IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 19th day of May, 2008

REVIEW APPLICATION No.8/2008
(OA No.274/06)

Umesh Mishra
s/o Shri Ram Narain Mishra,
at present working on the post of
Shunter (Loco Pilot)O/o Loco Foreman,
Railway Loco Running Shade, Ajmer
r/o House No. 1146/30, Madhav Kunj,
Nagra, Ajmer.

.. Applicant

Versus

1. Union of India
through General Manager,
North Western Railway,
Opposite Railway Hospital,
Jaipur.

2. The Divisional Railway Manager,
Ajmer Division,
Ajmer

3. Shri Bharat Lal Meena
s/o Shri Ram Meena,
Shunter (Loco Pilot),
Loco Shade, Abu Road.

.. Respondents

REVIEW APPLICATION No.9/2008
(OA No.273/06)

Bhanwar Singh Rawat
s/o Shri G.S.Rawat,
at present working on the post of
Shunter (Loco Pilot),
Office of Loco Foreman,
Railway Loco Running Shade, Ajmer
r/o 164/38, Parbatpura, Ajmer.

.. Applicant

Versus

1. Union of India
through General Manager,
North Western Railway,
Opposite Railway Hospital,
Jaipur.

2. The Divisional Railway Manager,
Ajmer Division,
Ajmer

3. Shri Brij Mohan
s/o Shri Muralidhar,
Shunter (Loco Pilot),
Loco Shade,
Abu Road.

.. Respondents

REVIEW APPLICATION No.10/2008
(OA No.267/06)

Deepak R.Bhatnagar
s/o Shri Ramswaroop Bhatnagar,
at present working on the post of
Sunter (Loco Pilot),
Office of Loco Foreman,
Railway Loco Running Shade,
Ajmer
r/o 1/25/52, Kotra, Pushkar Road,
Ajmer.

.. Applicant

Versus

1. Union of India
through General Manager,
North Western Railway,
Opposite Railway Hospital,
Jaipur.

2. The Divisional Railway Manager,
Ajmer Division,
Ajmer

3. Shri Ram Singh Yadav
s/o Shri Gulab Singh Yadav,
Shunter (Loco Pilot),
Loco Shade,
Abu Road.

.. Respondents

ORDER (By Circulation)

We propose to dispose of these Review Applications by this common order as the OAs by which these Review Applications arise were decided by a common order dated 26.2.2008.

2. Briefly stated facts of the case are that the review applicants have filed OAs before this Tribunal thereby challenging the impugned order dated 18.7.20006 whereby they were reverted from the post of Loco Pilot (Shunting) to the post of Senior Loco Pilot (Assistant Driver). The impugned order was challenged on the ground that before passing the reversion order, no opportunity of hearing was given to the applicants. This Tribunal vide judgment dated 26.2.2008 after hearing the parties and taking into consideration the reply filed by the official respondents held that cadre strength of Loco Pilot (Shunting) was 56 whereas 77 Loco Pilot (Shunting) were working. Thus, 21 employees including the applicants were declared surplus and rightly reverted back to the Senior Loco Pilot (Assistant Driver) in the same pay scale. It was

further noticed that vacancies have now become available, as such, the applicants have been promoted vide order dated 14.11.2006 but the order could not be given effect to because of order of status-quo granted by this tribunal. Thus, the respondents were directed to promote the applicants against the available vacancies of Loco Pilot w.e.f. 14.11.2006.

3. The applicants have filed the present Review Applications on the ground that admittedly, the cadre strength of Loco Pilot (Shunting) has been increased from 56 to 63. Thus, 7 posts were increased and at the time of passing of the impugned reversion order dated 18.7.2006, 7 posts were available, as such, the applicants could not have been reverted treating the cadre strength of 56 posts. It is further averred that as per reservation policy out of 63 posts there cannot be more than 10 SC category and 5 ST category candidates in the cadre. Admittedly, more than 10 candidates belonging to SC category and more than 5 ST candidates were working including the junior SC/ST category candidates. The applicants have also placed letter dated 11.9.2006 (Ann.RA/1) on record which shows that cadre strength of Loco Pilot (Shunting) has been increased from 56 to 63 posts.

4. We have given due considerations to the submissions made by the review applicants in the Review Applications and we are of the firm view that the present Review Applications are wholly misconceived. The review applicants have proceeded on wrong premise that when the reversion order was passed, the cadre strength of Loco Pilot (Shunting) was increased from 56 to 63 posts whereas such averments made by the review applicants is factually incorrect. Admittedly, when the reversion order was passed on 18.7.2006 the cadre strength of Loco Pilot (Shunting) was 56 posts, as can be seen from order dated 11.9.2006 (Ann.RA/1), which has been placed on record for the first time by the review applicants in these pleadings, it is evident that the cadre strength was increased from 56 to 63 posts vide order dated 11.9.2006 with the approval of the competent authority. This order is prospective in nature. Thus, it cannot be said that 7 additional posts were available as on 18.7.2006 when the order of reversion was passed in the case of the applicants. It is no doubt true that for the purpose of increasing the aforesaid cadre strength, the respondents have conducted review of the cadre for the period between 1.7.2005 to 30.6.2006 but the fact remains that the decision to create the posts on the basis of the review conducted for the aforesaid period was taken only on 11.9.2006 when the posts were created. As

such, as on 18.7.2006 the cadre strength of Loco Pilot (Shunting) was 56 which was increased to 63 only as on 11.9.2006 after reversion of the review applicants. This Tribunal has also taken note of the fact that subsequently 7 vacancies became available against which promotion order of some of persons who were reverted vide order dated 18.7.2006 was issued on 14.11.2006 whereas in the case of the applicants the same could not be issued because of interim order of status quo granted by this Tribunal. As such, this Tribunal directed the respondents to promote the applicants against the available vacancies of Loco Pilot (Shunting) w.e.f. 14.11.2006.

5. Thus according to us, the review applicants have not made out a case for reviewing the order dated 26.2.2008. The new ground taken by the applicants in the Review Applications that against 63 posts there cannot be more than 10 SC category candidates and 5 ST categories candidates cannot be entertained as this was not the case set up by the applicants in the OAs. As already stated above, the case of the applicants was confined only to reversion of the applicants vide impugned order dated 18.7.2006 being in excess of the cadre strength. Further, the other ground taken by the applicants that the respondents have failed to produce the record showing the exact date from which posts were increased, is also wholly misconceived. It is for

the applicants to prove their case and the burden cannot be placed on the respondents to establish a case for the applicants. For the sake of repetition, it is stated that the letter dated 11.9.2006 (Ann.RA/1) whereby posts were created w.e.f. 11.9.2006 on the basis of the cadre review conducted for the period between 1.7.2005 to 30.6.2006 was not part of the pleadings before this Tribunal in the aforesaid OAs. As such, we are of the view that it is not a case where there is an error apparent on the face of the record. Accordingly, the applicants have not made out a case for reviewing the judgment.

6. The law on the scope of review is well established. The Apex Court has repeatedly held that review application cannot be entertained merely for the purpose of re-hearing the case and scope of review has to be considered in the light of the provisions contained in Section 114 read with Order 47 of Code of Civil Procedure.

7. For the foregoing reasons, the Review Applications are bereft of merit, which are accordingly dismissed by circulation.

(J.P.SHUKLA)
Admv. Member

(M.L.CHAUHAN)
Judl.Member

R/