

13.07.2009

OA No. 439/2007

Mr. Shiv Kumar, Counsel for applicant.  
Mr. Anupam Agarwal, Counsel for respondents.

On the request of the learned counsel for the applicant, let the matter be listed for hearing on 06.08.2009. It is made clear that no further adjournment will be granted on that date.

(B.L. KHATRI)  
MEMBER (A)

(M.L. CHAUHAN)  
MEMBER (J)

AHQ

6.8.2009 Mr. Shiv Kumar, Counsel for applicant  
Mr. Anupam Agarwal, Counsel for  
respondents

Heard learned counsel for the  
parties

for the reasons dictated  
separately, the matter stands adjourned

2.

(B.L. Khatri)  
M(A)

(M.L. Chauhan)  
M(J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

Jaipur, this the 6<sup>th</sup> day of August, 2009

**OA No.439/2007**

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)  
HON'BLE MR. B.L.KHATRI, MEMBER (ADMV.)

1. Pradeep Kumar Jain s/o Shri J.P.Jain, r/o RE/TTT/3, T.R.D. Colony, Ramganj Mandi, Kota.
2. Shiv Ram Jangid s/o Jalluram Jangid r/o New Railway Colony, Q.No.T-II-B, Hindon City, Distt. Sawai Madhopur.
3. Padam Chand Jain s/o Shri Kalyan Prasad, r/o New Railway Colony, Hindon City, Distt. Sawai Madhopur.

.. Applicants

(By Advocate: Shri Shiv Kumar)

Versus

1. Union of India through General Manager, Western Central Railway, Jabalpur.
2. Divisional Railway Manager, Western Central Railway, Kota Division, Kota, Rajasthan.
3. Senior Divisional Electrical Engineer (TRD), (Establishment), Western Central Railway, Kota Division.

.. Respondents

(By Advocate: Shri Anupam Agarwal)



### ORDER (ORAL)

The applicants have filed this OA thereby praying for quashing the order dated 11.12.2007 (Ann.A/1) reverting the applicants from the post of Technician Grade-I and marking recovery from the applicants and in the alternative the applicants have prayed that the respondents may be directed to protect the pay scale of the applicant for the post of Technician Grade-I.

2. Briefly stated, facts of the case are that the applicants were assigned seniority in ELF Grade-III vide letter dated 8.11.1993 which was subsequently withdrawn and position of the applicants in the seniority list dated 17.6.1993 was restored. Pursuant thereupon, the applicants were ordered to be reverted from ELF-I to ELF-II. Feeling aggrieved by the said action of the respondents, the applicants and other persons filed OA No.656/94 before this Tribunal. This Tribunal vide order dated 30.3.2001 (Ann.A/2) dismissed the case of the applicants. In Para 12 this tribunal has made the following observations:-

"12. In view of the facts and circumstances of this case, we find that this application has no merit and deserves to be dismissed. However, we find that the applicants have been continuing in Grade-I because of the stay granted in the matter. The respondents are directed to examine the position whether in view of latest vacancy position, the applicants can be allowed to continue even after accommodating the senior suitable candidates to the extent the vacancies remain after promoting such senior suitable candidates, the applicant should be allowed to continue."

This order has also been affirmed by the Hon'ble High Court vide its judgment dated September 10, 2007 passed in CWP

No.1986/2001. Pursuant to the judgment rendered by this Tribunal as affirmed by the High Court the respondents vide impugned order Ann.A/1 have reverted the applicants to the post of Technician Grade-II w.e.f. 5.8.1994. It is this order which is under challenge before this Tribunal.

2. Notice of this application was given to the respondents. The respondents have filed reply. In the reply, the respondents have categorically stated that in terms of direction given by this Tribunal in Para 12 of the order, relevant portion of which has been quoted above, the respondents were under obligation to consider the claim of the applicants for continuance as Technician Grade-I by considering latest vacancy position. It is further stated that as per the existing vacancy position, promotion were made on 1.2.1994 wherein name of the applicants were erroneously included because of their erroneous seniority position assigned to them at the relevant time. However, the same stood corrected in view of the orders of the Tribunal up held by the Hon'ble High Court. Thus, according to the respondents, name of the applicants stood deleted and replaced from the next candidate as per seniority from the order dated 1.2.1994. It is further stated that thereafter further promotions were also made from time to time in the year 1996 and 2005 as per vacancy according to the post based roster. The respondents have also placed on record copy of the promotion made during 1994-2007 jointly as Ann.R/1. In this para the respondents have explained how the vacancy position has been

worked out till 2007. It is further stated that name of the applicants could not find place in the zone of consideration for promotion to the post of Technician Grade-I as is evident from seniority list dated 17.6.1993 and 1.9.2006. Thus, the applicant could not be continued in Technician Grade-I on account of availability of the vacancies in terms of the observations made by this Tribunal in Para 12 of the judgment.

3. We have heard the learned counsel for the parties and gone through the material placed on record.

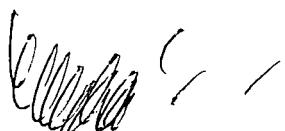
4. In view of the specific stand taken by the respondents in the reply affidavit which has not been controverted by the learned counsel for the applicant, we see no infirmity in the order dated 11.12.2007 (Ann.A/1) whereby the applicants have been reverted to the post of Technician Grade-II and their pay has been fixed accordingly in compliance of the decision rendered by this Tribunal in the earlier OA which has been affirmed by the High Court.

5. So far grievance of the applicants that the respondents may be restrained to effect the recovery is concerned, the stand of the respondents is that Ann.A/1 did not disclose any amount to be recovered or ordered to be recovered from the applicants. In view of this specific statement in the reply, we are of the view that no positive direction can be given on this aspect. In case the respondents proceed to recover the amount from the applicants for the period during which he has performed duty of Technician Grade-I, it will be open for the applicants to file substantive OA in this regard and the matter will be examined on merit.

6. With these observations, the OA is disposed of with no order as to costs.



(B.L.KHATRI)  
Admv. Member



(M.L.CHAUHAN)  
Judl.Member

R/