

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Original Application No. 700 of 1995

Allahabad this the 26th day of Sep 1995

Hon'ble Dr. R.K. Saxena, Member (J)
Hon'ble Mr. S. Dayal, Member (A)

1. Amar Nath S/o Munni Lal A/a 52 years.
2. Shafeeqe S/o Illahi, A/a 54 years.
3. Jagdish Ram SS/o Munni Lal A/a 54 years.
4. Munna Ali S/o Manzoor, A/a 46 years.
5. Kallu S/o Angnoo, A/a 54 years.

All working as Conservansi Jamadars in N.E. Railway,
Varanasi.

6. Mahendra Kumar S/o Ambika Prasad, A/a 30 years.
7. Hishamuddin S/o Noor Mohammad, A/a 40 years.
8. Ali Husain, S/o Pulloo Mian, A/a 42 years.
9. Nabi Husain, S/o Peer Bux, A/a 50 years.
10. Mumtaz, S/o Habibullah, A/a 30 years.
11. Ramji S/o Janki, A/a NIL
12. Babu Lal, S/o Mata Prasad, A/a 40 years.
13. Phool Badan, S/o Pouthi, A/a 34 years.
14. Noor Mohammad, S/o Haleel, A/a 44 years.
15. Zainul, S/o Haleem, A/a 40 years.
16. Mahabir Pd. S/o Ram Pd. A/a 48 years.
17. Bhagwan Das S/o Behari, A/a 50 years.
18. Sukhoo S/o Tegae A/a 42 years.
19. Ram Dhani S/o Jagannath A/a 36 years.
20. Prem Chand S/o Patloo, A/a 34 years.
21. Munni Lal S/o Chunoo Lal, A/a 56 years.
22. Munna Lal S/o Mahabir, A/a 46 years.
23. Munna Lal S/o Chhedi Lal A/a 42 years.
24. Usha Devi, W/o Banke Lal, A/a 46 years.
25. Chamba W/o Pyare Lal, A/a 46 years.
26. Bhilmati W/o Mani Raj A/a 42 years.
27. Sudama S/o Hamesh A/a 43 years
28. Hamidan W/o Bulla A/a 48 years.
29. Ashok Kumar S/o Khunkhun A/a 42 years.
30. Panna S/o Chanda, A/a 40 years.
31. Gopal S/o Munna A/a 41 years.

32. Moinuddin S/o Chhedi A/a 42 years.
33. Kalloo S/o Chhedi A/a 42 years.
34. Ram Nath S/o Hira A/a 42 years.
35. Jawahir S/o Hira A/a 42 years.
36. Rasheed S/o Ramzan, A/a 36 years.
37. Munawwar S/o Bulla A/a 35 years.
38. Rabi S/o Bishwanath A/a 34 years.
39. Vijai Kumar S/o Malloo, A/a 34 years.
40. Vijai Kumar S/O Gulab A/a 34 years.
41. Jeet Lal S/o Sita Ram A/a 33 years.
42. Krishna Kant S/o Bechan A/a 33 years.
43. Ramesh S/o Lala A/a 46 years.
44. Buddho S/o Lakhi Chand A/a 36 years.
All promoted Senior Safaiwalas.
45. Lallan S/o Ram Kishore, A/a 68 years.
46. Shanker S/o Kishun A/a 52 years.
47. Shanti D/o Tirri, A/a 44 years.
48. Badrudding S/o Zahoor A/a 45 years.
49. Maya Shanker S/o Ram Das A/a 26 years.
50. Ram Chander S/o Somaroo, A/a 32 years.
All Senior Safai-walas.
51. Shivmangal S/o Malloo A/a 34 years.
52. Mukhtar Ahmad S/o Peer Mohammad A/a 32 years.
53. Suresh S/o Meer Chand A/a 32 years.
54. Kashi Nath S/o Pyare Lal A/a 34 years.
55. Rajendra Prasad S/o Bhagwati A/a 29 years.
56. Durga S/o Ram Dass A/a 39 years.
57. Naeem S/o Soudagar A/a 42 years.
58. Ram S/o Chamba Lal A/a 32 years
59. Abdul Gafoor S/o — A/a 32 years
60. Ramasre S/o Meer Chand A/a 32 years
61. Maimoona D/o Rahmatulla A/a 34 years.
62. Ashok Kumar S/o Malti A/a 32 years.
63. Vijai Kumar S/o Shanker A/a 29 years.
64. Ram Das S/o Ganesh A/a 36 years.
65. Harendra S/o Bijendra A/a 30 years.
66. Ram Chand S/o Vidya A/a 30 years.
67. Manoj Kumar S/o — A/a 29 years.
68. Maimoona W/o Idris A/a 34 years.
69. Vishram S/o Ram Prasad.
70. Raja Ram S/o Mahindra A/a 32 years.

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71. Ram Shringare S/o Ram Pd. A/a 30 years.
72. Purshottam S/o Hari Lal A/a 36 years.
73. Shahabuddin S/o Allauddin A/a 31 years.
74. Barkat S/o Shahabuddin A/a 32 years.
75. Ramzan S/o Bhole, A/a 40 years.
76. Badruddin S/o Bhazal, A/a 38 years
77. Shyam Devi W/o Bhole, A/a years.
78. Prem Nath S/o Vishwa Nath A/a 30 years.

All working as Junior Safaiwala, N.E. Railway Varanasi.

APPLICANTS

BY Advocate Shri Sanjay Kumar,

Versus

1. Union of India through the Divisional Railway Manager, N.E. Railway, Varanasi.
2. The Divisional Engineer, N.E. Rly., Varanasi.
3. The Chief Medical Superintendent, N.E. Railway, Varanasi.

RESPONDENTS.

By Advocate Shri Prashant Mathur.

ORDER

By Hon'ble Dr. R.K. Saxena, Member (J)

This O.A. has been filed by 78 persons and others & who are working as Junior Safaiwala, under the respondents at Varanasi. The case of the applicants is that they are working under the respondents but, in medical department which is looking after the work of preventive services, of Public-Health and Sanitation through the Chief Medical Superintendent. Giving the history, it was pointed out that the Railway Board had created a separate cell, headed by officer on special duty

(Medical) in August, 1955. The office of the said officer-on special-duty (Medical) was converted into Joint-Director (Medical) and thereafter it was upgraded as Director-Health. The medical department is further divided into two wings; one is headed by Chief-Medical-Officer who is incharge of the medical department of the Zonal Railways and the other looks after the work of preventive services of Public Health and Sanitation through Chief-Medical-Superintendent. Thus, it is pointed out that the department of Public-Health and Sanitation is under the administrative control and supervision of Chief-Medical-Superintendent right from the inception of this department in the year 1955. The Sanitary department consists of Chief Health Inspector, Safaiwalas, Bhistis and Conservancy Jamadars. In Varanasi Zone of N.E. Railway, there are one Chief-Health-Inspector, Eighty Two Safaiwalas, Five Bhistis, and Two Conservancy Jamadars under the control of Chief-Medical-Superintendent. The present applicants consist of these lower wrung ~~employees~~ known as Safaiwalas, Bhistis and Conservancy Jamadars.

2. It is contended that the duty of Safaiwalas according to Clause 48 of para 304 of Indian Railway Medical Manual is to sweep the roads, grounds, floors and to collect, remove and dispose of rubbish and night-soil from Railway Compounds, Colonies etc. The duties of Bhistis are given in Clause 56 of para 304. Besides, the duties of Safaiwala, the department is also maintaining a separate seniority

of these staff, ignoring all these facts, the respondent no.1 had directed the respondent no.3 to transfer the Sanitation department from Medical to Engineer ^{ing.} department. The contention of the applicants is that this kind of transfer by Divisional Railway Manager, Varanasi is bad in law and against the provisions which were laid down in the Manuals including Indian Railway Medical Manual. It is also the case of the applicants that Divisional-Railway-Manager is not competent to take this decision of transferring all the employees of one department to another. Since the transfer of the applicants was secretly done and was opposed by Chief-Medical-Superintendent vide Annexure-1 and the representation(Annexure-2) given by the applicants, was not taken into consideration, they ultimately approached this Tribunal.

3. The respondents contested the case on several grounds. The first ground is that the applicants have not verified the contents of the application, which is a pre-requisite condition for bringing an application and thus, it is liable to be dismissed. It is denied that the applicants who are Safaiwalas, Bhistis and Conservancy Jamadars, are being transferred from the administrative control and supervision of the Chief-Medical-Superintendent to other departments but, as a matter of fact, they

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are going to be deputed to work under different health inspectors. It is also averred that for the purpose of their seniority and promotion, they would construe a separate cadre of medical department and would be required to work under the engineering branch because the maintenance of the cleanliness of the railway property, has been entrusted to the engineering department. It is also averred that the staff (applicants) is going to be placed under the effective control of engineering department, so that liaison may be maintained but, for all practical purposes, their seniority, promotions would remain intact in their own cadre and would have their avenues of promotion in the cadre itself. This decision was taken after due deliberations with the senior officers of the department and with the approval of the competent authority. It is pleaded that this O.A. has been filed on some misapprehension which does not subsist. According to the respondents, the only change would be that instead of medical superintendent, they would have to work under Senior DEB, who is the head of the Engineering Department.

4. The applicants have filed rejoinder, reiterating the facts which are mentioned in the

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O.A. It has further been pointed out that the channel of promotion to Safaiwalas and Conservancy Jamadars in the medical branch, shall not be available to them on their being shifted to engineering department.

5. We have heard the learned counsel for the parties and have perused the record.

6. In order to come to any conclusion, it would be necessary to find out the historical background of the functioning of the railways. It may be mentioned that before the different railways ⁸ were integrated into one Indian Railway, there were different companies. The Indian Railway Act, 1890 was enacted to consolidate, amend and ^{add} to the law relating to railways in India. ¹ Section 47 of this ⁸ Act deals with the working of the Railways in general; and the Central Government was empowered to make general rules consistent with the said ¹ Act for the purposes enumerated therein. Sub-section 1(g) of Section 47 of the ^{for} Act provided making rules generally for regulating the travelling upon and the use, working and management of the railway. It was, further, felt that this function of the Central Government should be entrusted to some other body and, therefore, the Indian Railway Board Act, 1905 was enacted. The object, and reasons of the Indian Railway Board Act were to provide for investing the Railway Board with the powers

and functions of the Governor-General in Council under the Indian Railways Act, 1890 which could as that Act stood, be delegated only to local Governments and also to confer the powers to make general rules as to Government, railways as provided under Section 47. In these circumstances, the Railway Board came into existence. For the proper functioning of the railway, Indian Railway Establishment Code and different Manuals were made. The preface of Indian Railway Establishment Code speaks that the Code was issued by the President in exercise of powers conferred on him by the provision of Article 309 of the Constitution of India. Thus, the Code deals with the rules of different services and conditions therefor. The Railway Board had prepared different Manuals. Of them, for the purpose of this case, are Indian Railway Establishment Manual and Indian Railway Medical Manual. These Manuals contained the circulars, orders and instructions which were issued by the Board from time to time. It appears from the prefactory note of the Indian Railway Establishment Manual published in 1989 that the Manuals were edited and published in different years. In the ^{years} ~~orders~~ Manual published in 1989, the Board had decided that the subject matters finding place in other Codes and publications, may not be included in the book in this edition and accordingly the chapters X, XIII, XIV, XIX, XX, XXI, XXVIII, XXXI, to XXXV had been kept out

of the scope of the book. It was, further made clear that the provisions and chapters of this edition supersede those on the subjects contained in the 1968 edition to the extent these ~~had~~ been revised and incorporated in the body. It was also made clear that provisions ~~of~~ the said Manual do not supersede the rules contained in any of the Indian Railway Codes, and in case of conflict the latter should prevail. Thus, other Manuals namely Indian Railway Medical Manual remains intact.

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*of Indian Railway Establishment
Code Vol I & II*

7. Para 103(14) defines the department of the railway administration which means one of the branch constituted for the purpose of conducting the business of the railways. In the light of this definition of the department, it is to be seen whether medical department is separate and distinct from other departments. For this purpose, we will have to go through the Indian Railway Medical Manual which was intended for uniform adoption on all Indian railways. Prior to it, there were 42 railways system prevailing in the country and each was following a separate policy of its own specially in the matter of medico-social amenities with the result that medical and health organisation had no uniform pattern of development and the level of the amenities provided differed widely. On this Medical Manual having come into existence,

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it was desired that all Zonal Railways would have more or less a uniform level and pattern of medical facilities. Para 106 of this Medical Manual deals with organisation and general set up of the medical department. The diagram which has been given in para 106, the para-medical and clerical staff to which the applicants belonging, is placed under the preventive services of which Chief-Medical Officer, incharge of the medical department of a Zonal Railway is ^{head} ~~made~~. This Chief-Medical Officer is again working under the Director, Health, Railway Board. The post of Director Health is under the Ministry of Railways (Railway-Board). In this way, the medical department has been separately indicated in the Indian Railway Medical Manual and this staff has also been shown separate. Their duties and functions have also been discussed elaborately. In para 204, the duties of Medical Officers, Hospital Attendants, Sweepers, Safaiwalas, Cleaners of a hospital/health unit and Sanitary/Conservancy Sweepers and Bhistis ^{are} ~~are~~ discussed. The promotions to higher grade i.e. in Group 'D' and Group 'C' post relating to medical department are dealt with in para 182 of Indian Railway Establishment Manual, Vol.I. All ^{these} ~~these~~ shows that the different departments have been created in the Railways and Medical Department is one of them. A complete structure

right from top to the bottom has been drawn.

Their duties and functions defined and channel of promotion prescribed. In this connection, it may also be necessary to find out that the Railway Board under Para 123 has been given full powers to make rules of general application to Group C and Group D railway servants under their control. Para 124 deals with the powers of the General-Managers only to the extent to frame rules with regard to railway servants in Group 'C' and 'D' under their control provided they are not inconsistent with any made by the President or the Ministry of Railways.

8. With this background of historical importance, we shall now try to find out as to whether the scheme was legally made by the authority concerned for transferring the applicants from the medical department to the engineering department. Annexure-1 is the letter which has been written by Chief-Medical-Superintendent highlighting the legal and practical problems which may arise on implementation of the scheme. The contention of the applicant is that they are being transferred from Medical department to Engineering department as a measure of implementation of the scheme only in Varanasi region. They also contended that at no other place such scheme was drawn and implemented. Besides, it

is also contended that the Regional Manager, Varanasi is not the competent authority to draft such a scheme and then to pass orders of transfer the employees ~~enblock~~ from one department to another.

9. The respondents have not come with the clear case. In the counter-reply, it has been averred in para 5 by Shri N.N. Pathak, Assistant Personnel Officer that the applicants who are working under the administrative control and supervision of the Chief-Medical-Superintendent are deputed to work under different Health Inspectors. In para 7 of the same counter-reply, it is also mentioned that the staff including the applicants are required to work under the effective control of the Engineering department and in order to maintain liaison with the staff, they are required to work under the Engineering department but, for all practical purposes, their seniority, promotion would remain intact in their own cadre and they would have their avenues of promotion in their own cadre. In para 10 of the same counter-reply, it was mentioned that the only change would be that instead of Medical Superintendent, the applicants would have to work under Senior D.E.B. who is the administrative head of the Engineering department. So far as the framing of the scheme is concerned, it is mentioned in para 8 that the decision to take work from the staff working under the

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Medical department was taken after due deliberations with the senior officials of the department and with the approval of the competent authority. The averment of having taken approval of the competent authority is mentioned in the para 10 of the counter-reply. From the analysis made ~~through~~ ^{through} going the Indian Railways Act and Indian Railway Board Act, and also the Indian Railway Establishment Code, it is fully established that the competent authority is the Railway Board. The Manuals which are compilation of circulars, orders, instructions issued by the Railway Board from time to time also indicate the same position. The Railway Board is competent to frame rules about the creation of different departments in the Railway Administration or to amalgamate two or more in one department for smooth functioning of the railways. There is no necessity for the Railway Board to seek approval of any other authority. It means that the scheme which is under challenge, was not prepared by the Railway Board. As a matter of fact, the respondents should have disclosed clearly as to which authority had drafted the scheme but, it is not done so. What appears from the pleadings of the parties, ^{is} that the scheme was drafted ~~by~~ ^{at} the level of the Divisional Railway Manager who is definitely not a competent authority to create different departments or to amalgamate the existing departments in one or

more. While dealing with the Indian Railway Medical Manual, it was found that the Medical department was created through out the country on uniform pattern and the cadre was created therefor. Para 119 of the Indian Railway Establishment Code, Volume I lays down the cadres of Railway servant- Group 'C' and Group 'D'. It reads:

"In the Railway Board and attached Offices - The number and character of Group C and D posts in the office of the Railway Board and other offices, projects, organisations immediately under its control, shall be such as may be determined by the Railway Board. The Director General, Research, Designs and Standards Organisation or any other authority to whom the powers may be specifically delegated by the Railway Board may create temporary posts on the conditions prescribed in their respective schedules of power."

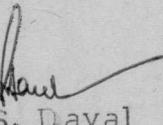
10. A perusal of this para speaks that Railway Board is the only competent authority unless the powers were delegated to any other authority to decide the number and character of Group C and D posts in different departments. By giving effect to the scheme under challenge, will mean the transfer of the cadre of Safaiwalas, Bhistis and Conservancy staff from Medical department to Engineering department and thereby reduction of the cadre in the Medical department and addition of the cadre and number and character of posts in Engineering department. The respondents have failed to show that the powers of the Railway Board

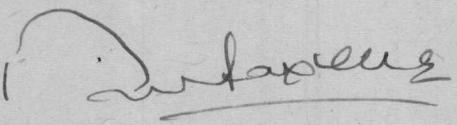
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under para 119 of the Indian Railway Establishment Code, Volume I, have ever been delegated to any authority such as General Manager or the Divisional Railway Manager. In view of these facts, we come to the conclusion that the scheme under challenge, has been prepared by Divisional Railway Manager, Varanasi who is not a competent authority and, therefore, the scheme is invalid and cannot be given effect to. We want to make it clear that the creation of more departments or amalgamation of more of the departments in one, ^{is by competent authority} ~~can't~~ be done. It is prerogative of the Government to create more departments or to amalgamate more or some of the departments in one and so far as the Railway Administration is concerned, such powers have been given only to the Railway Board. Thus, if the Railway Board which is the competent authority deems it necessary, it can draft a scheme of shifting any category of employees from one department to another. The consequential amendments in the Code and the Manuals would also be necessary particularly ^{regarding} with disciplinary action ^{is} required to be taken against any of the employee of such category of employees which is required to be transferred. The Disciplinary authority and the Appellate authority including Revisional and Reviewing authority may have to be changed accordingly.

11. The contention of the respondents that the verification of the contents of the O.A., have not been done by the applicants and, therefore, the O.A. is defective, is not accepted. The reason is that all the applicants have put their signatures and it would amount necessary verification.

12. On consideration of the facts and circumstances of the case, we hold the view that the scheme which has been drafted in Varanasi division by Divisional-Railway-Manager transferring the applicants from Medical department to Engineering department, is illegal because it has not been drafted by a competent authority. Therefore, the resulting consequence of transferring the applicants from Medical department to Engineering department, cannot be sustained. The O.A. is, therefore, allowed. No order as to costs.


(S. Dayal),
Member ' A '


(Dr. R.K. Saxena)
Member ' J '

/M.M./