

(19)

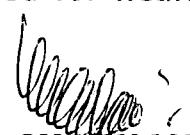
**23.10.2007**

**OA No. 473/2003 with MA 488/2003**

Mr. Shailendra Srivastava, Counsel for applicant.  
Mr. T.P. Sharma, Counsel for respondents.

Heard in part. Let the matter be listed for hearing on 20.11.2007.

  
**(J.P. SHUKLA)**  
**MEMBER (A)**

  
**(M.L. CHAUHAN)**  
**MEMBER (J)**

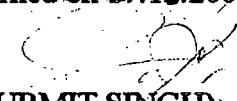
AHQ

**20.11.2007**

**OA 473/2003 a/w MA 488/2003**

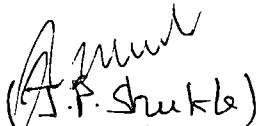
Present : Mr. Shailendra Srivastava, counsel for the applicant.  
Miss Kavita Khinchi, proxy counsel for  
Mr. T.P. Sharma, counsel for the respondents.

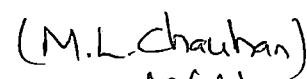
This part – heard matter has been listed before the Deputy Registrar due not non-availability of concerned Division Bench. Be listed before the Hon'ble Division Bench concerned on 27.11.2007.

  
**(GURMIT SINGH)**  
**DEPUTY REGISTRAR**

akv

27-11-07  
Mr. Shailendra Srivastava, Counsel for applicant  
Ms. Kavita Khinchi, Proxy Counsel for  
Mr. T.P. Sharma, Counsel for respondents  
Heard learned Counsel for the parties.  
For the reasons dictated separately, the OA ~~and~~ <sup>is</sup> referred.

  
**(J.P. Shukla)**

  
**(M.L. Chauhan)**  
**MIN**

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

OA No.473/2003 with MA No.488/2003.

Jaipur, this the 27<sup>th</sup> day of November, 2007.

**CORAM :** Hon'ble Mr. M. L. Chauhan, Judicial Member.  
Hon'ble Mr. J. P. Shukla, Administrative Member.

1. Rajveer Singh  
S/o Shri Yogendra Pal Singh  
Aged about 32 years,  
R/o Railway Quarter No.273/8, Loco Colony,  
Jaipur.
2. Vijay Kumar Sharma  
S/o Satish Chandra Sharma  
Aged about 45 years,  
R/o Quarter No.T/119, Near Delhi Gate,  
Railway Colony,  
Bandi Kui.
3. Anwar Hussain  
S/o Izhar Hussain  
Aged about 49 years,  
R/o Quarter No.483-A Double Story,  
Railway Colony,  
Phulera.
4. Amarchand  
S/o Shri Banshilal  
Aged about 33 years,  
R/o T/95-B, Loco Colony,  
Jaipur.
5. Gajnand Sharma  
S/o shri Ram Prasad Sharma,  
Aged about 47 years,  
R/o near Railway Phatak, Mandawar  
Mahua Road, Distt. Dausa.
6. Bachchan Pal Singh  
S/o Shri Shyodan Singh  
Aged about 35 years,  
R/o Railway Quarter No.L-111/D,  
Loco Colony, Jaipur.
7. Hukumchand Saini,  
S/o Shri Chitarmal Saini,  
Aged about 33 years,  
R/o Near Railway Station, Chomu.
8. Bhikharam Sharma  
S/o Shri Gulab Chand Sharma,  
Aged about 39 years,

R/o Mohan Girara, Achhnera,  
Agra (U.P.)

9. Subhash Chand  
S/o Jutharam  
Aged about 35 years,  
R/o Quarter No.L-111/D,  
Loco Colony,  
Jaipur.
10. Ram Babu Sharma  
S/o Shri Phulchand Sharma  
Aged about 48 years,  
R/o Ajmeri Gate Ke Pass Ward No.9,  
Shri Ram Nagar,  
Phulera.
11. Kishore Singh  
S/o Shri Narottam  
Aged about 36 years,  
R/o Railway Quarter No.331-D,  
AEN Colony, Phulera.
12. Birduram Meena,  
S/o Shri Devilal Meena,  
Aged about 45 years,  
R/o Gram Panchayat, Kachroda School Ki Dhani,  
Phulera.

... Applicants.

By Advocate : Shri Shailendra Shrivastava.

Vs.

1. Union of India  
Through General Manager,  
North West Railway,  
Jaipur.
2. Divisional Railway Manager,  
North West Railway,  
Jaipur.
3. Sr. Divisional Commercial Manager,  
North West Railway,  
Jaipur.

... Respondents.

By Advocate : Ms. Kavita Khinchi proxy counsel for  
Mr. Tej Prakash Sharma.

## O R D E R (ORAL) :

The applicants have filed this OA thereby praying for the following reliefs :-

- (1) To issue a writ order or direction in the nature of MANDAMUS thereby commanding the respondents to grant the benefit of past services rendered by the petitioners in the pay scale of Rs.950-1500 in their parental department prior to their absorption in commercial department in the same scale of pay in the light of the circular dated 21.4.89 issued by the Railway Board which has a force of law and further direct them to settle the case of the petitioners as per the provision contained in Para 311 of the IREM Vol.1.
- (2) To declare the condition void ab initio for which petitioners were forced to accept in declaratory form in writing by the respondents illegally and arbitrarily at the time of their absorption in the commercial department resultantly petitioners were compelled to waive off their right to claim benefit of past services rendered by them in the pay scale of 950-1500 in their original department.
- (3) To issue direction to the respondents to dispose of joint representation dated 06.08.02 submitted by the petitioner through speaking and reasoned order.
- (4) To issue any other order in favour of the humble petitioners as deemed fit and proper by this Hon'ble Tribunal as per facts and circumstances of the case.
- (5) To award the cost of the petition in favour of the humble petitioners."

2. Briefly stated, the facts of the case are that the decision was taken by the Railway administration vide order dated 5.2.1992 to abolish the Loco Shed and by that process certain employees, including the applicants in the instant OA were declared surplus. It was further

decided by the administration that all the persons who were declared surplus would be absorbed in other departments/units and such decision was taken in consultation with the recognized Union of Railway department. The applicants have annexed a copy of such decision on record as Annexure A/1 dated 05.02.1992. The applicants were asked to submit their options in different cadres/units vide order dated 11.3.1993 (Annexure A/2). Accordingly, the applicants opted for the post of Ticket Collector in commercial department. Under the process of absorption in the commercial department, since all the employees were to be absorbed in another wing i.e. the commercial department, the applicants were asked to qualify the written test and viva voce test, which the applicants qualified on 31.1.1997 and their names were placed in the provisional select list. Subsequently, since they have qualified the selection process, they were sent for training which was one of the essential condition for absorption in the new department/unit on regular basis which training they have completed on 23.4.1997 and finally they were posted as Ticket Collector vide order dated 23.4.1997 in different station at Jaipur Division. Since the applicants were not given the benefit of past service in the pay scale of Rs.950-1500 rendered by them in their original department at the time of absorption in the commercial department in equivalent grade, the applicants have filed this OA thereby praying for the aforesaid reliefs.

3. Notice of this application was given to the respondents and they have filed the reply. In nut shell the stand taken by the respondents in the reply is that the applicants were made aware that in case they opted for the post of Ticket Collector then they would be assigned bottom seniority. The respondents have also opposed the claim of the applicants on the ground that the present application is time barred inasmuch as the applicants were absorbed and posted at different stations at Jaipur Division vide order dated 23.4.1997, the applicants have filed a joint representation on 6.8.2002 to the concerned authorities whereas the present OA has been filed on 13.10.2003. It is further stated that the present application has been filed after a delay of 6 years without any sufficient and cogent reasons for not filing the original application earlier, as such, it cannot be entertained and is liable to be dismissed in view of the provisions contained in Section 21 of the Administrative Tribunals Act, 1985. It is further stated that the applicants cannot get the shelter of representation dated 6.8.2002 to condone the delay after a lapse of about 6 years.

4. We have heard the Learned Counsel for the parties and gone through the material placed on record.

5. The issue involved in this case is whether the staff who are declared surplus on account of closure of Loco Shed and who were absorbed entirely in a new cadre after undergoing selection process and training should be given seniority in new cadre from the date of their initial appointment in the old cadre in the same grade or from the date of joining in the new cadre as fresh entrant?

6. Before dealing with the question involved in this case, we propose to deal with the preliminary objection raised by the respondents regarding filing of this application after a period of limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985. Admittedly, the decision was taken by the Railway administration to abolish the Loco Shed vide order dated 5.2.1992. However, the applicants were absorbed/given reappointment vide order dated 23.4.1997 (Annexure A/5) when they qualified the select test as per rules for the post of Ticket Collector and after completion of training. Admitted case of the applicants is that they made joint representation for the first time on 6.8.2002. The reason for not making the representation when the cause of action has arisen in their favour on 23.4.1997 is that all the applicants were posted at different stations and most of them are discharging clock wise duties, hence it was very difficult for them to assemble at one place at the same time. It is further stated that

their joint representation has not been disposed of so far, as such, the present application is within a period of limitation and in any case there is short delay as the applicants could not file the present application within six months from the date of filing of their representation dated 6.8.2002. Admittedly, in this case the OA was filed on 13.10.2003 i.e. after a lapse of more than six years period when the applicants were absorbed on 23.4.1997. Thus, according to us, the applicants have not made out any ground for condonation of delay. The Hon'ble Apex Court in the case of State of Karnataka and ors. vs. S. M. Kotrayya and Ors., 1996 SCCp (L&S) 1488, has held that although it is not necessary to give an explanation for the delay which occurred within the period mentioned in sub-sections (1) or (2) of Section 21, explanation should be given for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should satisfy itself whether the explanation offered was proper. In the instant case, the explanation offered was that they came to know of the relief granted by the Tribunal in August 1989 and that they filed the petition immediately thereafter. That is not a proper explanation at all. What was required of them to explain under sub-sections (1) and (2) was as to why they could not avail of the remedy of redressal of their grievances before the expiry of the period prescribed under sub-section (1) of (2). That was not the explanation given.

16

Therefore, the Tribunal was wholly unjustified in condoning the delay. The similar view was also taken by the Hon'ble Apex Court in the case of Baliram Prasad vs. Union of India and Ors., 1997 (1) SLJ 222 (SC) wherein the Hon'ble Apex Court while interpreting Section 21(3) of the administrative Tribunals Act, 1985 has held that sufficient cause for not making application within the statutory period has to be made out only in respect of the period beyond limitation. In this case, the applicants have not made out any case as to why they could not file the OA in the year 1998 onwards after the period prescribed for filing OA under Section 21 of the Administrative Tribunals Act, 1985. The so called explanation given by the applicants that the applicants were working at different stations and as such, they could not file the joint representation cannot be accepted. It is not necessary that joint representation should have been filed. The applicants in their individual capacity could have filed the representation for ventilating their grievances. Thus, according to us, the present application is liable to be dismissed on this count alone.

7. Apart from this, in case the claim of the applicants is accepted on merit at this stage, it will affect those persons who are already working in the commercial department prior to absorption of the applicant on 23.4.1997. Those persons have also not impleaded as

party in this OA. This is also one of the ground on which the applicants are not entitled to any relief, even if, it is found that they have made out a case for grant of relief on merit which case according to us the applicants have not made out as can be seen from the finding recorded herein after.

8. Now let us consider the case of the applicants on merit. As per own showing of the applicants the decision was taken by the Railway administration vide order dated 5.2.1992 to abolish the Loco Shed thereby declaring the applicants surplus and it was also decided by the administration that all the persons who were declared surplus would be absorbed in other division/unit as per the decision taken vide order dated 5.2.1992. Pursuant to the decision, the applicants have exercised their option for their absorption on bottom seniority. At this stage it may be stated that consequent upon exercising their option by the applicants they were not straight way absorbed in the commercial department. They were absorbed only when they qualified the selection test meant for the post and after undergoing training. The question whether the previous service rendered by the applicants in Loco Shed department can be counted for the purpose of seniority/promotion in C&W department is no longer res integra. This Tribunal in the case of Dhruva Datt Sharma & Ors. vs. Union of India & Ors, OA No.221/2002 decided on 17.11.2005, after taking into

consideration the decision of the Hon'ble Supreme Court and also noticing the new provisions added by way of Para 313A of IREM has categorically held that such employees are not entitled to seniority over and above the persons already working in C&W department. At this stage, it will be useful to quote Para 4.1, 4.2 & 4.3 of the judgment which is squarely applicable to the facts and circumstances of this case and thus reads as under :-

4.1 The sole question which requires our consideration is whether respondent No. 5 to 7 who were drafted from Loco Department and were declared surplus and absorbed in C&W Department as Section Engineer in the grade of Rs. 6500-10500 w.e.f. 14.9.99 and subsequently by giving the benefit of the service rendered by them in the same grade and admittedly in different unit, their previous service rendered in Loco Department can be counted for seniority and promotion in C&W Department ?

4.2 According to us, the matter is no longer res-integra. The Apex Court as far back as in the year 1980 in the case of Rama Kant Chaturvedi and ors. vs. The Divisional Superintendent, Northern Railway, Moradabad and ors., 1981 SCC (L&S) 423 has categorically held that the seniority in the old unit (in this case Loco Department) is of no relevance in determining seniority in new unit (in this case C&W Department) when they are appointed in new unit on different dates. The facts of the case were that the diesel unit of railway was constituted for the first time apart from the steam unit already existing. The two units were treated as separate and distinct having different avenues of promotion. Some of persons belonging to Fireman category were drafted from steam unit to diesel unit, possessing a minimum qualification of matriculation to the diesel side as Drivers' Assistant after giving them requisite training. This resulted in absorption of junior persons as Drivers Assistant on the diesel side as against senior persons who could not be drafted on the diesel side as they did not fulfill the requisite qualification. Subsequently relaxation was granted to the category of those Fireman and they were also

granted promotion as Drivers Assistant. The issue before the Apex Court was whether persons who were senior as Fireman in steam side and were absorbed in the diesel side after the absorption of some of junior persons as Driver Assistant after granting them relaxation in educational qualification should be placed senior in that category on the basis of their seniority in steam side. The Apex Court categorically held that the seniority on the steam side is of no relevance in determining seniority in diesel side when they are appointed on diesel side on different dates. The judgment in the case of Rama Kant Chaturvedi (supra) was further followed by the Apex Court in the case of V.K.Dubey and ors. vs. Union of India and ors., 1997 (4) SLR 251. This was a case where the appellants before the Apex court were drafted on diesel side of the locomotive operation. Subsequently on introduction of electrical engines, they were given training and were absorbed in electrical locomotive side. The controversy before the Tribunal was regarding inter-se seniority. The Tribunal held that since they were deployed to the electrical side for the first time, their seniority was required to be counted from the date of deployment in the electrical locomotive operation and the previous service cannot be counted for the purpose of determination of inter-se seniority. For that purpose, reliance was placed on the judgment of the Supreme Court in the case of Rama Kant Chaturvedi (supra). The Apex Court while upholding the judgment of the learned Tribunal dismissed the appeal of the appellants and in Para 5 of the judgment has made the following observations:

“5. Shri Vijay Bahuguna, learned senior counsel appearing for the appellants, contends that since they had been working on the diesel side for a long number of years, merely because they were sent to training for three months to be absorbed in the electrical locomotive operations, their entire previous length of service cannot be wiped out causing detriment to their length of service and promotional avenues on account of the change in the policy. Therefore, the view taken by this Court requires reconsideration. We find no force in the contention. It is seen that the diesel engine drivers and the staff working with them operates in one sector, namely, diesel locomotive sector, while electrical engine drivers and the staff operating on the electrical engines operate on a different sector. Consequent upon the gradual displacement of diesel engines, instead of retrenching them from service they were sought to be absorbed by giving necessary training in the trains operating on electrical energy. As a consequence, they were shifted to a new cadre. Under these circumstances, they cannot have a lien on the posts on electrical side nor they be entitled to seniority over the

staff regularly working in the electrical locomotive detriment. Under those circumstances, this Court has held that they cannot have a seniority over them...."

Thus, in view of the law laid down by the Apex court as stated above, we are of the view that the present OA is squarely covered by the ratio laid down by the Apex Court in the case of Rama Kant Chaturvedi (supra) more particularly in the case of V.K.Dubey (supra) where the issue as involved in this case was directly involved.

4.3 At this stage, we may also refer some of the decisions rendered by this Tribunal which are also to the same effect. One of such decision rendered by the Calcutta Bench is in the case of Ram Prabesh Mondal and Ors. Vs. Union of India and ors. reported in 2005 (2) ATJ 229 whereby it was held that surplus staff on their absorption to other units will count their seniority from the date of absorption and the impugned seniority list assigning seniority to surplus staff on the basis of length of service in the earlier panel was quashed. The Calcutta Bench has also placed reliance on some of the earlier judgments of Lucknow and Jodhpur Benches of the Tribunal as can be seen from para 7 of the judgment. Thus, we are of the view that action of the respondents in assigning seniority to the private respondent Nos. 5 to 7 for the service rendered by them in Loco Department in the grade of Rs. 6500-10500 is illegal and they have to be assigned seniority when they were absorbed in C&W Department. The contention raised by the respondents that private respondents are entitled for seniority in terms of Para 311 of the IREM read with Para 3 (i) of the Railway Board letter dated 21.4.89 deserves out right rejection. The provisions of Para 311 of the IREM are not attracted in the instant case as it relates to assigning of seniority on transfer, whereas it is not a case of transfer. It is a case of absorption of persons from one unit to entirely different unit where the mode of appointment and promotion are different. Thus, provision of Para 311 of the IREM are not attracted in the instant case, which have been wrongly applied. At this stage, it may be relevant to mention that even the Railway Board based upon the judgment rendered by the Apex Court in CA No. 2530/81 and 1730/ 1987 in the case of Southern Eastern Railway and ors. vs. Ram Narain Singh and Ors. and also pursuant to the judgment rendered by the Apex Court in the case of Ramakant Chaturvedi (supra) circulated the copy of the judgment dated 18.11.198 to

10/

the railways vide ministry letter dated 16.3.1981 for information and guidance. Despite the fact that the judgment of the Apex court was circulated as far back as in the year 1981, it was not legally permissible for the respondents to issue instructions, if any, contrary to the decision rendered by the Apex court as the judgment of the Apex Court is binding on all the authorities. Further, the Apex Court has taken consistent view since 1981 that the service of the surplus staff will not be counted for the purpose of seniority which they have rendered prior to their absorption in the new unit. Even now, the respondents themselves have issued instructions dated 25.5.2004 consistent with the view taken by the Apex Court and also inserted new Para 313A in IREM after existing Para 313, which is to the following effect:-

**"313A: Assignment of seniority to redeployed surplus staff:** The surplus employees are not entitled for benefit of the past service rendered in the previous unit/department for the purpose of their seniority in the new unit/department. Such employees are to be treated as fresh entrants in the matter of seniority, promotions etc.

**Note I :** When two or more surplus employees of a particular grade in a unit/department are selected on different dates for absorption in a grade in another unit/department, their inter-se seniority in the latter unit/department will be same as in their previous unit/department provided that:

- (i) No direct recruit has been selected for appointment to that grade in between these dates and
- (ii) no promotion has been approved for appointment to that grade between these dates.

**Note II:** When two or more surplus employees of a particular grade in a unit/department are simultaneously selected for redeployment in another unit/department in a grade their inter-se seniority in the particular grade, on redeployment in the latter unit/department would be the same as in their previous unit/department.”

At this stage, it will also be useful to quote para 2 of the letter dated 25.5.2004 which necessitated the amendment in IREM 1989 in the aforesaid terms and thus reads:-

“2. CAT/Jodhpur in their recent judgment dated 24.12.1999 in OA No.165/98-Shri Surinder Prakash and others vs. Union of India and others and another dated 05.01.2000 in OA No. 489/94 – Indian Railway Ticket Checking Staff Association and another vs. Union of India and Ors. have allowed the applications filed by the Railway employees against the procedure of allowing full seniority to surplus staff on their absorption to another cadre. These judgments were based upon the judgment dated 29.7.1988 of Hon’ble Supreme Court in CA No.2530/81 and 1730/87 in the case of South Eastern Railway and Ors.

vs. Ram Narain Singh and Ors. and also the judgment dated 18.11.1980 in the case of Ramakant Chaturvedi and ors. vs. Divisional Supdt. Northern Railway, Moradabad and Ors., 1980 (Supp) (SCC 621. A copy of Apex Court's judgment dated 18.11.1980 was circulated to the Railways vide this Ministry letter No. E(NG)I-80/PMI/292 dated 16.03.1981 for information and guidance. In the civil side matters also, Hon'ble Supreme Court have given directions that surplus staff absorbed in other cadres/departments will not count the service rendered by them in the parent cadre/department for the purpose of seniority and promotion."

Thus, from reading of Para 2 of the letter dated 25.5.2004 as reproduced above, it is clear that the judgment of the Apex Court was circulated for information and guidance vide ministry letter dated 16.3.1981 and also that the Supreme Court has given directions that surplus staff absorbed in other cadres/departments will not count their service rendered by them in the parent cadre/department for the purpose of seniority and promotion. Thus, viewing the matter on the basis of law laid down by the Apex Court as early as in the year 1980 and followed subsequently and also that now the railway authorities have also inserted specific provision i.e., Para 313A in the IREM, there is no escapable conclusion that respondent No. 5 to 7 who belong to Loco department constitute one cadre and applicants who belong to C&W Department constitute different cadre. Consequent upon their displacement from the Loco cadre, instead of retrenching them from service they were sought to be absorbed by giving necessary training so that they can be adjusted in C&W department. As a consequence, they were shifted to new cadre. Under these circumstances, they are not entitled to the seniority over the staff already working in the C&W Department.

9. Thus, in view of the decision rendered by this Tribunal in the case of Dhruva Datt Sharma, as reproduced above, which is squarely applicable to the facts and circumstances of this case, we are of the firm view that the applicants are not entitled to any relief even on merit.

Uf

10. Learned Counsel for the applicants has drawn our attention to the decision of the Hon'ble High Court in DB Civil Writ Petition No.3564/2000, Raj Kumar Gupta & Ors. vs. Union of India & Ors., decided on 2.02.2007, whereby the writ petition filed by the applicants against assigning seniority to the private respondents prior to their absorption was dismissed. The judgment rendered by the Hon'ble High Court in the aforesaid case is not applicable to the facts and circumstances of this case. On facts, it was held that the transfer/absorption of the private respondents was in the interest of Railway administration unlike those cases where absorption was made on compassionate ground after relaxing the qualification unlike those cases which were under consideration before the Apex Court, as such, the benefit of past service was rightly given. The decision of the Apex Court in the case of South Eastern railway, Calcutta vs. Ramnarain Singh, (1997) 5 SCC 84 and also in the case of V. K. Dubey vs. Union of India, (1997) 5 SCC 81 was distinguished by the Hon'ble High Court. At this stage, it will also be useful to quote the relevant portion of the judgment of the Hon'ble High Court, which thus reads as under :-

" In South Eastern Railway v. Ram Narayan Singh (supra) which too was decided following the decision in Rama Kant Chaturvedi, the employees belonging to the diesel side were subsequently absorbed and posted on the electric side in the aftermath of electrification of tracks i.e. switching over from diesel locomotives to electric locomotives after completing the requisite training and qualifying at

16

the requisite test. It was held that it was not a case of transfer in the interest of administration but absorption on compassionate grounds. The following observation may usefully be quoted.

"The Rules only contemplate ordinary transfers and not situations arising from absorption of personnel from other cadres on compassionate grounds. So also the High Court was not right in taking the view that it was a "transfer" in the interest of the administration. In fact it was not a 'transfer' in the real sense at all. It was absorption of the employees on the diesel side or the electric side upon their acquiring the qualification requisite for being absorbed. So also, it was made on compassionate grounds and not in the interest of the administration. The point is squarely covered against the appellants by the decision in Rama Kant case."

The decisions in the abovementioned cases, it would appear were rendered in the fact situation of the case. In Rama Kant Chaturvedi case, which is the leading case, there was successive absorption, one was in accordance with the qualifications prescribed in the rules while the other was the result of relaxation of the qualification though the persons concerned were senior in the parent cadre to those absorbed earlier. In V. K. Dubey case, it was found, absorption had saved the staff from retrenchment and they were absorbed after necessary training in operating electric locomotives. Ram Narayan Singh case was also a case of absorption on compassionate ground on successful completion of training.

It is not the case of the respondents that the Telegraphists/Senior Telegraphists were intended to be retrenched nor there is any dispute about the respondents not fulfilling the qualifications for the posts of TC and TTE. The definite case of the railways is that transfer/absorption of the private respondents was in the interest of railway administration on account of restructuring of telegraph wing, and seeking option from the persons concerned did not amount to transfer on own request." (Emphasis ours)

11. Thus, from the portion, as quoted above, it is clear that the Hon'ble High Court distinguished the case of the

Apex Court in the case of South Eastern railway (supra) which decision was followed in the case of Rama Kant Chaturvedi and decision of V. K. Dubey's case (supra) on the ground that issue involved before the Apex Court was regarding absorption of the employees on compassionate ground on successful completion of training whereas the case before the Hon'ble High Court was only a case of simple transfer/absorption of private respondents in the interest of administration on account of restructuring of a cadre.

12. As already stated above, this is a case where the applicants were absorbed only when they qualified the written test as well as viva voce test which is the pre requisite condition for recruitment to the post by way of direct recruitment and those persons who have qualified the written test, they were directed to undergo training and it was only on the completion of training that the applicants were absorbed. According to us, the decision rendered by the Hon'ble High Court in the case of Raj Kumar Gupta is not applicable in the facts and circumstances of this case. Rather the observation made by the Hon'ble High Court while interpreting the judgment of Apex Court makes it clear that present case is not a case of transfer in the interest of administration but absorption on compassionate ground where applicants are not entitled to seniority for the exercise rendered by them in Loco Shed/Parental department before their

absorption in commercial department. Thus, viewing the matter from any angle, we are of the view that the present OA is bereft of merit which is dismissed on both counts, namely on the ground of limitation as well as on merit.

13. Accordingly, the OA as well as MA stands dismissed with no order as to costs.

  
(J. P. SHUKLA)  
ADMINISTRATIVE MEMBER  
(M. L. CHAUHAN)  
JUDICIAL MEMBER

P.C./