advocate - Shri H.B. Shrivastava)

O R D E R

By Madan Mohan, Judicial Member -

By filing this Original Application the applicant  
has claimed the following main reliefs :


"(i) call for the minutes of the selection  
committee whereby the respondent No. 5 came to be  
selected and appointed to the post of Motor Driver  
Grade-III in the pay scale of Rs. 3050-4590 (RSRP).

(ii) quash the memo dated 4.7.2001/Annexure A-7  
to the extent respondent No. 5's selection is  
concerned; as also the orders/memo dated 13.8.2001  
(Annexure A-10) and 17.9.2001 (Annexure A-11) and  
hold it to be malafide, arbitrary and illegal.

(ii-a) to direct the respondents to consider the  
applicant for promotion to the post of Motor Driver  
Grade III in the pay scale of Rs. 3050-4590 (RSRP)."



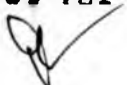
2. The brief facts of the case are that the applicant has been working as a Khalasi since 2.3.1984 and as a Driver, MRCL w.e.f. 24.9.1990. The respondent No. 5 was appointed as Khalasi w.e.f. 3.9.1993 i.e. much after the applicant has been working as Driver, MRCL since 3.4.95. Therefore, obviously, the said respondent No. 5 is junior to the applicant as per the seniority. The applicant belongs to Scheduled Caste category. The respondents issued the notification dated 16.3.2001 inviting applications for appointment to the vacant post of Motor Driver Grade III in the scale of Rs. 3050-4590/-. The vacant posts that were reflected in the said notification were 7, 4 for IV/scale, while 1 for MRCL and 2 posts were reserved for ST respectively. Since the applicant fulfilled the requisite qualification as were detailed therein, he applied for the same. The applicant also furnished the necessary documents also. In the eligibility list for consideration on the said post, in the category of MRCL Jeep Driver, the name of the applicant is reflected at serial No. 13 while that of respondent No. 5 at serial No. 17. The applicant attended the screening held on 19.6.01. The respondents issued the memo dated 4.7.2001, reflecting the names of successful candidates from the general category. The <sup>name of the</sup> respondent No. 5 finds place at Serial No. 5. The grievance of the applicant is that in relation to the selection and appointment of respondent No. 5, a driver who came to be appointed later than the applicant and who is junior to the applicant could not have been preferred vis-a-vis the applicant and the applicant being from a SC category ought to have been appointed to the said post. The applicant filed OA No. 456/2001, wherein the Tribunal vide order dated 24.7.2001 directed the respondents to consider the representation of the applicant within a period of four weeks. The respondents



vide order dated 13.8.2001 informed the applicant that in the screening programme he was not found fit and therefore he could not be selected while respondent No. 5 was found fit. No reason was given in it. The respondents vide memo dated 17.9.2001 reiterated what was contended in the order dated 13.8.2001 with a further elaboration that since he did not belong to MRCL quota, as such, he could not be promoted. It was further contended that the MRCL has been added to the departmental quota. It is amazing that the applicant has been functioning as MRCL for past several years and has been receiving the emoluments and other service benefits so also is the case of respondent No. 5, therefore, the contention of the respondents in the said order is contrary to the records. Further how the MRCL quota came to be merged with the departmental quota is also to be explained by the respondents. Giving an unfair treatment to the juniors is not only violative of the constitutional principles but also it results in demoralisation of the senior officials. The impugned order is contrary to the well established principles of promotion in vogue as well as the service rules in force for the time being. The impugned action is also wholly illegal, improper, unjustified and cannot stand <sup>to</sup> the scrutiny of law and therefore deserves to be buried.

3. Heard the learned counsel for the parties and perused the records.

4. It is argued on behalf of the applicant that the respondent No. 5 is apparently junior to the applicant because he was appointed on 3.9.1993 and was promoted as Driver, MRCL w.e.f. 3.4.1995, while the applicant was appointed as Khalasi on 2.3.1984 and as Driver, MRCL on 24.9.1990. For the post of Motor Driver Grade-III total



vacant posts were notified as 7, 4 for category IV/scale while 1 for MRCL and 2 posts were reserved for ST. On the place of 4 posts of IV/scale, the respondents have appointed 5 candidates and no approval for the 5th post was obtained from the concerned authorities. Our attention is drawn towards Annexure A-11 in which reference of one letter dated 20.6.1984 is made but that letter is not produced by the respondents. Hence it cannot be justified by the respondents that the 5th post was added in the departmental quota. He further argued that there should have been posts for SC candidates also. The respondents have not explained under what circumstances they have promoted the respondent No. 5 ignoring the promotion of the applicant while he is apparently senior to him.

5. In reply the learned counsel for the respondents argued that according to the letter dated 13.8.2001 (Annexure A-10) the respondent No. 5 was found suitable in practical by the selection committee, though he was junior to the applicant but due to finding him suitable, he was empanelled. There was no post reserved for SC category. It is further mentioned in this letter that two posts were reserved for ST category but the candidates were not available in that category, hence these posts were left blank and no person of any other category is empanelled on these posts. He has also drawn our attention towards the letter dated 17.9.2001, in which it is mentioned in the notification that there was no post reserved for SC category and the applicant had no eligibility in the skilled MRCL category, thus was not found suitable by the selection committee. Hence his name was not empanelled as Motor Driver.

6. After hearing the learned counsel for both the



parties and on careful perusal of the records, we find that the applicant was not found suitable by the selection committee while the respondent No. 5 was found suitable. He may be junior to the applicant but in case of any test held the person who is found suitable can be given preference over the senior. There was no post of scheduled caste category. Hence the applicant's claim that he should have been considered by the respondents on the ground of his belonging to the SC category does not stand. The learned counsel for the respondents had undertaken to produce the copy of the order dated 20.6.1984 within a period of three days on the date of hearing of this OA i.e. on 7.5.2004 but this letter is not produced by the respondents so far. Further if this letter is not produced by the respondents, even then the applicant cannot get any benefit from it, because he was not found suitable by the selection committee, while the respondent No. 5 was found suitable by the selection committee.

7. After considering all the facts and circumstances of the case, we do not find any merit in this OA and the Original Application is liable to be dismissed. Accordingly the Original Application is dismissed. No costs.

(Madan Mohan)  
Judicial Member

(M.P. Singh)  
Vice Chairman

"SA"

Issued  
On 24-6-04  
BS

पृठांकन सं ओ/ज्या.....जबलपुर, दि.....  
चलितदिधि अद्योहित:-  
(1) सचिव, उच्च न्यायालय बार एसोसिएशन, जबलपुर  
(2) आवेदक श्री/श्रीमती/कु.....के काबंरल Ku. PL Shrivastava  
(3) प्रत्यर्था श्री/श्रीमती/कु.....के काउंसल MB Shrivastava  
(4) वायपान, केप्रभा, जबलपुर न्यायपीठ  
सूचना एवं आवश्यक कार्यवाही हेतु  
Rajendra  
उप सजिस्ट्रार 24.6.04