

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 718 of 2001
Original Application No. 102 of 2002
Original Application No. 413 of 2002

Jabalpur, this the 9th day of October, 2003

Hon'ble Shri Anand Kumar Bhatt, Administrative Member
Hon'ble Shri G. Shanthappa, Judicial Member

1. Original Application No. 718 of 2001 -

1. Mohan Lal Malviya,
Son of Shri Dhanna Lal
Malviya, Aged about 42 years,
Goods Driver, Railway Department,
R/o Loco Foreman Itarsi.
2. Dinesh Chand Soni, Son of Shri
Shanker Lal Soni, Aged about 47
years, Goods Driver, Railway
Department, R/o. Loco Foreman,
Itarsi.
3. K.K. Shrivastava, Son of Shri
Ramcharan Shrivastava, Aged about
44 years, Goods Driver, Railway
Department, R/o. Loco Foreman,
Bina.
4. Lalman Malviya, Son of Shri
Bhaiyalal Malviya, aged about 47
years, Goods Driver, Railway
Department, Loco Foreman, Itarsi.
5. Mamlesh Yadav, Son of Shri Govind
Singh Yadav, Aged about 32 years,
Goods Driver, Railway Department,
R/o. Loco Foreman Itarsi.
6. Ramdas Choudhary, Son of Shri
Chhotelal Choudhary, Aged about 48
years, Goods Driver, Railway
Department, R/o. Loco Foreman, Beena.
7. Mohd. Arif Son of Shri Abdul Khalik,
aged about 37 years, Goods Driver,
Railway Department, R/o. Loco
Foreman, Beena.
8. Hari Om Gour, Son of Shri Ram
Prasad Gour Aged about 37 years,
Goods Driver, Railway Department,
R/o. Loco Foreman, Itarsi.
9. Lakhan Lal Sahu, son of Shri Babu
Lal Sahu, aged about 44 years,
Goods Driver, Railway Department,
R/o. Loco Foreman, Itarsi.
10. Man Singh, Son of Shri Mohkam

Singh, Aged about 46 years,
Goods Driver, Railway Department,
R/o Loco Foreman, Beena.

11. Tulsi Ram Kushwaha son of Shri Babulal Kushwaha, aged about 29 years, Goods Driver, Railway Department, R/o. Loco Foreman, Itarsi.
12. Shyam Sunder Dhruv, son of Shri Lalla Prasad Dhruv, aged about 42 years, Goods Driver, Railway Department, R/o. Loco Foreman, Itarsi.
13. Hansh Kumar Choudhary, son of Shri Vishnu Prasad Choudhary, Aged about 41 years, Goods Driver, Railway Department, R/o Loco Foreman, Itarsi.
14. Vijay Kumar Sule, son of Shri Sadashiv Sule, aged about 42 years, Goods Driver, Railway Department, R/o Loco Foreman, Itarsi.
15. Suresh Kumar Yadav, Son of Shri Komal Singh Yadav, aged about 44 years, Goods Driver, Railway Department, R/o Loco Foreman, Itarsi.
16. Tulsi Ram, son of Shri Churaman, aged about 44 years, Goods Driver, Railway Department, R/o Loco Foreman, Beena.
17. Rajesh Chouhan, son of Shri Bhekulal Chouhan, aged about 40 years, Goods Driver, Railway Department, R/o Loco Foreman, Itarsi.
18. Rajesh Shrivastava, son of Shri Ram Bihari Shrivastava, aged about 30 years, Goods Driver, Railway Department, R/o Loco Foreman, Itarsi.
19. Jaggannath, son of Shri Mohan Lal, aged about 44 years, Goods Driver, Railway Department, R/o Loco Foreman, Beena.
20. Imrat Lal Pal, son of Shri Pal, aged about 43 years, Goods Driver, Railway Department, R/o. Loco Foreman, Beena.
21. Manoj Awasthy, son of Shri V.S. Awasthy, aged about 35 years, Goods Driver, Railway Department, R/o Loco Foreman, Beena.
22. Sanjay Shrivastava, son of Shri

B.L. Shrivastava, aged about 32 years, Goods Driver, Railway Department, R/o Loco Foreman, Beena.

23. Alok Shrivastava, son of Shri H.N. Shrivastava, aged about 32 years, Goods Driver, Railway Department, R/o Loco Foreman, Beena.
24. Prakash Chand Verma, son of Shri Kanta Prasad Verma, aged about 37 years, Goods Driver, Railway Department, R/o Loco Foreman, Beena.
25. Ramesh Rathore, Son of Shri D.P. Rathore, Aged about 42 years, Goods Driver, Railway Department, R/o Loco Foreman, Guna.

... Applicants

(By Advocate - Shri R.L. Gupta)

V e r s u s

1. Union of India,
Through its Secretary,
Ministry of Railway Affairs,
Rail Bhawan, New Delhi.
2. Assistant General Manager,
Central Railway, Mumbai, CST.
3. Chief Personnel Officer (T),
Office of General Manager,
Central Railway, Mumbai CST.
4. Senior Divisional Personnel
Officer, Central Railway,
Bhopal (MP).

... Respondents

(By Advocate - Shri S.P. Sinha)

2. Original Application No. 102 of 2002 -

1. Jugal Kishore, son of Shri Ramkaran Yadav, aged about 33 years, Goods Driver, Railway Department, R/o. Loco Foreman, Guna.
2. Ashok Kumar Son of Shri Gorelal, aged about 37 years, Goods Driver, Railway Department, R/o Dwarika Nagar, Railway Hospital Road, Nishampura, Bhopal (MP).
3. Sunderlal son of Shri Ram Prasad, aged about 45 years, Goods Driver Railway Department, R/o Railway Colony, Bina (MP).
4. Chetanya Kumar aged about 33 years,

Goods Driver, Railway Department,
R/o Satya Gyan Nagar, Bhopal.

5. Subhash Chand Panchariya
son of Shri Kedarnath Panchariya,
aged about 30 years, Goods Driver,
Railway Department, R/o Saket Nagar,
Bhopal (MP).
6. Bal Krishna son of Shri Mohan Lal,
aged about 51 years, Goods Driver,
Railway Department, R/o Loco Foreman
Bina.
7. Ramcharan Mina, son of Shri Sitaram
Mina, aged about 40 years, Goods
Driver, Railway Department, R/o
Loco Foreman Guna.
8. Mahmood Ali, son of Shri Maksood
Ali, aged about 45 years, Goods
Driver, Railway Department, R/o
infront of Shiv Mandir, Badi
Bajariya, Bina.

... Applicants

(By Advocate - Shri R.L. Gupta)

V e r s u s

1. Union of India, Through
its Secretary, Ministry of Railway
Affairs, Rail Bhawan, New Delhi.
2. Assistant General Manager,
Central Railway, Mumbai, CST.
3. Chief Personnel Officer (T),
Office of General Manager,
Central Railway, Mumbai CST.
4. Senior Divisional Personnel
Officer, Central Railway,
Bhopal (MP).

... Respondents

(By Advocate - Shri S.P. Sinha)

3. Original Application No. 413 of 2002 -

Jagjit Singh, Son of Shri Anoop Singh,
Aged about 32 years, Goods Driver,
Railway Department, R/o Loco Foreman,
Bina.

... Applicant

(By Advocate - Shri R.L. Gupta)

V e r s u s

1. Union of India, Through
its Secretary, Ministry of
Railway Affairs, Rail Bhawan,
New Delhi.

2. Assistant General Manager,
Central Railway, Mumbai, CST.
3. Chief Personnel Officer (T),
Office of General Manager,
Central Railway, Mumbai CST.
4. Senior Divisional Personnel
Officer, Central Railway,
Bhopal (MP).

... Respondents

(By Advocate - Shri S.P. Sinha)

O R D E R (Common)

By Anand Kumar Bhatt, Administrative Member -

OA No. 718/2001, OA No. 102/2002 and OA No. 413/2002 are similar in nature and they are taken up together for a common order. For the sake of convenience we are discussing only OA No. 718/2001 which will apply mutatis-mutandis to the other two cases also.

2. The facts as per the applicants in brief are that the applicants were working as Senior Assistant Drivers, Assistant Drivers and similar equal posts. For the purpose of giving promotion to the post of Goods Driver in the pay scale of Rs. 5000-8000/-, the respondents started the process of promotion and the applicants were issued call letters for appearing in the oral examination. They were successful in the said interview and a panel was prepared vide DRM letter dated 20.07.2001 (Annexure A-4). It was mentioned in the said letter that the indicated candidates will be posted only after they pass the Main Line Training course (MLT) from Zonal Training School, ^{at Bhusawal} Bhopal. On the basis of the panel, promotion and posting orders were also issued vide Annexure A-5. However later vide office order No. 780/2001, dated 24.10.2001 (Annexure A-6), the panel which was issued vide letter dated 20.07.2001 (Annexure A-4) was cancelled and ~~number of~~ such promoted officials

including the applicants were reverted. The applicants have sought the relief that the impugned order dated 24.10.2001 (Annexure A-1) and 19.10.2001 (Annexure A-2) cancelling the panel and reverting the applicants be quashed.

3. The applicants have stated that vide Railway Board's letter dated 01.04.1987 (Annexure A-7) it was decided that in view of the difficulty being experienced in filling up the vacancy in the grade of Drivers the essential condition of 2 years^{service} which was relaxed for the period upto 30.06.1986 will be extended till 31.12.1988 provided the candidates fulfill the following conditions :

- i) Six years service (Combined as second Fireman and First Fireman/Diesel Assistant/Electric Assistant),
- ii) Two years service as First Fireman/Diesel Assistant/Electric Assistant; and
- iii) 60,000 Kms. experience of foot-plate as FIRST Fireman/Diesel Assistant/Electric Assistant."

By Annexure A-8 this relaxation was further extended till 30.06.2001. It is clear from Annexure A-4 that the interview for the said selection was conducted in the month of March and April, 2001 and therefore the said selection is covered by the said relaxation given in Annexure A-8. In the oral submission Shri Gupta the learned counsel for the applicants stressed that in case the promotion can be made only after passing the MLD course, the panel could be kept alive and the promotions be made after the applicants pass the said course.

4. The respondents on the other hand have stated that the Diesel Assistants and Shunters unless do not pass the promotional course including break-down and vacuum test, which is mandatory requirement for safety reasons, they cannot be empanelled for the post of Goods Driver and an irregularity was committed by empanelling the applicants without fulfilling the mandatory requirement and because of this procedural lapse

the panel dated 20.07.2001 and the subsequent promotion orders have been cancelled by order dated 24.10.2001. They have further stated that although some conditions were relaxed by Annexure A-7 and Annexure A-8, but the passing of the Zonal Training ^{in School} Promotional Course including breakdown and vacuum test were mandatory and maintained. The panel has been cancelled by the Chief Operating Manager who is the competent authority. The cancellation of the panel is because of violation of mandatory provisions and therefore no show-cause notice was necessary. They have referred to the clarification dated 18.03.1985 (Annexure R-I) issued by the Railway Board in which it has been clarified that the passing of the Zonal Training School Promotion course including vacuum test and breakdown test is a condition precedent for appearing in the selection for promotion to the post of Driver Grade-C. This was reported in RBE No. 273/87 issued on 11.11.1987 (Annexure R-II).

5. The learned counsel for the applicants has drawn our attention to the letter dated 28.04.1999 (Annexure A-10) in which the same condition was put that some candidates were found suitable subject to passing the MLD course. The learned counsel for the applicants ^{here the said mandatory} stated that ~~this~~ condition was not considered. Similarly ^{it} ~~there~~ is ^{the} ~~a~~ case, ^{it is} ~~with~~ the promotion orders issued vide order dated 01.06.1999 (Annexure A-11).

6. Shri Sinha for the respondents has made a distinction between the pre-selection requirement and the post-selection requirement. He stated that passing the vacuum test and the breakdown test is an essential and mandatory pre-condition for being considered for selection, whereas after selection also they have to pass the MLD test.

7. We have considered the pleadings on both the sides and have heard the counsel at some length.

8. It is not disputed that passing of certain tests is essential before actual promotion is made. Whether there is ^{and} difference between the vacuum training/the breakdown training on one hand and the main line driving training on the other is not very clear. The clarification issued on 18.03.1985 (Annexure R-I) by the Railway Board mentions Zonal Training School Promotion Course included vacuum test and break down test. This clarification does not mentions MLD training. ^{In possibly} ~~It is relevant that~~ MLD training is a wider term which includes vacuum test and breakdown test. However it cannot be denied that without passing these tests promotion ^{not sh} can be made to the post of Goods Driver from the lower cadre. In the present case a panel has been prepared and a condition has been put of passing the said promotional test which is mentioned in the Railway Board letter/clarification dated 18.03.1985 (Annexure R-I) as Zonal Training School Promotion ^{test} course includes the break down/and vacuum test. So as regards passing of ^{In this} ~~these~~ promotion course is a precondition for promotion, ~~and~~ there cannot be any dispute and as such in case the applicants have been reverted from the promoted post to their original post in the absence of passing the said course the action of the Department cannot be faulted. However the Department is not on such a solid footing so far as the preparation of panel is concerned. We feel that the ends of justice would be met if the panel is kept alive and the applicants are promoted as and when they clear all the tests i.e. promotion test including vacuum test and breakdown test and it is presumed that this promotion course is the same as MLD and if not then the pre-condition of passing MLD test before actual promotion has to be maintained. However there

is no harm in keeping alive the panel which was prepared including the applicants. We are not interfering with the order cancelling the promotion and reverting the applicants to their original post. But we direct that the panel will be kept alive and the applicants and other similarly placed candidates who were ^{it included} ~~selected~~ in the panel will be promoted as and when they pass the required promotion course which included the vacuum test and breakdown test. The applicants may be given atleast three chances to pass the said promotion course and only after ^{that} if the respondents so desire the panel could be cancelled.

9. In the result all the three Original Applications are partly allowed. No costs.

- Sd -
(G. Shanthappa)
Judicial Member

- Sd -
(Anand Kumar Bhatt)
Administrative Member

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