



**CENTRAL ADMINISTRATIVE TRIBUNAL,
CALCUTTA BENCH, KOLKATA**

O.A. No. 935/2011

**Present : Hon'ble Justice Shri Vishnu Ch. Gupta, Judicial Member
Hon'ble Ms Jaya Das Gupta, Administrative Member**

1. Shri Manik Lal Dey,
Son of Late Susanta Kumar Dey,
Working as Technician Gr.-III at the
Diesel Shed under the S.S.E. (Diesel),
Eastern Railway, Howrah,
Resident of 1/67 Kataganj Colony,
P.O. – Kataganj, P.S. Kalyani,
Dist. Nadia.
2. Shri Sudip Bhattacharjee,
Son of Late Taraprasad Bhattacharjee,
Working as Tech. Gr.-III at the same Diesel Shed,
Resident of Ram Sita Para,
P.O. – Nabadwip, P.S. Nabadwip,
Dist. Nadia.
3. Shri Kajal Kanti Mukherjee,
Son of Late Paresh Nath Mukherjee,
Working as Tech. Gr.-III at the same Diesel Shed,
Resident of P.O. & Village – Rasulpur (Ambegan),
P.S. – Memari,
Dist. – Burdwan.
4. Shri Raja Ram Sharma,
Son of Late Shree Narayan Sharma,
Working as Khalasi Helper at the Same Diesel Shed,
Resident of Bally Choto Durgapur Rail Colony,
No.26/B, P.O. – Baro Durgapur, P.S. Bally,
Dist. Howrah.

..... Applicants.

Versus

1. Union of India,
Through the General Manager,

Eastern Railway,
17, Netaji Subhas Road,
Kolkata – 700 001.

2. Divisional Railway Manager,
Eastern Railway, Howrah.
3. Sr. Divisional Personnel Officer,
Eastern Railway, Howrah.

..... Respondents.

4. Shri Manas Kumar Ghosh,
Tech. Gr.-II, Diesel Shed,
Eastern Railway, Howrah.

5. Shri Sudhir Mukherjee,
Tech. Gr.-II, Diesel Shed,
Eastern Railway, Howrah.

..... Private Respondents.

For the Applicant : Mr. P.K. Munsi, Counsel

For the Respondents : Mr. M.K. Das, Counsel

Date of hearing : 26.09.2016

Date of order: 06.10.2016

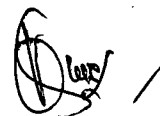
ORDER

JUSTICE V.C. GUPTA, JM

By means of this application the applicant prays for the following reliefs:

"8.A. Leave to file and prosecute this application jointly under Rule 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules, 1987 as the applicants have a common interest in the matter.

B.(i) Promotion of the applicants from the post of Khalasi Helper to the post of Tech. Gr.III on the basis of seniority as in the Seniority List even against 60% D.R. quota as already considered in the case of juniors, by way of extension of similar benefit as granted by the Hon'ble High Court at Calcutta vide Judgement &



Order dated 27-02-2007 in W.P.C.T. No. 73 of 2004 (Shew Prasad & Others -Vs- Union of India & Ors.);

(ii) Consequential benefits arising out of such promotion including corresponding promotion to Tech. Gr.-II;

(iii) Cost."

2. The brief facts for deciding this application are that the applicants have been working at the Diesel Shed of Eastern Railway at Howrah Division. They joined service as Khalasi Helper on different dates. The name and date of joining of the applicants are extracted herein below:

<u>"Name</u>	<u>Date of Joining</u>	<u>Post</u>
Shri Manik Lal Dey	16-11-1987	Khalasi Helper
Sudip Bhattacharjee	20-08-1988	"
Kajal Kanti Mukherjee	01-09-1988	"
Raja Ram Sharma	25-09-1996	"

A Committee for promotion of Group D to Group C was set up by the Government. The said Committee recommended that no academic qualification is to be prescribed for such promotion and the staff having 3 years Railway service shall be considered for promotion. It is stated that the said recommendation has been accepted by the Government and the Railway Board has issued a Circular No.E (NG)I-85-CFP/3 dated 31.07.1987. In view of this circular recommendation to the post of Technical Gr.III in the grade of Rs.3050-4590 (pre-revised) was as per quota fixed, direct recruit against 60%, promotion 40% irrespective of any qualification. This circular dated 31.07.1987 which was referred in para 4(c) of the application was not annexed with the O.A but Railway Board Circular which has been annexed is of dated 28.09.1998, which has been relied upon by the applicants, is extracted herein below:

**"Serial No. 203/98 No. ME370/28/0/Policy Dt:
28.09.98**

**Sub : Implementation of V.P.C recommendations regarding pay
scales for Khalasis in Diesel/ Electric Loco/EMU Sheds.**

Copy of Board's letter No. PC-V/97/1/11/7 dated 28.09.98 on the above noted subject is forwarded herewith for information guidance and necessary action. Board's earlier letters dt. 19.09.95 & 02.02.98 referred to therein were circulated under this office Sl. No. 101/95 & 43/98 respectively.

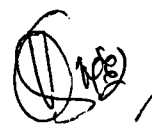
Copy of Board's letter No. PC-V/97/1/11/7 dated 28.09.98 addressed to General Managers, All India Railways & others.

**Sub : Implementation of V.C.P.C recommendations regarding
pay scales for Khalasis in Diesel / Electric Loco/EMU Sheds.**

The recommendation of the Fifth Central Pay-Commission, contained in para 54.23 of their Report, on the subject of recruitment of candidates with Apprenticeship Pass/Matriculation with ITI as desirable qualification in diesel/Electric/EMU sheds is in the grade Rs. 950-1500/-(Rs. 3050-4590) has been under consideration of the Board. After examining all aspects, the Ministry of Railways, with the approval of the President, have decided as follows.

2. In terms of Railway Board's letter No. E(NG)II/95/RR-1/8 dated 19.09.1995 the minimum qualification for direct recruitment to the posts of Artisan Khalasis, in Diesel/Electric Loco/EMU maintenance trades is matriculation/Apprenticeship pass under Apprentices Act in relevant trades/Diploma in Electrical/Mechanical/Electric Engineering, with ITI pass in relevant trade being and additional desirable qualification in the case of matriculates. These Group 'D' posts are distributed in the ratio of 20% in grade Rs. 750-940 (2550-3200) and 80% in the grade Rs. 800-1150 (2650-4000) respectively. While 50% of the posts in these two grades as on 01.09.98 will be placed in the grade of Rs. 950-1500 (Rs.3050-4590), 10% of the posts in these two grades as on 01.09.98 will be surrendered in the grade of Rs. 750-940. Accordingly, the revised percentage distribution of the Group 'D' posts existing on 01.09.98 in the Diesel/Electric Loco/EMU maintenance trades will be as indicated below:-

Sl No.	Scale	Existing percentage	Revised Percentage
1.	Rs.950-1500/Rs.3050-4590	Nil	50
2.	Rs.800-1150/Rs.2650-4000	80	30
3.	Rs.750-940/Rs.2550-3200	20	10



4.	To be Surrendered		10
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The posts in the grade Rs.750-940(Rs.2550-3200) to the extant lying vacant, shall stand surrendered with immediate effect and the balance in due course as per serial number 4 in the table above. These balance posts shall not be adjusted against any additional creation and have to be surrendered in due course. The posts surrendered shall not be credited to the surplus staff bank and cannot be used as matching surrender for creation of additional posts.

4. The additional posts in grade Rs. 3050-4590 in terms of these orders will be added to skilled grade of Rs. 950-1500(Rs.3050-4590). However, there will be no consequent increase in the number of posts in the grades higher than Rs.3050-4590. In other words, the skilled Artisan cadre will not get automatically restructured in accordance with the prescribed percentages with enlarged base in the Grade Rs.3050-4590.

5. In pursuance to the above changes, the revised methodology for filling up the posts of skilled Artisans in grade Rs.3050-4590/- in diesel/electric/EMU maintenance trade will be as under.

i) 60% by direct recruitment from successful course completed Act Apprentices, ITI pass candidates and matriculates from the open market.

ii) 20% from serving semi-skilled and unskilled staff with three years of regular service with educational qualification as laid down in the Apprentice Act, as outlined in Railway Board's letter No. E(NG)/I/96/PM7/56 dated 02.02.1998 and

iii) 20% by promotion of staff in the lower grade as per prescribed procedure.

6. With a view to give the benefit of the grade Rs.3050-4590 to the existing staff with the prescribed qualification stated in para 5(i) above in a reasonable time, the following procedure of filling up the posts in grade Rs. 3050-4590 is laid down for the present.

i) The additional posts in the grade Rs.3050-4590 becoming available in terms of these orders will be filled up by the employees possessing the prescribed qualification indicated in para 5(i) above and who are on roll as on 01.09.1998, on passing the prescribed trade test.

ii) The 60% vacancies earmarked for direct recruitment which accrue from 02.09.1998 onwards may be filled up from serving

employees on roll as on 01.09.1998 and who possess the prescribed qualifications as in para 5(i) above as outlined in Railway Board's letter No. E(NG)/I/96/PM7/56 dated 02.02.1998 for a period upto 31.08.2002 or till such time as no. such employees eligible as on 01.09.1998, remains awaiting placement in the grade, whichever is earlier.

7. With the coming into effect of the revised procedure for filling up posts in the grade Rs.3050-4590, direct recruitment in the grade Rs. 2550-3200 will be from amongst persons with 8th Class pass qualification. The posts in the grade Rs. 2650-4000 will continue to be filled from amongst staff in grade Rs.2550-3200 as per the existing procedure.

8. The number of posts to be operated in the scales of pay indicated in para 2 above will be with reference to the sanctioned cadre strength as on 1st Sept. 1988 in terms

9. **Applicability to various Cadres**

i) These orders will be applicable only to staff working in the regular Group 'D' cadres of Diesel/Electric Loco/EMU maintenance trades. The posts of rest givers and leave reserves will also be taken into account.

ii) These orders will not be applicable to work charged posts which will continue to be based on worth of charge.

10. **Pay Fixation**

Staff selected and posted against the higher grade posts as a result of introduction of the higher scale will have their pay fixed under Rule 1313 (R-II) (FR-22-I-(a)I) with the usual option for pay fixation as per extant instructions

11. **Basic functions, duties and responsibilities**

Since the posts in the grade Rs. 3050-4590 are being created inter alia, on functional considerations, the staff posted against these posts should be assigned duties of higher importance. Consequently, the basic functions, duties and responsibilities to be attached to the new posts will be decided by the concerned cadre controlling authorities and will include items of work currently being performed by such staff. The eligible staff will be placed in the grade Rs. 3050-4590 only after successfully undergoing the procedure indicated in para 6 above.



12. Provision of Reservation.

The existing instructions with regard to reservation will apply while filling up posts in the new grades.

13. Kindly acknowledge receipt.

14. Hindi version will follow.

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50% upgradation of Group 'D' posts to the pay scale Rs. 3050-4500/- in Group 'C' by eligible qualified staff on passing prescribed posts and revised percentage of semi-skilled and unskilled staff in Diesel/Electric Loco/EMU maintenance trade only."

3. It has been averred that while granting the promotion a vital factor of seniority was ignored. Dissatisfied with the action of the respondents, 9 Khalasi Helpers filed an O.A.1243/1999 praying for such promotion only on the basis of their respective seniority positions in the seniority list of Khalasi Helper subject to passing the Trade Test. The said O.A was allowed by the order dated 22.07.2002. A copy of which has also been placed on record. The relevant portion of the judgment is reproduced herein below:

"6. The Id. Counsel for the original applicant submits that he has prayed for this relief only in his O.A. that the quota meant for Khalasi Helper in Diesel Mechanic (Gr.III) should be filled by the khalasi Helper only and not by trade apprentice or any other category. While making promotion to the Diesel Mechanic (Gr. III) the seniority of the applicants should be kept in view and promotion should be given keeping in view their seniority, promotion as well as recruitment rules.

7. In view of the above we dispose of both the M.A. and O.A. by directing the respondent authorities to fill up the post of Diesel Mechanic (Gr.III) meant for Khalasi Helper according to the quota fixed and recruitment rules on the basis of their seniority list and promotion to the vacancies meant for Khalasi Helper should not be filled up by official belonging to any other category like trade



apprentice or direct recruits. The above exercise should be completed and all the vacancies meant for khalasi Helper quota should be filled up within a period of four months from the date of communication this order according to the rules and according to the seniority of the Khalasi Helper in their seniority list. Order so passed shall be communicated to the applicants within a period of two weeks thereafter. Both the M.A. and O.A. are disposed of accordingly."

4. Instead of that order Sr. Divisional Personnel Officer, Eastern Railway did not follow the order passed by the Tribunal on 22.07.2002 and passed an order on 29.07.2002 giving promotion to the Khalasi Helpers against 60% quota of direct recruits without recruiting the person from open market. But while promoting Khalasi Helpers seniority has not been considered and consequently lot of junior Khalasi Helpers below the applicants were promoted. The respondents published seniority list on 31.05.1998 which has been annexed with this application as Annexur A-3. The applicants demonstrated in para 4(i) by giving comparative chart in respect of the seniority position of the applicants vis-a-vis their juniors which is extracted herein below:

"4(i) That the applicants desire to furnish a comparative chart in respect of seniority positions of the applicants vis-à-vis their juniors as under:

Name of the applicant	Seniority Position Date of Joining	Name of the Junior Promoted	Seniority Position & Date of Joining
Shri Manik Lal Dey	<u>132</u> 16-11-1987	Shri Manas Kr. Ghosh	<u>144</u> 29-04-1988
Shri Sudip Bhattacharjee	<u>133</u> 20-08-1988	Shri Manas Kr. Ghosh	<u>144</u> 29-04-1989
Shri Kajal Kanti Mukherjee	<u>135</u> 01-09-1988	Shri Manas Kr. Ghosh	<u>144</u> 29-04-1989
Shri Ja Ram Sharma	<u>13</u> 25-09-1996	Shri Sudhir Mukherjee	<u>40</u> 30-12-1997

The applicants were having a legitimate expectation that the order dated 22.07.2002 of the Tribunal would be uniformly applied upto its compliance and the similar benefit extended to other including the applicants. When the benefits have not been extended in terms of the order dated 22.07.2002 some Khalasi Helpers, which according to the applicants were similarly situated, filed another O.A.1181/2002 (Shew Prasad & Others vs. Union of India & Ors.). The said O.A was dismissed vide order dated 07.01.2004. Copy of the said order is annexed with this O.A as Annexure A-4, relevant portion of which is extracted below :

"7. From the above it is very clear that in case required strength of direct recruitment quota could not be filled up, the authorities can fill up such unfilled vacancies from out of employees who are already working under the respondents on the basis of seniority and eligibility. In our opinion, therefore, no illegality has been committed by the respondents in giving promotion to the employees who are otherwise eligible and deserving. Furthermore, persons who have been given promotion have also not been impleaded in this case. It would be illegitimate for the applicants to question their promotion behind their back. The applicants have also not attained such seniority as is required for getting promotional posts.

8. Considering the case from any angle, we do not find any justification to interfere with the impugned order of promotion passed by the respondents.

9. Accordingly, the application is dismissed without any cost. It is, however, open to the respondents to consider the applicants cases for promotion when they become eligible to hold such promotional posts as per rules."

The aforesaid judgment was challenged before the Hon'ble High Court in W.P.C.T No.78/2004. The order passed by the Tribunal was set aside by Hon'ble High Court on 27.02.2007, copy of which is extracted herein below:



"W.P.C.T. 73 of 2004

Mr. P.K. Munshi

..... For the petitioners.

Ms. Shamoli Banejer

..... For the respondents.

It appears from paragraph 13 of the writ petition that the petitioners were left out and/or refused promotion and those below them in the gradation list were given promotion although the relevant circular governing the filed provides that such promotion shall be on the basis of seniority. When the only factor to be taken into consideration, in promoting a candidate, is his seniority, we have not been able to understand as to why were the seniors left out and the juniors promoted. There is no satisfactory answer to this question in the affidavit-in-opposition. Nor has any answer been attempted by the learned Advocate, appearing for the respondents.

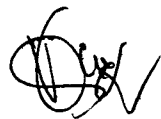
In that view of the matter and considering that the Tribunal has not at all considered this aspect of the matter, the order of the Tribunal is set aside. The concerned respondent authorities are directed to give the petitioners, who have since been promoted, notional seniority above the juniors, who had been promoted earlier.

This writ petition is, thus, disposed of.

There will be no order as to costs.

Let urgent Xerox certified copies of this order, if applied for, be delivered to the learned counsel, for the parties."

5. The official respondents challenged the aforesaid order of the Hon'ble High Court before the Hon'ble Supreme Court but after preliminary hearing the Hon'ble Supreme Court rejected the petition and as such the order of Hon'ble High Court dated 27.02.2017 hold the field. As such the case of the applicants is fully covered by the judgment of the Hon'ble High Court and applicants are entitled to the benefits at par with other similarly situated persons. In this application the applicants claimed the similar benefit which was extended by



this Tribunal in its order dated 22.07.2002 in O.A.No. 1243/1999 and the order passed by the Hon'ble High Court of Calcutta on 27.02.2007.

6. The respondents filed their reply wherein it has been contended that Railway Board vide communication dated 28.09.1998 decided for upgradation of certain Group D post to the extent of 50% of the posts in pay scale of Rs.2550-4000/- and Rs.2550-3200/- as on 01.09.1998 be placed in the grade of Rs.3050-4590/-. According to this decision, the methodology for filling up the posts of skilled Artisan Gr-III (DM Gr.III or Tech. Gr.III) in the grade of Rs.3050-4590/- has been circulated under Chief Personnel Officer's Circular No.203/98 which is applicable for DSL/Elect. Loco Maintenance Trade only existing passed on 01.09.1998. The aforesaid 60% of the upgraded posts have been earmarked as direct recruitment quota from open market in future and for the present from existing Group-D staff possessing above qualification maintaining inter-se-seniority by positive act of selection. 20% from serving semi-skilled and unskilled staff with three years regular service with educational qualification as laid down in the Apprentice Act. Remaining 20% post by promotion from staff in lower grade as per prescribed procedure. Consequently the promotions were made strictly in accordance with the order dated 22.7.2002 passed in O.A.1243/ 1999 and the promotion has been made effective to all eligible staff as per quota fixed. The applicants were considered against 20% promotional quota and rest were not considered due to non-availability of vacancy under 20% promotional quota. Shri Shew Prasad and others filed O.A.1181/2009 before this Tribunal but the same was dismissed with an observation to consider the case of the applicants for promotion when they become eligible to hold such post as per

rule. Against the above judgment the applicants preferred W.P.C.T.No.73/2004.

The Hon'ble High Court set aside the order of the Tribunal and directed the respondents to give notional seniority above the juniors, who have since been promoted. The applicants have claimed for promotion under direct recruitment quota without fulfilling the educational qualifications and other requirements. Though some juniors were promoted but not against 20% promotional quota. They were promoted under 60% direct recruitment quota. Now all the applicants have been promoted to the post of Technician Gr.II & Gr. III (DM-II & III) respectively. Therefore there is no illegality in not giving promotion to the applicant at that time. The authorities acted strictly in accordance with the Railway Board Circular and the order passed by this Tribunal. Hence the application lacks merit and liable to be dismissed.

7. Rejoinder has also been filed reiterating the averments made in the O.A.

8. It is not in dispute that process of selection in pursuance of Serial No. 203/98 dated 28.09.98 selection begun according to the quota prescribed i.e 60% for direct recruitment, 20% for serving semi-skilled and un-skilled staff and 20% from promotion from lower grade as per prescribed procedure. On perusal of the order Srl.No.203/98 dated 28.9.1998 it is clear that against 60% direct recruitment quota, 50% of the post as on 01.09.1998 were placed in the upgraded grade of Rs.3050-4590/-, 10% of the posts of these two grades as on 01.09.1998 were surrendered. Accordingly 40% post distributed to Group D existing on 01.09.1998 in the Diesel/Electric/Loco EMU Maintenance Trade were distributed 60% to be filled by direct recruitment that has successfully completed the course of Act Apprentice plus ITI passed candidates with

Matriculation from open market. 20% from serving semi-skilled and unskilled staff with 3 years regular service with educational qualification as laid down in the Apprentice Act as outlined in the Railway Board letter dated 02.02.1998 and remaining 20% post by promoting the staff in the lower grade as per prescribed procedure. Therefore, this clearly depicts that so far as 20% post are concerned and falling in the third category which should have been filled by the staff in the lower grade shall be promoted according to strict rule of seniority. But for remaining two categories for direct recruitment and 20% serving in semi-skilled and unskilled staff have certain educational qualifications and experience. Hence only 20% post meant for promotion who have no qualification and no experience and they have to be promoted strictly in accordance with seniority. It is not denied that 60% post ought to have been filled by direct recruitment as one time arrangement are directed to be filled by serving staff having requisite qualification meant for direct recruitment. It is also denied that the processes in pursuance of aforesaid srl.No.29/98 were started simultaneously. Therefore, in each category staff was promoted according to their requirement for promotion. The judgment of the Hon'ble High Court passed in W.P.C.T.73/2004 reveals that applicants were left out or refused the promotion but the juniors were promoted. The Hon'ble High Court has also made it clear that relevant circular governing the field provides that such promotion shall be on the basis of seniority. It was further mentioned that when the only factor is to be taken into consideration in promoting the candidates is his seniority, there is no reason to left out the seniors and promote the juniors. It is also mentioned that no satisfactory answer to this question in affidavit in opposition has been given by the respondents and in that particular scenario held that where there is only



criteria for promotion on seniority, the seniority should be adhered to. We found that 20% posts are strictly to be filled in accordance with seniority as these posts does not require any educational qualification or any requirement under the Apprentice Act or any period of service. The only requirement is that they must be in the lower grade as on 01.09.1998. Admittedly, the applicants do not possess any qualification either meant for vacancies to be filled under the direct recruitment quota or under 20% serving semi-skilled or unskilled staff with 3 years regular service and requisite educational qualification. Hence they can claim the benefit of their promotion under 20% quota where there is no requirement of the staff of lower grade. It is not in dispute that the applicants as and when vacancy made available under the particular quota they have been promoted. It is not the case that the seniority has been ignored by making promotion under the 20% quota in other category the seniority cum merit is the criteria for promotion and if merit is lacking only seniority will not count.

Hence we are of the view that these applications have no merit and accordingly the same are dismissed. There shall be no order as to costs.

(Jaya Das Gupta)
Administrative Member

6.10
(Justice V.C. Gupta)
Judicial Member