

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 3rd day of July 1996.

Hon'ble Mr. Justice B.C. Saxena, VC
Hon'ble Mr. S. Das Gupta, Member - A

I. Original application No. 27 of 1988.

Suresh Kumar Srivastava a/a 45 years,
S/o Sh. Baijnath Prasad Srivastava,
Presently working as Artisan Inspector
Grade-I (Staff no. 3719) Diesel Loco-
motive Works, Varanasi.

..... Applicant.

C/A Sri Sudhir Agarwal

Versus

1. The Railway Board, Rail Bhawan,
New Delhi.
2. The General Manager (P) Diesel
Locomotive Works Varanasi.
3. The Chief Mechanical Engineer (P)
D.L.W. Varanasi.
4. The Chief Inspecting Officer, D.L.W.
Varanasi.

..... Respondents.

C/R Sri Amit Sthalker
Sri Lalji Sinha

CONNECTED WITH

II. Original application No. 1294 of 1995.

Lal Mohan Mishra a/a 56 years,
S/o Late M.M. Mishra, P/o 124-K
D.L.W., Varanasi.

..... Applicant.

C/A Sri Sudhir Agarwal

Versus

1. Union of India through the Secretary, M/o Railways, Rail Bhawan, New Delhi.
2. The Railway Board, Rail Bhawan, New Delhi, through its Chairman.
3. The General Manager (P) Diesel Locomotive Works Varanasi.
4. The Chief Mechanical Engineer (P) Diesel Locomotive Works Varanasi.
5. Chief Inspecting Officer, Diesel Locomotive Works Varanasi.
6. The Senior Personnel Officer (Works) D.L.W. Varanasi.

..... Respondents.

CONNECTED WITH

III. Original application No. 1307 of 1995.

Rajendra Prasad a/a 52 years, S/o Sri Bholu Shaw Posted as Artisan Inspector Grade 'I' Inspection Organisation P.C.O., Diesel Locomotive Works Varanasi.

..... Applicant.

C/A Sri Sudhir Agarwal

Versus

1. Union of India through the Secretary, M/o Railways, Rail Bhawan, New Delhi.
2. The Railway Board, Rail Bhawan, New Delhi through its Chairman.
3. The General Manager (P) D.L.W., Varanasi.
4. The Chief Mechanical Engineer (P) D.L.W., Varanasi.
5. Chief Inspecting Officer, D.L.W. Varanasi.
6. The Senior Personnel Officer (Works) D.L.W. Varanasi.

..... Respondents.

CONNECTED WITH

IV. Original application No. 1308 of 1995.

Kameshwar Prasad a/a 51 years,
S/o Sri Bhoku Prasad, Posted as
Artisan Inspector Grade- 'I'
Inspection Organisation, P.C.O.
D.L.W., Varanasi.

..... Applicant.

C/A Sri Sudhir Agarwal

Versus

1. Union of India through the Secretary,
M/o Railways, Rail Bhawan, New Delhi.
2. The Railway Board, Rail Bhawan, New
Delhi, through its Chairman.
3. The General Manager, (P) Diesel Loco-
motive Works, Varanasi.
4. The Chief Mechanical Engineer (P)
Diesel Locomotive Works, Varanasi.
5. Chief Inspecting Officer Diesel
Locomotive Works Varanasi.
6. The Senior Personnel Officer (Works)
Diesel Locomotive Works, Varanasi.

.... Respondents.

CONNECTED WITH

V. Original application No. 1309 of 1995.

Shiv Narain Shah a/a 55 years,
S/o Sri Ram Bahadur Shah, Posted as
Artisan Inspector Grade-I, Inspector
Cell P.C.O., D.L.W., Varanasi.

..... Applicant.

C/A Sri Sudhir Agarwal

Versus

1. Union of India through the Secretary,
M/o Railways, Rail Bhawan, New Delhi.
2. The Railway Board, Rail Bhawan, New
Delhi through its Chairman.

Contd.

Bel

3. The General Manager (P) Diesel Locomotive Works, Varanasi.
4. The Chief Mechanical Engineer (P) D.L.W., Varanasi.
5. Chief Inspecting Officer, Diesel Locomotive Works, Varanasi.
6. The Senior Personnel Officer (Works) D.L.W., Varanasi.

..... Respondents.

ORDER

Hon'ble Mr. Justice B.C. Saxena, VC

All these O.As involve almost identical questions of fact and law, they were clubbed together and are being disposed of by a common order. The leading case is O.A. No. 27 of 1988 S.K. Srivastava Vs. Railway Board and Others. Under challenge in OA No. 27/88 is an order dated 14.10.87 contained in Annexure 14 by which the applicant S.K. Srivastava was ordered to be transferred from the Inspection Wing of the Production Control Organisation to Shop Floor Organisation of the Diesel Loco Motive Works, Varanasi. In the other O.As orders dated 7.1.95, 29.11.95 and 5.12.95, Annexures 1, 2 & 3 in each of the said O.A are under challenge. By order dated 7.1.95 the applicants of the other O.As were ordered to be transferred from the Inspection Cadre of the P.C.O to Shop Floor Organisation for posting them as Fitter Gr. I. By the order dated 29.11.95 the Chief Inspecting Officer, D.L.W Varanasi had directed the Supdt.(Inspection) D.L.W, Varanasi to relieve the applicant in order to allow him to join in the Shop Floor in pursuance to the transfer order dated

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7.1.95. By order dated 5.12.95 the Respondent no.6 had directed the respondent no.4 to ensure that the applicant joins at the Shop Floor immediately, failing which to stop his salary w.e.f. January 1996. In all the O.A an interim order was granted staying the operation of the impugned order. The said order has remained in operation.

2. We have heard Shri Sudhir Agrawal, learned counsel for the applicant and Shri Amit Sthalekar, learned counsel for the respondents in all the O.As.

3. The case of the applicants is that the Railway Board for the purposes of manufacturing of Railway Engines and Coaches constituted manufacturing units namely Integral Coach Factory Madras, Chitaranjan Loco Motive Works, Chitaranjan and Diesel Loco Motive Works, Varanasi which are called as Production Units of the Board. In this OA we are concerned with the D.L.W, Varanasi. Admittedly, on the mechanical side of the D.L.W there are two main organisations namely Shop Floor Workshop Organisation and Production Control Organisation (hereinafter referred to as P.C.O.) Besides the aforesaid there is another Organisation in the P.C.O but it has been given a different status from the remaining part of the P.C.O which included Planning, Progress and Training etc.

4. The case of the applicants, in short, further is that the staff of the PCO ~~was~~ mainly consisted of the incumbents temporarily transferred from the Workshop Cadre. However, a number of incumbents were also recruited directly from open market or on deputation. It is further stated that the transfer of the staff of the Shop Floor/Workshop Organisation to the PCO was similar to deputation inasmuch as the transfer used to be made on tenure basis with the condition that the transferee shall have a lien in his parent post in the Parent Cadre namely, the Workshop Organisation.

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5. In view of the said circumstances the employees of the PCO were under some confusion regarding determination of interse seniority amongst PCO employees which drew the attention of the Board and the authorities from time to time. The Railway Board through its letter dated 22.4.1963 had laid down certain provisions regarding determination of seniority of Workshop Staff employed in the PCO. **I**nteralia, by the said letter it was provided that all the posts in the PCO should be treated as ex-Cadre post and suitable staff from the Shop Floor cadre was eligible to be transferred to the PCO on the basis of selection/seniority cum suitability either in their own grades or in higher grades. In para 8 of the said letter dated 22.4.63 three kinds of existing staff working against the post in PCO prior to the decision to ~~treat~~^{be} the post as Ex-cadre posts were categorised namely:

- (a) Those transferred from Shop Floor
to Production Control Organisation (PCO)
and retain^{ed} their lien on Shop Floor;
- (b) Those transferred from Shop Floor and
absorbed permanently in Production
Control Organisation;
- (c) Those recruited directly to PCO
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.

6. The said letter further provided that the Inspection Cadre of PCO will also be treated as Ex-cadre and will be liable to be filled in by the staff of the Workshop Organisation employed on deputation or transfer on tenure basis. However, the respondents felt that the aforesaid treatment given to the Inspection cadre was not in the interest of work inasmuch as the Inspection Cadre was of

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sensitive nature / required the incumbents of a particular training attitude and therefore it was decided sometimes in the year 1964 that the Inspection Cadre of PCO would though continue to be a part of PCO will not be treated in future as Ex-cadre.

7. The applicant S.K. Srivastava was selected for training as Intermediate Trade Apprentice in May 1964. He completed the training on 9.12.1965. He was appointed as Skilled Artisan in the grade of Rs.110-180(AS) w.e.f. 10.12.1965 and was posted in the Shop Floor Organisation. The applicant indicated his willingness to join the said Cadre and he had joined the said cadre and he has continued through out in the Inspection Wing of the PCO. The said applicant gained his promotion on passing the trade test to the post of Artisan Inspector Gr.II in the year 1978 and subsequently as Artisan Inspector Gr.I The General Manager(P) DLW, Varanasi through his letter dated 10.12.76 which was in response to the Railway Board's letter dated 27.4.1976 requested that the approval of the Railway Board ~~to be~~ communicated for the post of Inspection Organisation ~~not be~~ ^{ing} treated as Ex-cadre post. The Railway Board through its letter dated 31.3.77 Annexure 7 to this OA approved the said proposal that post in the Inspection Wing need not be treated ~~as~~ Ex-cadre. Another letter, reference to which needs to be made is Railway Board's letter dated 9.6.78 which was in furtherance of the earlier letter dated 22.4.63. Through this letter the Ministry of Railways decision with regard to the question of pay of staff who were posted in the PCO from Shop Floor have been given. It interalia, provided that staff recruited specifically in the PCOs and still borne on the PCO cadre or permanently absorbed therein should be treated as ex-cadre post. It also provided that staff in PCO whether holding the post of that Organisation ex-cadre will not be

entitled to incentive, bonus besides salary. It was further provided that staff from Shop Floor on their being posted to the PCO will receive a special pay of 10% of the pay admissible to them in their pay of Shop Floor with a rider that if however, they are transferred to PCO they will not receive any special pay till such date unless it may be certified, but for their posting to the PCO they would have been appointed to the higher grade on the Shop Floor and the special pay becomes payable from the date such certificate is valid.

8. The last letter of the Railway Board in the series which needs to be referred to is the Railway Board's letter dated 13.9.84, a copy of which is Annexure 10 to the leading OA. Through this letter after making reference to earlier letter dated 22.4.63 and 9.6.78 certain decisions regarding further streamlining of the staff pattern of PCO in the Workshops on the Indian Railways and Production Units were provided for. These decisions were arrived at after negotiations with the staff side in the Departmental Council of the Ministry of Railways and the decisions were in partial modifications of the orders contained in their letters dated 22.4.63 and 9.6.78. Through this letter inter alia it was provided that:

- (i) Posts in the PCO will continue to be ex-cadre post so that experienced Shop Floor staff are drawn from time to time as per requirement on tenure basis.
- (ii) The Staff from the Shop Floor shall; be transferred to the PCO only in the same grade, no staff should be transferred to PCO on promotion.

(iii)

The tenure of posting in PCO will be five years which should be strictly adhered to. But if in any exceptional circumstances, or for unavoidable reasons, staff is to be retained in the PCO beyond five years maximum two extensions of six months each may be given. ~~XXXXXXXXXXXXXXXXXXXX~~ *bl*

bl It is not necessary ^{to} go into the other decision given and indicated in the railway Board's letter dated 13.9.84.

9. In the light of the said Railway Board's letters the applicants plead that the Inspection Cadre although treated as part of PCO **has been treated as Ex-cadre.** *bl* Thus the transfer of the applicant from the Inspection Wing of the PCO to the Shop Floor amounts to change of cadre. The applicants case further is that though interchangeability was provided for by the Railway Board's letter dated 13.9.84 but only after obtaining the consent of the concerned employees and the applicants consent for change of cadre had not been taken and thus transfer order involving change of cadre is bad in law.

10. The respondents have filed a detailed counter affidavit. The stand of the respondents is that the DLW came into being on 1.8.61 and in the formative stage the posts in Planning and Progress were treated as Ex-cadre posts, but the Inspection Wing was kept as a separate cadre. However, on receipt of Railway Board's circular letter dated 22.4.63, a reference was made to the Railway Board that the Inspection Wing may be treated as a separate cadre and not ex-cadre, though it is part of PCO. The case of the respondents is that ~~through its~~ *bl* through its letter dated 16.11.1967 (Annexure R-1 to the counter) the Railway Board communicated their approval that the Inspection Cadre at DLW being kept separate. *bl* The

Inspection Wing in DLW though formed part of PCO. Accordingly the respondents maintained that in the DLW only posts in Planning and Progress were declared as Ex-cadre posts and the Inspection Wing was maintained as separate cadre. The further case of the respondents is that the General Manager(P) DLW through his letter dated 7.10.86 provided a channel of promotion and accordingly the promotional aspects of employees in the mechanical and electrical department was bifurcated in several divisions viz vehicle, Engine, Millwright, HTS, Toolroom, Inspection etc. The respondents dispute that the applicants, who were transferred and posted in the Inspection Organisation, were ~~not~~ permanently absorbed in PCO and therefore it is their case that the question of termination of their lien from the Shop Floor did not arise.

11. The further case of the respondents in the counter affidavit is that in the year 1975, it was however found that the total number of Ex-cadre posts exceed^{ed} the number of cadre posts and to remove the aforesaid imbalance ~~the~~ ~~XXXXXX~~ between ex-cadre and Cadre posts in DLW the Railway Board's approval was sought for declaring the posts in the Inspection Organisation as Cadre Posts. The Railway Board through its letter dated 31.3.77 approved that the posts in the Inspection Organisation in DLW need not be treated as ex-cadre posts. The respondents further plead that in view of the Minutes of the discussion held on 22.5.77 between the DLW management and labour

"the principle of "ONE TRADE ONE SENIORITY" was accepted and tradewise seniority made instead of Divisionwise seniority which was then in existence. It is further pleaded by the respondents that since the seniority of the Workshop employees including those posted in PCO in DLW was on tradewise basis. The applicant S.K. Srivastava occupied the post of highly skilled Gr.1 in scale of 1930-2040 KPI and his case has been shown on the

seniority list of highly skilled Gr.I in Fitter trade. it is further plead^{ed} that as the Inspection Wing has also been specified to be PCO in accordance with the Railway Board's letter dated 9.6.78 the applicant alongwith others who are working in the Inspection Wing are receiving a ^{special} pay of 10% which was later revised to 15% with necessary modifications thereafter. It is pleaded that this special pay would not be admissible to them in their post in Shop floor.. The respondents further pleaded that in view of the stipulation of posting on tenure basis of five years, since the applicant S.K. Srivastava has been working in the Inspection Wing w.e.f. 11.1.1969, he was liable to be transferred back to the Shop Floor at the end of the said tenure.

12. In the counter affidavit it has further been indicated in respect of S.K. Srivastava that while working as a skilled Artisan(Fitter trade) on Shop Floor he was transferred and posted in the same grade and pay in the Inspection Wing which he joined on 11.1.69. He was promoted on Highly skilled Gr. II w.e.f. 1.8.78 and as Highly skilled Gr.I Fitter Trade w.e.f. 1.8.84, in his turn i.e. top say of seniority cum fitness basis along the persons of seniority group of Fitter trade and not in the Inspection Wing only and he was assigned seniority accordingly.

13. In the Rejoinder affidavit the applicants have not denied that they have been receiving special pay. The assignment of seniority on tradewise basis has also not been effectively denied in the rejoinder.

14. The particular facts of the OA other than the leading OA are not necessary to be given. They are almost identical to the facts in the leading OA.

15. The learned counsel for the applicants has taken us through various letters which indicated that the posts

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were to be treated as Ex-cadre subsequently as a separate cadre and so on which we have noted hereinabove. The thrust of the submission of the learned counsel for the applicant was that since the applicants have worked for a long period in the Inspection Wing their transfer to the Shop Floor which entails manual work at the fag end of their career would not be justified. The learned counsel cited two decisions to show the meaning and ambit of the word 'cadre'. It is not necessary to go into that question. The Railway Board's letters have come up for consideration before the Hon'ble Supreme Court in the two decisions cited by Sri Amit Sthalekar, learned counsel for the respondents. The said decisions are reported in:

- (i) AIR 1988 Supreme Court 1645 S.K. Chakraborty and Ors vs. Union of India and Ors.

This decision was also followed by the Hon'ble Supreme Court in a case reported in:

AIR 1991 Supreme Court 2080 Union of India and Ors Vs. A. Radha Krishnan.

16. The first case pertained to employees of the PCO Kharagpur. The appellant before the Hon'ble Supreme Court, had challenged before the Calcutta Bench of the CAT, Memorandum of 1979 declaring that the posts in PCO in Kharagpur will be treated as ex-cadre. The Tribunal vide its judgment dated 8.12.86 had dismissed the OA. The claim of the applicants therein who were employees of the PCO at Kharagpur Railway Workshop of South Eastern Railway was that the declaration of the post as ex-cadre affected their vested rights.

17. Secondly, it was contended that they were treated differently from those of the Integral Coach factory on the Southern Railway and the employees of PCO there continued to hold the Cadre posts, and thus brought about ~~an~~ hostile discrimination and amounted to violation of the rights of the appellants therein. Hon'ble the Supreme Court referred

to the Railway Board's letter dated 22.4.63 laying down the Rules for determination of seniority of Workshop staff employed in the PCO. It was, however, noted that the said circular, could not be implemented in the Kharagpur Workshop on account of the stiff opposition of Organised labour. The question was discussed with the organised labour in a meeting held on 4th June 1973 and in pursuance of the decision taken in that meeting the memorandum dated 21st of July 1973 was issued and stated that all posts in PCO would be cadre posts. The Supreme Court in its judgment further proceeded to note that after issuance of the Railway Board's circular letter dated 9.7.78 the Railway Board declared that the staff from Shop Floor posted in the PCO would receive special pay of 10% of their pay but this would not be available to the staff who were permanently absorbed in the PCO or directly recruited in the PCO. It appears that this brought about a change in the attitude of the labour and representations were made to the railway Board for implementing its circular dated 22.4.63, so that the staff of the PCO would be eligible for the special pay. Consequently, the meetings were held with the labour on the 4th and 22nd of September 1979 and in pursuance of the decision taken in these meetings the Memorandum dated 4-5/10/79 was issued which declared that the Railway Board's circular of 1963 would be implemented in the PCO and that all posts would be treated as ex-cadre posts. The Hon. Supreme Court rejected the contention that the vested rights which had accrued in favour of the petitioners by the operation of the Memorandum dated 21.7.1973 and 15.12.1973 were issued declaring that the posts in PCO would be on cadre basis which was held that these circulars were in violation of Rule 158 of the Indian Railway establishment Code, Vol-1, which lays down that the

General Managers of the Indian Railways have full powers to make rules with regard to non-gazetted Railway servants under their control provided they are not in consistent with any rules made by the President or the Railway Board.

18. It was held that the Memorandum dated 21.7.73 was clearly inconsistent with the circular issued by the railway Board in 1973. In the said case Hon'ble the Supreme Court made the following relevant observation:

" The Railway Board is fairly competent to bring about necessary changes in the staff pattern of the various units under its control for the purpose of streamlining the Organisation and improving the efficiency of the Administration. It was held that the exception made in the Railway Board's circular letter dated 13.9.84 for the Integral Coach Factory at the Southern Railway and allowed the PCO to continue on Cadre basis. It was a differentiation which has a rational nexus with the object of streamlining the Organisation. This differentiation cannot be condemned as violative of rule of equality. It does not amount to hostile discrimination. It was noted that the existing arrangement in the PCO of Integral Coach Factory was not disturbed because the recognised Unions did not want it to be so disturbed. Whereas, in the PCO of Kharagpur the recognised Unions had already agreed, that the Railway Board's circular dated 22.4.63 would be implemented in the

Kharagpur PCO and the plea of hostile
discrimination and violation of Art. 14 of the Consti-
tution was thus rejected.

19. In the case before us also we have already noted hereinabove that the Railway Board's circular letter dated 13.9.84 had been issued pursuant to a decision reached at between the management and the labour of the DLW. Thus since the railway Board was Competent to streamline the Organisation making necessary provisions the said decision cannot be faulted.

20. The learned counsel for the respondents next invited out attention to a Supreme Court decision in Union of India and Ors Vs. A. Radha Krishnan, AIR 1991 S.C 2080. The said decision pertained to the PCO in the Integral Coach Factory Perambur. The said decision considered the railway Board's letter dated 13.9.84 laying down the staff pattern of the PCOs of the Workshops including the Integral Coach Factory. The Respondents before the Hon'ble Supreme Court in the said case were employees of the Inspection Wing and they contended that they are entitled to be treated similarly as the employees of Progress Wing whose continuance in the PCO without the risk of reversion to the Shop Floor is assured by the adoption of this Policy contained in General; Manager Integral Coach Factory's letter dated 8.6.80. The Hon'ble Supreme Court noted that the service conditions in the PCO are better than those of corresponding posts in the Shop floor and that was the reason for those in the PCO not wanting to revert to the Shop Floor and the keenness of persons from the Shop Floor to go to the PCO. Before the Hon'ble Supreme Court petitions by both category of employees have come up for consideration. The Hon'ble Supreme Court further proceeded to hold that the Inspection Wing of the PCO performs function of inspecting the quality

of the products of the Integral Coach Factory and thereby ensures quality control of the products. The Progress, Planning and Time Study Wings of the PCO are involved in the manufacture of these products and came at the stage relating to manufacture of the products. Thus their Lordships held that there is thus an intelligible differentia between the function of the Inspection Wings on one side and the remaining wings of the PCO on the other. It was noted by the Hon'ble Supreme Court that the decision of the Railway Board to treat the Progress Wing alone would be treated as a permanent cadre in the Integral Coach Factory and not the others was reached on the basis of experience over a long period and was in consonance with the opinion of the staff Council representing the views of the staff of the Integral Coach Factory. It was observed:

"It appears that the continuity in Progress wing and rotation in the Inspection Wing was considered desirable for better efficiency and it was observed:

Board ✓

"The Railway, being Competent to effect necessary changes in the Staff pattern of the various units under its control for the purpose of streamlining the Organisation and improving their efficiency took this decision for this purpose which is consistent with the view of the staff Council representing the interest of the entire staff in the PCO.

"It was held that the Railway Board's decision takes into account all points of view and makes an attempt to reconcile the conflicting interests while ensuring improvement in the efficiency of the unit. " ✓

It further proceeded to observe that:

" For the efficiency of Inspection Wing which performs the duty exercising vigilance over the production for the sake of ensuring quality of the products, it is not unreasonable to think that a periodic rotation of its personnel would be conducive to efficient functioning of the Inspection wing. The permanency of personnel in the Inspection Wing can promote lethargy in them and may also tend to create vested interests. The possibility of change therein makes the existing personnel more vigilant to avoid any lapse which could be discovered by the replacement....."

"The work of the Inspection wing being at the end point with no further scrutiny thereafter, rotation of its personnel is likely to promote the efficiency of the unit. This factor is sufficient to provide a reasonable basis for classification of the Inspection Wing differently from the Progress Wing and there is no ground to complain of discrimination, if according to the Railway Board's Policy the Inspection Wing is not treated as a separate cadre like the progress wing."

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21. The learned counsel for the applicant faced with the situation that the Railway Board's letter dated 13.9.84 has been upheld by the Hon'ble Supreme court submitted that since the applicants have ^{for} almost two decades worked in the Inspection Wing of the PCO. their transfer to the Shop Floor at the fag end of their career calls for interference by this Tribunal, On the basis of the Hon'ble Supreme Court's decision in Shiv Ratan Soni and Ors Vs. Union of India and Ors civil appeal nos 7289-95/1983 decided on 7.3.1995. Certified copy of the said judgment was placed for our consideration. In the bunch appeals/writ petitions the case of the appellants was that they could not be reverted from the PCO to their Parent Shop Floors where they were originally working before their absorption in the PCO. The appellants/petitioners had put in between 10 to 20 years of service in the PCO, and they were reverted back to their respective floor. They challenged the orders of ^{re}version by way of writ petitions before the High Court and applications u/s 19 before the CAT and writ petitions under Art. 32 of the Constitution of India before the Hon'ble Supreme Court. The Hon'ble Supreme Court was pleased to make the following observation:

" Keeping in view the ~~xxxxxxxxxxxx~~ ^{re} specially ^{bl} facts and circumstances of the case specially, that the appellants/petitioners are working in the PCO for almost two decades or more, it would not be in the interest of justice to revert them to their original Shop Floors. Accordingly without going into the merits of the controversy the Hon'ble Supreme Court directed that the appellants/petitioners be permitted to continue to work in the PCO and their reversion orders be treated as non-est and

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and inoperative. It was further provided that any further promotion in the PCO can only be claimed by them in accordance with the rules which are applicable to the said organisation. The appeals/writ petitions were allowed and the orders of the High Court and the CAT were set aside.

22. We are conscious of the fact that the order passed by the Hon'ble Supreme Court in the aforesaid case can be said to have been made in exercise of power under Art. 142 of the Constitution of India vested in them. This Tribunal does not exercise the same power, as it is not vested with a similar power by any analogous provision either in the Constitution of India or under the Administrative Tribunals Act.

23. The only other plea that remains to be considered is that under Para 7 of the Railway Board's letter dated 13.9.84 it was provided that the staff absorbed permanently in the PCO or recruited directly in PCO as on 31.12.83 may be allowed fresh opportunity to opt for Shop Floor Cadre. It was urged by the learned counsel for the applicant that since the applicants have been absorbed in the PCO they were entitled to a fresh opportunity to opt the Shop Floor Cadre. They have also stated that they have not exercised any such options so far.

As far as this plea is concerned in the counter affidavit the respondents have taken the stand that para 7 of the Railway Board's letter dated 13.9.84 is not applicable since neither of the applicants were permanently absorbed in the Inspection Wing. They have maintained the seniority in the fitter trade on the principle of 'One Trade one seniority'. 1/22

23. In the Rejoinder affidavit the averments made in the OA about the applicants having been permanently absorbed have been reiterated. No factual basis have been shown to support such a plea. No order for their permanent absorption have been issued at any time. On the basis of the pleadings on record it is difficult to accept the plea taken by the applicants that they had been permanently absorbed in the PCO. It has been stated in a supplementary counter affidavit that although on the one hand the applicants are claiming that the Inspection Organisation is to be treated as a separate cadre for the purpose of avenue of promotion, at the same time, are also reaping the benefit of stepping up of pay and 15% special pay in terms of Railway Board's circular dated 9.6.78. The applicant, it is urged are claiming double benefit. The benefit of stepping up of pay and promotion on the principle of 'One Trade one Seniority' and at the same time avoiding posting in the Shop Floor on the misconceived notion that the Inspection Organisation be treated as separate cadre with special status. The respondents have also pleaded that at no point of time the applicants challenged the seniority list issued from time to time on the principle of 'One Trade one seniority'.

24. In the supplementary rejoinder the applicants have taken the plea that preparation of one seniority list of all the division in DLW for the purposes of promotion so that the incumbents in any wing may not get undue advantage on account of occurrence of the vacancies unevenly one seniority in one trade could have been prepared and acted upon but it does not result in merging or uniting all the different wings creating one wing only.

25. In view of the Supreme Court decision upholding the validity of the Railway Board's Notification dated 13.9.84 and the reason indicated in the judgment passed by the

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Hon'ble Supreme Court that the scheme of interchangeability is conducive to streamlining the organisation, it is difficult to take any other view of the matter. The applicants are bound by the provisions of circular dated 13.9.1984.

26. No other point arises to be discussed.

27. In view of the discussion hereinabove no case for grant of relief is made out, all the OAs are accordingly dismissed. The interim order is vacated.

MEMBER(A) /

VICE CHAIRMAN

Dated: July..3rd..1996

Uv/