

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCHALLAHABAD.

Allahabad this the 12th day of September 2001

Hon'ble Mr. Justice RRK Trivedi, Vice-Chairman

Hon'ble Maj Gen KK Srivastava, Administrative Member

Original Application no. 71 of 2000.

1. Shiv Mangal, S/o Sri Budhai,
R/o Tehra, Post Office Peepiganj,
Gorakhpur.
2. Lallan Prasad, S/o Sri Kashi Nath,
R/o Village JharnaTola, Post Office Kuraghat,
Distt Gorakhpur.
3. Anwar Ali, S/o Sri Munauwar Ali,
R/o Jatepur North, Gorakhpur
4. Ghari Prasad, S/o Jyut, R/o Village Rampur
Kaithauliya, Post Office Kanapar,
Gorakhpur.
5. Ram Munnar, S/o Sri Guru Prasad,
R/o village Dhodhara Baniya tola, Post Office Kusumi
Bhainsahwa, Sardar Nagar,
Gorakhpur.
6. Brij Bhan, S/o Sri Bachchoo Lal,
R/o village Parsalal Sahi, P.O. Majhwa Meer,
Basti.
7. Ramanand Yadav, S/o Sri Ram Kewal Prasad Yadav,
R/o village and Post Office Kakar Khurd,
Gorakhpur.
8. Wasi Ahmad, S/o Sri (late) Bashir Ahmad,
R/o Qr. no. 363B, Bauriya Railway Colony,
Gorakhpur.

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9. Sami Ullah, S/o Sri Bujharat,
R/o Vill. Karmahawa, Post Office Rawatganj,
Gorakhpur.
10. Shiv Shankar Gupta, S/o Santoo,
R/o vill. Mahawankhor, Post Office
Peepiganj, Gorakhpur.
11. Hari Narain Yadav, S/o Sri Asharfi Yadav,
R/o vill and P.O. Tighara,
Gorakhpur.
12. Hira Lal III, S/o Sri Chhotu Shah,
R/o Sheo Nagar Colony, behind Aluminium Factory,
Basaratpur Road, Gorakhpur.
13. Manna Ansari, S/o H. Ansari, R/o 412c, Naurangabad,
Gorakh Nath, Gorakhpur.
14. Insan Ali, S/o Sukrullah, R/o vill and Post Office,
Udairajganj, Distt. Sultanpur.
15. Ram Preet Yadav, S/o Sri Sudama, R/o Mauza Sheolahiya,
Pratap pur, Post Office Kamplaganj,
Gorakhpur.
16. Ran Surat, S/o Gofai, R/o Vill Bharohiya,
P.O. Kanapar, Gorakhpur.
17. Gulab Prasad, S/o Sri A. Prasad,
R/o vill Bahrapur, Post Office Kusumi,
Bazar Gorakhpur.
18. Abdul Majeed, S/o Sri Abdul Nazeer, R/o Qtr no. L/60-E
Bauliya Railway Colony, Gorakhpur
19. Ram Awadh, S/o Bansu Prasad, R/o Vill Jogi
Chak, P.O. Tighar Peepiganj,
Gorakhpur
20. Ram Adhar Yadav, S/o Sri Pardeshi Yadav,
R/o Vill Matihani, PO Parsiya,
Gorakhpur.

....3/-

3.

All working as Fire Man II, North Eastern Railway, Gorakhpur.

..... Applicants

C/As Sri TS Pandey

Versus

1. Union of India through its Ex-Officio Secretary, and Chairman, Railway Board, Rail Bhawan, New Delhi.
2. General Manager, North Eastern Railway, Gorakhpur.
3. Divisional Railway Manager, North Eastern Railway, Lucknow.
4. Divisional Mechanical Engineer, North Eastern Railway, Lucknow.
5. Senior Divisional Personnel Officer, North Eastern Railway, Lucknow.

..... Respondents.

C/Rs Sri KP Singh

ALONGWITH

Original Application no. 112 of 2000.

1. Bhagwan Yadav, S/o Chhabil Lal Yadav, R/o Vishnu Puram, Shahpur, P.O. Basaratpur, Gorakhpur. Fireman II, Diesel Lobby NE Rly., Gorakhpur.
2. R.D. Dubey, S/o Sri Paras Nath Dhar Dubey, R/o vill Kahrauli, P.O. Bankata, Gorakhpur. Fireman II, Diesel Lobby, N.E. Rly., Gorakhpur
3. Mahammad Jabbar Khan, S/o Mohd Shakoor Khan, R/o L61-A Bauliya Railway Colony, Gorakhpur. Fireman II, Diesel Lobby NE Rly Gorakhpur.
4. Ram Bhagwat, S/o Sri Tikai, R/o village Surhiya Kuan P.O. Basaratpur, Gorakhpur. Fireman II

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4.

Diesel Lobby, NE Rly, Gorakhpur.

5. Akhtar Ali, S/o Sri Asghar Ali, R/o Vill Bhitani, P.O. Dohariya Bazar, Gorakhpur.
Fireman II, Diesel Bobby, NE Rly.,
Gorakhpur.
6. Kanak Singh, S/o R.M. Singh,
R/o vill Jangal Salik Ram,
P.O. Podraee Bazar, Gorakhpur
Fireman II, Diesel Lobby, NE Rly,
Gorakhpur.
7. Ram Darash, S/o Sri Shyam Deo,
R/o Vill Jangal (Junglae) Agahi Tola Sahjua,
P.O. Peepiganj, Gorakhpur
Fireman II, Diesel Lobby, NE Rly.,
Gorakhpur.
8. Y.P. Sharma, S/o Sri Gajadhar Sharma,
R/o 366A, Bauliya Railway Colony, Gorakhpur
Fireman II, Diesel Lobby, NE Rly.,
Gorakhpur.

... Applicants

C/As Sri TS Pandey

Versus

1. Union of India through its Ex-Officio,
Secretary and Chairman, Railway Board,
Railw Bhawan, New Delhi.
2. General Manager, N.E. Rly, Gorakhpur.
3. General Mechanical Engineer, N.E Rly Gorakhpur
4. Chief Crue Controller Diesel Lobby,
Gorakhpur
5. Divisional Railway Manager,
N.E. Rly,
Lucknow.

... Respondents

C/Rs Sri AK Gaur

.....5/-

5.

Original Application no. 113 of 2000.

1. Dhirendra Kumar, S/o Sri Preetam Singh,
R/o 414, Ballabh Nagar Colony, Pilibhit,
Fireman II at Kashipur, NER Izatnagar,
Bareilly
2. Balbir Singh, S/o Lal Bahadur,
R/o L/15-8, Railway Colony, Pilibhit.
Fireman II at Diesel Lobby Kathgodam,
NE Rly Izatnagar Bareilly.
3. Bhagwan Swaroop, S/o Sri Chanda,
R/o EL/6C, Railway Colony, Pilibhit.
Fireman II at Pilibhit, NE Rly, Izatnagar
Bareilly
4. Datt Prakash Khanna, S/o Sri OP Khanna,
R/o 333, Kanwarpur, Bareilly, Fireman II
at Diesel Lobby, NE Rly, Izatnagar Division,
Bareilly.
5. Roop Lal, S/o Sri Ram Swaroop, R/o L/11, City Colony,
Bareilly, Fireman II at Diesel Lobby, NE Rly,
Izatnagar Division, Bareilly.
6. Mohd Shaukat Khan, S/o Mahboob Khan,
R/o 321 Mulukpur, Bajdaran, Bareilly,
Fireman II at Diesel Lobby, NERly,
Izatnagar Division Bareilly.
7. Zakir Ali, S/o Saeed Ali, R/o 16A, Engineering
Railway Colony, Pilibhit. Fireman II Diesel Lobby,
Pilibhit. Izatnagar Bareilly.

... Applicants

C/As Sri TS Pandey

Versus

1. Union of India through its Ex-Officio,
Secretary and Chairman, Railway Board, Rail Bhawan
New Delhi.
2. General Manager, N.E. Rly Gorakhpur.
3. Divisional Railway Manager, N.E. Rly., Izatnagar
Division, Bareilly
4. Senior Divisional Personnel Officer, N.E. Rly., Izatnagar,
Bareilly.

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5. Divisional Mechanical Engineer, Diesel Shed,
NE Rly., Izatnagar, Bareilly.

... Respondents

C/Rs Sri P Mathur.

O R D E R

Hon'ble Maj Gen KK Srivastava, Member-A.

These three OAs are heard separately, but for convenience sake a single order is being given as the facts and law point in all these OAs are almost similar. The leading OA is OA no. 71 of 2000.

2. In OA 71 of 2000, the applicants 20 in number have challenged the reversion orders dated 9.12.1999, 14.12.1999 & 20.12.1999 (Ann. A1, A2 & A3) and have prayed that the respondents be directed to issue promotion order to the applicants either as Diesel Assistant or as Fireman Grade I with consequential benefits including running allowance.

3. The brief facts of the case as per applicants are that the applicants are working as Fireman Grade II and are drawing 30% running allowance in addition to their pay and allowances. The Railway Board issued a circular dated 21.4.1989 for deployment of surplus staff. In pursuance of this, respondent no. 3 i.e. D.R.M. N.E Railway, Lucknow, should have issued a fresh seniority list of different categories and posts. Instead of this, respondent no. 3 have issued re-deployment orders on the basis of old seniority list dated 24.8.1994 (Annexure A-4). Besides Railway Board's Circular dated 6.5.1998, circulated by General Manager, N. E. Railway vide their order dated 26.5.1998 revised

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the rate of running allowance which is also not being paid by respondent no. 3. The applicants with many others filed complaint case no. 37 of 1998 before Labour Tribunal at Gorakhpur. It has been stated by the applicants that before promotion as Fireman Grade I the applicants were requested to complete the training to be either posted as Diesel Assistant or Fireman Grade I in the System Technical School Gorakhpur. During October the Principal System Technical School, Gorakhpur called upon the respondents to relieve applicants and others running ^ust^uff for the said training. The applicants completed training and were declared successful by the Prinicipal System Technical School, Gorakhpur on different dates. The respondents instead of issuing the promotion orders issued orders for redeployment in respect of those above 45 years of age and also who are not class VIII pass on 9.12.1999, 14.12.1999 & 20.12.1999 which is actually a reversion order. The applicants represented, but no decision has been given on their representation. Hence, this O.A.

4. In OA 112 of 2000, eight applicants have challenged orders no. 1461 and 1463 dated 31.12.1999 and have prayed for the quashing of the same and similar relief as in O.A. 71 of 2000. The brief facts of this case are almost similar to that of O.A. 71 of 2000.

5. In OA 113 of 2000, seven applicants have challenged order no. 2252 & 2253 dated 29.12.1999 and have prayed for quashing the same and providing the similar relief as prayed in O.A. 71 of 2000.

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6. Heard Sri T.S. Pandey learned counsel for the applicants in all the OAs and Sri K.P. Singh learned counsel for the respondents in OA 71 of 2000, Sri A.K. Gaur learned counsel for the respondents in OA 112 of 2000 & Sri P Mathur learned counsel for the respondents in OA 113 of 2000.

7. Sri T.S. Pandey, learned counsel for the applicants submitted that Rule 137 of IREM Vol I and Railway Board's circulars dated 30.4.1982 and 17.9.1982 have laid down terms and conditions for promotion of Fireman Grade II to Fireman Grade I stipulating therein that for promotion to Fireman Grade I an official should be below 45 years of age. But this restriction of age was removed by Railway Board's circular dated 4.11.1987 (Ann. A-7). Before promotion as Fireman Grade I, the applicants completed required training for being posted as Diesel Assistant or Fireman Grade I in Technical School, Gorakhpur and were declared successful. Gross injustice has been done to the applicants by not promoting them as Diesel Assistant or Fireman Grade I and reverting them by issuing redeployment orders which need to be quashed. Learned counsel for the applicants further argued that it is gross violation of natural justice as applicants have been denied running allowance, the rate of which has been revised by Railway Board's circular dated 6.5.1998. He finally submitted that the entire action of the respondents is in contravention of Rule 137 of IREM Vol I and argued that the relief prayed for by the applicants is legally justified.

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8. Learned counsel for the respondents contested the claim of the applicants and submitted that on closure of Steam Loco Shed, number of Staff of Mechanical department have been rendered surplus. Railway Board vide its letter dated 21.4.1989 laid down certain guidelines regarding absorption and utilization of surplus staff. In pursuance of that the General Manager, N.E. Railway, Gorakhpur vide letter dated 6.7.1999 issued instructions regarding redeployment of surplus staff as large number of staff of Mechanical/Operative/Medical/Engineering are getting salary without performing any duty. In Lucknow division of N.E. Railway 1299 mechanical staff were rendered surplus of which 163 belong to Fireman Grade II category. The respondents counsel also submitted that as per avenue of channel of promotion (AVC) of running staff circulated by Railway Board circular dated 13.3.1987 vacancy in the grade of Diesel Assistant/Electrical Assistant are to be filled by lateral induction upto 50% from amongst Fireman Grade I who are at least 8th class pass and below 45 years of age. Short fall, if any, to be filled by promotion by usual selection procedure from Fireman Grade II who are at least 8th pass and below 45 years of age. Out of 163 Fireman Grade II, 87 fulfilling the requisite qualification have been retained in mechanical/operative departments against running cadre for the higher grade while the remaining not fulfilling the requisite qualifications have been absorbed in existing vacancies in signal work shop, Carriage and Wagon, Loco fitting & Engineering department. It has also been argued that the applicants have been allowed protection of pay and full benefit of seniority. The learned counsel for the respondents submitted that the Railway Board

has never waived the condition of age bar (ie below 45 years) as is evident from circular dated 3.11.1987 placed on record as Annexure 7. It has finally been submitted by learned counsel for the respondents that the applicants have already been absorbed in signal work shop, Gorakhpur vide office order dated 31.12.1999 issued by D.R.M. (P), N.E. Railway, Lucknow.

9. We have carefully considered the submissions^{lu} of learned counsel for the parties and perused the records. From perusal of various records we have no doubt in our mind that these are the cases of redeployment of staff who have been rendered surplus due to closure of Steam Loco Shed in 1994 and not that of reversion.

10. In fact there are two questions before us which need to be addressed in these OAs. The first question is whether the action of the respondents in issuing redeployment orders is correct and legal as per rules and various instructions on the subject, secondly, whether the applicants are entitled for revised running allowance. In order to decide the first issue we would like to quote rule 137 of IREM Vol. I, which is as under :

"137. (1) The vacancies in the grade of Diesel Assistant in scale Rs. 950-1500 may be filled as under :-

a. 50% of the vacancies shall be filled by lateral induction from among First Firemen who are atleast 8th Class pass and are below 45 years of age: in the case of shortfall, by promotion by usual selection procedure from among second Firemen who are atleast 8th class pass and are below 45 years of age.

b. Balance 50% of vacancies shall be filled.....11/-

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by lateral induction of matriculate First Firemen with minimum three years of continuous service, shortfall, if any, by promotion of Matriculate Second Firemen through departmental examination.

c. Shortfall, if any, against (a) and (b) above shall be made good by direct recruitment through the Railway Recruitment Boards."

It is clear from the rule that for promotion to the post of Diesel Assistant, ^{he}one has to be 8th class pass and below 45 years age, whether ^{he}is First Fireman or a second Fireman. It has also been laid down in para 4(a) of the Railway Board's circular no. 1309 dated 3.11.1987 placed at annexure 7 that for promotion as Diesel/Electrical Assistant one has to be 8th class pass and below 45 years of age. Therefore, the action of the respondents in retaining 87 Firemen Grade II (out of 163 Firemen Grade II) who are 8th pass and below 45 years of age, in mechanical/operating department against running cadre of the higher grade is correct and covered by the rules and instructions on the subject. We find no illegality in their action. A staff who is declared surplus has two options. One that he quits the job in order to find better job elsewhere or he accepts alternate job offered by the employer. In the present case the respondents have been gracious enough to accommodate the surplus Fireman Grade II who are not fulfilling the requisite qualification for promotion as Diesel Assistant in the existing vacancies in signal workshop, Carriage and Wagon, Loco Fitting and Engineering departments. They have also been given all the benefits regarding seniority and 30% running allowance has been taken into account while fixing pay of the applicants in their new appointment.

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where they have been redeployed.

11. As regards the second question, whether the applicants are entitled for revised rates of running allowance as per Railway Board circular dated 6.5.1998 circulated by General Manager, N.E. Railway on 26.5.1998. We are of the considered view that the applicants are not entitled as they are not working in the running cadre. Running allowance is a special allowance which is not a part of the pay. Special allowance is given for special work which the applicants have not ^{been} doing presently. Therefore, the applicants now are not eligible for any running allowance whether old or revised. They have also been given advantage of the running allowance at the time of their redeployment and fixation of pay against the new posts.

12. The entire action of the respondents is in conformity with the various rules and instructions on the subject. Therefore, the action of the respondents is legal. We find no reason to interfere in the matter.

13. In view of the facts and circumstances and our observations, the ^{are} ~~OPs~~ are devoid of merit and, therefore, dismissed.

14. There will be no order as to costs.

Sd/-
member (A)

Prepared

[Signature]
18/9/01

Sd/-
V.C.