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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

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Registration (O.A.) No. 706 of 1987

S.K. Bhattacharya & others ... Applicants.

Versus

The Addl. Chief Mechanical  
Engineer, Charbagh, Lucknow  
and others ... Respondents.

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Hon'ble Ajay Johri, A.M.  
Hon'ble G.S. Sharma, J.M.

(Delivered by Hon. Ajay Johri, A.M.)

In this application under Section 19 of the Administrative Tribunals Act XIII of 1985 the applicants, who are working in the Production Control Organisation of the Loco Workshop, Northern Railway, Lucknow, have challenged an order dated 4.5.1987 issued by the Addl. Chief Mechanical Engineer (W), Charbagh, Lucknow ordering them to be transferred back to the shop floor.

2. According to the applicants they have been working as Stage Inspectors in the Inspection Shop under the Production Control Organisation on ex-cadre posts for the last 20 to 25 years. They joined this organisation after having been declared surplus in their respective Workshops where they were working as skilled Artisans. The applicants were doing the inspection of the work produced by the skilled and highly skilled artisans, though they were themselves only in the skilled grade. The anomalous situation which existed due to supervision of the work of highly skilled artisans

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by a skilled artisans was corrected by the Railway Board by allotment of an appropriate grade to the staff in the Inspection Wing through their letter no.E(P&A) 1-71/FE-2/3/DC, dated 9.2.1979. The applicants have further submitted that they were entitled to higher pay scales in terms of Railway Board's letter no.E(P&A) 1-70/PE-4/6, dated 9.5.1972 but these were not made applicable to them, though in the Amritsar Workshop this was done. They have annexed a copy of the order issued by the Amritsar Workshop as Annexure 'III' to the application. Even this order was initially made applicable with effect from 1.4.1972 and arrears were not allowed and the affected officials<sup>of Amritsar Workshop</sup> filed a suit which was decreed in their favour and the appeal against the said decree were rejected by the District Judge, Amritsar as well as Punjab & Haryana High Court. The applicants have further claimed that they could not be shifted back from the production Control Organisation to the Workshop without their consent but the respondents have ordered their transfer back to the Shops. In a similar case some affected persons had filed a writ petition in the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow, which was transferred to this Tribunal and finally disposed of under Registration (T.A.) No.256 of 1987 on 30.6.1987. While rejecting the applicants' case it was observed in the judgment that the order dated 9.2.1979 being the main order other orders issued to be implemented could not go against the spirit of this order and that if the applicants did not want to remain in the Inspection Wing in accordance with the renewed terms they have to go back to their respective Workshops. <sup>By But</sup> Thus the

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applicants' claim that they could also not be sent back without their consent have not been taken. They had also represented to the respondents to implement the judgment of this Tribunal given in Registration (T.A.) No.256 of 1987 but instead of implementing it they have transferred them to the Shop Floor and withheld their pay. They have, therefore, claimed that they are entitled to get the benefits of the scale of Rs.130 - 212 instead of Rs.110 - 180 as allowed to the similarly placed staff at Amritsar and are entitled to be considered for upgradation in the Production Control Organisation and cannot be transferred to the Shop against their wishes and have, therefore, prayed for declaring the order dated 4.5.1987 as null and void and for being given the benefits of the higher scale of pay from 1960 as has been allowed to the staff at Amritsar.

3. The application has been opposed by the respondents. They have said in their reply that the decision of this Tribunal dated 30.6.1987 left it open for the respondents to transfer the applicants from the Production Control Organisation to Shop Floor as they had already completed more than 5 years' of service on the ex-cadre posts. The applicants had been transferred from the Production Control Organisation to Shop Floor in terms of the Railway Board's letter no. E(NG)-1-79/MI-24/0-1) JCM, dated 13.9.1984. According to the respondents the applicants had a lien in their parent Shop as has been rightly held in the judgment in Registration (T.A.) No.256 of 1986 and, therefore, they cannot insist as a matter of right that

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they cannot be transferred from the Production Control Organisation to the parent Shop.

4. In their replication the applicants have reiterated that the decision of this Tribunal in the above referred case is being ignored and they are being sent to the Shop Floor against their consent and without considering them for up-gradation in the Production Control Organisation and since they have signified their willingness to accept the terms and conditions laid down in the orders of 9.2.1979 the question of sending them back to the Shop Floor does not arise and they have <sup>3/</sup> further right to be considered for up-gradation in the Production Control Organisation. The Government orders of 13.9.1984 which have been referred to by the respondents are applicable to those who came from the Shop Floor and not to the applicants, who were declared surplus and given an alternative appointments in the Inspection Wing of the Production Control Organisation because for all practical purposes they became the incumbents of the Production Control Organisation not subject to any transfer without their willingness. Under the orders of 13.9.1984 a transferee could not be kept in the Production Control Organisation <sup>3/</sup> for more than six years, whereas they have been working nearly 20 years.

5. The Railway Board's letter of 9.2.1979 (Annexure 'A-2' to the application) is on the subject of pay scale of staff engaged on inspection duties in the Production Control Organisation. Para 2 of this letter desired that an immediate review of the posts in the Inspection Wing of the Production Control

Organisation should be undertaken and upon the relative worth of charge the posts may be placed in the highly skilled grade I scale. The letter also says that these orders would take effect from the date of issue.

Regular appointments to these posts would be made in accordance with the prescribed procedure for filling posts in the relevant grades in the Production Control Organisation. In a copy of the judgment of Sub Judge 1st class, Amritsar, in Civil Suit No.424 of 20.9.1978 decided on 18.8.1980 a copy of the letter from the Deputy Chief Mechanical Engineer, Northern Railway, Amritsar, dated 27.9.1963 has been mentioned. This letter, according to the judgment, provides that all posts of the Production Control Organisation are ex-cadre posts. (This ~~decision~~ position has not been denied by the applicants). The staff of the Production Control Organisation, according to this letter, has been devived into three categories. The relevant portion, which is reproduced from this judgment, is as follows :-

"Staff already working against posts in the production control organisation prior to the decision to treat the posts in this organisation as ex-cader posts fall under the following categories :-

- a) those transferred from shop floor to Production Control Organisation and retain their lien on shop floor.
- b) those transferred from shop floor and absorbed permanently in Production Control Organisation.
- c) those recruited directed to production Control Organisation either from open market or by transfer from other railway or otherwise who have not been allotted a trade

earlier.

For the purpose of Promotions in future :-

i) Staff falling under category (a) above will be deemed to have been on temporary transfer to the production control organisation. Their original seniority will be taken into account in determining their position on the shop floor which the employees would have continued to occupy but for their transfer to the production control organisation.

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ii) Staff falling under category (b) above will be given option to accept the position on the shop floor which they would have come to occupy but for their transfer to the Production Control Organisation. In case they do not exercise their option in favour of transfer to the shop cadre they will be considered for promotion along with others to higher grade posts in the Production Control Organisation only. All things being equal, such staff will be given preference at the time of filling up of ex-cadre posts.

iii) Staff falling under category (c) above be allotted a trade by an officer of the Mechanical Department not lower than of Junior Administrative rank. Such staff will also be given an option for being absorbed in the shop caders and will be treated in the same manner as staff falling under category (b)."

6. The petitioners' were declared surplus on the Shop Floor on the introduction of the incentive scheme. It is nowhere mentioned that they ceased to have their lien on the Shop Floor. On the contrary in Registration (T.A.) No.256 of 1987 paragraph 5 which describes the respondents' case gives the position of such staff, who were posted against the ex-cadre posts.

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A perusal of this paragraph would indicate that the petitioners who were basically artisans staff have also without any iota of doubt maintained their seniority in the original trade in which they were recruited and they had enjoyed the benefits of the Shankar Saran Award in the year 1962 and the next up-gradation in the year 1978, on the basis of their common seniority <sup>31 with</sup> in the parent shop. The case of the applicants in this application is not different to the case of the applicants in Registration (T.A.) No.256 of 1987. It is, therefore, obvious that the applicants' case will not fall in the category of those transferred from the Shop Floor and absorbed permanently in the Production Control Organisation <sup>31 and</sup> until they will belong to the category of those transferred from the Shop Floor to Production Control Organisation retaining their liens on the Shop Floor. The letter placed as Annexure 'A-1' to the application is silent <sup>31 about</sup> to the lien of the applicants. It only says that on being declared surplus the persons in that list are posted to work in the Inspection Shop and they are allotted the new ticket numbers. When a person is posted to a different shop he has necessarily to be given a different ticket. <sup>31</sup> These posts were declared ex-cadre in 1963. The petitioners' number. The post being ex-cadre it cannot be said that <sup>31</sup> were posted to the Production Control Organisation in 1965 (Annex A-1), <sup>31</sup> there was a creation of a new cadre where the applicants <sup>31</sup> after the post had been declared ex-cadre. <sup>31</sup> were posted to. They were also not recruited only for the Production Control Organisation and this letter does not say that they were absorbed permanently on being posted to the Inspection Wing. The contention of the applicants, therefore, that an option should have been taken from them before sending them back to the Shop Floor cannot, therefore, be accepted.

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7. The Railway Board's letter of 9.2.1979 clearly ~~xxx~~ shows that the intention of the Railway Board was to man the post of Inspectors by persons, who are considered eligible to get the highly skilled grade I and the intention is not that all the incumbents who are posted as Inspectors will ifsofacto get promoted to the higher grade. The posting of the Inspectors in the higher grade was required to be done according to the prescribed procedure. In paras 14 and 15 of the judgment in Registration (T.A.) No.256 of 1987 it has been observed as follows :

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"14. Paragraph 3 of the letter annexure 1 of the Railway Board, which the petitioners want us to quash in this petition, has been clarified by the Railway Board by its subsequent letter dated 9.8.1979, copy annexure A-3, in which it was mentioned that since the postsof inspectors in the scale of Rs.380-560 are created as ex-cadre, selection will have to be made for filling up such posts. The incumbents of existing posts of Junior Inspectors in the scale of Rs.330-480, if otherwise eligible, may also be called for such selection. The intention of the Railway Board was that the upgraded posts have to be filled by selection and present incumbents of the existing post of Junior Inspectors may also be allowed to participate in that selection if they are otherwise found eligible. The contention of the petitioners is that there are no posts of Junior Inspectors and this clarification does not serve any purpose. In our opinion, the term Junior Inspector has been used in order to distinguish the two grades of these two posts - (i) as it stood before annexure 1 was issued and (ii) revised upgraded grade introduced thereunder. The

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intention of the Railway Board, was, therefore, not to give advantage of the upgradation exclusively to the present incumbents of the said posts as contended on behalf of the petitioners and in our opinion, their claim is misconceived.

15. The challenge of the petitioners to paragraph 3 of annexure 1 is clearly an afterthought. In our opinion, paragraph 3 is a natural corollary of paragraph 2 of this annexure, wherein the Railway Board had directed that the minimum review of the post of inspection wing of the PCO is to be taken up depending upon the relative worth of the charge that staff may be placed in the higher scale. Paragraph 3 prescribes the procedure as to how this review is to be done. Paragraph 3, therefore, cannot be separated from this annexure and on this ground, it cannot be quashed so as to enforce and implement the remaining part of the annexure. We have already pointed out that the Railway Board on a reference, amply clarified this position by issuing annexures A-3 dated 9.8.1979. We are, therefore, of the view that the petitioners can take the advantage of the upgraded post in the inspection wing of the PCO only in accordance with the procedure prescribed under paragraph 3 of annexure 1 and as the annexures 2 and 4 were issued simply to implement annexure 1, they cannot go against the spirit of annexure 1 and in case the petitioners do not want to remain in the inspection wing in accordance with the renewed terms, as stated above, they have to go back to their respective workshops. It is not correct to say that they have no liaison there as admittedly, the posts held by them in the PCO are ex-cadre posts. We are, therefore, unable to uphold their contention that they are entitled to the benefits of

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upgradation under annexure 1 merely by virtue of their holding the present post in the inspection wing of the PCO."

8. The case of the applicants being analogous and similar to that of the petitioners in Registration (T.A.) No.256 of 1987 the ratio of the judgment in the above registration will equally apply to the applicants in this application. In terms of this ratio the applicants can take advantage of the upgradations in the Inspection Wing of the Production Control Organisation only in accordance with the procedure prescribed for filling such ex-cadre posts.

9. The applicants' case is not on all fours with the staff of the Amritsar Workshop, who were posted to the Production Control Organisation in 1961 when perhaps it had a cadre of its own. In 1963 this cadre was declared ex-cadre and the staff posted there were placed in three categories. The applicants were transferred in 1965 on ex-cadre posts. They cannot claim to be treated along with the staff, who were either recruited directly for Production Control Organisation or who were transferred from shop floor permanently. Thus the upgradation ordered in 1972 does not give them any benefit.

10. For the above considerations we find no force in this petition. It is accordingly dismissed with no order as to costs.

*APR Staff*  
Member (A).

*S. L. Arora*  
9/11/87  
Member (J).

Dated: November 9/11, 1987.