

**THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET**

APPLICATION NO.: _____

Applicant (S)

Respondent (S)

Advocate for Applicant (S)

Advocate for Respondent (S)

NOTES OF THE REGISTRY	ORDERS OF THE TRIBUNAL
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20.05.2009

OA No. 200/2008 with MA 306/2008, 29/2009 and 60/2009

Mr. C.B. Sharma, Counsel for applicant.
Mr. N.C. Goyal, Counsel for respondents.

MA 29/2009

This MA has been filed by the applicant for taking certain documents on record.

In view of the averments made in the MA, the same is allowed. The documents annexed with this MA shall form part of the main OA.

The MA is disposed of accordingly.

MA 60/2009

This MA has been filed by the respondents for submitting the reply to the queries of the Hon'ble Court.

In view of the averments in this MA, the same is allowed. The reply submitted by the respondents is taken on record.

The MA is disposed of accordingly.

OA 200/2008 with MA 306/2008

Heard learned counsel for the parties.

For the reasons dictated separately, the case is disposed of.

(B.L. KHATRI)
MEMBER (A)

(M.L. CHAUHAN)
MEMBER (J)

AHQ

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 20th May, 2009

ORIGINAL APPLICATION NO. 200/2008
WITH
MISC. APPLICATION NOS. 306/2008

CORAM:

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

1. Pushpendra Kumar son of Shri Jai Prakash, aged about 30 years. Presently working as Record Sorter, office of Deputy Chief Electrical Engineer under Deputy Mechanical Engineer (Carriage), Carriage time office, North Western Railway, Ajmer Division, Ajmer.
2. Kamal Kishore Sharma son of Shri Govind Narain Sharma. Presently working as Record Sorter, Office of Deputy Chief Mechanical Engineer (Carriage), North Western Railway, Ajmer Division, Ajmer.
3. Vaibhav Kumar Sharma son of Shri Suresh Chand Sharma. Presently working as Record Sorter Electric Mill Write Railway Power House under Deputy Chief Mechanical Engineer (Carriage), North Western Railway, Ajmer Division, Ajmer.

.....APPLICANTS

(By Advocate: Mr. C.B. Sharma)

VERSUS

1. Union of India through the General Manager, North Western Zone, North Western Railway, Jaipur.
2. Chief Works Manager (Carriage), North Western Railway, Ajmer Division, Ajmer.
3. Deputy Chief Mechanical Engineer (Carriage), North Western Railway, Ajmer Division, Ajmer.

.....RESPONDENTS

(By Advocate : Mr. N.C. Goyal)

ORDER (ORAL)

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

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"(i) That the entire record relating to the case be called for and after perusing the same, order dated 27.5.2008 (Annexure A/1) in respect of the applicants as shown in Part A of the orders for reverting the applicants from promotional posts to the original posts be quashed and set aside with all consequential benefits.

(ii) That respondents be further directed not to revert the applicants from the present post of Record Sorter scale Rs.2740-4400 and to allow the applicants to hold the present post with due benefits.

(iii) Any other order, direction or relief may be passed in favour of the applicants which may be deemed fit, just and proper under the facts and circumstances of the case.

(iv) That the cost of this application may be awarded."

2. The case of the applicants is that they were appointed as Recorder Sorter in Group 'C' category after qualifying the written examination/ selection test, the result of which was declared vide order dated 28.06.2006 (Annexure A/4) wherein the name of the applicants find mentioned and subsequently they were also promoted as Record Sorter vide order dated 13.07.2005 (Annexure A/5) in which the name of the applicants find mentioned at sl. Nos. 5, 6 and 7. The grievance of the applicants is that vide impugned order dated 27.05.2008 (Annexure A/1), the applicants have been reverted to the lower post on account of surrendering of the posts of the Record Sorter, which course are not permissible for the respondents as only those posts can be surrendered which are vacant.

3. Notice of this application was given to the respondents. The respondents have stated that after surrendering the posts vide impugned order dated 27.05.2008 (Annexure A/1), the sanctioned cadre strength of the Record Sorter remained 6, as such the applicants being the junior most have to be reverted to their original posts.

4. In order to sort out the controversy, the learned counsel for the respondents was directed to produce the order which authorize the appropriate authority to even surrender those posts, which are filled in. Learned counsel for the respondents has produced the notification dated 30.03.2006 and another order No. 57/2006. Perusal of these documents shows that proposal was put up for abolition of the ~~19~~ posts, which were vacant. In fact the Appropriate Authority has

approved the surrender of 19 posts, which were vacant. However, perusal of the order dated No. 57/2005 reveals that 85 posts of different category was required to be surrendered at Item No. 21, category - Record Sorter at column No. 5, one post is shown to be vacant, which was required to be surrendered. Thus on the face of these documents, it is evident that posts which were required to be surrendered were the post which were lying vacant. Admittedly, the post(s) of the applicants were not lying vacant. As such, it was not under the competence of the authority concerned to surrender those posts, which have already been filed in accordance of rules and only those posts could have been surrendered, which may fall vacant subsequently or are lying vacant when the decision is taken. This is not being the case of such nature. As such the actions of the respondents vide impugned order Annexure A/1 thereby surrendering the posts of the applicants is illegal and the same is liable to be quashed and set aside.

5. Learned counsel for the applicant submits that applicants have subsequently passed the test for clerical post and their promotion has been withheld on account of pendency of this OA. For that purpose, applicants has placed on record the order dated 14.11.2008 (Annexure MA/2) in MA No. 29/2009. Learned counsel for the applicant further submits that the purpose of surrendering 3 posts of Record Sorter can be achieved by the respondents in case the applicants are given posting against the clerical posts pursuant to the aforesaid order, which decision will be in conformity with the decision taken by the Railway Board where the Board has taken the decision to reduce 2% of the vacant posts in respect of different categories. Be that as it may, since we have already held that the respondents could have surrendered only those posts which are lying vacant and not the posts which have been filled in accordance with the rules, as such, the impugned order dated 27.05.2008 (Annexure A/1) so far as it relates to the applicants is quashed and set aside. No decision is brought to our notice which authorizes the respondents to even surrender those posts, which are filled in.

6. In view of what has been stated above, we are of the view that applicant have made out a case for our Interference. Accordingly the OA is allowed in the aforesaid terms.

7. In view of the order passed in the OA, no order is required to be passed in the MA; the same is accordingly disposed of.


(B.L. KHATRI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

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