

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH BANGALORE

DATED THIS THE 12TH NOVEMBER, 1986

Present: Hon'ble Shri Ch. Ramakrishna Rao, Member (J)
Hon'ble Shri L.H.A. Regom, Member (A)(R)

APPLICATION NO. 143/86(T)

Sri P. Solemn, Ticket No. 2360,
Major, Progressman, Foudery,
S.C., Railway Workshop, Hubli.

Applicant

(Shri R.U Goulay, Advocate)
Vs.

1. Railway Board, by its Secretary,
Railway Bhavan, New Delhi.
2. Deputy Chief Mechanical Engineer,
S.C. Railway Workshop, Hubli.
3. Sri. Md. Inrahim, Major,
Senior Clerk, S.C. Railway,
Workshop, Hubli.
4. G.K. Kulkarni, Senior Clerk,
S. C. Railway Workshop, Hubli,
5. C.N. Joshi, Senior Clerk,
S.C. Railway Workshop, Hubli.
6. Padmappa, Major, Senior Clerk,
S.C. Railway Workshop, Hubli,
7. S.M. Hiremath, Major, Senior
Clerk, S.C. Railway Workshop
Hubli.
8. S.G. Patil, Senior Clerk,
S.C. Railway Workshop, Hubli.
9. V.B. Sabale, Major, Senior Clerk,
S.C. Railway Workshop, Hubli.
10. The Chief Personnel Officer,
South Central Railways,
Rail Nilayam, SECUNDARABAD,
Andhra Pradesh.

Respondents

(Shri Sreerangaiah, Advocate)

The application has come up for hearing before
this Tribunal to-day, Member (AM) made the following:

O R D E R

This is a writ petition filed in the High Court of Judicature, Karnataka, under Article 226 of the Constitution of India, which has been transferred to this Bench under Section 19 of the Administrative Tribunals Act, 1985 and renumbered as an Application. The prayer of the applicant inter alia is to declare the impugned order dt. 24/25.5.1977 (Exhibit E) issued by the Second respondent, holding in abeyance his promotion to HSK-I (Riv BMP) in the boiler shop, as also the order dt. 29.9.1977 (Exhibit L) issued by the same respondent posting him as Progressman in the foundry shop in the Progress Wing of the Production Control Organisation (PCO) as illegal and void.

2. The facts of the case are briefly as follows:

The applicant was appointed as a Khalasi in the South Central Railway Workshop (Workshop, for short) at Hubli on 4.9.1952 in the Wagon Shop. The Workshop has separate shops (or shop floors) for various trades such as Millwright, Machine, Boiler, Wagon, Carriage Building, Smithy, Paint, Trimming etc. and is under the overall administrative control of the Deputy Chief Mechanical Engineer, which post is now upgraded and designated as Additional Chief Mechanical Engineer, who is the second respondent in this case.

3. In order to help coordinate efficiently various aspects such as, planning, inspection and progress, the Workshop has an organisation known as the Production Control Organisation (PCO) with three distinct wings for each of these aspects. The posts in these wings are filled in, by inviting volunteers from the shop floor of the respective trades and subjecting them to the required tests to assess their suitability for selection.

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4. The applicant first entered the PCO in 1954 in the Progress Wing as a Store Issuer I, in the pay scale of Rs.40-60 revised to Rs.80-110. The venue of promotion then available to them in the Progress Wing was as follows:

S.No.	Post	Pay scale (unrevised)
(1)	(2)	(3)
		Rs
(i)	Storeman Store Issuer II	105-135
(ii)	Caretaker Store and Tool Keeper Progressman Grade I	110-180
(iii)	Progress Chaser Progressman Grade II	130-300
(iv)	Mistry	150-240

5. On 1.8.1976 however, this channel of promotion came to be revised as follows. There was a bifurcation in the above channel, from the posts of Caretaker and Store and Tool Keeper, into the ministerial cadre, with the promotional channels as under, in that cadre.

S.No.	Post	Pay scale (unrevised)
(1)	(2)	(3)
		Rs.
(i)	Senior Clerk	130-300
(ii)	Head Clerk	210-380
(iii)	Chief Clerk	350-475

6. Consequent to this change in the channel (bifurcation) of promotion (i) the post of Store and Tool Keeper was redesignated as Material Clerk in the pay scale of Rs.110-180 (unrevised) and the seniority of the incumbents in this post, was integrated with those in the ministerial cadre to help regulate their promotion in that cadre; and (ii) the Progressman Grade I (pay scale Rs.110-180 - unrevised) and Progressman, Grade II (pay scale Rs.130-300 - unrevised) were allotted trades and shops in the PCO and the shop floor and allowed to advance in their career,

in the category of artisans. In the normal course, the applicant would have advanced in his career not in the ministerial cadre, according to the chart indicated in Exhibit A, but only in the Progress Wing of the PCO.

7. In the Progress Wing, volunteers were invited from the shop floor, only in the lower grade of Store Issuer I in the pay scale of Rs.80-110 (unrevised) and they could advance in their career, only within the Progress Wing. Artisan staff in the pay scale higher than Rs.105-135 (unrevised), was not allowed to enter the Progress Wing.

8. In their letter dated 22.4.1983 (Exhibit B) the Railway Board laid down the procedure and principles (Guidelines for short) to be followed by all Railways in respect of the workshop staff employed in the PCO. These Guidelines are reproduced below in toto, as they have a crucial bearing in this case:

"Re: Seniority of workshop staff employed in Production Organisation.

Reference correspondence resting with your replies to Board's letter of even No. dated 22.2.1961. The Board have considered the matter at great length and decided that here in after, the under mentioned procedure and principles should be followed on all Railways, in respect of workshop staff employed in production organisation.

1. All posts in the Production Control Organisation viz. Planning, Progress and Inspection including these already created should be treated as ex-cadre posts.
2. The trade or trades from which the staff will be drawn to fill the posts in the Production Control Organisation should be specifically indicated.
3. Where more than one trade is indicated against a particular ex-cadre post in the Production Control Organisation only these staff on the shop floor belonging to the trade from which the post is required to be filled at the time will be considered eligible for the ex-cadre post.
4. Every workshop employee will be borne on the seniority list of the particular category on the shop floor and will have a lien against a post in the shop floor.

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1. Staff deputed to Production Control Organisation will be retained in that organisation for 3 to 5 depending upon the exigencies of service. They will be allowed to return to the parent shop cadre earlier than 3 years only on promotion.

2. Some of the Railway administrations have appressed difficulties transferring the staff from the shop floor to the production Control Organisation. The board desire that transfers may be made only as and when opportunities arise for promotion.

3. The board have considered the points raised by the G.M.C.L.M. but desire that the above principles and procedure should be followed."

9. The following are some of the important features of these Guidelines, in so far as they are relevant to this case:

- (i) All posts in the three Wings of the PCO inclusive of those already created, are to be treated as ex-cadre posts.
- (ii) Every Workshop employee will be borne on the shop floor and he will maintain his lien against a post in the shop floor.
- (iii) The selection to posts in the higher grades in the PCO, would not in itself entitle an employee for consideration for the higher grade posts on the workshop floor, unless he is regularly selected for that grade on the shop floor. As and when an employee reverts to the shop floor, he will revert to his due position in the cadre of the shop floor.

10. The staff working against the posts in the PCO prior to the decision to treat them as ex-cadre posts, was ^{categorised as} below:

- (i) Those transferred from the shop floor to the PCO, with their lien retained on the shop floor.
- (ii) Those transferred from the shop floor and absorbed permanently in the PCO and
- (iii) Those recruited directly to the PCO, either from the open market or by transfer from other Railways or otherwise who have not been allotted a trade earlier.

11. In the case of the staff working in the Planning and Inspection Wings, implementation of these Guidelines was easier than in the case of the Progress Wing, as they already held trades and their seniority was maintained in the respective shop floors. In the case of the Progress Wing, however, in contrast, there was neither trade nor shop floor position. While these Guidelines appear to have been implemented with fair expedition in the case of the Planning and Inspection Wings, a fairly long time is seen to have elapsed in giving effect to them in regard to the Progress Wing. The principles and procedure outlined in the Guidelines are seen to have been extended to the Progress Wing, as late as on 21.7.1986 (Exhibit C) in accordance with the directives of Southern Central Railway Headquarters, through their letter dated 23.10.1975. The modalities were spelt out in the form of a Circular issued on 21.7.1986 (Exhibit C), issued by the second respondent (referred to as Circular I, for short) which was to take effect from 1.8.1976. The relevant portion of this Circular I is extracted below, to facilitate reference:

"Subject: Filling up of posts in PCO (Production Control Organisation) Progress Wing.

Board vide their letter No.ENG 59 SR 6-22 dated 22.4.63 enumerated the procedure and principles that are to be followed in respect of planning progress and Inspection wings of the Production Control Organisation on Workshops. The Planning and Inspection wings were covered by these instructions. The extension of this to Progress wing has been in correspondence for quite some time. Vide their letter No.P.608/Mech Workshops (PCO) dated 23.10.75, S.C. Railway Headquarters gave directive that the Board's instructions should be got implemented without any further delay.

Accordingly the following further course of action is decided for the Progress Organisation wing of Hubli shops for implementation from 1st August 1975.

1(a) Material Checkers, Fuel Keepers, Care Takers, Material Clerks and Adrema Operators:

These posts along with the present incumbents will be transferred from Progress Wing to Non-Personnel Branch. These staff will seek their

further promotion in Non-personnel branch only. The inter-se seniority of the staff wing to non-personnel branch will be based on their date of entry into their respective corresponding grades, for the position as obtaining as on 1.8.76. With the implementation of the above modified avenue charts for Non-Personnel branch shall be as shown in Annexure-1.

1 (b) With the above transfer of posts and incumbents from progress wing to Non-personnel branch, the instructions of the headquarters office vide their letter No.P.135/GAR/Clerks of 9.1.1975 regarding upgradation of 22 posts of non-Personnel branch will be given effect to. (This benefit being available to the existing staff on the non-Personnel branch side as well as to those being transferred from Progress wing to non-Personnel branch, depending upon the inter-se seniority enumerated in para 1(a) above.

ii (a) - Progressman, Progressmen⁺LR, Chargeman A/Chargeman B.

The posts of all Progressmen including Leave Reserve Progressmen, Chargemen 'A' and 'B' in the Progress wing will be allotted separate trades (shops) as was done in respect of planning and Inspection wings. The present incumbents of these posts will be treated as coming under Item-7 (c) of Board's instructions dated 22.4.1963 referred to above. These incumbents will be asked to give their choice - one or more for allotment of trades (shops); the choice of the incumbents for particular trades (shops) will be matched with the tradewise (shopwise) distribution of the above posts. For this purpose the seniority of the staff in respective grades and the order of priority of their choice will form the basis. Though every effort will be made to allot trades (shops) as asked for by the incumbents in their choice, it may become necessary for Dy. CME/UBL to allot trades (shops) other than what is asked for, to individual employee concerned.

ii(b) Employees already empanelled purely for progress wing prior to 1.8.1976 and not promoted shall be given preference for filling up of future vacancies in the higher grades of Progress wing subject to the condition that the trades (shops) now being allotted to the employee already empanelled matches with the trade (shops) of the vacancy occurring in the higher grade, and such vacancies occurred during the currency of the panels; otherwise the unoperated portion of the panels shall be deemed to lapse on the date of expiry of the panel.

ii(c) Once the trade shop is allotted, the inter-se seniority of the present incumbents of the Progress wing in these posts vis-a-vis the staff on shop floor in the shop concerned will also be fixed taking the date of entry in the corresponding grades for the position as obtaining on 1.8.1976 as the basis.

ii(d). The present incumbents in these posts in the progress wing will also be given the option either to seek further promotion in progress wing only or on the shop floor-cum-progress wing. The inter-se seniority mentioned in para-ii(c) above will be the basis on which promotion are made in the progress wing in the future.

ii(e) Staff who opt to seek further promotion on shop floor-cum-progress wing will be given training for a period of 3 months on the shop floor and will be suitably trade tested wherever necessary if necessary extended training will be given at the discretion of DY.CME/UBL.

ii(f) Such of the Progressmen, Chargeman 'A' and Chargemen 'B' who are already serving in the Progress wing as on 1.8.1976 and who are transferred in the same grade to shop floor based on their option shall continue to enjoy the same rate of pay as they are drawing in the progress wing at the time of their transfer. Their further promotions will, however, depend upon their position in combined seniority in the shop floor and will be governed by normal conditions such as selection, passing trade test etc.

ii(g) The present incumbents of Material Clerks, etc/LR Progressmen shall be given the option either to remain in their respective present posts or ask for change to the other category viz. LR Progressman/ Material Clerks etc. Such option shall be entertained and accommodated to the extent possible.

ii(h) All options once exercised shall be final.

iv In future, staff from shop floor cadre will be eligible to be transferred to the progress wing on the basis of Selection/Seniority-cum-suitability either in their own grades or in the higher grades in accordance with the normal rules as are being observed in respect of Planning and Inspection Wings."

12. The employees who opted for the Shop Floor-cum-Progress Wing, were to undergo training for a period of 3 months, on the shop floor and then trade-tested, to assess their suitability for the new trade opted by them.

13. According to Circular I, the applicant came to be promoted as HSK-I in the Boiler Shop, for which he had opted and his pay was fixed with reference to his position in the shop floor and not to the pay he drew as Progressman in the PCO.

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14. Under his Circular dated 2.9.1977 (Exhibit H) (Circular II, for short) the second respondent, after review, sought to correct with reference to his Circular I, the error in the principle, in regard to fixation of seniority and pay, in respect of the category of Progressmen, who had opted to go to the shop floor from the Progress Wing. The principle so corrected in Circular II, was as follows:-

"Staff who have given their option to go back to the shop floor, will have to accept the position on shop floor which they would have come to occupy but for their transfer to the PCO."

15. It was further clarified in Circular II, that the Progressmen on going back to the shop floor, would draw pay at the rate which they would have drawn but for their transfer to the Progress Wing of the PCO. In the light of this clarification, a fresh option was called from all concerned by 17.9.1977, making it clear that if no option was exercised by that date, they would be deemed to have opted to continue as Progressmen in the Progress Wing of the PCO. The applicant however failed to exercise his option anew and consequently he was deemed to have opted to continue in the Progress Wing of the PCO.

16. We have examined carefully the rival contentions as also the material placed before us by either side. The learned counsel for the applicant contends, that the applicant was confirmed with effect from 1.3.1972 as Progressman in an ex-cadre post in the Progress Wing of the PCO and therefore he is entitled in law to be considered for promotion on this basis. According to him, it is illegal and unjust, that the applicant should be required to retrace his promotion de novo in the shop floor (for which he had opted) from the lowest post of Khalasi, which would result in stagnation in his career. He submits that the lien of his applicant continued in the workshop and his seniority in the shop was to be protected, after he volunteered to go to the Progress Wing of the PCO. He further pleads, that at the time of issue of the Guidelines the applicant was already working

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in the Progress Wing of the PCO and he was given the option to go back to the workshop, in the same position which he had occupied in the PCO, in the same manner, as the persons in the workshop go to the PCO in the position corresponding to that held by them in the workshop. He therefore submits that the applicant having been promoted as HSK-I, is entitled to hold this post in the workshop.

16. The counsel for the applicant submits, that the option given by the applicant in accordance with Exhibit C was final and while exercising this option it was clearly guaranteed to him, that the position held by the applicant in the PCO ~~was~~ should be protected. According to him, this option once exercised, had become final in law and could not be cancelled. The counsel alleges, that the Guidelines were implemented far too belatedly—namely, after 13 years—in the case of the Progress Wing of the PCO and as a result, the applicant had to stagnate in the PCO, whereas the employees in the workshop marched ahead. He points out that the plight of the applicant was aggravated, by giving him only notional promotion in the ministerial cadre from 1963 to 1967, as he was treated as Progressman, while respondents 3 to 9, who were junior to him and were his colleagues in the post of Store Issuer in the same stream, progressed in the ministerial cadre.

17. The learned counsel for the respondents in refuting the above contentions, states that initially the applicant was given seniority in the shop floor (for which he had opted) erroneously, with reference to Exhibit C, with reference to his seniority as Progressman in the Progress Wing of the PCO. This error was later rectified by Circular II on 2.9.1977, the gist of which has been given earlier, and fresh options were invited from the concerned employees. The applicant, however, did not exercise his option according to Circular II, on account of which he was deemed to have opted to continue in the Progress Wing of the PCO.

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18. The Guidelines issued by the Railway Board applied to all Railways and were the basis on which the second respondent had to issue instructions in respect of the staff under his administrative control. It is apparent that the instructions issued by him in his Circular I in this regard, were at variance with these Guidelines, wherein it was clearly stated that selection to posts in the higher grades in the PCO, would not in itself, confer on an employee, any right for consideration for the higher grade posts on the workshop, unless he was regularly selected for that grade on the shop floor. It was also explicitly stated in the Guidelines, that as and when an employee reverts to the shop floor, he would revert to his due position in the cadre of the shop floor. The second respondent had patently erred in Circular I, by deviating from the Guidelines issued by the Railway Board for all Railways, in respect of fixation of seniority and pay of the employee, on his return to the shop floor from the PCO. This error was, however, later corrected by him in Circular II.

19. The following points are material for deciding the case of the applicant. The Railway Board had in their Guidelines dated 22.4.1963, declared the posts in all the three Wings of the PCO as ex-cadre posts. All these posts were allotted trades and were to be filled in, by inviting volunteers from the shop floor from the respective trades. The lien of the employees selected and posted against these posts was retained in their respective parent shops as admitted by the counsel for the applicant. The applicant came within the purview of the category specified in para 7(a) of the Guidelines, in respect of the staff already working against posts in the PCO, prior to the decision taken to treat the posts in the PCO as ex-cadre posts. This category related to staff transferred from the shop floor to the PCO who had their lien retained in their parent shop floor. The applicant is seen to have willingly opted for the shop floor position when

option was called for under Circular I. According to the Guidelines, the applicant was to be restored to his position in the shop floor which he would have occupied but for his transfer to the PCO. To begin with, the applicant^{was} erroneously assigned seniority according to Circular I, in the shop floor as HSK-II Progressman in the PCO, but this error was later rectified by the second respondent in accordance with Circular II issued by him.

20. The seemingly pathetic picture depicted by the counsel for the applicant that on going back to the shop floor, his client was assigned the position as a Khalasi, in the lowermost rung of the ladder in 1976, from which he had entered the PCO as long back as in 1952 and that he was required to retrace his career step by step, all over again, is clearly make-believe, as in actuality, the applicant was assigned a position in the shop floor, which he would have attained but for his transfer to the PCO and his pay was fixed accordingly. Thereby, the applicant neither suffered pecuniary loss nor even loss of status. If at all, the applicant did not have career satisfaction in the PCO in which he had volunteered to serve, nothing prevented him to represent promptly to the concerned authority, for his repatriation to his parent shop floor on which he had maintained his lien. The counsel for the applicant has not, brought to our notice that the applicant bestirred himself in this regard but on the contrary we see that the applicant continued in the PCO for long, without demur.

21. In view of this position, the applicant on return to his parent shop floor on exercise of his option, where he had maintained his lien, cannot have a legitimate claim for protection of his seniority and pay, with reference to the ex-cadre post held by him in the Progress Wing of the PCO, without having

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severed his lien on his parent shop. Since he had not severed his lien on his parent shop, he was well aware that sooner or later, he would have to return to his parent shop from the Progress Wing in the PCO. This being the case, whatever benefit was secured by the applicant in the meanwhile, during his tenure in the PCO by way of career advancement with corresponding emoluments, could only be regarded as of a fortuitous nature, on which the applicant cannot legitimately capitalise, for protection of his seniority and pay on return to his present shop, where he held his lien. Besides, this would be invidious to other employees in the shop floor and cause them grave injustice in their career for no fault of theirs.

22. The counsel for the applicant reiterated before us that the applicant was confirmed with effect from 1.3.1972 as Progressman in an ex-cadre post in the Progress Wing of the PCO and therefore he is entitled in law, for protection of his seniority and pay, on his going back to his parent shop according to his option. According to Fundamental Rule 12(b), a Government servant cannot be appointed substantively to two or more permanent posts at the same time. We are not clear as to how and for what purpose, the applicant could have been confirmed in an ex-cadre post (which presumably was not permanent) in the Progress Wing of the PCO and that too, when he had not severed his lien in his parent shop. This violates the above Fundamental Rule and therefore cannot confer any benefit on the applicant as pleaded by his counsel.

23. The second respondent, as explained earlier, corrected the error in Circular I, by issuing Circular II wherein he had invited fresh option from the employees concerned by 17.9.1977, among whom was the applicant. The applicant however failed to exercise this revised option and therefore in terms of Circular II was deemed to have opted to continue in the PCO. The second

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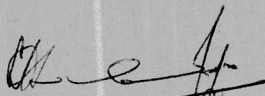
respondent was well within his rights to rectify the error in his Circular I, as one wrong did not justify another-injuria non excusat injuriam. In the above circumstances, the applicant was therefore rightly deemed by him to have opted to continue in the PCO.

24. The grievance of the applicant that he was denied the avenue of promotion in the ministerial cadre in the NPB, while his juniors were allowed, is prima facie not tenable, as having been promoted to the grade of Progressman on the crucial date namely 1.8.1976, when the channels of promotion came to be revised (bifurcated) as explained earlier, the applicant was not eligible under the scheme to opt for NPB.

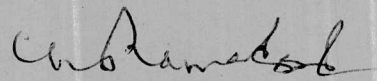
25. We are told by the counsel for the respondents that on review, a fresh option was given to the staff of PCO, inclusive of the Progress Wing in accordance with the revised directions dated 13.9.1984 of the Railway Board, keeping in view the incentive element of special pay of Rs.150/- per mensem. We are also told, that the applicant was given the benefit of this option, which of his own volition he exercised, to better his career prospects in Boiler Trade as Rivetter BMP. As he was already promoted as Progressman Grade I, in the pay scale of Rs.380-560 on 22.2.1982, in the PCO, he was transferred on 1.11.1985 to the Boiler Shop as HSK-I Riv. BMP, in the pay scale of Rs.380-560 (revised) for which, he had already been trade-tested and declared suitable. The counsel for the respondents further submits, that the applicant is since transferred as Inspector Gr.I PCO/UBL with effect from 6.8.1986 in the pay scale of Rs.380-560 (revised), in which post he is now serving on a monthly salary of Rs.515/-.

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26. In the light of the above facts and circumstances, we find that no injustice has been caused to the applicant as alleged and that the action taken by the respondents in this case, is in accordance with law and the Guidelines. The application therefore fails and we dismiss the same. No order as to costs.



(L.H.A. Rego)
Member (AM)(R)
12.11.1986



(Ch. Ramakrishna Rao)
Member (JM)
12.11.1986

5. Suitable staff from shop floor cadres will be eligible to be transferred to the Production Control Organisation on the basis of a selection/seniority-cum-suitability either in their own grades or in higher grades in accordance with the normal rules governing the promotion of non-gazetted staff.

6. The selection to posts in the higher grades in Production Control Organisation would not in itself give to an employee any right for consideration for the higher grades posts on workshop floor, unless he is regularly selected for that grade on the shop floor. As and when an employee reverts to the shop floor he will revert to his due position in the cadre of the shop floor.

7. Staff already working against posts in the Production Control Organisation prior to the decision to treat the posts in this organisation as ex-cadre 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 directly 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.
- 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 cards 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 offer of the Mechanical Depot not lower than of Administrative rank. Such staff will also be given an option for being absorbed in the shop cadre and will be treated in the same manner as staff falling under category (b).

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