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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 14.05.2025

+ W.P.(C) 5449/2003
HARISH KUMAR

.....Petitioner

Through: Ms. Supriya Manan, Adv.
versus

UOI & ORS.

.....Respondents

Through: Ms.Saroj Bidawat, SPC for R-1
to 3.
Mr.A.K. Trivedi, Adv. for R-4.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE RENU BHATNAGAR

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed by the petitioner, challenging the Order dated 09.05.2002 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as, 'learned Tribunal') in O.A. No.3146/2001, titled *Hind Kumar & Anr. v. Union of India & Ors.*, and the Order dated 11.07.2003 passed by the learned Tribunal in R.A. No.146/2002 in O.A. No.3146/2001.

2. To give a brief background of the present petition, the Railway Board, by its Circular dated 01.05.1996, decided as an *interim* measure that whenever the Railways is unable to fill up the vacancies for the post of Goods Drivers by promotion of Shunters in terms of Board's letters dated 03.08.1995 and 13.12.1995, the Railways may, with the personal approval of their General Manager, also consider first Fireman/Diesel/Electric Assistant, (including shunters with less than 3 months service) for filling up the vacancies of Driver (Goods),



provided they have put in:

“i) Six years service (combined as Second Fireman and First Fireman/Diesel Assistant/Electric Assistant).

ii) two years service as first Fireman/Diesel Assistant/Electric Assistant; and

iii) 60,000 kms. experience of foot-plate as First Fireman/Diesel Assistant/Electric Assistant.”

(emphasis supplied)

3. Since adequate number of Shunters and Senior Shunters were not available in the Ferozepur Division of the Northern Railways in proportion to the number of vacancies of Drivers (Goods), the approval of the General Manager was sought for calling Diesel Assistants/Fireman who fulfill the conditions laid down in the abovementioned Circular dated 01.05.1996 of the Railway Board.

4. The approval of the General Manager was communicated by the Head Quarters Office of the Northern Railways, *vide* their letter dated 23.03.2000, for filling up 104 vacancies of Drivers (Goods). In all, 299 Senior Shunters, Shunters, Senior Diesel Assistants and Diesel Assistants were called to appear in the written test. As a result of the written test held on various dates, 137 Shunters/Diesel Assistants were found suitable for the *viva-voce* test. All the 137 employees were then subjected to the Psycho Test. As a result of the written test, the *viva-voce* and the psycho test, a list of the senior-most 98 candidates who were found suitable for empanelment against the un-reserved vacancies was prepared, in which the name of the petitioner falls at serial No. 95, and as such, he was due for empanelment.



5. At this stage, a complaint was received that the petitioner, who had been called for the selection process, did not fulfill the prescribed condition of having 60,000 KMs experience of foot-plate as Diesel Assistant, prescribed *vide* the Railway Board's Instruction dated 01.05.1996. Pending scrutiny in the matter, a panel of 94 candidates in order of their seniority, excluding the name of petitioner and three others, was issued on 16.02.2001.

6. Thereafter, as it was discovered that the petitioner had not completed the prescribed condition of 60,000 km experience of foot-plate, his case was referred to the Head Quarters Office for relaxation of the said prescribed condition on the ground that he was utilized as Power Controller in administrative interest and, therefore, he could not complete the said prescribed experience on foot-plate.

7. The respondent nos.1 to 3, in their reply filed before the learned Tribunal, further stated that the Head Quarters, *vide* Letter dated 05.07.2001, desired a clarification as to whether the position regarding the experience on foot-plate remains the same, or whether there is any change in the experience earned by the petitioner and the others, whose cases had been simultaneously kept in abeyance.

8. The concerned office, *vide* Communication dated 25.07.2001, informed the Head Quarters that till 07.07.2001, the petitioner had earned an experience of 75,850 KMs on the foot-plate. The Head Quarters, in turn, *vide* Letter dated 11.10.2001, stated that the petitioner, who had by then completed 60,000 KMs on foot-plate as Diesel Assistant, be placed on the panel and be promoted as Driver (Goods).



9. The Zonal Officer issued a Letter dated 07.11.2001, treating the communication dated 11.10.2001 as a relaxation of the prescribed condition of experience of 60,000 KMs on foot-plate, and directed that the petitioner be interpolated at Serial No.90-A.

10. Aggrieved by the same, the respondent nos.4 and 5 filed the above OA before the learned Tribunal.

11. The learned Tribunal, *vide* its Impugned Order dated 09.05.2002, held that the relaxation granted to the petitioner was wrong and arbitrary as he had not completed the requisite condition of 60,000 KMs of foot-plate as Diesel Assistant. The learned Tribunal, therefore, directed that the three slots kept vacant, including that of the petitioner, be released and candidates in the empaneled list from Serial No.128 onwards be appointed.

12. Aggrieved by the above order, the petitioner filed a Review Application, being R.A. No. 146/2002, before the learned Tribunal, which came to be dismissed *vide* the Impugned Order dated 11.07.2003. Before passing the Impugned Order dated 11.07.2003, the learned Tribunal called for the records from the Railway Board regarding the alleged relaxation of the prerequisite condition granted in favour of the petitioner. The learned Tribunal observed that there was no express approval in writing which had been sought from the Railway Board, but later on, when the matter had been espoused by the Association, the Competent Authority, by an Order dated 19.06.2002, accorded approval for the de-empanelment of the name of the petitioner from the panel of Driver (Goods) and empanelled the respondent no.4 instead. The learned Tribunal, therefore, dismissed



the Review Application stating that there was no relaxation granted by the Railway Board in the required eligibility criteria of experience of 60,000 KMs of foot-plate.

13. Aggrieved by the above order, the petitioner has filed the present petition.

14. The learned counsel for the petitioner submits that the Competent Authority had granted a relaxation in favour of the petitioner on the prerequisite condition of experience of 60,000 KMs of foot-plate as Diesel Assistant, taking into view the fact that it was the Department itself which had utilized the petitioner to perform the duties as a Power Controller in the administrative interest. She submits that in a similar situation, this Court in its judgment in *Union of India v. Rakesh Kumar & Ors.* 2007:DHC:1084-DB, had also held that similarly situated persons were entitled to a relaxation of this condition.

15. On the other hand, the learned counsel for the respondent nos.1 to 3 submits that the stand taken by the respondent nos.1 to 3 before the learned Tribunal was contrary to the record and, in fact, the learned Tribunal has rightly held that there was no relaxation given in favour of the petitioner regarding the fulfilment of the condition of 60,000 KMs of foot-plate.

16. We have considered the submissions of the learned counsels for the parties.

17. The conditions required for being promoted to the post of Drivers (Goods), as prescribed in the Circular dated 01.05.1996, have been reproduced hereinabove. One of the requirements is that the



candidate should possess 60,000 KMs experience of foot-plate. Admittedly, the petitioner did not fulfil this condition. The respondent nos.1 to 3 appear to have sought a relaxation of this condition for the petitioner. The learned Tribunal has found that no such relaxation was, however, approved by the Head Quarters. Treating the Letter dated 11.10.2001 issued by the Head Quarters as a relaxation granted in favour of the petitioner, the respondent nos.1 to 3 issued the Order dated 07.11.2001, treating the petitioner as eligible for the post of Driver (Goods) and interpolating him at Serial No.90-A in the panel. This was clearly erroneous as no such relaxation in the eligibility criteria had been granted to the petitioner by the Competent Authority in the Railways.

18. The letter dated 11.10.2001, which was treated as an order of relaxation, reads as under:

*“Sub:- Promotion to the post of Driver Goods
Gr. Rs. 5000-8000 from Diesel Assistant.*

In continuation to this office, letter of even no. dated 5.7.2001 and your response vide your letter No, E-54/5/C/Goods Drivers dated 25.07.2001, it is advised that Railway Board have not agreed to relax the criteria for promotion to the post of Driver (Goods) in foot plate experience in favour of Shri Amar Nath and Shri Ramji Dass for their promotion as Drivers (Goods).

However, Shri Harish Kumar who has completed 60000 kms on foot plate as Diesel Assistant may be placed on the panel and promoted as Driver (Goods).”

19. The above order, in fact, clearly states that as the petitioner has



by then completed 60,000 KMs on foot-plate as Diesel Assistant, he may, therefore, be placed on the panel and be promoted as Driver (Goods). The relaxation for the other two personnel namely, Mr.Amar Nath and Mr.Ramji Dass, was rejected by stating that no such relaxation can be granted. The Order can only be read to mean that the condition of experience of 60,000 KMs of foot-plate was sacrosanct and had to be met, and since the petitioner had by then met the same, he was held entitled for promotion in due course. This demonstrates that no relaxation was granted to the petitioner; rather, he became eligible only upon fulfilling the mandatory requirement. We are informed that the petitioner was thereafter promoted to the post of Driver (Goods) in his own turn in 2004. Whether a relaxation should or should not have been given to the petitioner was not the subject matter before the learned Tribunal nor is it a subject matter before us. Much water has thereafter flown. We would, therefore, not like to examine this issue now as it would require examination of facts that took place more than 24 years back, and that too as a Court of first instance. Therefore, the Judgment of this Court in *Rakesh Kumar* (supra) also cannot come to the aid of the petitioner.

20. For the reasons stated hereinabove, we do not find any infirmity in the Impugned Orders passed by the learned Tribunal. The petition is accordingly, dismissed.

NAVIN CHAWLA, J

RENU BHATNAGAR, J

MAY 14, 2025/Arya/SJ

[Click here to check corrigendum, if any](#)