IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 20th August, 2008

CORAM:

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. B.L. KHATRI, ADMINISTRATIVE MEMBER

1. **ORIGINAL APPLICATION NO. 445/2007**

Chottey Lal son of Shri Asha Ram aged about 46 years, resident of c/o Senior Section Engineer (TRD) Lakheri at present employed on the post of Technician Grade I, Western Central Railway, Kota Division.

2. **ORIGINAL APPLICATION NO. 446/2007**

Abdul Kasim son of Shri Gafforji aged about 43 years, resident of Chuli Gate, Near Masjid, Swaimadhopur, Rajasthan at present employed on the post of Technician Grade I, Western Central Railway, Kota Division.

.....APPLICANTS

(By Advocate: Mr. Shiv Kumar)

VERSUS

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

.....RESPONDENTS

(By Advocate: Mr. Anupam Agarwal)

ORDER (ORAL)

By common order, we propose to dispose of these OAs as common question of law is involved.

2. Briefly stated, facts of the case so far as it is relevant for the decision of these cases are that the applicants who were initially appointed as Electrical Fitter Grade III, they were further promoted as Electrical Fitter Grade II (now known as Technician Grade II). They also appeared for selection for promotion to the post of Technician Grade I. They were also promoted to the said post. Subsequently, the respondents proposes to revise the seniority of the applicants and also to revert them from Technician Grade I as they were wrongly promoted. The said action of the respondents was challenged by the affected parties including one of the applicants (Abdul Kasim) in OA No. 656/1994 which was disposed of vide order dated 30.03.2001 and this Tribunal came to the conclusion that this application has no merit and deserves to be dismissed. However, while dismissing the said OA, this Tribunal further observed that respondents may 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 applicants should be allowed to continue.

3. The Writ Petition filed against the judgement of this Tribunal was also dismissed by the Hon'ble High Court vide its order dated 10.09.2007.

4. The respondents have passed the impugned order dated 11.12.2007 (Annexure A/1) in pursuant to the judgement rendered by

this Tribunal, which has been affirmed by the Hon'ble High Court, whereby the pay of the applicant have been re-fixed. It is this order which is challenged in these OAs. The applicants have prayed for quashing of the order dated 11.12.2007 (Annexure A/1), reverting the applicants from the post of Technician Grade I and making recovery from the applicants.

5. Notice of this application was given to the respondents. Respondents have filed reply. In the reply, the respondents have categorically stated that the impugned order dated 11.12.2007 (Annexure A/1) has been passed in conformity of the order passed by this Tribunal which has been affirmed by the Hon'ble High Court; as such the applicant cannot challenge the validity of the impugned order. Regarding the recovery being made from the applicants for the period during which they worked on the post of Technician Grade I, the respondents have categorically stated that "bare perusal of the order Annexure A/1 does not disclose any amount to be recovered or order of recovery. Thus any submission with regard to the same is premature and without any substance at this stage."

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

7. From the material placed on record, it is evident that the applicants were wrongly promoted as Technician Grade I, on the basis of wrong seniority ignoring the claim of the senior persons. Accordingly, a show cause notice was issued by the respondents regarding change in seniority and reversion which action of the respondents was challenged by one of the applicant in this OA and also other

person by filing OA No. 656/1994 without any success and action of the respondents was upheld by this Tribunal as well as by the Hon'ble High Court. Consequently, the applicants who were wrongly promoted had to be reverted from the post of Technician Grade I. Thus the applicants cannot agitate this issue again in this OA. However, they were subsequently promoted on the post of Technician Grade I in view of the observations made by this Tribunal in earlier OA against future vacancies. Thus grievance of the applicant that their pay has been wrongly re-fixed cannot be entertained, as ~~such~~ these orders have been passed in conformity with the order passed by this Tribunal as well as by the Hon'ble High Court as a follow up action on account of their illegal promotion. As regards the other grievance of the applicants that respondents may be restrained from effecting recovery during the period they have worked on the post of Technician Grade I, suffice it to say that since the applicants have worked on the pot of Technician Grade I, no recovery of excess amount shall be effected from the applicants for the period during which they have been wrongly promoted on the post of Technician Grade I. Besides it, the respondents have categorically stated that no such recovery is being effected. Thus in view of the categorical averment made by the respondents in the reply affidavit and the fact that the applicants have worked on the post of Technician Grade I, the respondents are restrained from effecting recovery of excess amount from the pay of the applicants for the period during which they were wrongly allowed to work on the post of Technician Grade I.

8. With these observations, these OAs are disposed of at with no order as to costs.

(B.L. KHATRI)
MEMBER (A)

(M.L. CHAUHAN)
MEMBER (J)

AHQ