

CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH, JAIPUR.

OA No.71/1996

Date of order: 16/5/2007

1. Puran Singh S/o Shri Gordhan, Ticket No.1,  
aged 41 years, at present working as Compositor  
Grade II in the scale Rs.1200-1800 in Ticket  
Printing Press, Western Railway, (Ajmer)
2. Pusal Lal S/o Shri Ladu Ram, Ticket No.34,  
aged 46 years, at present working as Compositor  
Gr.II, in the scale Rs.1200-1800 in Ticket  
Printing Press, Western Railway, Ajmer.
3. Prem Chand S/o Shri Natthu, Ticket No.58,  
aged 45 years, at present working as Compositor  
Gr.II, in the scale Rs.1200-1800 in Ticket  
Printing Press, Western Railway, Ajmer.
4. Kalyan S/o Shri Natthu Ram, Ticket No.59  
aged 45 years, at present working as Compositor  
Gr.II, in the scale Rs.1200-1800 in Ticket  
Printing Press, Western Railway, Ajmer.
5. Munnal Lal S/o Shri Phool Chand, Ticket No.3,  
aged 37 years, at present working as Compositor  
Gr.II, in the scale Rs.1200-1800 in Ticket  
Printing Press, Western Railway, Ajmer.

....APPLICANTS

V E R S U S

1. The Union of India through the General Manager,  
Western Railway, Church Gate, Bombay.
2. Divisional Railway Manager, Western Railway,  
Mal Road, Ajmer.
3. Deputy Controller of General Stores,  
Western Railway, Nagra, Ajmer.
4. Shri Fazluddin, Compositor Gr.II,  
Ticket Printing Press in the Office of  
Dy. C.O.S., Western Railway, Ajmer.



5. Shri Shahabuddin, Assistant Personnel Officer  
in the Office of Dy. C.O.S., General Stores,  
Western Railway, Nagra, Ajmer.

....RESPONDENTS.

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Mr. P.V. Calla, counsel for the applicants.

Mr. M. Bhandari, counsel for respondents No.1 to 3 & 5

Mr. P.P. Mathur, counsel for respondent No.4

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CORAM

Hon'ble Mr. S.K. Agarwal, Judicial Member.

Hon'ble Mr. A.P. Nagrath, Administrative Member.

ORDER

(per Hon'ble Mr. A.P. Nagrath)

This application has been filed by Puran Singh and four others with a prayer that the impugned order Annex.A/1 dated 17.1.1996 be declared illegal in so far as it relates to respondent No.4 and that respondents be restrained from interpolating the name of respondent No.4 in the seniority of Compositor in Ticket Printing Press.

2. We find from the facts and also as brought to our notice at the time of oral arguments, the controversy relating to absorption of respondent No.4 Shri Fazluddin into the cadre of Compositor Gr.III in Ticket Printing Press was challenged in OA No.157/95<sup>by</sup> one Shri Bishan Lal and the matter was decided on 4.1.1996. In that case also Sh. Fazluddin was respondent No.4 whose absorption as Compositor Gr.III in Ticket Printing Press was challenged. The Tribunal had gone into the background of how Shri Fazluddin, initially in the cadre of Ticket Printing Press, had been declared surplus and redeployed on the post of Proof Reader in

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Ticket Printing Press on his passing the prescribed trade test and how the respondents on a plea, that Shri Fazluddin was denied his due placement in the cadre of Compositor because of irregularity committed by the Department, were taking action to set right the injustice done to Shri Fazluddin. The Tribunal having gone into all the facts and circumstances of the matter decided as under in respect of Shri Fazluddin respondent No.4 in this OA as also in OA No.157/95;-

"As regards respondent No.4 he was also holding the post of Compositor earlier in TPP but was reverted and declared surplus but was absorbed on the post of Proof Reader in the same press (TPP) on his passing trade test for Proof Reader. He has since continued on the said post which carries the same scale of pay which is available to Compositor Gr.III. He also did not challenge his being declared surplus etc. at the relevant time. There is no provision for change from one seniority unit to another even in the same press. Since he was in a different unit though in TPP, his being brought back to the seniority unit of Compositor Gr.III, is not in accordance with the rules. Therefore, the applicant's reversion from the post of Compositor Gr.III, in order to absorb respondent No.4 in the said post is not valid. However, it was stated before us during the arguments that two posts of Compositor Gr.III are available now in TPP and besides the applicant respondent No.4 can also be accommodated against one these posts. Since respondent No.4 remained throughout in TPP, we are of the view that if additional post of Compositor Gr.III is available in TPP, respondent No.4 may be fitted against that post without causing any prejudice to any of the right of the applicant accruing to him by virtue of his holding the post of Compositor Gr.III in TPP.

In the result, orders Annexure-A/1 and Annexure-A/2 are quashed with consequential benefits, to the extent indicated above.



3. Learned counsel for the applicants referred to the seniority list issued under letter dated 1.1.95 Annexure-A/9 by Deputy Controller of Stores, Ajmer to emphasize that all the applicants belonged to the seniority of Compositors Gr.II in Ticket Printing Press to which Shri Bishan Lal also belongs who had challenged induction of Shri Fazluddin to this cadre. Shri Fazluddin's name does not find a mention in this seniority list. Thus, these applicants are similarly placed as Shri Bishan Lal and the first four applicants in this OA are senior to Shri Bishan Lal. Their apprehension is that respondents have tried to not only induct respondent No.4 into this cadre but that they are likely to assign higher seniority to Shri Fazluddin. It was contended by the learned counsel for the applicants and also stated in the written averments that Shri Fazluddin is being promoted as Compositor Gr.II vide the impugned order on a vacancy on which applicant No.5 Munnalal should have rightly been promoted on regular basis.

4. The official respondents have raised preliminary objection to the OA on the ground of mis-joinder of parties as the relief sought by the applicant No.1 to 4 is different from the relief sought by applicant No.5. They contend that applicants No.1 to 4 have no cause of grievance by the impugned order as there is no mention of their names in that order. In so far as, applicant No.5 is concerned, the plea of the respondents is that he is estopped from agitating the matter as he had accepted his position as adhoc Compositor Gr.II, in writing in response to the notice given to him about the likely change of seniority by induction of Shri Fazluddin. Respondents have also raised objection stating that the applicants have challenged Annex-A/1 only which is an order consequent to and in



pursuance of decisions taken earlier, which have not been challenged. Thus, the respondents submit, the application is hit by limitation.

5. We would first like to address these preliminary objections. In so far as mis-joinder of parties is concerned, we do not find any force in the arguments of the respondents as all the applicants find their name in the seniority list dated 1.1.95 and, therefore, are similarly placed. From the facts, it is clear that absorption of respondent No.4 as Compositor Gr.II will affect their status. The ground of an estoppel against applicant No.5 is also not valid as the seniority is governed by the statutory rules and there cannot be an estoppel against statutory provisions. We have perused the declaration given by applicant No.5 Munna Lal in reply to respondents letter of 1.12.94, in view of the impending likelihood of reversion. No specific proposed change in seniority list was intimated to the applicant No.5 and his declaration cannot be read to mean acceptance of his changed position of seniority. In fact, the applicant goes on to write in that declaration, that in view of the uncertain condition because of reference from Headquarters, he is accepting the situation and that he would not make any claim for seniority in future. Respondents themselves in their reply have stated that he (Munna Lal) was permitted to continue as Compositor Gr.II on ad hoc basis only after his having submitted such a declaration. This obviously meant that declaration was given by applicant No.5 to avoid his immediate reversion. Such a declaration cannot take away the right available to an employee under the Rules. The ground of limitation also has no merit. The impugned order is dated 17.1.96 and this makes certain amendments in some earlier orders. The order, in so far as it

relates to respondent No.4 it is a fresh order. It is Shri Fazluddin's promotion to Gr.II which is under challenge and this application cannot be stated to be hit by limitation.

6. Learned counsel for the respondents No.1 to 3 & 5 emphasized that the respondent's action of inducting or absorbing Shri Fazluddin as Compositor Gr.III and promoting him to Gr.II was only a step towards remedying the wrong done to Shri Fazluddin by the administration earlier. On that count, he pleaded that the applicants cannot have a ground to complain. Every employee has to be treated fairly and if there has been infringement of the rights of some employee because of administrative lapses, the administration has a right to correct the situation by grant of necessary relief to the employees so wronged.

7. Learned counsel for respondent No.4 took the same line of argument as that of the official respondents and stated that wrong was done to respondent No.4 from the time, he was declared surplus from the cadre of Compositor in the Ticket Printing Press. He initially belonged to the same cadre of Compositor in the Ticket Printing Press and that impugned order was only a corrective action to restore his due position.

8. We have gone into the written statements from the parties including the applicants, the official respondents and respondent No.4 as also the additional reply filed by respondent No.4. As we have stated earlier, the background in which respondent No.4 had been declared surplus and absorbed as Proof Reader etc. was comprehensively gone into by the Tribunal in OA 157/95. It was held that rendering of respondent No.4 as surplus and his alternative absorption as Proof Reader had resulted into a situation that he got appointed in a different seniority unit. He did not

challenge his being declared surplus at the relevant time, Action of the respondents to <sup>reabsorb</sup> respondent No.4 as Compositor affecting the rights of <sup>Bishan Lal,</sup> the applicant in that case: ~~Shri Fazluddin~~, who was already in that unit, was held to be not valid. We find no reason to differ from the view held in that case by the Tribunal. Four of the applicants in this OA, as we have mentioned earlier, are senior to Bishan Lal and Munna Lal is just next below in seniority. Obviously, respondent No.4 cannot find a place as Compositor Gr.III over the heads of those, who were already working as Compositor Gr.II in Ticket Printing Press. The statement made by the respondents that even accepting that person from another seniority unit cannot be inducted in this group, it was still possible to accommodate respondent No.4 as additional post was available, it was noted by the Tribunal with an observation that the respondent No.4 may be fitted against that post without causing any prejudice to any of the right of the applicant accruing to him by virtue of his holding the post of Compositor Gr.III in Ticket Printing Press. This did not mean that the respondents were permitted to absorb respondent No.4 as Compositor Gr.III even if it effected the rights of others similarly placed as Bishan Lal and holding the post of Compositor Gr.III. In fact, the respondents while projecting the possibility of absorbing Shri Fazluddin as a Compositor did not come before the Tribunal with complete facts. It appears that the respondents misread the observations of the Tribunal and took it as a permission not only to absorb respondent No.4 as Compositor Gr.III but they have gone ahead by promoting him as Compositor Gr.II vide impugned order, where Bishan Lal has been shown to be continuing in Gr.III only. We are, in fact, surprised at this interpretation of the order, When the Tribunal did not permit ~~The~~ absorption of Shri Fazluddin



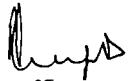
over the head of Shri Bishan Lal, the impugned order proposes to place Shri Fazluddin in still higher grade. This action of the respondents has caused obvious apprehensions in the minds of applicants 1 and 4 and applicant No.5 also is rightly aggrieved. Applicant No.5 was already holding the post as Compositor Gr.III on regular basis and as per the decision in Bishan Lal's case, we do not find any reason for Shri Fazluddin to have been appointed not only in Gr.II but even as Compositor Gr.III. The action of the respondents is contrary to the provisions of Rules as held in Bishan Lal's case and is liable to be struck down. If the department wanted to find a remedy to grant benefit of Shri Fazluddin for their own admitted lapse, it was for them to work out a scheme which would not affect the rights of the persons who were already in the seniority unit of Compositor Gr.III, and Gr.II. In Railways, the distribution of posts in various grades is on percentage basis and the right of promotion within that percentage belongs to only those, who are in that cadre. Outside these prescribed percentages, if the department wants to help respondent No.4 they have to find an alternative solution. We cannot commend any action which would adversely affect the right of those already in the cadre. Respondent No.4 had failed to establish his claim in OA 157/95 and he fails to establish the same in this OA for the same reasons.

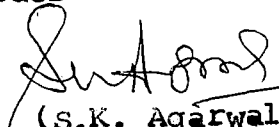
9. In view of the facts and circumstances as discussed above, we declare the impugned order as illegal only in so far as it relates to appointment of respondent No.4 as Compositor Gr.II in Ticket Printing Press, Ajmer. Status of the applicants shall stand restored to a





position as if respondent No.4 had not been absorbed against the sanctioned strength of the cadre of Compositors in Ticket Printing Press. No order as to costs.

  
(A.P. Nagrath)  
Admn. Member.

  
(S.K. Agarwal)  
Judl. Member