

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00826/2015
With
MA/050/00127/2016

Reserved on: 03.05.2019
Pronounced on: 06.05.2019

C O R A M

HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER

1. Awadhesh Kumar, S/o Sri Rajendra Ram, At- Pahari Chak, Railway Colony, Qr. No. T/27-E, Sonepur, At present working as Khalasi under SSE (Works), Sonepur.
2. Sonu Kumar Rajak, S/o Sri Sohan Rajak, At- Gol Bunglow Colony, Sonepur, Qr. No.- 269/5, At present working as Khalasi under SSE (Works), Sonepur.
3. Ravi Kumar, S/o Sri Shyam Babu Chaudhary, At & PO- Solha, District- Vaishali, at present working as Khalasi under SSE (Works), Sonepur.
4. Mukul Kumar, S/o Sri Tarkeshwar Singh, At & PO – Bharpura, Sonepur at present working as Mali under SSE (Works), Sonepur.
5. Vinod Kumar Prasad, S/o Late Sudarshan Prasad, Village- Baburbani, PO- Pahelja Barka, Distt.- Saran, At present working as Mali under SSE (Works), Sonepur.
6. Dhananjay Kumar, S/o Late Raj Kumar Pandit, Village- Pamara, PO – Keshopur, PSD- Tharthari, District- Nalanda, At present working as Khalasi.

.... **Applicants**

- By Advocate: - Mr. J.K. Karn

-Versus-

1. The General Manager, East Central Railway, Hajipur.
2. The General Manager (P), EC Railway, Hajipur
3. The Divisional Railway Manager, EC Railway, Sonepur.
4. The DRM(P), EC Railway, Sonepur.
5. The Sr. Divisional Personnel officer/Admn., EC Railway, Sonepur.
6. The Sr. Divisional Engineer (Co-ordination), EC Railway, Sonepur.

.... **Respondents.**

- By Advocate: - Mr. B.K. Choudhary with Mr. S.K. Raj

ORDER

Per Dinesh Sharma, A.M:- The applicants in this case belong to the category of Khalasi/Mali working under SSE (Works), EC Railway, Sonepur. They have prayed for allowing them to appear in the LDCE for promotion to the post of Junior Clerk notified by respondent no. 5 under notification dated 03.07.2015. They have claimed that the categories of Khalasis and Malis have been excluded from this notification which is against Rule-189 of Indian Railway Establishment Manual- 1989. These categories were included when the selection was held for the same 33.33% quota in the year 2008.

2. The applicants had also requested for an interim order to allow them to appear in the examination with the result being subject to the outcome of this OA as was done in allegedly similar cases such as OA/050/595/2015 and OA/050/00807/2015. The prayer for interim relief was granted vide this Tribunal's order dated 03.11.2015 and the results were directed to be kept in sealed cover till the final outcome of the OA.

3. The applicants have filed an Misc. Application (No. 127 of 2016) in which they requested for opening the results kept in the sealed cover since other 11 candidates were shown successful after the conduct of the LDCE.

4. The respondents have denied the claim of the applicant. They have alleged that the OA is bad due to misjoinder and nonjoinder of parties. According to the respondents, the 33.33% quota is for such eligible Group D staff who have no regular avenues of promotion. The Khalasis and Malis have separate channel of promotion (as shown in Annexure R/3). Even if an exception was made in favour of Khalasi and Malis in the past, this was a one-time exception in terms of RBE No. 24/2004 (Annexure R/4) and it cannot be cited as a rule to be continued further.

5. We have gone through the pleadings and heard the learned counsels of both the parties. The learned counsel for the respondents vehemently argued in favour of not making any exception to the Rule to include the applicants in the process of selection which was meant only for those for whom regular channels of promotion are not available. The learned counsel also argued that the Railway Department is in the best position to judge about which categories of employees to include under RBE 24/2004, even as a one-time measure. An exception made in the past, therefore, cannot be forced to be made every time in future. The learned counsel for the applicant, on the other hand, brought to our notice our decision in OA/050/00807/2015, in which this Tribunal has directed the Railways to make an exception in case of applicants therein in the interest of justice.

6. After going through the records, the arguments of the learned counsels of both the parties and the decision of this Tribunal in OA 807/2015, it is very clear that the applicants who belong to the category of

Khalasi and Mali have no right to be included in the examination process for selection through LDCE under the 33.13% quota. Their claim for getting themselves included stems partly from the earlier exception made by the Railways in the year 2008 and partly from the decisions of this Tribunal (to allow them to appear provisionally in similar cases and, in OA/050/00807/2015, to finally direct the respondents to consider their examination result). We agree with the contention of the respondents that an exception made in the past as a “one-time measure” goes not give right to the applicants in this case to claim this exception as a matter of right. We have gone through the decision in OA 807/2015. In that case, the applicants had specifically argued for making an exception because, as Khalasis working in the office, they had no other avenue of promotion. Though it was found that no separate category of Office Khalasi existed, the respondents therein could not satisfactorily explain availability of promotion opportunities for Khalasis working in the offices. It was under these circumstances that this Tribunal had allowed an exception to be made for the applicants in that case. In the present case before us, the applicants have not stated any grounds other than that it was done earlier in 2008 and also that this Tribunal had provisionally allowed similarly situated staff to appear in the examination. They have not even raised the plea of them not having other avenue of promotion and therefore this Tribunal will not be in a position to force a decision of the Department to make an exception just because it was done in the past. However, since these applicants have been allowed to appear in the LDCE examination, we leave it to the wisdom of the Railway

Department whether to make an exception for these applicants, using the powers given under RBE No. 24 of 2004 or not. The OA and MA are disposed of accordingly. No order as to costs.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member