

OA No. 463/2012, OA No. 482/2012, OA No. 488/2012,
 OA No. 493/2012, OA No. 04/2013, OA No. 09/2013,
 OA No. 10/2013, OA No. 11/2013 & OA No. 12/2013

CENTRAL ADMINISTRATIVE TRIBUNAL,
 JAIPUR BENCH, JAIPUR

OA No. 463/2012, OA No. 482/2012, OA No. 488/2012,
 OA No. 493/2012, OA No. 04/2013, OA No. 09/2013,
 OA No. 10/2013, OA No. 11/2013 & OA No. 12/2013

ORDER RESERVED ON: 13.02.2015

DATE OF ORDER: 17.3.2015

CORAM

**HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER
 HON'BLE MRS. CHAMELI MAJUMDAR, JUDICIAL MEMBER**

OA No. 463/2012

Hari Kesh Meena S/o Shri Vijay Ram Meena, aged about 34 years, R/o Quarter No. 1002-A, New Railway Colony, Kota Junction, Kota and presently working as Assistant Loco Pilot, under Senior Section Engineer (TRO) / CT CC, West Central Railway, Kota Division, Kota.

...Applicant

Mr. C.B. Sharma, counsel for applicant.

VERSUS

1. Union of India through General Manager, West Central Zone, West Central Railway, Jabalpur.
2. Divisional Railway Manager (Estt.), West Central Railway, Kota Division, Kota.
3. Shri Rajesh Kumar Meena, Assistant Loco Pilot, C/o CT CC, West Central Railway, Kota Division, Kota.
4. Shri Lalit Kumar Meena, Assistant Loco Pilot, C/o CT CC, West Central Railway, Kota Division, Kota.
5. Shri Rajendra Kumar, Assistant Loco Pilot, C/o CT CC, West Central Railway, Kota Division, Kota.

...Respondents

Mr. M.K. Meena, counsel for respondent nos. 1 & 2

OA No. 482/2012

Hemant Kumar Meena S/o Shri Suraj Mal Meena, aged about 30 years, R/o Near Dharmendra Kirana Store, Jago Ka Mohalla, Prem Nagar-II, Kota and presently working as

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Assistant Loco Pilot, under Senior Section Engineer (TRO) /
 CT CC, West Central Railway, Kota Division, Kota.

...Applicant

Mr. C.B. Sharma, counsel for applicant.

VERSUS

1. Union of India through General Manager, West Central Zone, West Central Railway, Jabalpur.
2. Divisional Railway Manager (Estt.), West Central Railway, Kota Division, Kota.
3. Shri Mahaveer Meena, Assistant Loco Pilot, C/o CT CC, Gangapur City, West Central Railway, Kota Division.
4. Shri Hem Raj Meena, Assistant Loco Pilot, C/o CT CC, Gangapur City, West Central Railway, Kota Division.
5. Shri Lakhan Singh, Assistant Loco Pilot, C/o CT CC, Gangapur City, West Central Railway, Kota Division.

...Respondents

Mr. M.K. Meena, counsel for respondent nos. 1 & 2

OA No. 488/2012

Kishan Gopal Meena S/o Shri Ram Deo Meena, aged about 34 years, R/o House No. 2/266, Swamy Vivekanand Nagar, Kota and presently working as Assistant Loco Pilot, under Senior Section Engineer (TRO) / CT CC, West Central Railway, Kota Division, Kota.

...Applicant

Mr. C.B. Sharma, counsel for applicant.

VERSUS

1. Union of India through General Manager, West Central Zone, West Central Railway, Jabalpur.
2. Divisional Railway Manager (Estt.), West Central Railway, Kota Division, Kota.
3. Shri Mahaveer Meena, Assistant Loco Pilot, C/o CT CC, Gangapur City, West Central Railway, Kota Division.
4. Shri Hem Raj Meena, Assistant Loco Pilot, C/o CT CC, Gangapur City, West Central Railway, Kota Division.
5. Shri Lakhan Singh, Assistant Loco Pilot, C/o CT CC, Gangapur City, West Central Railway, Kota Division, Kota.

...Respondents

Mr. M.K. Meena, counsel for respondent nos. 1 & 2

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OA No. 493/2012

Vijendra Pratap Meena S/o Shri Nand Kishor Meena, aged about 32 years, R/o House No. 875, Sector-7, Keshavpura, Kota and presently working as Assistant Loco Pilot, under Senior Section Engineer (TRO) / CT CC, West Central Railway, Kota Division, Kota.

...Applicant

Mr. C.B. Sharma, counsel for applicant.

VERSUS

1. Union of India through General Manager, West Central Zone, West Central Railway, Jabalpur.
2. Divisional Railway Manager (Estt.), West Central Railway, Kota Division, Kota.
3. Shri Mahaveer Meena, Assistant Loco Pilot, C/o CT CC, Gangapur City, West Central Railway, Kota Division.
4. Shri Hem Raj Meena, Assistant Loco Pilot, C/o CT CC, Gangapur City, West Central Railway, Kota Division.
5. Shri Lakhan Singh, Assistant Loco Pilot, C/o CT CC, Gangapur City, West Central Railway, Kota Division, Kota.

...Respondents

Mr. M.K. Meena, counsel for respondent nos. 1 & 2

OA No. 04/2013

Ajay Kumar Meena S/o Shri Shankar Lal Meena, aged about 30 years, R/o Jawahar Colony, Mahukalan, Gangapur City and presently working as Assistant Loco Pilot, (Ticket No. 3102/2009) under CTCC, West Central Railway, Gangapur City, Kota Division.

...Applicant

Mr. C.B. Sharma, counsel for applicant.

VERSUS

1. Union of India through General Manager, West Central Zone, West Central Railway, Jabalpur.
2. Divisional Railway Manager (Establishment), West Central Railway, Kota Division, Kota.
3. Shri Vinod Kumar Meena, Assistant Loco Pilot, C/o CTCC, Kota, West Central Railway, Kota Division.
4. Shri Sahaj Ram Meena, Assistant Loco Pilot, C/o CTCC, Kota, West Central Railway, Kota Division.

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5. Shri Sugan Singh Meena, Assistant Loco Pilot, C/o CTCC, Gangapur City, West Central Railway, Kota Division.

...Respondents

Mr. M.K. Meena, counsel for respondent nos. 1 & 2

OA No. 09/2013

Vijay Singh Meena S/o Shri Madan Lal Meena, aged about 34 years, R/o C/o Govind Prasad, Sindhi Colony, Gangapur City and presently working as Assistant Loco Pilot, under CTCC, West Central Railway, Gangapur City, Kota Division.

...Applicant

Mr. C.B. Sharma, counsel for applicant.

VERSUS

1. Union of India through General Manager, West Central Zone, West Central Railway, Jabalpur.
2. Divisional Railway Manager (Establishment), West Central Railway, Kota Division, Kota.
3. Shri Vinod Kumar Meena, Assistant Loco Pilot, C/o CTCC, Kota, West Central Railway, Kota Division.
4. Shri Sahaj Ram Meena, Assistant Loco Pilot, C/o CTCC, Kota, West Central Railway, Kota Division.
5. Shri Sugan Singh Meena, Assistant Loco Pilot, C/o CTCC, Gangapur City, West Central Railway, Kota Division.

...Respondents

Mr. M.K. Meena, counsel for respondent nos. 1 & 2

OA No. 10/2013

Ram Hari Meena S/o Shri Khem Chand Meena, aged about 29 years, R/o C/o Pyare Lal Verma, Jawahar Colony, Mahukalan, Gangapur City and presently working as Assistant Loco Pilot, under CTCC, West Central Railway, Gangapur City, Kota Division.

...Applicant

Mr. C.B. Sharma, counsel for applicant:

VERSUS

1. Union of India through General Manager, West Central Zone, West Central Railway, Jabalpur.
2. Divisional Railway Manager (Establishment), West Central Railway, Kota Division, Kota.
3. Shri Vinod Kumar Meena, Assistant Loco Pilot, C/o CTCC, Kota, West Central Railway, Kota Division.
4. Shri Sahaj Ram Meena, Assistant Loco Pilot, C/o CTCC, Kota, West Central Railway, Kota Division.
5. Shri Sugan Singh Meena, Assistant Loco Pilot, C/o CTCC, Gangapur City, West Central Railway, Kota Division.

...Respondents

Mr. M.K. Meena, counsel for respondent nos. 1 & 2

← **OA No. 11/2013**

Om Veer Singh S/o Shri Maharaj Singh, aged about 33 years, R/o 264-E, Carriage Colony, Mahukalan, Gangapur City and presently working as Assistant Loco Pilot, under CTCC, West Central Railway, Gangapur City, Kota Division.

...Applicant

Mr. C.B. Sharma, counsel for applicant.

VERSUS

1. Union of India through General Manager, West Central Zone, West Central Railway, Jabalpur.
2. Divisional Railway Manager (Establishment), West Central Railway, Kota Division, Kota.
3. Shri Vinod Kumar Meena, Assistant Loco Pilot, C/o CTCC, Kota, West Central Railway, Kota Division.
4. Shri Sahaj Ram Meena, Assistant Loco Pilot, C/o CTCC, Kota, West Central Railway, Kota Division.
5. Shri Sugan Singh Meena, Assistant Loco Pilot, C/o CTCC, Gangapur City, West Central Railway, Kota Division.

...Respondents

Mr. M.K. Meena, counsel for respondent nos. 1 & 2

← **OA No. 12/2013**

Bhagwan Sahai Meena S/o Shri Suka Ram Meena, aged about 26 years, R/o C/o Murari Lal Sharma, Naroliwale, Narsing Colony, Gangapur City and presently working as

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Assistant Loco Pilot, (Ticket No. 3054) under CTCC, West Central Railway, Gangapur City, Kota Division.

...Applicant

Mr. C.B. Sharma, counsel for applicant.

VERSUS

1. Union of India through General Manager, West Central Zone, West Central Railway, Jabalpur.
2. Divisional Railway Manager (Establishment), West Central Railway, Kota Division, Kota.
3. Shri Vinod Kumar Meena, Assistant Loco Pilot, C/o CTCC, Kota, West Central Railway, Kota Division.
4. Shri Sahaj Ram Meena, Assistant Loco Pilot, C/o CTCC, Kota, West Central Railway, Kota Division.
5. Shri Sugan Singh Meena, Assistant Loco Pilot, C/o CTCC, Gangapur City, West Central Railway, Kota Division.

...Respondents

Mr. M.K. Meena, counsel for respondent nos. 1 & 2

ORDER (per MR. ANIL KUMAR, ADMINISTRATIVE MEMBER)

Since all the Original Applications i.e. OA No. 463/2012, OA No. 482/2012, OA No. 488/2012, OA No. 493/2012, OA No. 04/2013, OA No. 09/2013, OA No. 10/2013, OA No. 11/2013 & OA No. 12/2013 have similar facts and involve similar question of law, therefore, with the consent of the learned counsels for the parties, they were heard together and they are being disposed of by this common order. For the sake of convenience, the facts of OA No. 463/2012 (Hari Kesh Meena vs. Union of India & Ors.) are being taken as a lead case.

2. This is the second round of litigation. Earlier the applicant had filed an OA No. 165/2012, which was disposed of by this Bench of the Tribunal vide order dated 16.03.2012 with the directions to the respondents to decide the representation of the applicant dated 10.11.2011 (Annexure A/15 of that OA) by passing a reasoned and speaking order. In compliance of these directions, the respondents have decided the representation of the applicant vide impugned order dated 11.05.2012 (Annexure A/1). Being aggrieved by this decision, the applicant has filed the present Original Application No. 463/2012.

3. The brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant was initially appointed as Assistant Loco Pilot on 22.03.2005 in Moradabad Division, Northern Railway. His pay was fixed in PB-1, Rs. 5200-20200 plus grade pay Rs. 1900 with effect from 01.01.2006. He was allowed grade pay of Rs. 2400 in the year 2007 and designated as Senior Assistant Loco Pilot.

4. While working in Moradabad Division, the applicant applied for mutual transfer with one Shri Anoop Kumar Vaish working at Gangapur City under Kota Division. Shri Anoop Kumar Vaish is an appointee of 16.01.2001 in Kota

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Division. The mutual transfer of the applicant was approved vide letter dated 12.10.2010. The applicant joined at Kota on 22.10.2010 and posted at Kota vide order dated 28.10.2010 (Annexure A/7).

5. In the meanwhile, the Railway Board issued orders dated 30.04.2010 for restructuring of the cadre of Assistant Loco Pilots which provide 80% as Senior Assistant Loco Pilots in the grade pay of Rs. 2400 and 20% in the grade pay of Rs. 1900. This cadre restructuring was made effective on the sanctioned cadre strength as on 01.05.2010.

6. Since the applicant came on mutual transfer, therefore, the seniority of the applicant would be governed by the provisions of para 310 of the Indian Railway Establishment Manual (IREM), Volume-I, which reads as follows:-

“310. Mutual Exchange – Railway Servants transferred on mutual exchange from one cadre of a division, office or railway to the corresponding cadre in another division, office or railway shall retain their seniority on the basis of the date of promotion to the grade or take the seniority of the railway servants with whom they have exchanged, whichever of the two may be lower”.

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7. Since Shri Anoop Kumar Vaish was appointee of 16.01.2001 in Kota Division and the applicant was an appointee of 22.03.2005, therefore, as per the provisions of para 310 of IREM, Vol.-I, the applicant was entitled for the seniority w.e.f. 22.03.2005 at Kota Division (being lower of the two). However, the respondents have not assigned the correct seniority to the applicant. The juniors to the applicant were sanctioned the benefit of restructuring w.e.f. 01.05.2010 and have been placed in the higher grade pay of Rs. 2400, which is against the provisions of para 310 of IREM, Volume-I. The applicant has been allowed the grade pay of Rs. 2400 vide order dated 26.04.2012 (Annexure A/16). Learned counsel for the applicant submitted that the applicant is senior to the private respondent nos. 3, 4 & 5. The respondents had allowed the correct seniority to the applicant vide seniority list dated 08.12.2010 (Annexure A/8). However, subsequently his seniority has been changed vide letter dated 08.02.2012 (Annexure A/12). Learned counsel for the applicant prayed that the applicant is entitled for the grade pay of Rs. 2400 w.e.f. 01.05.2010 or 22.10.2010 with all consequential benefits including the arrears of pay and allowances and correct fixation of his seniority, etc.

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8. On the other hand, the respondents have submitted their written reply. The respondents have stated that before his transfer to Kota Division, the applicant was working on the post of Assistant Loco Pilot in the grade pay of Rs. 2400 in Moradabad Division. Before his transfer to Kota Division, he accepted his reversion in the grade pay of Rs. 1900. He joined at Kota Division as Assistant Loco Pilot in pay band 5200-20200 plus grade pay Rs. 1900. The applicant has been assigned seniority in accordance with the provisions of paragraph 310 of Indian Railway Establishment Manual (IREM).

9. The Railway Board issued orders dated 30.04.2010 for restructuring which was to be effective from 01.05.2010. Accordingly, select list of candidates eligible for promotion to the post of Senior Assistant Loco Pilots in the pay scale of Rs. 5200-20200 plus grade pay of Rs. 2400 was issued vide letter dated 15.04.2011 (Annexure A/9) and the promotion orders were issued vide letter dated 18.05.2011 (Annexure A/10) w.e.f. 01.05.2010. Learned counsel for the respondents submitted that since the applicant had joined at Kota Division on 22.10.2010 as Assistant Loco Pilot having accepted reversion from grade pay of Rs. 2400 to Rs. 1900 on mutual transfer from Moradabad Division, therefore, the name of the applicant could not find place in

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the select list issued vide letter dated 15.04.2011. Shri Anoop Kumar Vaish was working as Assistant Loco Pilot in the pay scale Rs. 5200-20200 plus grade pay Rs. 1900 on 01.05.2010 at Kota Division, therefore, he was promoted as Senior Assistant Loco Pilot in the pay scale Rs. 5200-20200 plus grade pay of Rs. 2400 and relieved from Moradabad Division as Assistant Loco Pilot in the Pay Scale Rs. 5200-20200 plus grade pay of Rs. 1900 on 04.04.2011. Since the applicant was not on the rolls of the Kota Division as on 01.05.2010, therefore, he could not be considered for promotion to the grade pay of Rs. 2400 along with others who were on the rolls of the Kota Division as on 01.05.2010. Thus, there is no illegality or infirmity in the action of the respondents in rejecting the representation of the applicant vide order dated 11.05.2012 (Annexure A/1) and in not considering the applicant for grade pay of Rs. 2400 w.e.f. 01.05.2010.

10. Heard learned counsel for the parties and perused the documents available on record.

11. Learned counsel for the applicant reiterated the facts as mentioned in the O.A. He vehemently argued that the respondents have not fixed the seniority of the applicant as per the provisions of para 310 of IREM Vol.-I and they have

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also not correctly given him the grade pay of Rs. 2400. The applicant has been given the grade pay of Rs. 2400 in Kota Division w.e.f. 26.04.2012 whereas the juniors to the applicant have been given the grade pay of Rs. 2400 w.e.f. 01.05.2010. Therefore, he prayed that the applicant be assigned correct seniority and he should also be given the grade pay of Rs. 2400 with all consequential benefits including the arrears w.e.f. 01.05.2010 or at least from 22.10.2010 the date on which he joined at Kota Division.

12. On the other hand, learned counsel for the respondents reiterated their stand taken in their written statement that since the applicant was not on the cadre of Kota Division as on 01.05.2010, therefore, he could not be given the grade pay of Rs. 2400 w.e.f. 01.05.2010 and his seniority has also been fixed correctly according to the provisions of para 310 of IREM, Vol. I. Thus, there is no merit in the Original Application, which deserves to be dismissed.

13. It is not disputed that the applicant while working in Moradabad Division was in the grade pay of Rs. 2400. However, before his transfer to Kota Division, he accepted the reversion to the grade pay of Rs. 1900. Similarly, Shri Anoop Kumar Vaish was also in the grade pay of Rs. 2400

as on 01.05.2010 and he was also transferred to Moradabad Division with grade pay of Rs. 1900. Though, it is not clear from the pleadings as to why both i.e. the applicant (Hari Kesh Meena) as well as Shri Anoop Kumar Vaish were reverted from the grade pay of Rs. 2400 to 1900 before their mutual transfer. However, without going into this controversy, we proceed with the fact that both the applicant as well as Shri Anoop Kumar Vaish when mutually transferred were in the pay band-1 Rs. 5200-20200 plus grade pay Rs. 1900. Therefore, now the question arises as to what would be the criteria for fixing the seniority of the applicant on transfer to Kota Division on mutual basis.

14. If an employee is transferred on request then his seniority in the new place of posting is governed under the provisions of para 312 of IREM, Volume-I. Such railway servant is placed at the bottom of the seniority of the relevant grade. However, the present case is of mutual exchange and, therefore, it will be governed by the provisions of para 310 of IREM, Volume-I.

15. In the present case, the respondents have not disputed that Shri Anoop Kumar Vaish was an appointee of 16.01.2001 and that the applicant was appointee of 22.03.2005. Both sought mutual transfer, therefore, for the

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purpose of fixing their seniority, provisions of para 310 of IREM, Volume-I would be applicable in the present case. For the sake of convenience, Para 310 of IREM, Volume-I is again quoted as below: -

“310. Mutual Exchange – Railway Servants transferred on mutual exchange from one cadre of a division, office or Railway to the corresponding cadre in another division, office or railway shall retain their seniority on the basis of the date of promotion to the grade or take the seniority of the railway servants with whom they have exchanged, whichever of the two may be lower”.

16. From the bare reading of para 310 of IREM, Volume-I, it is clear that the railway servants transferred on mutual exchange from one cadre of a division, office or railway to the corresponding cadre in another division, office or railway shall retain their seniority on the basis of the date of promotion to the grade or take the seniority of the railway servants with whom they have exchanged, whichever of the two may be lower.

17. In the present case, the applicant sought mutual transfer with Shri Anoop Kumar Vaish who is an appointee of 16.01.2001 whereas the applicant is an appointee of 22.03.2005. At the time of transfer, both the applicant as

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well as Shri Anoop Kumar Vaish were working in the grade pay of Rs. 1900 on the post of Assistant Loco Pilot. Thus, both were in the same cadre of Assistant Loco Pilot. Therefore, the applicant, according to the provisions of para 310 of IREM Volume-I, will be entitled for the seniority w.e.f. 22.03.2005 because it is a lower seniority as compared to the seniority of Shri Anoop Kumar Vaish in Kota Division. Shri Anoop Kumar Vaish since was appointee of 16.01.2001 would normally have been senior in Kota Division. However, the rule provides that an employee who comes on mutual transfer will get the lower seniority.

18. It is not disputed by the respondents that Shri Anoop Kumar Vaish was granted the grade pay of Rs. 2400 w.e.f. 01.05.2010 in Kota Division vide letter dated 18.05.2011 (Annexure A/10), therefore, even if the arguments of the learned counsel for the respondents are accepted that the applicant was not on the rolls of Kota Division as on 01.05.2010 and therefore he would not be entitled to the grade pay of Rs. 2400 w.e.f. 01.05.2010 but then the applicant would be entitled for the grade pay of Rs. 2400 with effect from the date he joined at Kota Division i.e. 22.10.2010. Since Anoop Kumar Vaish was already getting grade pay of Rs. 2400 as on 22.10.2010 vide letter dated 18.05.2011 (Annexure A/10) as he was given the grade pay

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of Rs. 2400 w.e.f. 01.05.2010, therefore, when he was transferred from Kota Division to Moradabad Division that post fell vacant. In any case as we said earlier the applicant is entitled for the seniority w.e.f. 22.03.2005 in Kota Division and the employees junior to him have been granted the grade pay of Rs. 2400 w.e.f. 01.05.2010, therefore, the applicant is also entitled for the same grade pay being senior but from the date of his joining at Kota Division. As we have said earlier one post in the grade pay of Rs. 2400 would be available, which was being occupied by Shri Anoop Kumar Vaish before his transfer to Moradabad Division.

19. We have carefully perused the order dated 11.05.2012 (Annexure A/1) in which it has been stated that an employee who comes from outside will be placed at the bottom seniority in the grade pay in which he has been transferred at Kota Division. This is obviously a wrong interpretation of para 310 of IREM. The provisions of this para nowhere mention that railway servant who comes on mutual transfer will be given the bottom seniority in that grade pay vis-a-vis other employees of the same grade pay. The provisions of para 310 of IREM are clear that the employee who is coming to Kota Division will be given the seniority either of the person who is going out from Kota

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Division on mutual transfer or his own seniority which he was enjoying at his original place of posting, whichever is lower and not the bottom seniority.

20. Thus, on the basis of above discussions, we issue the following directions to the respondents: -

(A). The applicant is entitled for his seniority in Kota Division with effect from 22.03.2005 as he was an appointee of 22.03.2005 and Shri Anoop Kumar Vaish was appointee of 16.01.2001, being lower of the two.

(B). The applicant is also entitled for PB-1 Rs. 5200-20200 plus grade pay of Rs. 2400 with effect from 22.10.2010 the date on which he joined at Kota Division as his juniors at Kota Division were given grade pay of Rs. 2400 with effect from 01.05.2010.

(C). The applicant will also be entitled for all consequential benefits like arrears of pay and allowances, etc.

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(D). The respondents shall complete this exercise within a period of three months from the date of receipt of a copy of this order.

21. The observations, directions as well as analogy as discussed hereinabove shall be applicable in all the other similar Original Applications i.e. OA No. 482/2012, OA No. 488/2012, OA No. 493/2012, OA No. 04/2013, OA No. 09/2013, OA No. 10/2013, OA No. 11/2013 & OA No. 12/2013.

22. The registry is directed to place certified copy of this order in the files of all the said OAs.

23. With these observations and directions, all the Original Applications are disposed of with no order as to costs.

(MRS. CHAMELI MAJUMDAR)
 JUDICIAL MEMBER

(ANIL KUMAR)
 ADMINISTRATIVE MEMBER

Kumawat

Copy given to Mr. C.B. Saman and
 for Applicant & Mr. M.K. Meena and
 for Respondent Regd. Nos. 296 to 297 Dated
 17-3-15
 18-3-15