

Central Administrative Tribunal, Principal Bench

O.A. No. 1620/2002

New Delhi this the 16th day of Aug 2005

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

Hon'ble Mr. S.A. Singh, Member (A)

1. Shri Vinod Sharma
S/o Shri T.N. Sharma
Diesel Generator Engineer (SIG)
Northern Railway,
Subzi Mandi,
Delhi
2. Shri Shiv Shankar Gaur
S/o late Xshri Jai Kishan Gaur,
R/o WZ-64, Sri Nagar, Shakur Basti,
Delhi-110034.

3. Shri Sawan Kumar
S/o late Shri P.C. Sinha
R/o G-16, Kotla Mubarkpur,
New Delhi-3.

- ④ 4. Shri Jai Ram
S/o Shri Kishan Dev

...Applicants

By Advocate: Shri B.S. Mainee.

Versus

Union of India: Through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi.
3. The Senior Divisional Signal
& Telecommunication Engineer,
Northern Railway,
DRM Office,
New Delhi.

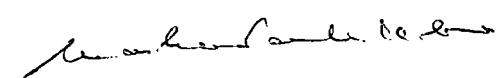
④ Corrected and name
entered as per Order
dt: 08-8-2005, in M.A.
No. 1408/05 in O.A. 1620/2002.
30/8/05
D.R(T)

....Respondents

By Advocate: Shri R.L. Dhawan.

ORDER**By Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)**

The applicant has filed this OA for grant of the following reliefs:-



(a) To quash the impugned orders in so far as the re-designation of the applicants to the post of Wireman as opted by them has been withheld.

(b) The respondents be directed to consider the applicants for absorption as Wiremen in accordance with their options which have been exercised in accordance with the decision of the H.Q. office.

2. The applicants are working as Diesel Generator Fitters in Delhi Division of Northern Railway. The cadre of Diesel Generator Fitters being a diminishing cadre, the respondents Railways invited options from the existing incumbents to change from existing category to ESM/TCM/WM depending upon their aptitude, qualification and willingness. The applicants opted in favour of the post of Wiremen (WM). Instead changing their category as per option exercised by them the respondents have taken a decision to absorb the applicants as ESM (Electric Signal Maintainers) in place of wiremen without calling for their option, hence this OA.

3. The respondents in their reply stated that earlier the option was invited from Diesel Generator Fitters for change of their category but at that time the issue of re-designation of the cadre was not finalized. No guarantee/assurance was given that the employees would be re-designated as per their option and the option had also not been received from all the employees. Moreover, the Senior Divisional S&T Engineer, Delhi Division vide letter dated 11.9.2000 addressed to the Head Quarters Office, Northern Railway, apprised that there is no appreciable decrease in the work load of Diesel Fitters rather due to doubling on GZB-MUT section number of Diesel Generator Sets were increasing. . The work of Diesel Fitters, being of specialized nature, no ESM/MSM could maintain them to ensure reliability and availability of supply particularly in colour light signaling area. It was requested that the existing sanctioned strength of Diesel Fitter be merged with ESMs/MSMs depending on their option. The Headquarters Office of the Northern Railway then advised Delhi Division to retain Diesel Fitters and decided to re-designate them as ESM as the cadre of Diesel Generator Fitters was a diminishing cadre. They have already been re-designated as ESM in the signalling department itself, which the Diesel Generator Fitters belong to. The designation of the applicants was not changed as ESMs as the present application was pending. The respondents also stated that the decision taken by the respondents to re-designate the Diesel General Fitters as

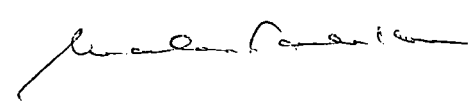
ESMs is in administrative interest and strictly in accordance with the law laid down by the Hon'ble Supreme Court in *Balco Engineering Union (Regd) Vs. Union of India & Others* (2002) 2 SCC 333. It was further submitted that the case of Delhi Division was different from other divisions. There were 109 Diesel Generators and 27 Diesel Fitters in Delhi Division whereas ALD Division and UMB and FZR Divisions had two Diesel Generator Fitters each, MB, LKO, JU, BKN divisions did not have any Diesel Generator Fitter. It is prayed that the application should be dismissed.

4. In the rejoinder the applicants have reiterated their own case and have denied the case of the respondents.

5. We have heard the learned counsel for the parties and have gone through the relevant record.

6. Indeed the options were invited from Diesel Generator Fitters for change of their cadre to ESM/MSM/TCM/WM vide circular dated 14.7.1999 (Annexure A-1) and the applicants had given their option for change of their category to the WM (Wiremen). This option was invited since the cadre of Diesel Generator Fitters was a dying cadre and there was no avenue of promotion available. The applicants belong to Delhi Division where a conscious decision was taken that in view of the availability of large number of Diesel Generator Sets and need to operate them the incumbents holding the post of Diesel General Fitters should be retained to operate them. The respondent then took a decision that the present incumbents holding the post of Diesel Generator Fitter be adjusted against the vacant post of ESM/MSM after inviting their options by changing their designation (Annexures R-3 and R-4).

7. The short argument of the learned counsel for the applicants is that the respondents had invited options and the applicants had opted for change of their category to the category of Wiremen but the respondents have arbitrarily decided to absorb them in the category of ESM for which options were not given by them. The respondents, conversely, stated that the respondents had only changed the designation of Diesel Generator Fitters and placed them in the signalling department to which they belonged and all other Diesel Generator Fitters have been re-designated excepting the four applicants who have filed the present OA. The change of cadre is a policy matter of the respondent. According to the respondent since the need for the services of Diesel

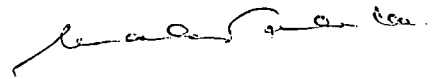


Generator Fitters is still continuing in Delhi Division and the cadre is a diminishing cadre, the category is decided to be re-designated under the signalling department in which these persons were working earlier also. The Tribunal in exercise of judicial review will not be able to go behind the decision of the respondents to change the designation of the post held by the applicants. Since the decision is taken in view of the exigency of services and in the interest of the administration, the decision cannot be interfered with.

8. Merely because the applicants had given an option to the change of their category to the category of Wiremen does not give the applicants any indefeasible right to compel the respondents to change their category only to Wireman. The decision of the respondents is in the domain of public policy, correctness or otherwise of which cannot be scrutinized by the Tribunal in exercise of power of judicial review. Support to this view can be had from the judgment of the Hon'ble Supreme Court in *Balco Employees' Union (Regd.) Vs. Union of India and Others*, (2002) 2 SCC 333. The principle of promissory estoppel is not attracted.

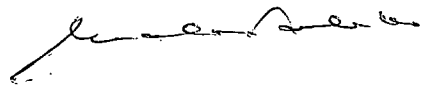
9. It has been categorically stated on behalf of the respondents that only designation of the applicants had been changed. Annexures R-I to R-4 have also been filed by the respondents which substantiate these allegations.

10. The respondents, however, have not stated whether the category of the applicants would be merged with the existing category of ESM or there would be a unified seniority list of the Diesel Generator Fitters and the existing ESMs. The counter is silent on it, which means that the respondents do not propose to merge the posts of the applicants with the posts of the present ESMs to form a unified cadre or prepare a combined seniority list without their consent. If it is so, none of the existing rights of the applicants are going to be effected. If the applicants want to continue to work in the present posts, which have been re-designated as ESM they may do so at their own peril, but they cannot compel the respondents to change their category to WM. Simply because the category of Diesel Generator Fitters in other divisions of the Northern Railway has been changed as per their option will not give a right to the applicants also to have the same benefit. The seniority of the Diesel Generator Fitters is division wise. There is no combined seniority list of all the divisions. Three divisions had only 2 Diesel Generator Fitters and it is only



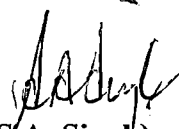
the Delhi Division, which has 27 Diesel Generator Fitters. Four divisions, however, did not have even a single person working on this post. Therefore, the applicants cannot equate them with the Diesel Generator Fitters in other Divisions. The requirement of Delhi Division is different considering the volume of work and need of the services of Diesel Generator Fitters which still continues. It being a diminishing category all that the respondents propose to do so is to change the designation. We, therefore, do not find any legal infirmity in the orders of the respondents as contained in Annexure R-4.

11. The applicants have cited two judgments of this Tribunal first in OA 1389/1997 dated 23.4.1998 and the second in OA 184/2003 dated 4.6.2004 in support of their contention. Both these orders are distinguishable on their peculiar facts. In OA No. 1389/97 the applicants were working as Assistant Programmers but they were placed in the seniority list of Chief Enquiry and Reservation Supervisors (CE & RS) which they challenged and the Tribunal held that the Railway Board's instructions could not be given effect to retrospectively to the appointment made prior to the date of instructions relating to the new applicants and that the Railway Board's letter dated 15.2.1993 declaring the post as ex-cadre posts employees as the Assistant Programmers were earlier Programmer Posts so the new instructions cannot be given effect to. The Tribunal allowed the OA with a direction to the respondents that they cannot change the cadre of the applicants without their consent. In the second OA 184/2003 the applicants were aggrieved by an order of the Railway authorities dated 25.9.2002 by which the cadre of Training Lighting and Air Conditioning of Electrical Department were merged on the ground that the merged was arbitrarily, discriminatory and damaging to the career of the applicants who belong to Air Conditioning staff. The Tribunal observed that the merger of the two categories being a decision could not and has not been challenged before the Tribunal. It was further observed that the merger could not be given retrospective effect because it affected the career progress of the applicants. The Tribunal partly allowed the OA and directed the respondents that the merged cadre of Air Conditioning staff and the electrical staff be introduced as ordered in the impugned order but the option of the existing staff may be obtained before driving them into the unified cadre of Electrical Technicians. The facts of the above case were peculiar. In that case there was merger of two cadres without consent of the employees who were adversely affected.



12. In the present case the respondents in the counter has simply stated that Diesel Generator Fitters have been re-designated. No allegation is made in the OA or in the counter that the applicants on change of designation will loose their category or cadre and that a combined seniority list of Diesel Generator Fitters and ESM will be prepared. If it is done it should be with the consent of the applicants.

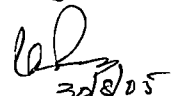
13. For the reasons stated above, we do not find that the relief, as has been claimed by the applicants, can be granted. The OA is accordingly dismissed but without any order as to costs.


(S.A. Singh)
Member (A)


(M.A. Khan)
Vice Chairman (J)

Rakesh

⊗ Correction carried out and name of applicant no. 4, Shri Jai Ram, entered as per Order dt: 08-08-2005, in M.A. No. 1408/05, in O.A. No. 1620/2002, on Page 1 of this order.


30/8/05
DR(J)