OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NUMBER 176 OF 2001

ALLAHABAD THIS THE 01ST DAY OF SEPTEMBER, 2003

HON'BLE MR. JUSTICE R. R.K. TRIVEDI, V.C.

HON'BLE MR. D. R. TIWARI, MEMBER (A)

1. Subhash Chandra Singh (T.No.E/48) a/a 46 years son of Shri K.P. Singh Posted as TL Fitter, Grade.I in Production Control Organisation NE Railway Mechanical Workshop, Gorakhpur.

2. Rakesh Srivastava(T.No.429) a/a 40 years son of Shri D.N. Srivastave Posted as TL Fitter Grade I in Production Control Organisation N.E. Railway Mechanical Workshop Gorakhpur.

3. Satish Kumar Srivastava (T.No E/1695) a/a 38 years son of Shri Baleshwar Lal Srivastava Posted as TL Fitter Grade I in Production Control Organisation N.E. Railways Mechanical Workshop, Gorakhpur.

4. Samson Peter (T.No.E/1484) son of Shri E. Peter, Posted as Oil Engine Fitter I, in production Control Organisation NE Railways Mechanical Workshop, Gorakhpur.

5. Om Prakash Mishra (T.No.E/1685) aged about 40 years son of Late Salik Mishra, Presently posted as TL Fitter Grade I in Production Control Organisation, N.E. Railways Mechanical Workshop Gorakhpur.

6. Brijesh Kumar Bhat (T.No.E/1645) aged about 34 years s/o Shri S.R. Bhatt posted as Painter Gr.II in Production Control Organisation, NE Railways, Mechanical Workshop Gorakhpur.

.....Applicants

(By Advocate : Shri S. Agarwal)

VERSUS

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

2. The General Manager/General Manager (P) Norther Eastern Railway, Gorakhpur.

.....2/-

3. The Chief Workshop Manager/Chief Workshop Manager(P) Mechanical Workshop, N.E. Railways, Gorakhpur.

.....Respondents

(By Advocate : Lal ji Sinha & Anil Kumar)

ALONG WITH O.A. NO. 918/02

1. Pramod Kumar Gupta aged about 47 years(T.No.1495) son of Shri Kamla Prasad Gupta, Presently posted as Inspector in Production Control ORGANISATION, N.E. Railways Mechanical Workshop, Gorakhpur.

2. Chandrika aged about 50 years (T.No.8066) son of Shri Ram Awadh, Presently posted as Inspector in Production Control Organisation, NE Railways, Mechanical Workshop, Gorakhpur.

3. Ram Yatan aged about 48 years (T.No.9447) son of Shri Satya Narayan presently posted as Rate Fixer in Production control organisation, N.E. Railways, Mechanical Workshop, Gorakhpur.

4. Indra Deo Yadav aged about 47 years (T.No.9345), son of Shri Govardhan Yadav Presently posted as Inspector in Production Control Organisation NE Railways, Mechanical Workshop, Gorakhpur.

5. Mahendra Kumar aged about 48 years (T.No.9604) son of Shri Vanasraj Yadav presently posted as Inspector in Production Control Organisation NE Railways, Mechanical Workshop, Gorakhpur.

6. Suresh Pd. Singh aged about 48 years (T.No.9400) son of Shri Shiv Nandan Singh Presently posted as Inspector in Production Control Organisation, NE Railways, Mechanical Workshop, Gorakhpur.

.....Applicants

(By Advocate : Shri Sudhir Agarwal)

V E R S U S

1. Union of India through the General Manager, N.E. Railways, Gorakhpur.

2. The Chief Workshop Manager/Chief Workshop Manager (P) Mechanical, Mechanical Workshop, NE.Railways, Gorakhpur.

.....Respondents

(By Advocate : Shri Lal Ji Singh & A.V. Srivastava)

ALONG WITH O.A. NO.755/2000

1. Bimlesh Bijoy Kumar Joseph aged about 41 years s/o Late J. Jojeph posted as Inspector Progressman in PCO N.E. Railways Mechanical Workshop Gorakhpur posted under Production Engineer, NE Railway Mech.Workshop Gorakhpur,

....3/-

V E R S U S

1. Union of India through the General Manager, N.E. Railway, Gorakhpur.

2. Chief Workshop Manager Mech, Workshop N.E. Railway, Gorakhpur.

3. Chief Workshop Manager, Personnel Mech.Workshop, N.E. Railway, Gorakhpur.

.....Respondents

(By Advocate : Shri Lal ji Sinha & Shri A.K. Gaur)

ALONG WITH O.A. NO. 1592 of 1999

1. Bechoo Prasad aged about 45 years, son of Shri Ram Pratap Prajapati posted as Inspector in PCO NE Railway, Mechanical Workshop, Gorakhpur.

2. Abdul Kalam Ansari aged about 42 years, son of late Abdul Aziz, posted as Inspector, P.C.O. N.E Railway Mechanical Workshop, Gorakhpur.

3. Gorakh Ram son of Shri Sadhu Ram, posted as Inspector, P.C.O. N.E. Railway, Mechanical Workshop, Gorakhpur.

.....Applicants

(By Advocate : Shri Sudhir Agarwal)

V E R S U S

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

2. The General Manager / General Manager (P), Northern Eastern Railway, Gorakhpur.

3. The Chief Workshop Manager/Chief Workshop Manager(P) (Mech) Workshop N.E. Railway, Gorakhpur.

....Respondents

(By Advocate : Shri Lal Ji Sinha & Shri V.K. Goel)

ORDER

Hon'ble Mr. Justice R. R. K. Trivedi, Vice-Chairman

As the controversy in the aforesaid O.As and the question of facts and law are similar, they can be decided by a common order against which counsel for the parties have no objection. The leading case is 176 of 2001.

2. The applicants in the present O.As were transferred from Shop Floor to Production Control Organisation (P.C.O.) on different dates. By the impugned order applicants have been repatriated to Shop Floor on their substantive posts, aggrieved by which they have filed the present O.As. Counter and Rejoinder Affidavits have been exchanged.

3. We have heard Shri S. Agarwal, counsel for the applicant and Shri A.K. Gaur, Shri A.V. Srivastava, Shri Lalji Sinha, Shri V.K. Goel, and Shri Anil Kumar, counsel for the respondents.

4. Learned counsel for the applicant has submitted that employees, who had served in the PCO for 10 to 20 years, had challenged their reversion or repatriation to shop floor by filing suits and Writ Petitions and the dispute ultimately was resolved by Hon'ble Supreme Court by judgment dated 07.03.1995 (Annexure A-5). The relevant portion of the Judgment of Hon'ble Supreme Court is being reproduced below:-

> "Without going into the merits of the controversy we direct that the appellants/petitioners be permitted to continue to work in the PCO and their reversion orders be treated as non-est and inoperative. Needless to say that any further promotion in the PCO can only be claimed by them in accordance with the rules which are applicable

....5/-

to the said organisation. We allow the appeals, Writ Petitions and set aside the orders of the High Court and Central Administrative Tribunal. No costs."

5. Counsel for the applicant has submitted that applicants are entitled for the same relief. It is also submitted that Railway Board's Circular dated 13.09.1984 provided for a fixed tenure during which an employee transferred from Shop floors to P.C.O could serve there. However, this period has never withheld by the Board. The applicants were allowed to continue for long periods for more than 10 years and thus they are similarly situtated and are entitled for the similar relief. It is also submitted that on account of long service rendered in P.C.O. where their services are of supervisory nature, they cannot be compelled to serve in Shop floor.

6. Learned counsel for the respondents on the other hand submitted that in P.C.O. applicants are ex-cadre posts and they are not entitled to continue until they are permanently absorbed. Their lien continues in their department i.e. Shop Floor. It is also submitted that the orders of repatriating to them to their parent post, were passed but they are continuing on account of the interim order passed by the Tribunal. About the Judgment of the Hon'ble Supreme Court, it has been submitted that the Judgment is not on merits as clear from the opening line of the operative part of the order. Hon'ble Supreme Court passed the

....6/-

order in the interest of justice. In the facts and circumstances of that case, applicants can not claim any benefit in the present cases.

7. We have carefully considered the submissions made by counsel for the parties.

8. It is true that the judgment of Hon'ble Supreme Court passed in earlier cases on 07.03.1995 is not an order passed on merits. But at the same time it cannot be said that it was passed without any reason. Hon'ble Supreme Court could not have set aside the judgment of this Tribunal and Hon'ble High Court, unless their lordship were pursuaded by same grave injury likely to be caused if the employees serving in PCO, if transferred to the place. In our opinion, if similar circumstances are present in the present cases, they may be considered for the relief. But for this, applicants are required to establish grave injury or inconvenience, if they are sent back to their parent organisation. Facts have not been placed before us on which basis we may record the findings for passing such final orders.

9. In these circumstances, in our opinion, ends of justice will better be served, if the applicants are given liberty to make representations before the competent authority against their transfer. In such representation, they will place the facts showing that if they are transferred they will suffer irreparable injury or loss and these representation shall be considered

by the competent authority before giving effect to the transfer order passed against them. All the OAs are accordingly disposed of finally with liberty to applicants to make individual representation before the respondent No.3, the Chief Workshop Manager/Chief Workshop Manager (P) Mechanical Workshop, NE Railway, Gorakhpur. The representation, if so filed, shall be considered and decided within a period of 03 months from the date a copy of this order is filed and till the representations are decided impugned transfer order shall not be given effect to. It is made clear that, in case, any of the applicants does not make any representation in pursuance of this order, this protection shall not apply to ~~them~~ him. No order as to costs.

MEMBER (A)

VICE-CHAIRMAN

Shukla/-