

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No.376/2013

Reserved on :24.03.2021
Pronounced on:01.04.2021

**Hon'ble Mr. Dinesh Sharma, Member (A)
Hon'ble Mrs. Hina P. Shah, Member (J)**

1. Seva Ram S/o Shri Dhanna Lal, aged about 57 years, Resident of P.No.151/25 Chand Bawali, Ashaganj Ajmer presently posted as Ticket Counter.
2. Narendra Kumar S/o Shri Mangal Ram, aged about 52 years, Resident of Vijaisingh Pathik Nagar, Pooja Marg, Dhola Bhata, Ajmer presently posted as Machine Operator.
3. Bharat Bhushan S/o Shri Murari Lal, aged about 57 years, Resident of P.No.A-819, Chandra Bharti Nagar Ajmer presently posted as Proof Reader.
4. Heera Lal S/o Shri Shankar, aged about 56 years, Resident of 67-C, Jagdamba Colony, Gulabbari Ajmer presently posted as T.C.M.O.
5. Sharwan Singh S/o Shri Harji, aged about 52 years, R/o Adwala Kua Makhupura, Ajmer presently posted as Machine Operator.
6. Chhotu Lal S/o Shri Bhanwar Lal, aged about 58 years, Resident of Morthala Ki Chowki, Village Kharwa, District Ajmer presently posted as Ticket Printer.

...Applicants.

(By Advocate: Shri Vinod Goyal)

Versus

1. Union of India through General Manager, North Western Railway, Jawahar Circle, Jagatpura, Jaipur.
2. Dy. Chief Material Manager, (Dy.C.M.M.) North Western Railway, Ajmer.

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...Respondents.

(By Advocate: Shri Anupam Agarwal)

ORDER

Per: Dinesh Sharma, Member (A):

In this OA, the applicants have prayed for the following relief:

"(i) By an Appropriate order or direction, the impugned orders dated 9.4.2013 (Annex.A/1) and order dated 22.2.2013 Annex.A/2 so far it relates to give posting to the applicants in the lower pay grade in Loco Factory/Carriage Factory is concerned may kindly be quashed and set aside and respondents be directed to absorb the applicants by giving posting in Railway Press/General Store, Carriage Depot, Diesel Depot, Mandal Depot T.P. Press, General Store under N.W.R. Ajmer as per their options submitted by them.

(ii) By an appropriate order or direction, the respondents be directed to extant similar treatment to the applicants likewise to other similarly situated employees by giving them posting in Railway Press/General Store, Carriage Depot, Diesel Depot, Mandal Depot T.P. Press, General Store under N.W.R. Ajmer.

(ii) Any other order which appears to be just and correct in the interest of justice may also be passed."

2. Following a decision of the respondents to close 42 posts at the Ticket Printing Press Ajmer, an order adjusting 39 employees working against these was issued by order dated 22.02.2013 (Annexure A/2). The applicants had approached this Tribunal against it earlier with OA

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No.255/2013, which was disposed of with direction to the respondents to decide on the applicants' representation and issue a reasoned and speaking order. The respondents have issued order dated 09.04.2013(Annexure A/1). The applicants have challenged these orders stating that they have been absorbed at posts carrying lesser grade pay. They do not have the technical knowledge to do the work now assigned to them. The absorption is not as per the options given by them. There has been discrimination against them as similarly placed employees had been absorbed in the past against posts of their options and carrying same pay and type of work.

3. The respondents have denied the claims of the applicants. It is stated in the reply that the applicants have been absorbed as per the availability of posts. The applicants have no right to be absorbed as per their options. Since there were no posts available with similar grade pay they have been absorbed against posts carrying lesser grade pay but their existing grade pay has been protected. The applicants' case cannot be said to be similar to the earlier employees who were absorbed at a time when the posts were available. The respondents have strictly followed the seniority and the junior employee had to be absorbed against posts carrying lesser grade pay. It is not for the

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employees to decide whether they are technically competent to do a job or not and it is the employers' prerogative to use the surplus manpower wherever it can be used. The OA, therefore, deserves to be dismissed on all these counts.

4. No rejoinder has been filed.

5. The matter was heard on 24.03.2021. The learned counsel for the applicant produced a copy of the judgment of this Tribunal in OA No.212/2013, stating that the applicants would be satisfied, if the OA is disposed of with a similar direction to adjust the applicants in Railway Press as and when vacancies arise and to continue them in nearby departments till then. The learned counsel for the respondents did not object to the suggestion. We reproduce the operative portion of this judgment here:

"After hearing both the sides, the OA is disposed of with the following directions:

1. On preferential basis the applicants should be adjusted in Railway Press as and when the vacancy arises.
2. Till then they will continue to work in nearby departments."

6. After going through the pleadings and hearing the arguments, we find that the applicants have not been able to establish any justiciable right to have themselves posted

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at places of their options. However, as decided by this Tribunal in a similar matter, we dispose of this matter with a similar direction to "adjust" the applicants on preferential basis in Railway Press, as and when vacancies arise. Until then, they will continue to work in nearby departments. We make it abundantly clear that this direction is not based on our determination, on merits, of any legally enforceable right of applicants for such "adjustment", and, therefore, would not amount to conferring any such right to the applicants through this order. No costs.

(Hina P. Shah)
Member (J)

(Dinesh Sharma)
Member (A)

/kdr/