

Central Administrative Tribunal  
Jaipur Bench, JAIPUR

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ORDERS OF THE BENCH

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19<sup>th</sup> August, 2009


OA. 319/2005


MA 351/2005

Present: Shri Rajesh Kapoor, counsel for applicant  
Sh.V.S.Gurjar, counsel for respondents

Heard counsel for parties.

For the reasons to be dictated separately the OA is disposed  
of

  
(B.L. Khatri)  
Member (Administrative)

  
(M.L. Chauhan)  
Member (Judicial)

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Central Administrative Tribunal  
Jaipur Bench, JAIPUR

OA 319/2005  
MA 351/2005

This the 19<sup>th</sup> day of August, 2009

**Hon'ble Shri M.L. Chauhan, Member (Judicial)**  
**Hon'ble Shri B.L. Khatri, Member (Administrative)**

Umesh Kumar Nema  
S/o Shri V.D.Nema, Senior Section Engineer  
(Ad-hoc) Foundry Shop Loco Ajmer,  
Transferred to EDPM, Carriage, Ajmer,  
R/o Railway Banglow No. 378, Beawar Road,  
AJMER (RAJTHAN) ...Applicant

(By Advocate: Shri Rajesh Kapoor )

**- VERSUS -**

1. Union of India, through the General Manager  
North Western Railways Jaipur.
2. Railway Board, Rail Bhawan New Delhi, through its  
Chairman.
3. Chief Works Manager, (Estt.) North Western Railways,  
Loco Workshop, Ajmer,
4. Deputy Chief Mechanical Engineer, (L), Loco Workshop ,  
Ajmer.
5. Babulal S/o Shri Rameshchander Senior Section  
Engineer Foundry Shop Loco Ajmer,  
R/o Railway Banglow No. 309  
Pal Bichla, Ajmer (Raj) .....Respondents

(By Advocate: Shri V.S.Gurjar )

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### ORDER (ORAL)

When the matter was listed 10.8.2009, the Tribunal has passed the following orders:-

The grievance of the applicant in this case is that the official respondents have granted promotion to respondent NO.5 on the post of Sr. Section Engineer as per notification dated 21.8.2007 (Annexure A/1) in violation of Memo. Dated 2.7.1997 (Annexure A/3) issued by the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pension, Government of India, in respect of post based roster. It has been specifically pleaded that the roster issued by the Railway Board has been quashed by the Tribunal and even the Hon'ble High court of Jodhpur Bench has upheld the roster of the DOPT in the case of R.K. Gaur, as such it was not permissible for the respondents to make selection on the basis of the quashed roster. When the matter was listed on 20.5.2009, the same was adjourned.

Learned counsel for the respondents has produced a copy of the judgment dated 8.4.2009 passed in DB passed DB Civil Writ Petition No. 11230/2008 where the Hon'ble High Court has deferred hearing of the matter till the matter is decided by the Hon'ble Supreme Court.

In view of the order dated 8.4.2009 passed by the Hon'ble High Court, where similar issue is pending and which has been deferred sine-die till the matter is decided by the Hon'ble Supreme Court, the hearing of this OA can either be deferred till the matter is decided by the Hon'ble Supreme court or the OA can be decided subject to the diction rendered by the Apex Court which maybe made applicable to the applicant without dragging him for further litigation within the time bound period.

Learned counsel for the applicant prays for adjournment to seek instructions from his client in this regard.

Let the matter be listed for hearing on 19.8.2009.

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Learned counsel for applicant on instructions from his client submits that he has no objection if present OA is disposed of in terms of observations made above and direction is given to the respondents to process the case of the applicant in the light of the decision to be rendered by the Apex Court where the issue regarding application of post based roster is pending.

In view of what has been stated above, the present OA is disposed of with a direction to the respondents that they should proceed with the matter in accordance with the judgment to be rendered by the Hon'ble Supreme Court where the issue regarding the application of the post based roster in the case of **R.K. Guar** pursuant to the notification dated 21.8.1997 is pending, without dragging the applicant to further litigation and direction of the Apex Court be carried out within a period of two months from the date of receipt of a copy of the judgment.

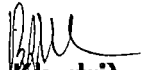
Learned counsel for the applicant has drawn our attention to the order dated 22.3.2007 whereby this Tribunal while vacating Status-quo order has further observed that the incentive which may be admissible to the applicant shall be subject to the outcome of this OA.


Grievance of the applicant is that he was granted promotion on ad-hoc basis as Sr. Section Engineer w.e.f. 5.6.2004 subsequently he was transferred in that capacity to EDPM vide the order dated

2.6.2005 but on account of order of status quo passed by this Tribunal the applicant continued to serve in that capacity in the Foundry Shop Loco AJMER(Raj). The grievance of the applicant is that he has not been paid incentive for the period w.e.f. 2.6.2005 till he was regularly appointed in the year 2007 because of the order of status quo passed by this Tribunal whereas he is entitled to such incentive. Since this issue is not directly involved in this case however, we wish to clarify that respondents may examine this aspect independently on merits and take decision within a period of three months from the date of receipt of this order. In case the applicant is still aggrieved it will be open to him to file substantive OA.

With the above observations the present OA is dispose of.

In view of order passed in OA no order is required to be passed in the MA 351/05.

  
(B.L. Khatri)  
Member (Administrative)

  
(M.L. Chauhan)  
Member (Judicial)

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