

Original Applications Nos.471 of 1997 & 627 of 1998

Jabalpur, this the 6th day of February, 2003

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

(1) O.A. No.471 of 1997

Ravi Shanker Khare aged about 32 years,
son of late Shri N.D. Khare resident of
1496, Civil Lines, Jhansi

- APPLICANT

(By Advocate - Shri H.P. Chakravorty)

Versus

Union of India through

1. Chairman, Railway Board/Principal Secretary,
Govt. of India, Ministry of Railways, Rail
Bhawan, New Delhi.
2. General Manager, Central Railway, Mumbai, CST.
3. Chief Personnel Officer, Central Railway,
Mumbai CST.
4. Chief Administrative Officer (Construction),
Central Railway, Mumbai, CST.
5. Dy. Chief Engineer (Construction), Central
Railway, Gwalior (M.P.).

- RESPONDENTS

(By Advocate - Shri S.P. Sinha)

(2) O.A. No. 627 of 1998

Deepak Arya, S/o Shri R.D. Arya,
Age 36 years, Occupation: Service,
R/o B-11, Tansen Nagar, Gwalior

- APPLICANT

(By Advocate - Shri Atul Nema)

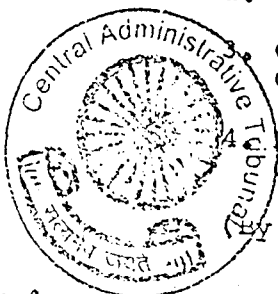
VERSUS

1. Union of India Through : Secretary,
Ministry of Railways, Rail Bhawan, New Delhi.
2. General Manager, Central Railway, Mumbai (CST).
3. Chief Administrative Officer (Construction),
Central Railway, Mumbai (CST).

4. Deputy Chief Personnel Officer (Const.) CAO (C)
Office, Central Railway, Mumbai

- RESPONDENTS

(By Advocate - Shri S.P. Sinha)



Common Order

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

These applications are being disposed of by a

SRN
Sr. Personnel Officer,
Central Railway,
Mumbai CST

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common order for sake of convenience as the facts and issues involved are similar.

2. In O.A.471 of 1997 the applicant Ravi Shanker Khare has stated that he was a Diploma Holder (Civil Engineering) from Polytechnic, Bhopal and was appointed as Highly Skilled Technical Maistry (for short 'HSTM') from 24.11.1986. He has been conferred temporary status from 19.11.1987 and claims to have been performing the duties of Inspector of Works. He has claimed regularisation of his services and absorbing him permanently on the post of Inspector of Works (for short 'IOW'), against the existing vacancies as has been done in similar other cases on the basis of decisions of Hon'ble Supreme Court and this Tribunal.

2.1 In O.A.627 of 1998 the applicant Deepak Arya has stated that he was initially appointed on the post of HSTM against the vacant post of IOW from the year 1987. According to him, he is a Diploma Holder and holds the necessary qualifications for being eligible to be appointed as IOW Grade-III. He has also requested for being regularised on the post of IOW Gr.III as has been done in similar other cases.

2.2 It is stated by the learned counsel of the applicants that these Original Applications deserve to be allowed following the decision of this Tribunal in the case of Shri G.S.Kushwaha and others Vs. Union of India and others, O.A.No.398 of 1995 decided on 29.2.1996 (Annexure-A-3 to OA 627/1998). They further stated that this decision in the case of G.S.Kushwaha (supra) was followed in several other cases including O.A.No.379 of 1997 (Pramod Kumar Verma & 9 others Vs. Union of India & others), O.A.352 of 1997 (Vinod Kumar Khare & 5 others Vs. Union of India and 5 others) and O.A.452 of 1997 (Santosh Kumar Khare Vs. Union of India & 4 others) which were allowed by a common order dated 10.3.1998 (Annexure-A-7 to OA 627/1998). It is

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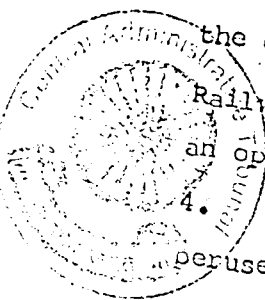
also informed by the learned counsel that the respondents had filed special leave petition in the case of G.S.Kushwaha (supra) and writ petitions in the cases of Pramod Kumar Verma etc. (supra). The Hon'ble Supreme Court as well as the Hon'ble High Court of Madhya Pradesh have upheld the orders of this Tribunal. It is, therefore, contended that the present applicants should also be extended the same benefit of being regularised as in the cases of G.S.Kushwaha and Pramod Kumar Verma (supra).

2.3 It was stated by the learned counsel that by M.A.672 of 1998 in OA 471/1997 the respondents have admitted that facts in three writ petitions filed in the cases of Pramod Kumar Verma etc. are similar to the case of applicant Ravi Shanker Khare.

3. The learned counsel of the respondents stated that the order of the Tribunal in the case of G.S.Kushwaha (supra) was implemented because there was contempt proceedings in that case. The decision of Hon'ble Madhya Pradesh High Court dated 30.10.2002 in Writ Petitions Nos.3700,3701 and 3705 of 1998 (Pramod Kumar Verma & others etc.etc. Vs. Union of India & others) is being challenged and SLP is being filed in the Supreme Court. He further invited attention to the provisions contained in Para 2007 of the Indian Railway Establishment Manual and stated that casual employees or monthly rated casual labourer cannot be regularised to Group-C post. The post of Inspector of Works is to be filled by Railway Recruitment Board and the applicants have not availed themselves of the opportunity in passing the test conducted by the Railway Recruitment Board in spite of having been given an opportunity to do so.

4. Heard the learned counsel of both sides and perused the material available on record carefully.

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Sr. Personnel Officer,
Central Railway,
Mumbai C.S.T.

4.1 This Tribunal in the case of G.S.Kushwaha(supra) has held as under:-

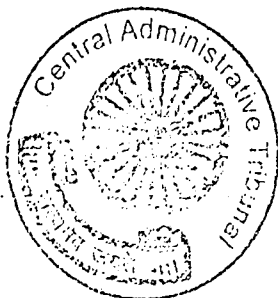
"6. The Department appears to be just casual. There is no intention to comply with the directions issued by the Supreme Court earlier. Had there been any intention to do so, they would have done it as had been done by South Eastern Railway. Shri R.D. Jain, the learned counsel for the applicants relied on several judgments wherein regularisation has been granted in cases of Casual employees. The principles laid down in those judgements have not been disputed. The case of regularisation should be considered of the employees if they are duly qualified. However, regularisation should be made by a procedure known to law. In the instant case, the Tribunal had directed that the applicants be given an opportunity to appear before the Railway Recruitment Board for regular selection but no such opportunity has yet been given to them. The learned counsel for the respondents submit that the post of I.O.W. is a selection post which can be filled by Railway Recruitment Board. Nobody denies that the post is to be filled by Railway Recruitment Board, but the respondents have not taken care to consider the cases of the applicants for regularisation by holding Screening Committee. In view of the above facts and circumstances, 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. There shall be no order as to costs".

Against the aforesaid order of this Tribunal, the respondents approached the Hon'ble Supreme Court in SLP. Meanwhile, a CCP No.52 of 1996 was also filed in the case of G.S.Kushwaha (supra) before this Tribunal and vide interim order dated 27.1.1997 the Tribunal have observed as under:-

"2. The only question to be considered in this case is as to what was the procedure adopted by South Eastern Railway while regularising similarly situated persons. Shri Sinha, counsel for the respondents has placed before us the correspondence in relation to the said regularisation and stated on affidavit that the department had taken written test as also the viva voce. The result of the said test is that all 175 persons who had appeared at the examination cleared the written as well as the viva voce test, as such, there was 100% result and all were regularised. It appears that the department had taken a liberal view.

3. Shri Sinha also states that the department is going to hold the examination and the whole process will be over by 28.2.1997. We expect that the Central Railways will act sympathetically in considering the applicants in the same manner as has been done by the South Eastern Railways.

4. List the matter for further orders on 18.3.97.."



On 18.3.1997 the aforesaid CCP 52/1996 was finally disposed of vide order as follows:-

Vide judgment dated 18.3.1997, this Tribunal in contd.....5/-

O.A.161/94 had issued the following directions-

'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 from the communication of this judgment'.

However, during the pendency of this petition, Shri Sinha, learned counsel for the respondents placed before us the correspondence in relation to regularisation and stated on affidavit that the South Eastern Railway had taken written test as also the viva voce, in which 175 persons had appeared and the department had cleared all those who had appeared. In other words, there was 100% clear result. In this view of the matter, this Tribunal on 27.1.1997 made an observation, that the Central Railway may also act in the similar manner. Shri Sinha states that the respondents held a written test in respect of the applicants on 12.2.1997.

3. Shri Sinha learned counsel for the respondents also submits that the respondents had approached the Hon'ble Supreme Court in Civil Appeal No.1769 of 1997 whereby their Lordships have passed the following order-

'Leave granted.

We have heard learned counsel on both sides. Pending the appeal, the written examination has been conducted by the appellants and the result thereof is awaited. In that view of the matter, without expressing any opinion on merits in the matter, the appeal is disposed of with the direction that the appellants would take further action pursuant to the result of the examinations according to rules. No costs.'

Now the only action left by the Central Railways is to hold the viva voce and finalise the regularisation. It is prayed that the Chief Personnel Officer, Mumbai C.S.T. shall look into the matter. We expect that the further action to be taken by the respondents shall be completed within two months from today. The viva voce test will not be postponed on the ground that there are some other persons to be considered or for any other reason. With this observation, CCP is disposed of. Notice is discharged".

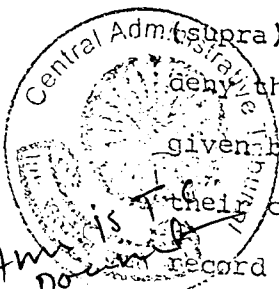
4.2 Based on the orders in the case of G.S.Kushwaha (supra), this Tribunal in the case of Pramod Kumar Verma (supra) have observed that "it would also not be proper to

deny the present applicants the benefit of the decision given by this Tribunal in O.A.398/95 supra i.e. getting their cases screened for regularisation on the basis of the record and holding a departmental test and viva voce".

Aggrieved by the order of the Tribunal in the case of

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Sr. Personnel Officer,
Central Railway,
Mumbai C.S.T.



Pramod Kumar Verma (supra), the respondents had filed Writ petitions bearing Nos.3700,3701 & 3705 of 1998 which have been decided vide common order dated 30.10.2002, wherein the Hon'ble High Court has observed that- "the order of the Tribunal is impeccable and there is no reason to lancet the same".

4.3 In view of the facts of these cases and in view of the decisions of this Tribunal, referred to above, as upheld by the Hon'ble Supreme Court and also by the Hon'ble Madhya Pradesh High Court, this Tribunal is of the considered view that the benefit which was extended to G.S.Kushwaha and others is also to be extended to the present applicants. We order accordingly. The respondents are directed to give effect to this order within a period of three months from the date of communication of this order.

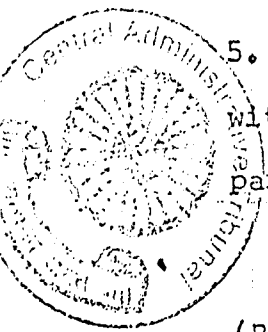
5. In the result, these applications are allowed with the directions as contained in the preceding paragraph without any order as to costs.

Sd/—

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

Sd/—

(N.N.Singh)
Vice Chairman.



IV.

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P.R. Bhawe, B.A.
H.C. J.P.P.

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