

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

Jaipur, this the 8<sup>th</sup> day of September, 2008.

ORIGINAL APPLICATION No.223/2005

CORAM:

HON'BLE MR. M.L.CHAUHAN, JUDICIAL MEMBER  
HON'BLE MR. B.L.KHATRI, ADMINISTRATIVE MEMBER

1. Sunil Bhardwaj  
s/o Shri Mohan Prakash,  
r/o Lalupura Road,  
Ajmer.
2. Jitendra Kumar  
s/o Shri Shyam Murari Sharma,  
r/o Panchsheel Colony,  
Ramganj,  
Ajmer.
3. Rajesh Saini  
s/o Shri Mool Chand Saini,  
r/o 330/C, A.En.Colony,  
Phulera.
4. Devki Nandan  
s/o Shri Pooran Chand Sharma  
r/o Railway Quarter,  
Near Railway Hospital,  
Phulera.
5. Vinay Makkad,  
s/o Shri Ameer Chand Makkad,  
r/o P.No.5, New Guard Colony,  
Phulera.
6. Sudesh Kumar  
s/o Shri Harlal Jat,  
r/o C/17, Behind R.M.S.,  
Railway Colony,  
Phulera.
7. Sanjay  
s/o Shri Tekchand,  
r/o Dhani Karigaron,  
Phulera.

8. Mahaveer Meena  
s/o Kana Ram Meena,  
resident of C/o Shri Narayan Kumawat,  
Dhani Nagoan,  
Phulera.

All are working on the post of Senior Khalasi, scale Rs. 2650-4000 in the office of Senior Section Engineer (Diesel), Diesel Shed, Phulera, Jaipur Division.

..Applicants

(By Advocate: Shri P.V.Calla)

Versus

1. Union of India  
through General Manager,  
North Western Railway,  
Headquarter Office,  
Opposite Railway Hospital,  
Jaipur
2. The Divisional Railway Manager (Estt.)  
Jaipur Division,  
North-Western Railway,  
Jaipur
3. The Seniro Divisional Mechanical Engineer  
(Estt.), Jaipur Division,  
Jaipur.

.. Respondents

(By Advocate: Shri V.S.Gurjar)

### O R D E R

Per Hon'ble Mr. M.L.Chauhan, M(J)

The applicants have filed this OA thereby praying for the following reliefs:-

- (i) the impugned order annexure-A/1 so far as it relates to the applicants whereby it has been notified that the applicants could not be promoted as they have not completed two years service on the grade below may kindly be declared illegal.

- (ii) Further by an appropriate order or direction direct the respondents to treat the applicants as eligible for the post of Electrical Fitter Gr.III scale Rs. 3050-4950 as they have already completed more than 2 years service as Group-D employee and thereafter included the name of the applicants in the office order dated 8.10.2004 at appropriate place and further the respondents may be directed to fix the pay of the applicants on the post of Electrical Fitter Gr.III scale Rs. 3050-4590 w.e.f. 1.11.2003 with all consequential benefits.
- (iii) Any other relief to which the applicants is found entitled, in the facts and circumstances of the present case, may also be granted in favour of the applicants.
- (iv) The Original Application may kindly be allowed with costs.

2. Briefly stated, facts of the case are that the applicants are working as Senior Khalasi in the pay scale of Rs. 2650-4000 in the office of Senior Section Engineer, Diesel Shed, Phulera, Jaipur Division. The grievance of the applicants is that the respondents have granted promotion in the grade of Rs. 3050-4590 in respect of employees who have not completed 2 years of service in the grade of Rs. 2650-4000, whereas such benefit has not been extended to the applicants. The applicants claim that they be granted promotion on the post of Electrical Fitter Gr.III which selection they have qualified but promotion in Group-C post has been denied to them solely on the ground that they have not completed two years of service in the lower grade and further that names of the applicants may be included in the office order dated 8.10.2004 at appropriate place. The applicants have further prayed that

respondents may be directed to fix the pay of the applicants on the post of Electrical Fitter Gr.III w.e.f. 1.11.2003 with all consequential benefits.

3. Notice of this application was given to the respondents. The respondents have filed reply. According to the respondents, as per provisions of para 214-C of the Indian Railway Establishment Manual Vol.I under Chapter II, Section-B, staff in the lower grade with minimum two years of service will only be eligible for promotion. The service for this purpose includes service, if any, rendered on ad-hoc basis followed by regular service without break and condition of two years of service should stand fulfilled at the time of actual promotion and not necessarily at the stage of consideration. It is further stated that there are two pay scale amongst Group-D employees in the diesel shed- (i) Rs. 2550-3200 and (ii) Rs. 2650-4000. According to the respondents, the employee who has put in service of two years in the pay scale of Rs. 2550-3200, he shall be eligible for promotion in the scale of Rs. 2650-4000 and after having put in service for two years in the pay scale of Rs. 2650-4000 then only he will be eligible for further promotion to Group-C category in the scale of Rs. 3050-4590. The respondents have admitted that all the applicants who are working on the post of Senior Khalasi in the pay scale of Rs.


2650-4000 in the office of Senior Section Engineer (Diesel) Diesel Shed, Phulera have passed the trade test and will be eligible for promotion only after having put in service for a period of two years in the pay scale of Rs. 2650-4000.

On the point of discrimination that persons who have not put in two years of service in the pay scale of Rs. 2650-4000 have been promoted to Group-C in the pay scale of Rs. 3050-4590, the respondents have stated that in the diesel shed there are three wings i.e. (i) Diesel Maintenance, (ii) Diesel Electrical and (iii) Ancillary Category. According to the respondents, the seniority list of all the three groups is not common as alleged by the applicants. In fact seniority of all the three groups is separate and the cadre is also separate. Promotion to Ancillary Group-C in the Ancillary Grade-III are made from amongst the employees of the Artisan Group-D and Ancillary Group-D. Since, Ancillary Category is a small group and the promotional avenues are less, therefore, the Ancillary Group-D and Maintenance Staff have been merged after seeking option of the concerned employees. The vacancies in the pay scale of Rs. 3050-4590 have been filled up on the basis of option only once and thereafter all promotions in the concerned category will be made in accordance with the seniority. According to the respondents, applicants

belong to entirely separate category and in a separate cadre. Thus, the applicants have no case whatsoever.

4. We have heard the learned counsel for the parties and gone through the material placed on record.

5. Admittedly, promotion to Group-C category in the grade of Rs. 3050-4590 has to be made in accordance with rule governing promotion of Group-C staff as contained in Chapter-II, Section-B of the Indian Railway Establishment Manual, Vol.I, 1989 Edition. According to the respondents, since the post in Group-C category in the grade of Rs. 3050-4590 is non-selection post, as such, it is Para 214 which is attracted in the instant case. According to the learned counsel for the applicants, the posts in question for which selection was held are selection posts, as such, provision of Para 214 of the IREM is not attracted in the instant case. Whether the post is selection or non-selection is irrelevant for the purpose of the matter in controversy. The facts remain that only those persons are eligible for promotion to Group-C category, who have put in minimum two years of service in the immediate lower grade i.e. Rs. 2650-4000 and condition of two years' service should stand fulfilled at the time of promotion and not necessary at the stage of consideration. For the purpose of counting two years' service, service rendered on ad-



hoc basis followed by regular service without break shall also be taken into consideration. Such provision is contained in Para 214-C so far as non-selection posts are concerned whereas identical provision exists in Para 215-A so far as selection posts are concerned.

Further, it is admitted case between parties that though the applicant have qualified the trade test for the post of Electrical Fitter Gr.III but they were not granted promotion because they have not put in 2 years' service in the grade of Rs. 2650-4000 whereas similar benefit was extended to persons belonging Ancillary Category which category has been merged with Maintenance Staff after seeking options from the employees. According to the respondents, such a departure has been made as one time measure because Ancillary Category is small group and their promotion avenues are less and thereafter all the promotions in the concerned categories will be made in accordance with the seniority. Thus, the sole question which requires our consideration is whether the applicants are entitled to relief solely on the basis that benefit has been illegally extended to Artisan Group-D cadre (which cadre was created after merger of Ancillary Category with Maintenance Staff). From the material placed on record, it is evident that initially there were 3 different wings in the diesel shed namely Diesel Maintenance, Diesel Electrical and Ancillary Category. Seniority in respect of 3 wings.

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was being maintained separately. The respondents have decided to merge the cadre of Ancillary Category with that of Maintenance Staff as Ancillary category consist of small group. Hence, as a one time measure promotion has been granted to the persons in immediate lower grade de hors the rules, although they have not completed two years' of service in that grade when such benefit was given to them. Admittedly, the applicants as well as persons who have been granted benefit belong to two different cadres. Thus, it cannot be said to be a case where the applicants are similarly situated to that of persons where the departure has been made while granting promotion to Group-C category.

6. The learned counsel for the applicants submits that this is a case of discrimination, as such, benefit should be granted to the applicants in the light of the decision rendered by the Hon'ble Apex Court in the case of Virendra Kumar and ors. vs. Union of India and ors., AIR 1981 SC 1775 (1). On the contrary, the learned counsel for the respondents has placed reliance on the decision of the Apex Court in the case of Indian Council of Agricultural Research and Another vs. T.K.Suryanarayan and Ors., (1997) 6 SCC 766 whereby it has been held that erroneous appointment will not confer any right to extend the similar benefit to a person contrary to service rules.



7. We have given due consideration to the submissions made by the learned counsel for the applicants. We are of the view that the decision rendered by the Hon'ble Apex Court in the case of Virendra Kumar (supra) is not applicable in the facts and circumstances of this case. That was a case where large number of persons were promoted to the post of Chargeman Grade-II after completion of two years of service whereas such benefit has been denied to the appellants before the Apex Court on the ground that unless they complete three years' service, they cannot be promoted on the said post. The Apex Court held that since benefit has been extended to large number of persons who have completed only two years' service, as such, the appellants being similarly situated should also be granted such benefit. The Hon'ble Apex Court have not given any finding on the point whether appointment can be given dehors the rules or Article 14 which is a positive concept can be enforced to perpetuate illegality. Rather from the tenor of the order it is evident that Hon'ble Apex Court has not laid down any principle of law and has given direction in the facts and circumstances of the case, which fact demonstrates that it was an order made under Article 142, thus not binding precedent. According to us, it is a case of Indian Council of Agricultural Research

(supra) which has laid down law where appointment is made contrary to service rules and is applicable in the instant case. Further, the applicants are also not similarly situated to those persons who were illegal promoted dehors the rules. In fact, the applicants belong to different category/cadre whereas the persons who belong to Ancillary Grade were extended such benefit as one time measure by the respondents when their cadre was merged with the cadre of Maintenance Staff. Thus, according to us, the applicants are not entitled to any relief.

8. Accordingly, the OA is dismissed being bereft of merit with no order as to costs.

  
(B. L. KHATRI)

Admv. Member

  
(M. L. CHAUHAN)

Judl. Member

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