

(8)

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL      ALLAHABAD BENCH

ALLAHABAD.

Allahabad this the 01st day of August 2001.

ORIGINAL APPLICATION NO. 1452 of 2000.

Hon'ble Mr. S. Dayal, Administrative Member  
Hon'ble Mr. Rafiq Uddin, Judicial Member

1. Mukesh Kumar Malviya  
S/o Sri Hari Shanker,  
36 Ganeshpura Nagar, Jhansi.
2. Amar Bahadur,  
S/o Sri Ram Padarath,  
R/o 6/19 Gudripura Premnagar  
Nagra Jhansi.
3. Iqbal Uddin, S/o Sri Rafiquddin,  
R/o 34/2 Badakuan Pulia No. 9  
Jhansi.
4. Mohd. Shamsul Qamar, S/o Mohd. Shamim,  
R/o 47 Pyarelal Compound,  
Premnagar Jhansi.
5. Ratanlal, S/o Sri Kishanlal  
R/o 94 Lalkurti Bazar, Jhansi
6. Dharmendra Kumar Yadav, S/o Sri BL Yadav,  
R/o 85 Lalkurti ba<sub>z</sub>ar, Jhansi.
7. Prabhu Dayal, S/o Sri Rajpal  
R/o 136 Gurudwara Nagar,  
Jhansi.
8. Om Dayal, S/o Sri P. Dayal,  
R/o 703/A Rani Laxmi Nagar,  
Jhansi.
9. Sunder Singh, S/o Sri Bhuri Singh,  
R/o 19/8 Mohalla Schoolpura Premnagar,  
Jhansi.
10. Abrar Ali, S/o Sri R shid Ali,  
R/o 72, Mohalla Ilahbadi Pulia no. 9  
Jhansi.
11. Deep Singh Yadav, S/o Sri Pannalal Yadav,  
R/o Isaitola Premnagar,  
Jhansi.
12. Beer Singh, S/o Sri Ram Dayal,  
R/o Gadiagaon PO,  
Premnagar Jhansi.

13. Rajendra Prasad, S/o Sri Kamta Prasad,  
R/o 18/A Inside Baragaon Gate,  
Jhansi.
14. Bal Krishna Sharma, S/o Sri TC Sharma,  
R/o 132 Nai Basti Chandgate,  
Jhansi.
15. Ballu Ram, S/o Sri Binde Prasad,  
R/o 505/B Mohalla Tal Sadar bazar,  
Jhansi.
16. Andrews Peter, S/o Sri Raymond Peter,  
R/o B-117 Awas Vikas Colony, Nandpura,  
Jhansi.
17. Brijlal Yadav, S/o Sri ND Yadav,  
R/o 175 Hansari Gwaltoli,  
Jhansi.
18. Ram Krishna Rathore  
S/o Sri S.P. Rathore,  
R/o RB-II/960 ETR Railway Colony,  
Jhansi.
19. Virendra Kumar Tewari, S/o Sri Pyarelal Tewari  
R/o 218 Itwariganj, Jhansi.
20. Balram Pachauri, S/o DR Pachori,  
R/o Nai Basti Gandhi Nagar,  
Near Ghandi Mandir, Lalitpur.
21. Virendra Narain, S/o Sri B. Das,  
R/o Hata Govind Das, Premnagar Sipri  
Bazar, Jhansi.
22. Kuldip Awasthi, S/o Sri KN Awasthi,  
R/o Tansen road, Near Loco Gwalior.
23. Sabir Khan, S/o Sri Kalla Khan,  
R/o Thatipur Shivaji Nagar,  
H. No. 1071 Morar, Gwalior.
24. Ram Charan, S/o Sri Ram Dayal,  
R/o KL 1020 Railway Colony Near Bima Hospital,  
Gwalior.
25. Harish Chand, S/o Sri KL Sharma,  
R/o 125 Bhauli Pian Mathura UP
26. Jammo Ali, S/o Sri Ali Bux,  
R/o 393/B Sultanpura, Agara Cantt
27. Udai Bhai Singh Meena, S/o RS Meena,  
R/o New Railway Colony,  
Tansen Road, Gwalior.
28. Ram Gopal, S/o Devi Ram,  
R/o Laxman Tallaiya Shinde Ki Chhaoni  
Gwalior

3.

29. Beni Singh, S/o Kalanji Ram Meena,  
R/o Ganga Niwas, New Railway Colony,  
Gwalior.

30. Shiv Nand, S/o Sri Bhudeo  
Near New Railway Colony,  
Tansen Road, Gwalior.

31. Chand Kiran Srivastava,  
S/o Sri LD Srivastava,  
R/o New Railway Colony,  
Tansen Road, Gwalior.

32. Mahesh Chandra Bhargawa, S/o Sri KN Bhargawa,  
R/o Azadnagar Morar, Gwalior.

33. Ilahi Bux, S/o Tahim Bux,  
R/o Mustafa Quarter, Railway Colony,  
Agra.

34. Prempal Singh, S/o Sri Hameer Singh,  
R/o New Janta Colony, Near Mustafa Quarter,  
Agra Cantt.

35. Subhash Chand Sharma,  
S/o Teta Ram, R/o 62/222, Heera Bhawan  
Agra Cantt.

36. Suresh Kumar Rawat, S/o Sri LL Rawat,  
R/o Village Khadera PO Ghatwar  
Distt. Lalitpur.

all applicants are working in Commercial  
section, under Divisional Rly Manager, Central  
Railway, Jhansi.

... Applicants

C/A Sri S. Agarwal

Versus

1. Union of India through the Principal Secretary/  
Chairman, Railway Board, Rail Bhawan,  
New Delhi.

....4/-

(11)

4.

2. The General Manager, Central Railway, Bombay VT.
3. The Divisional Railway Manager, Central Railway Jhansi.
4. Asstt. Personnel Officer (Mech.) Central Railway Jhansi.
5. The Divisional Rly Manager (P) Central Railway, Jhansi.

... Respondents.

C/Rs Sri P. Mathur

O R D E R

Hon'ble Mr. S. Dayal, Member-A.

This OA has been filed for setting aside order no. P-328-Surplus Loco Staff/ C & W/38 dated 30.11.2000 issued by respondent no. 3. A direction has also sought to the respondents to allow the applicants to join for absorption in TRS/TRD department of the Central Railway Jhansi in pursuance to the order dated 20.11.1992. A direction has further sought to the respondents to determine seniority of the applicants in TRS/TRD Deptt. in accordance with the rules and to give him all consequential benefits.

2. The applicants claims to have been appointed in Group 'D' post between the year 1969-98 (mentioned by learned counsel for the applicant as 1998 during arguments) and posted under Steam Loco Shed, Jhansi, Division. It is claimed that the Chairman Railway Board held meeting of General Manager on 21.6.1988 after full or partial closure of Steam Loco Shed, and it was suggested that the surplus steam staff who are not found

(12)

5.

suitable for any other post in Diesel Shed, Electric Shed and Over Head Electric may be deployed to work as Coach Attendants from any other category of Commercial Staff. The DO letter was sent by the office of Chief Commercial Superintendent, Mumbai to <sup>all</sup> Senior Divisional Commercial Officer of Central Railway. The surplus loco shed staff of Jhansi Division was screened and posted as Khalasi in Electric Loco Shed Jhansi. The applicant ~~was~~ <sup>were</sup> deployed as coach attendants and, thereafter, as announcers and inquiry clerks. Subsequently the office order was issued on 30.10.1992 for sending 20 of the applicants for absorption in TRS/TRD sections. Subsequently, another order on 20.11.1992 was issued by DRM (P) Jhansi in respect of another 14 applicants for absorption in TRS/TRD sections. The applicants approached Central Administrative Tribunal (CAT) by means of OA 1370 of 1992 between Nawal Kishor Mishra & 49 others Vs. U.O.I. & Ors challenging their transfer out side Commercial Department. The OA was decided on 1.8.1995 holding that the applicants ~~were~~ <sup>were</sup> not entitled to <sup>be absorbed</sup> ~~absorbed~~ in Commercial Section itself. The applicants then approached the Hon'ble Apex Court by means of SLP no. 11863 of 1995 between Mahesh Chandra Bhargava and others Vs. U.O.I. & Ors. The Apex court upheld the <sup>absorption</sup> ~~order~~ of the applicants in TRS/TRD deptt. and dismissed the Civil Appeal dated 01.11.2000. The respondents, however, did not permit the applicants to join TRS/TRD department. They issued letter dated 30.11.2000 directing them to join in their parent department ie, Carriage and Wagon. It is claimed that the order dated 30.11.2000 has been issued by the respondents to deprive the applicants their claim of seniority and consequential promotion in TRS/TRD department, where a large number of persons junior to the applicants

6.

have already been promoted to the higher post.

3. We have heard Sri S. Agarwal learned counsel for the applicant and Sri P. Mathur learned counsel for the respondents.

4. Learned counsel for the applicant has shown that Steam by orders dated 30.10.1992 and 20.11.1992, 31 surplus Loco Staff of Jhansi were returned back to Senior Mechanical Engineer (P) Jhansi to be absorbed in TRS/TRD department, and 18 other employees ~~were~~ <sup>were</sup> & subsequently sent for absorption to Senior Mechanical Engineer (P) Jhansi in TRS/TRD departments. Learned counsel for the applicant has also contended that order dated 1.8.1995 in OA 1317 of 1992 upheld the transfer of the applicants to TRS/TRD departments, by observing that their repatriation to their parent department has been necessitated because of the functional requirement of the parent department of the applicants. Learned counsel for the applicants has also referred to the judgment of the Apex Court in Civil Appeal no. 11864 of 1995 that the order of the Railway Administration in repatriating the applicants into their parent organisation and directing the absorption in TRS/TRD department cannot be held to be violative of any provision of the circular or any right of the applicants. The applicants have claimed seniority over their erstwhile junior in locoshed who had gone to TRS/TRD department earlier and sought protection of their seniority. The Apex Court, however, passed order that no case has been made out. Learned counsel for the applicant stated that the applicants <sup>have</sup> now been repatriated to Carriage and Wagon department & that they had never belonged to the said department. Therefore, this repatriation could not have been done. He has also mentioned that the applicants

7.

are willing to go to TRS/TRD department. It is the situation arising after the order of the Tribunal or Apex Court has been passed. He has contested the claim of the respondents made in their counter affidavit that no vacancy existed in TRS/TRD department by stating that applicants no. 15, 16, 19, 24, 25, 33 & 34 were helper Khalasis and annexure CA 2 showed that as many as 16 vacancies existed in the cadre of Helper Khalasis. As far as the cadre of Khalasis was concerned there were as many as 69 Khalasis in excess in TRS section and 48 Khalasis already in excess in TRD section. Therefore, the applicant who already stood absorbed could contribute only small part of this number. He has contended that since the applicants were directed to be absorbed by orders dated 30.10.1992 & 20.11.1992 which were upheld by the CAT and by the Apex Court, they should be first placed in TRS/TRD sections and it should be worked out on last come first go basis as to who should be retained and only then orders for sending employees, which may include applicants, if they are low down in the seniority list outside TRS/TRD should be passed.

5. Learned counsel for the respondents mentioned that the orders of the CAT and the Apex Court upheld the repatriation of the applicants to their parent organisation when they were sent to TRS/TRD sections. The applicants would still be in their parent organisation, if they are placed in Carriage and Wagon section and, therefore, the order dated 30.11.2000 need not be interfered with. He has mentioned that the applicant no. 13 had already joined Carriage & Wagon department and that three more applicants at sl no. 20, 29 and 30 had already joined Carriage and Wagon department. Therefore, it cannot be said that the applicants were not willing to go to Carriage

(15)

8.

& Wagon department. Besides on account of interim orders granted by the CAT as well as the Apex Court the applicants continued to work in Commercial Department.

6. We have considered the rival submissions made before us in the Original Application. We find that the challenge to the order of transfer of the applicants to TRS/TRD departments was contested by the respondents in the Central Administrative Tribunal as well as in the Apex Court right till 1.11.2000. We also find that 22 of the applicants absorbed in TRS section after the judgment in OA 1317 of 1992 was pronounced as evident from annexure RA-2 filed alongwith the RA by the applicants. Learned counsel for the applicant has stated that others ~~were~~ absorbed in TRD section ~~and~~ he could lay his hands on the said orders. He stated that all applicants barring applicant ~~in~~ 23 were absorbed either in TRS or TRD section.

7. Since, the applicants stood absorbed in TRS/TRD Sections, the respondents should have prepared a seniority list of the said sections giving place to the applicants in the said list after the judgment of the Apex Court was received by them and, thereafter, decide as to who should be considered surplus in TRS/TRD sections for being sent to other sections in organisation.

8. The respondents are, therefore, directed to make seniority list of Helper Khalasis and Khalasis in TRS/TRD sections and absorb those who were Helper Khalasis

*H*

.....9/-

16

9.

as they have shown that vacancy existed in the cadre of Helper Khalasi in TRS/TRD sections. Those who cannot be absorbed as Helper Khalasis shall find their places in the seniority list as per rules and only after that the persons to be sent out from TRS/TRD sections on the basis of last come first go principle should be worked out in accordance with instructions of the respondents contained in para 5 of the Master Circular dated 27.3.1991 on the subject of Surplus Staff and their redeployment. The respondents shall have three months to undertake this exercise based on these instructions shall, thereafter, assign persons to other sections like Carriage and Wagon department. The order dated 30.11.2000, which is impugned in this OA, is hereby set aside in case of all the applicants who stood absorbed in TRS/TRD sections and have not joined Carriage and Wagon Department by way of implementation of the impugned orders.

9. There shall be no order as to costs.

Patzsch  
Member AT

*Shaw*  
Member-A

/pc/