

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

O.As. Nos. 577/1998, 604/1998, 435/2000 and 769/2001

Jabalpur, this the 12th day of March, 2003

Hon'ble Mr. Justice N.N.Singh-Vice Chairman
Hon'ble Mr.R.K.Upadhyaya-Member(Administrative)

(1)Original Application No.577 of 1998

1. Devendra Kumar Pandey, s/o Shri Wasudeo Pandey, aged about 35 Yrs.
2. Subodh Kumar Ahirwar, Son of Shri N.R. Ahirwar, aged about 33 Yrs.
3. Arvind Kumar Shukla, Son of Shri P.R. Shukla, aged about 34 Yrs.
4. Parwat Singh Yadav, Son of Shri D.N. Yadav, aged about 36 Years.
5. Rakesh Kumar Dwivedi, son of late Shri G.C. Dwivedi aged about 34 Years.
6. Suresh Kumar Mishra, son of Shri R.P. Mishra, aged about 38 Yrs.
7. Prahalad Kumar Gupta, son of Shri S.S. Gupta, aged about 35 Years.
8. Girish Chand Rajpoot, son of Shri D.C. Rajpoot, aged about 34 Years.
9. Vineet Kumar Nigam, son of Shri S.L. Nigam, aged about 34 Years.
10. Ram Nath Sahu, son of Shri R.P. Sahu, Aged about 36 Years.
11. Swaroop Singh Dangi, son of Shri S.L. Dangi, aged about 36 Years.
12. Ram Narayan Tiwari, Son of Late Shri R.D. Tiwari, aged about 36 Years.
13. Gulab Chand Joshi, Son of Shri P.L. Joshi, aged about 38 Years.
14. Vijay Kumar Gayakwad, son of Shri R.S. Gayakwad, aged about 32 Years.
15. Ravindra Singh, son of Shri Bhikam Singh, aged about 34 Years.

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16. Pramod Kumar Sharma, son of Shri R.S. Sharma, aged about 34 years.
17. Rajesh Kumar Gupta, son of Shri R.C. Gupta, aged about 32 years.
18. Rakesh Mohan Richhariya, son of Shri M.P. Richhariya, aged about 34 years.
19. Rakesh Kumar Pandey, son of Shri R.L. Pandey, aged about 32 years.
20. Rakesh Kumar Gupta, son of Shri R.C. Gupta, aged about 32 years.
21. Raiesuddin Quazi S/o Quazi Saiduddin 34 years, C/o Chief Project Manager, Railway Electrification, Danapur, Bihar.

APPLICANTS

(By Advocate-Shri P.R. Bhave) VERSUS

1. Union of India, through Secretary, Ministry of Railways, Rail Bhawan, New Delhi.
2. Railway Board through its Chairman, Rail Bhawan, New Delhi.
3. The General Manager, Central Organisation Railway Electrification (CORE) Allahabad U.P.
4. The General Manager, Central Railway, Mumbai (CST)
5. Chief Personnel Officer, Central Railway, General Manager's Building, Mumbai (CST)
6. Chief Personnel Officer, Central Organisation Railway Electrification Allahabad: U.P.
7. Divisional Railway Manager (Personnel), Central Railway, Bhopal Division, Bhopal Bhopal : M.P.
8. Chief Project Manager, Railway Electrification, Danapur (Bihar).

- RESPONDENTS

(By Advocate- Shri S.P. Sinha)

(2) Original Application No. 604 of 1998

1. D.K. Pare, S/o M.L. Pare,
2. J.K. Nayak, S/o. Shri S.C. Nayak,
3. Sushil Sharma S/o. Shri J.N. Sharma,
4. K.K. Shukla S/o Late Shri N.P. Shukla
5. M.K. Jain S/o Shri S.C. Jain
6. S.K. Gupta S/o Late J.C. Gupta
7. S.B. Kolkar S/o Shri Basappa Kolkar,
8. V. Muralidharan S/o Late K. Viswanathan.

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9. A.K. Jain S/o Shri P.C. Jain
10. Satya Prakash S/o Shri Badri-
Prasad
11. A.K. Dixit S/o P.R. Dixit,
12. H.B. Niranjan S/o Shri R.R. Niranjan
13. V. S. Khare S/o Shri R.N. S. Khare,
14. I.P.A. Pathan S/o Shri R.P. Pathan,
15. A.K. Saxena S/o. Late K.L. Saxena

All Khalasis, Railway Electrification-
Project, Eastern Railway, Danapur,
District Patna

+ APPLICANTS

(By Advocate-Smt. S. Menon)

VERSUS

1. The Chairman, Railway Board,
Rail Bhawan, New Delhi.
2. The General Manager, Central-
Organisation Railway Electrification
(CORE), Allahabad, U.P.
3. The General Manager, Central-
Railway, Mumbai, C.S.T. Mumbai.
4. The Chief Personnel Officer,
Central Railway, Mumbai, C.S.T. Mumbai
5. The Divisional Railway Manager (P),
Central Railway, Bhopal.
6. The Senior Personnel Officer,
Railway Electrification Project,
Danapur (Bihar).

- RESPONDENTS

(By Advocate-^{Smt.} M.N. Banerji)

(3) Original Application No. 435 of 2000

1. Vijay Kumar Singh, son of Shri
Darshan Singh, aged about 33 years.
2. Ramprakash Gupta, S/o. Umashankar
Gupta, aged about 35 Years.
3. Ajay Tiwari, S/o Marishanker Tiwari,
aged about 35 years.

All the applicants are Technical Mate in
Central Railway, Bhopal Division. They are
presently posted under Chief Electrical
Engineer (Project). Railway Electrification.
Lucknow (U.P.)

APPLICANTS

(By Advocate-Shri Atul Nema)

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VERSUS

1. Union of India, through Secretary, Ministry of Railways, Rail Bhawan, New Delhi.
2. Railway Board through its Chairman, Rail Bhawan, New Delhi.
3. The General Manager, Central Organisation, Railway Electrification (CORE) Allahabad(U.P.)
4. The General Manager, Central Railway Mumbai (CST)
5. Chief Personnel Officer, Central Railway, General Manager's Building MUMBAI (CST)
6. Chief Personnel Officer. Central Organisation Railway Electrification, Allahabad(U.P.) Manager(Personnel), Central Railway
7. Divisional Railway, Bhopal Division, Bhopal (M.P.)
8. Chief Electrical Engineer (Project), Railway Electrification, Near KKC, Charbagh, Lucknow - 226001.

- RESPONDENTS

(By Advocate-Shri S.P. Sinha)

(4) Original Application No. 769 of 2001

Ajay Kumar Tripathi
S/o O.P. Tiwari
Aged about 36 Years
R/o N.K. Maharaj Vimla Bhawan,
Meera Road, PATNA

- APPLICANT

(By Advocate-Shri Atul Nema)

VERSUS

1. Union of India,
Through Secretary, Ministry
of Railways, Rail Bhawan, NEW DELHI
2. Railway Board
through its Chairman,
Rail Bhawan, NEW DELHI
3. The General Manager,
Central Organisation,
Railway Electrification (Core)
ALLAHABAD
4. The General Manager,
Central Railway, MUMBAI (CST)

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5. Chief Personal Officer,
Central Railway,
General Manager's Building,
Mumbai (CST)
6. Chief Personnel Officer,
Central Organisation,
Railway Electrification,
ALLAHABAD (U.P.)
7. Divisional Railway Manager
(Personnel) Central Railway,
Bhopal Division,
BHPAL (M.P.).
8. Chief Electrical Engineer (Project)
Railway Electrification
Near KKC Charbagh,
LUCKNOW

- RESPONDENTS

(By Advocate - Shri M.N. Banerji)

Common Order

By R.K.Upadhyaya, Member (Admnv.)-

These Original Applications are being disposed of by a common order for sake of convenience as the reliefs claimed and grounds raised are similar.

2. In O.A. 577/1998 it is claimed by the applicants that all the 21 applicants are Diploma Holders in Electrical/Mechanical/Civil Engineering. It is also claimed that they were appointed initially on daily wages as Casual Work Supervisors during the period 1984 to 1988. In due course, they were granted temporary status as Technical Mates in the pay scale of Rs.1320-2040. The applicants have stated that those who were holding Diploma in Mechanical or Electrical Engineering were working against the vacancies of Chargeman 'B' and those persons who were holding Diploma in Civil Engineering were engaged in vacancies of Inspector of Works. All of them have claimed regularisation as Chargeman 'B'/Inspector of Works Grade-III in the pay scale of Rs.1400-2300 and are aggrieved by the order of regularization as Group-D employees as per order dated 3.3.1998 (Annexure-A-1).

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2.1 In O.A.604/1998 all the 15 applicants have challenged the regularisation in Group-D category as per orders dated 3.3.1998 (Annexure-A-1) and 19.5.1998 (Annexure-A-2). It is stated by the applicants that all of them, except applicant no.5 Shri M.K.Jain, are Diploma Holders in Mechanical/Electrical/Civil Engineering. The applicant M.K.Jain is stated to be holding B.E.Degree in Civil Engineering. It is also stated that all of them were initially appointed during the period 1985 - 1988 as Casual Work Supervisor on daily wages and they were accorded temporary status in due course in the scale of Rs.1320-2040.

2.2 In OA 435/2000 all the three applicants have challenged the orders dated 3.3.1998 (Annexure-A-1) and 19.5.1998 (Annexure-A-2) by which they are being absorbed in various Group-D categories. They have claimed that they should be extended the benefit of regularisation as Chargeman-B or Inspector of Works Grade-III in the pay scale of Rs.1400-2300 as has been done in the case of similarly situated other Diploma Holders in Central Railway. All the three applicants claim that they were initially appointed between 1986 and 1988 as Casual Work Supervisor on daily wages. Applicants Vijay Kumar Singh and Ajay Tiwari are Diploma Holders in Civil Engineering whereas applicant no.2 Ram Prakash Gupta is Diploma Holder in Electrical Engineering. It is also claimed that in due course they were given temporary status in the scale of Rs.1320-2040 as Technical Mates.

2.3 In OA 769/2001, the applicant states that he is Diploma Holder in Civil Engineering and was initially appointed on 27.6.1987 on daily wages as Casual Work Supervisor. In due course he was given temporary status in the pay scale of Rs.1320-2040 as Technical Mates. He is aggrieved by the order dated 3.3.1998 (Annexure-A-1) by which he is being absorbed as Group-D employee. The applicant

claims that he should be regularised as Chargeman-B/IOW Gr.III as has been done in the case of similarly situated Diploma Holders in Central Railway.

3. It is stated on behalf of the applicants that because of delay in regularisation of the applicants several Writ Petitions were filed directly before the Hon'ble Supreme Court. Smt. Menon, learned counsel of applicants in OA 604/1998 stated that the applicants were petitioners before the Hon'ble Supreme Court in the case of B.K. Mishra and others (Writ Petition No. 1198/1988). In a common order dated 3.5.1989 (Annexure-A-5) the Hon'ble Supreme Court had passed the following order :-

"Learned counsel appearing on behalf of the respondents agreed that the petitioners will be given an opportunity to appear before the Railway Recruitment Board for their selection to posts in accordance with their suitability and qualification for such post. In such selection there will be no question of age bar. So long as such an opportunity is not given, the respondents are restrained to terminate the services of the petitioners. The Writ Petitions are disposed of as above. There will be no order as to costs".

The claim of the applicants is that in all propriety after the directions of the Hon'ble Supreme Court passed on 3.5.1989, the case of all the temporary employees ought to have been considered in terms of the order, but despite directions of the Hon'ble Supreme Court, there was no change in the status of the applicants inasmuch as they continued as temporary employees (Technical Mates).

3.1 The applicants have further claimed that their grievance was agitated at various levels through their Unions and the matter was also placed for consideration in the National Federation of Indian Railways. They have stated that the Railway Board vide their order dated 4.12.1992 (Annexure-A-7 to OA 604/1998) issued orders for regularisation of services of adhoc para-medical staff of Central Railway. Such para-medical staff was subsequently regularised. It is stated by the applicants that even such para-medical staff were writ-petitioners

before the Hon'ble Supreme Court. Subsequently, vide order dated 26.3.1992 (Annexure-A-9 to OA 604/1998) orders were issued by the Railway Board for absorption of Work Mistries in the scale of Rs.1400-2300 recruited from open market by the Construction Unit,Visakhapatnam. Thus, not only the para-medical staff belonging to Central Railways but also similarly situated temporary employees in the employment of South-Eastern Railway were regularised subject to selection by screening committee constituted for the purpose. The grievances of the applicants was being agitated from time to time at different forums. One Gyanendra Singh Kushwaha & 9 others, who were petitioners in one of the Writ Petitions before the Hon'ble Supreme Court, approached this Tribunal by way of an Original Application bearing number 161 of 1994. This Tribunal vide order dated 27th July,1994 directed as follows:-

"7. Accordingly,we direct the respondents to consider the regularisation of the applicants in the post of Inspector of Works Grade-III by giving them an effective opportunity to appear before the Railway Recruitment Board for regular selection. As an alternative, we direct them to consider extending to the applicants the same treatment as has been meted out to similarly placed persons by the South Eastern Railway. These directions shall be complied with within a period of three months of the communication of this judgment".

However, the respondents failed to give benefit to those applicants in spite of the extension of time granted by the Tribunal. Hence another O.A.No.398 of 1998 was filed by the same applicants G.S.Kushwaha and others and this Tribunal vide order dated 29.2.1996 had observed as under:-

"6.....we direct the respondents to constitute a Screening Committee and consider the case of the applicants as permissible under the law as has been done by South Eastern Railway within four months from the date of communication of the order.."

Some other applications were also filed claiming similar reliefs by Pramod Kumar Verma & 9 others (O.A.379/1997), Vinod Kumar Khare & 5 others (O.A.352/1997); and Santosh Kumar Khare (O.A.452/1997). All these applications were disposed of by this Tribunal by a consolidated common order

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dated 10.3.1998 in which the benefit as granted in the case of G.S.Kushwaha in O.A.398/1995 was directed to be given to those applicants also.

3.2 It is stated by the learned counsel of the applicants in OA 604/1998 that the respondents had filed a Writ Petition No.3705/1998, 3700/1998 and 3701/1998 against the aforesaid consolidated order dated 10.3.1998 and the Hon'ble High Court of Madhya Pradesh vide order dated 30.10.2002 has upheld the order of the Tribunal. All the grounds taken by the respondents in the present OAs have been elaborately considered by the Hon'ble M.P. High Court wherein it has been stated that "the instance put forth that the applicants were bound to go through the RRB test does not with stand close scrutiny and we unhesitatingly repel the said submission canvassed by the learned counsel for the petitioners"; The High Court had held that "it can safely be concluded that the Railway Administration abdicated the idea of the Railway Recruitment Test and when this fact had taken place in the South-Eastern Railway, the Central Railways employee being emboldened approached the Tribunal and the Tribunal in the case of Gyanendra Singh Kushwaha(supra) taking stock of the fact situation directed as has been indicated herein above". It has also been held by the Hon'ble High Court that the applicants similarly placed with Gyanendra Singh Kushwaha, deserve to be regularised on the same terms. Some of these applicants had filed petitions for being treated as Intervenors in the case before the High Court, wherein the Hon'ble High Court observed that since Original Applications were pending before this Tribunal, the same were to be decided after taking stock of the fact situation. It was, therefore, urged by the learned counsel of the applicants that all these applicants deserve to be given the same treatment as has been given to Gyanendra Singh Kushwaha & others.

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4. The learned counsel of the respondents repeated the same arguments as have been canvassed in the cases of Gyanendra Singh Kushwaha (supra) and before the Hon'ble High Court in the cases of Vinod Kumar Khare & others (supra). It was stated that the applicants cannot be allowed to agitate the matter by these OAs which have been filed in 1998 or thereafter, being belated one. It was also stated that the applicants could not be regularised as they had to appear before the Railway Recruitment Board for being considered for regularisation as Inspector of Works Grade-III/Chargeman-B.

4.1 Shri S.P.Sinha, learned counsel of the respondents invited attention to the provisions contained in Para 2007 of the Indian Railway Establishment Manual wherein it has been stated that the regularisation could be made in Group-D posts only and that too on availability of vacancies. He also invited attention to the Railway Board's circular dated 9.4.1997 (Annexure-R-3 to OA 604/1998) which provides as under:-

"3.After careful consideration of the matter, Board have decided that the regularisation of casual labour working in Group 'C' scales may be done on the following lines:-

- (i) All casual labour/substitutes in Group 'C' scales whether they are Diploma Holders or have other qualifications, may be given a chance to appear in examinations conducted by RRB or the Railways for posts as per their suitability and qualification without any age bar.
- (ii) Notwithstanding (i) above, such of the casual labour in Group 'C' scales as are presently entitled for absorption as skilled artisans against 25% of the promotion quota may continue to be considered for absorption as such.
- (iii) Notwithstanding (i) and (ii) above, all casual labour may continue to be considered for absorption in Group 'D' on the basis of the number of days put in as casual labour in respective Units".

4.2 According to the learned counsel of respondents, absorption as skilled artisans against 25% promotion quota only can be resorted to, and any other absorption had to be done in Group-D posts only, therefore, the impugned order dated 3.3.1998 (Annexure-A-1) is in accordance with the

existing instructions of the Railway Board.

5. We have heard the learned counsel of both the parties and have perused the material available on record. There is no dispute that all the applicants hold requisite academic qualification and experience for being considered for appointment as IOW Grade-III/ Chargeman-B. All of them have been working for more than a decade as Technical Mates. All of them have been given temporary status and are drawing pay in the revised scale of Rs.1320-2040 as Technical Mates. We are of the view that the matter has been agitated at different fora by all the applicants as can be seen that many of the present applicants were also writ petitioners under Article 32 of the Constitution before Hon'ble Supreme Court. Thereafter, also they had been agitating their grievances by filing representations etc. Therefore, the claims cannot be said to be barred by limitation. In any case, similar plea has been allowed by this Tribunal in the cases of G.S.Kushwaha (supra). Following that order in the case of G.S.Kushwaha, similar benefit has been allowed in the case of Framod Kumar Verma & others(supra). Recently, this Tribunal in the cases of Ravi Shanker Khare Vs. Union of India & others, O.A.No.471 of 1997, and Deepak Arya Vs. Union of India & others, OA No.627 of 1998 by a common order dated 6.2.2003 directed that the benefit, which was extended to G.S.Kushwaha and others, is also to be extended to these applicants. In view of these decisions we consider that the present applicants are also entitled to get the similar treatment and benefits.

5.1 There is no dispute that the post of IOW Gr.III/ Chargeman is a selection post. The same is to be filled up by holding a screening test as has been directed in the case of G.S.Kushwaha in OA 398/1995 vide order dated 29.2.1996. In case there are not enough number of vacancies for the regularisation of the present applicants, they

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need not be reverted to Group-D posts and may be continued in the present status wherever they are working or if there is no work in that project, they may be adjusted in any other project where such work is still in progress. At the cost of repetition, it is clarified that all these applicants are entitled to be given same treatment and benefits as have been given to G.S.Kushwaha and others in OA 398/1995.

6. In the results, these Original Applications are allowed. The respondents are directed to give effect to this order within a period of three months from the date of communication of this order. The parties are directed to bear their own costs.

Sd/-

(R.K.Upadhyaya)
Member (Admnv.)

Sd/-

(M.N.Singh)
Vice Chairman

rkv.