

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 7th day of December, 2006

Original Application No. 102 of 1998

Hon'ble Mr. Justice Khem Karan, Vice Chairman
Hon'ble Mr. P.K. Chatterji, Member (A)

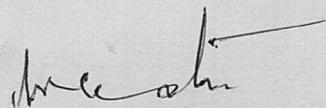
1. Ashok Kumar Jain, S/o late S.C. Jain, R/o L-6/A Railway North Colony Bareilly Junction, Presently working as Loco Maintenance, Supervisor/Section Engineer Carriage and Wagon department, Northern Railway, Bareilly.
2. Shiv Om Sharma, S/o late S.L. Sharma, R/o 81-A North Colony Bareilly Junction, Presently working as Loco Maintenance, Supervisor/Section Engineer Carriage and Wagon department, Northern Railway, Bareilly.
3. Ved Prakash Srivastava, S/o late J.B. Srivastava, R/o M.N. Zaio Jalanagar, Shahjahanpur, Presently working as Loco Maintenance, Supervisor/Section Engineer Carriage and Wagon department, Northern Railway, Bareilly.
4. Mahendra Pratap Singh, S/o late Badri Singh, R/o L-6-13 Northern Railway Colony, Bareilly Presently working as Loco Maintenance, Supervisor, J.E. Grade II Carriage and Wagon department, Northern Railway, Bareilly.
5. Shishupal Singh, S/o Sri Nathu Singh, R/o E-26/A Northern Railway Colony, Bareilly Junction, Presently working as J.E. Grade I Carriage and Wagon department, Bareilly.
6. Naveen Kumar Saxena, S/o Sri J.M. Saxena, R/o 162-Baljiti Well, Old City Bareilly, Presently working as J.E. Grade I Carriage and Wagon department, Bareilly.

. . . Applicants

By Adv: Sri S.K. Mishra

V E R S U S

1. The Union of India through Secretary, Ministry of Railways, New Delhi.



2. The General Manager/General Manager (Mech)
Northern Railway, Baroda House, New Delhi.
3. The Divisional Railway Manager, Northern
Railway, Moradabad.
4. Senior Divisional Personnel Officer/Divisional
Personnel Officer, Northern Railway, Moradabad.
5. Senior Divisional (Mechanical) Engineer,
Northern Railway, Moradabad.

.... Respondents

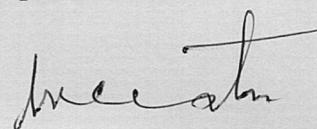
By Adv: Sri A.V. Srivastava

O R D E R

By Hon'ble Mr. P.K. Chatterji, Member (A)

There are 6 applicants in this OA who were initially appointed as apprentice mechanic on different dates between April 1976 to April 1987. Thereafter, they were posted as Charge men Grade 'B' and Change man Grade 'A'. Applicants No. 1, 2 and 3 got further promotion as Loco Maintenance Supervisor in the Grade of Rs. 2000-3200 on 01.01.1992.

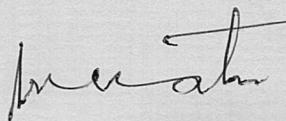
2. The Steam Loco shed of Moradabad division in which they were working was closed in the year 1994 and the applicants were declared surplus. They were directed to submit their option for consideration of their names for permanent absorption in the C & W Department vide letter dated 17.08.1994 issued by the Senior Divisional Mechanical Engineer Moradabad. All applicants except applicant No. 3 submitted their consent for absorption in the C & W division. In view of the specific provision of the letter dated 17.08.1994 even applicant No. 3 became entitled to be absorbed in the C&W department.



3. Thereafter, the applicants were sent for undergoing two months training in the Divisional System Training and Development Central Moradabad in order to absorb them in the C&W department. On completion of the training the applicants made representation for their posting in the C&W department with the benefit of their seniority. But the Senior Divisional Mechanical Engineer issued an order dated 06.01.1995 informing that the applicants were required to undergo one month's further training at System Technical Centre Northern Railway Charbagh Lucknow for which they were directed to report. After completion of training the applicants (except applicant No. 6) were declared successful. Respondent No. 4 issued an order dated 10.03.1995 and later on 31.05.1996 stating that although the applicants successfully completed their training for being absorbed in C&W department, but until the matter was finally decided they were being posted in C&W department, but their pay would continue to be charged against the post held by them in the Loco Shed.

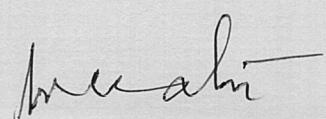
4. The applicants have brough to our notice a circular of the Railway Board dated 27.03.1991 relating to utilization of surplus staff (Annexure A-8 of the OA). Rule 15 of the Circular provides as follows:

"The staff, who cannot to immediately absorbed even after training against other duly sanctioned



post, should be allowed to continue against "special supernumerary" posts in the same grade in which the incumbents were working. They will continue to have their lien in their old cadre posts so as to keep their promotional prospects intact."

5. The applicants have further stated that even after expiry of several years the respondents have neither absorbed the applicants in the C&W department nor have they considered the applicants for further promotion against the existing vacancies in the Steam Loco Shed, for the alleged reasons that they have not taken final decision in the matter. Several representations were made by the applicants but to no effect. The applicants have further brought to our notice that other subordinate staff who were also declared surplus in the Steam Loco Shed, namely the Artisan Staff, were absorbed in the C&W department wherein they have got further promotion. It is also stated by the applicant that a large number of vacancies in the grade in which the applicants were working in the Steam Loco Shed are available in the C&W division but the respondents have not taken any decision in the matter. While the respondents were so indifferent and insensitive to the aspirations for promotion of the applicants, they were continuously giving promotions to persons working in the C&W department who are in the same grade as the applicants. But the matter of the absorption of the applicant in the C&W Division is kept in the cold storage. Not only that, vacancies in the higher grade also existed in



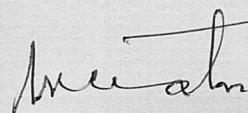
the Steam Loco Shed, but the case of the applicants are not being considered on the plea that they are awaiting absorptions in the C&W Department. In this way the applicants' fate have been kept in a limbo for so many years.

6. The applicants have further brought to our notice the judgment of this Tribunal in **OA 1089 of 1985 I.W.K Naqvi and others Vs. Union of India & Ors** dated 07.11.1997. In this judgment the Tribunal had directed the respondents in the Railway to consider the applicants who were similarly declared surplus in Loco Shed and to treat them as absorbed in the Diesel Shed and be eligible for promotion in the said cadre w.e.f. 01.03.1993 and with all other benefits. Copy of this judgment is annexed as Annexure A-12.

7. Giving this background of the case the applicant have sought the following reliefs:

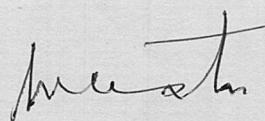
- a. "to issue a mandamus directing the respondents to treat the applicants as duly absorbed/inducted in Carriage and Wagon Department with effect from the date they have been directed to work in the said department with all consequential benefits like seniority, promotion and arrears of salary etc.
- b. to issue mandamus directing the respondents in the alternative to consider the applicants for promotion in the higher grade in Loco Steam Shed in accordance with para 15 of the Master's Circular on 27.03.1991 since the date they would have been promoted, had they not been declared surplus with all other consequential benefits."

8. The respondents have not denied and disputed the fact that the applicants were surplus staff from the Steam Loco Shed and after necessary training



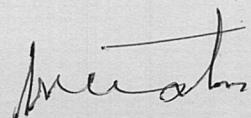
they are working in the C&W Department but drawing salary from their the Steam Loco Shed from the supernumerary post. They have also not denied that these people have been kept in wait against supernumerary posts. The learned counsel for the respondents informed us that these applicants are in the process of absorption in the C&W Department as per the decision of the Competent Authority in the Railway Board. Against a pointed question whether any staff rendered surplus from the Loco Shed have been absorbed in the C&W or any other department and later given further promotion, the learned counsel informed us that only the Staff of Artisan Grade have been so absorbed in the Diesel Shed but none belong to the supervisory to which the applicant belonged, have been absorbed so far. Against another question whether even after expire of 12 years from the time the applicants were rendered surplus their case for absorption could not be decided, the learned counsel could not give any satisfactory explanation.

9. The learned counsel for the respondents, however, asserted that the judgment in the case of I.W.K Naqvi (supra) pertained to the Artisan Cadre would not apply to the case of the applicants who belong to the Supervisory Cadre.

A handwritten signature in black ink, appearing to read "Mehta".

10. The respondents made some further clarification in the matter by submitting a supplementary affidavit. It has been stated that the applicants No. 1 to 3 were Supervisors/Section Engineer in Loco Shed and applicants' No. 4 to 6 were Junior Engineer. On being declared surplus they were deployed to work in C&W Department with the condition that they shall maintain their lien in Steam Loco Shed against special supernumerary post. So they were not entitled for either seniority or claim for absorption in the C&W Department. Regarding applicants' No. 1 to 3 the Headquarter of the Railway had decided they could not be absorbed against vacancies in C&W Department as they were only deployed to work in C&W Department. It has been further stated that the names of applicants' No. 1 to 3 were shown in the combined Seniority list of Northern Railway of Section Engineers (Loco) in the pay scale of Rs. 6500-10500 and they would be further considered for promotion as Senior Section Engineer in the pay scale of Rs. 7450-11500 on the basis of Combined Seniority list of the Northern Railway issued in July 2002. The respondents have also drawn our notice to the clarification issued by the Railway Board in the matter dated 13.06.2002 and 04.07.2002 (Annexure CA-1 and CA-2).

11. The applicants have replied to the above noted points of the supplementary affidavit as follows:



"A perusal of the letter dated 13.06.2002 shows that the respondents have distinguished the case of Sri I.W.K. Naqvi on the ground that there were vacancies for absorption of the applicants on Diesel Side while the same is not deposition in the present case as there are no vacancy available for absorption in Carriage and Wagon department. It appears that the Divisional Officer have misrepresented the matter before the Headquarter in as much as not only the vacancy in the grade of Rs. 5500-9000 and Rs. 6500-10500 were available in C&W department on the post of Supervisory against which the applicants were entitled for absorption, but instead of doing so the respondents have made appointment/promotion of other persons in the said grade. "

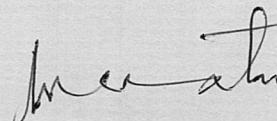
12. Before we proceed further it would be pertinent to extract from the relevant correspondences which are important to the decision in this OA. Firstly, the copy of the letter of the respondents calling for options of the applicants dated 17.08.1994 which is a follows:

"You may kindly indicate your willingness and preference for training and subsequent posting in any of the Diesel Shade of Northern Railway, by 31.8.1994. In case you do not given any option, you will be considered for permanent absorption in carriage & Wagon Department of Moradabad Division."

13. Equally important is the letter of the respondents dated 13.06.2002 explaining why the case of I.W.K. Naqvi (supra) has no bearing upon this case and why the applicants cannot be absorbed against the vacancies in C&W Department.

"As mentioned in the said DO letter, the case of Sri I.W.K. Naqvi of ALD Division do not appear to be similar as is evident from the Judgment in the case of Shri I.W.K. Naqvi which speaks that Shri Naqvi the applicant was allotted duties on the Diesel Side on closure of the Steam Shed and the applicant was sent for training on Diesel Side also since there is no denial of the fact that the applicant has been absorbed in the Diesel Side. THIS WOULD IMPLY THAT THE VACANCY for absorption of the applicant on Diesel Side was available when the letter date 4.9.92 was issued after screening of the surplus staff.

From the above, the redeployment in the case of Shri I.W.K. Naqvi was treated by the Hon'ble CAT against the available vacancies, therefore, the applicant was given the advancement in the Diesel Side from the date of his redeployment.



In the case of Shri A.K. Jain, the applicants were deployed/utilized to work in C& Side keeping their lien in Steam Loco Side against special supernumerary post, therefore, they cannot be treated as absorbed against the vacancies in C&W Deptt.

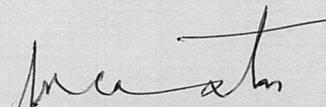
The names of the applicants have been shown in the seniority list issued in January, 2001 in the Loco Side itself and they will be considered for promotion on the combined seniority of Northern Railway to Gr. Rs. 7450-11500 on availability of vacancies in their due turn. Still, there appears to be no point of confusion at the stage and a supplementary counter reply based on the facts may be filed before the Hon'ble CAT and in case of any disagreement on the view point, the concerning APO may be deputed to discuss the case with the undersigned.

Further, 2 SE (Maint) S/Shri Rehman Ali and V.K. Gupta have since been promoted as SSE (Maint Gr. 7450-11500 by HQs Office being HQ controlled post vide this office letter NO. 847-E/148/11/Maint./EIIC dated 6.5.98. Promotions against this vacanyt post of SE may also be considered from JE-I to SE on your Davison being divisional controlled category Action taken in this regard may be advised to this office."

14. Also relevant in this context is the letter dated 10.03.1995 of the respondents directing the applicants to be attached to the C&W Department for their work until a decision was taken regarding their status. The relevant part of the letter is as follows:

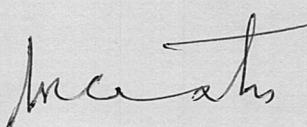
"Following Loco maintenance and Boiler Supervisors, who on being rendered surplus due to closure of steam shed. Loco side and having successfully completion of training in C&W working are utilized in C&W Deptt. alongwith their posts on Loco side till something is finally decided and posted as shown against each names. Their pay will continue to be charged against post held by them and they will continue to draw their pay in loco shed but will work in C&W deptt."

15. The question which we are required to answer are whether the claim of the applicants for absorption in the C&W Department is tenable and secondly, whether the ratio of the judgment of I.W.K. Naqvi's case would apply to this case. It is also required to answer whether there is any



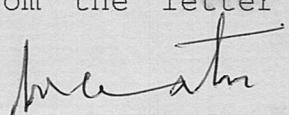
contradiction between the stand taken by the respondents in March 1995 and that declared subsequently vide letter dated 13.06.2002.

16. Extracting the relevant facts from the aforementioned correspondences we find from the order date 10.03.1995 that absorption of the applicants in C&W Department was a clear option for the respondents. In the letter dated 17.08.1994 calling for option from the applicant it was made clear that in case no specific option was forthcoming from the applicants they would be considered for permanent absorption in C&W Department of Moradabad Division. What followed this letter was a letter of option each from the applicants stating clearly that they would be interested in absorption in supervisory grade in C&W Department retaining their seniority. When we go carefully through the letter dated 10.03.1995 we, however, find that they were only attached to C&W Department but continued to be in the establishment of the Loco side until the matter was finally decided. If we follow the subsequent development we find that not only the matter was left undecided, but the possibility of their absorption in the C&W Department was closed, as would be evident from the letter dated 13.06.2002. We are of the view that while closing this option the respondents should have decided on the future of the applicants.



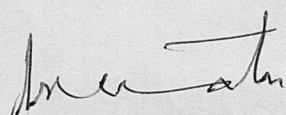
17. We find from the above noted developments that the legitimate expectation of the applicants raised by the letter calling for option was belied subsequently. While the respondents time and again professed to be considerate and sincere about the promotional opportunities of the applicant, this has not been matched by their action. Even today the fate of the surplus staff have been kept in suspense. They are neither here nor there. The applicants only claimed that they should be considered for absorption and promotion in C&W department alongwith other employees of the C&W department in the same grade. This has also been denied to the applicants.

18. In case operationally and administratively it was not possible to accommodate the applicants in C&W Department, the respondents should have at least ensured their promotion in the establishment in the Loco Shed in their turn. However, even this was not done. In para 11 of the Counter Affidavit it was stated that two vacancies existed in the Grade of Section Engineers and therefore, two of the first three applicants could be given seniority and the third will be considered later. The other three applicants in the Grade of Junior Engineers would be given seniority later on occurrence of vacancy. But this pious declaration has not been followed up in action, and to this date nothing has been done. On the other hand it would be seen from the letter



this pious declaration has not been followed up in action, and to this date nothing has been done. On the other hand it would be seen from the letter dated 13.06.2002 that two Sections Engineers were promoted to the higher grade under the Headquarter control quota. The action in respect of the applicants were left under the care of the division who however, have not done anything so far.

19. The other question which needs to be answered clearly is whether the ratio of the decision of I.W.K. Naqvi would apply in this case. In the letter dated 13.06.2002 it has been asserted that it would not apply for the reason that the case of Naqvi related to subordinate staff and not supervisory grade officials. Moreover, in the case of Naqvi there existed clear vacancy in the Diesel Shed to which the surplus staff were absorbed. In the present case there was no vacancy in the C&W Department. We have however, gone through the Naqvi's case judgment, and we are of the view that the only difference that exists is in respect of the grade of the officials. In rest of the matters they are identical. If vacancy could occur in C&W Department the applicants could have been absorbed. It has been strongly asserted by the applicants that there were vacancies but the applicants were not considered. To us also it appears to be somewhat incredible and unlikely the no vacancy in the



relevant grade occurred in the C&W Department all these years.

20. In our view the respondents have shown lack of care and concern for the surplus staff as if it was no body's business. We also find that the applicants have been quite reasonable and modest in their prayer as would be evident from the relief they have sought. It has been stated clearly therein that either the respondents consider their absorption and promotion in the C&W Department or decide their fate clearly in the Loco Shed. We feel that this is a very legitimate expectation.

21. With these observations we direct that the respondents should take a decision without keeping the matter pending any longer and latest within three months from the date of receipt of a copy of this order and decide the case either way. In other words they should either provide the relief No. 1 sought by the applicants, or, if it is operationally and administratively not feasible, provide them relief two as an alternative. With these orders we dispose of this OA. No cost.

Member (A)

Vice-Chairman

/pc/

7.12.56