

(Reserved on 30.08.18)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

Original Application No. 330/00168/2010

Allahabad this the 06th day of September, 2018

Hon'ble Mr. Gokul Chandra Pati, Member – A

Hon'ble Mr. Rakesh Sagar Jain, Member - J

1. Mohd. Naim son of Mohd. Yameen, Posted as Chief Office Superintendent. Working in the office of Divisional Material Manager, Northern Railway, Moradabad.
2. Veer Pal Singh son of Buddhi Singh, Posted as Office Superintendent-II/Type, working in the office of Divisional Material Manager, Northern Railway, Moradabad.
3. Charan Das, son of Ram Swaroop, Posted as Office Superintendent-II in Transport Branch, Northern Railway, Moradabad.
4. Smt. Manju Mittal wife of Late Ashok, Posted as Store Porter, Operating Branch, Divisional Manager, Northern Railway, Moradabad.
5. J.K. Bali son of Chet Ram Bali, Posted as Special Messenger.
6. Santosh Masih, son of Shyam Lal, Posted as Technician Gr.-II
7. Rajesh Kumar son of Fakeera, posted as Store Khalasi.
8. Chandan Singh, son of Diwan Singh, Posted as Store Helper.
9. Keshar Singh, son of Kishan Singh, Posted as Helper Khalasi.
10. Tarun Kumar, son of Raghunandan Prasad, Posted as Confidential Assistant

Applicants Nos. 5 to 10 are working in the office of Divisional Material Manager, Northern Railway, Moradabad.

Applicants

By Advocates: Shri Vikas Budhwar

V E R S U S

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Rail Manager, Northern Railway, Moradabad.
3. Senior Divisional Material Manager in the office of Divisional Railway Manager, Moradabad.

Respondents**By Advocate: Shri P.N. Rai****ORDER****By Hon'ble Mr. Gokul Chandra Pati, Member-A.**

The reliefs prayed for by the applicants in this OA are the following:-

“i. to set aside orders dated 01.01.2010, 20.01.2010, and 20.01.2010 respectively Annexures A-1, A-2 and A-3 to compilation No. 1.

ii. to issue order or direction in the nature of mandamus commanding the respondents not to pass orders in respect of repatriation of the applicants from the Divisional Stores Organization to their respective parent departments.

iii. to issue mandamus commanding the respondents to forthwith consider the absorption of the applicants in the Divisional Stores Organization of Northern Railways, Moradabad in terms of Circular dated 13-2-2008 issued by Dy. Controller of Stores and dated 10-5-2008 and continue paying them their salary and other pecuniary benefits payable to the applicants in accordance with law.”

2. The facts in this case are that the applicants are working in the Divisional Stores Organization, Northern Railway, Moradabad since 1994 onwards and want to be absorbed in the Stores department without returning to their parent departments, by virtue of the Railway Board circular dated 2.8.2002. It is stated in the OA that the applicants had earned promotion in Stores department while working there. The respondents issued an order dated 13.2.2003 in pursuance to

the Railway Board circular dated 2.8.2002, providing for operation of the Divisional Stores Depots. The said circular provides for permanent transfer of the staff working in the store department on deputation from other departments and they are finally absorbed in the Divisional Stores Organization (in short DSO). The respondent no.3 issued a letter expressing his inability to spare any of the persons working in the Stores.

3. At this stage, the respondents repatriated the applicants from DSO to their parent departments vide order dated 20.3.2009 and 9.3.2009, which were challenged by the applicants in the OA No. 350/2009 which was disposed of vide order dated 7.4.2009 (Annexure A-16) directing the applicants to file a comprehensive representation before the respondents who are to pass a speaking order within two months. When such representation was rejected, the applicant filed another OA No. 765/2009, which was disposed of by the order dated 23.7.2009 (Annexure A-18) quashing the impugned order dated 30.6.2009 by which the applicants were repatriated to their parent departments. The respondents were directed to consider the case of the applicants afresh keeping in view the observations in the order.

4. In compliance of the order dated 23.7.2009 of this Tribunal in the OA No. 765/2009, the respondents have passed another order dated 1.1.2010 (Annexure A-1) by which the case for absorption of the applicants in the DSO was rejected. This order has been impugned in this OA, which is the third round of litigation between the parties. The present OA has been filed mainly on the ground that the respondents have not taken into account the Railway Board circular dated 2.8.2002. It is further alleged in para 4.24 of the OA that two staffs who were deputed to the Stores much after the applicants, have been allowed to continue in DSO. Subsequent to passing of the impugned order dated 1.1.2010, the respondents issued letter dated 20.1.2010 asked the applicant no.1 and 2 to furnish their option for

absorption in the DSO, where as in the case of other applicants, no such letter was issued.

5. The respondents filed Counter Reply stating that there is no staff cadre of the DSO in Moradabad and the work is managed by taking staff on deputation from other departments. As per the Railway Board letter dated 2.8.2002, separate book of sanction for the DSO and the staff working in the DSO will be permanently transferred to DSO and then absorbed against the book of sanction for the DSO. No additional post would be created in the parent department. No additional staff was created for the Stores. Then due to shortage of staff in other departments, the repatriation of the applicants to their respective departments was ordered, but the applicants filed OA against this order. The example of two staffs mentioned in para 4.24 of the OA was denied in para 36 of the Counter, which stated that those two staffs were reverted from DSO to their parent department.

6. In the Rejoinder, the applicants stated that the respondents are bound to implement the Railway Board circular dated 2.8.2002. In the Supplementary Counter Reply, the respondents submitted that the staff who were borrowed from parent departments had enjoyed promotion as per their turn in their respective parent department in which their lien was being maintained. No promotion of any staff was done based on posts in the DSO. There is no staff cadre for the DSO. The applicants have also filed a Supplementary Affidavit attaching a letter written by the respondent no. 3 stating that there is shortage of staff in DSO, for which he cannot spare experienced staff from the Stores department. In reply, the respondents have filed another Supplementary Counter stating that Store department is not the parent department of the applicant no.1 who has been repatriated on his own request to his parent department i.e. Mechanical department as per his written request. Absorption in DSO is a policy matter and unless the staffs working in DSO give their option, no decision for absorption can take place. It is

stated that the applicants were asked to exercise their option vide letter dated 20.1.2010, but there was no response from the applicants.

7. We heard the counsels for the parties and perused the pleadings on record. The grievance of the applicants is that the respondents are not implementing the Railway Board circular dated 2.8.2002, the copy of which was neither furnished by the applicants with their pleadings. It is also a fact that the applicant were called upon by the respondents in letter dated 20.1.2010 to exercise their option to continue in DSO, but there was no response, as stated in the Supplementary Counter Reply dated 25.10.2012. The reason for the applicants not willing to give their option to be posted in store department was the bottom seniority, if the transfer will take place on their own request. On the other hand, if the transfer takes place by the administration, then the seniority in the parent department will be retained.

8. It is admitted by the respondents that as per the circular dated 2.8.2002, the Railway Board had specified a separate book of sanction for the DSO. The respondents have also stated that no sanction for separate post for the DSO was received and that the applicants were asked to furnish their willingness to be absorbed in the Stores department, but it was not given by the applicants. In reply, the applicants in the Rejoinder para 14 to 19 that the decision to give bottom seniority to the applicants in the DSO was not justified in view of the Railway Board circular dated 2.8.2002 and order dated 13.2.2003 by which the local administration issued the procedure to carry out the circular dated 2.8.2002. It was further contended that it was the duty of the respondents to absorb the applicants in the DSO. It was also averred that some of the applicants gave their willingness on 23.2.2010 to go back to their parent department and on 24.2.2010, it was informed that the letter dated 23.2.2010 was written under protest.

9. It is seen that the applicants in their letter dated 29.1.2010 (Annexure RA-1) had stated that their transfer was done by the administration on their own, not on the request of the applicants and since they were working in DSO for 10-15 years, absorbing them in DSO on bottom seniority basis will be like a punishment to them. It was further mentioned in the letter dated 29.1.2010 that their transfer can be possible at the division level for which the matter may be placed before the competent authority. Then the applicant no.1 furnished his willingness to go back to his parent department (Mechanical) vide letter dated 23.2.2010 (Annexure RA-2 to the Rejoinder), on which, the respondents decided to repatriate him to the parent department vide order dated 23.2.2010. It was stated in the Rejoinder that on next day, i.e on 24.2.2010, it was informed by the applicant that the letter dated 23.2.2010 was under protest and as stated in para 18 of the Rejoinder a copy of the said letter dated 24.2.2010 was enclosed in Annexure RA-3 to the Rejoinder. On perusal of the letter dated 24.2.2010 at Annexure RA-3, it is seen that it was not a letter clarifying that the applicant no. 1's letter dated 23.2.2010 was written under protest, as averred in para 18 of the Rejoinder. In fact by the letter dated 24.2.2010, the applicant no.1 reported for duty in his parent department in pursuance to his repatriation order from DSO. There is no document furnished by the applicants to show that the letter dated 23.2.2010 giving willingness for going back to the parent department was written by the applicant no.1 under protest. In fact, as stated in para 6 of the Supplementary Counter Reply filed on 15.9.2010, some of the applicants had furnished their willingness to go back to their parent department, which is corroborated by the willingness of the applicant no. 1 as mentioned in the Rejoinder affidavit filed by the applicants as stated above.

10. From the discussions in para 9 above, it is clear that the applicants were not willing to be absorbed in the DSO at bottom seniority and they had not furnished any willingness for such absorption. In case the condition of bottom seniority was not

acceptable, they could have furnished their willingness subject to the condition that the transfer is ordered to be in the interest of administration in the light of the Railway Board circular dated 2.8.2002. There is nothing on record to show that willingness was given with these conditions. The respondents could not be compelled by the Tribunal to order a transfer in administrative interest since it is the prerogative of the concerned administrative authority to take a decision in this regard.

11. A justification given by the applicants for their automatic absorption in the DSO was the Railway Board circular dated 2.8.2002, copy of which has not been furnished by the parties. However, the applicants have referred to an order dated 13.2.2003 (Annexure A-12) issued by the respondents. The said order dated 13.2.2003 stated the following regarding the manpower in para 16 of the aforesaid order:-

“16.1 Since Divisional Organization of Divisions are having very less staff and some of the staff has been provided by the Operating Mechanical Deptts etc. There is practically no book of sanction for Divisional Stores Organization. The staff working from other department shall be permanently transferred to the Divisional Stores Organization and shall be absorbed in the book of sanction of Divisional Stores Organization.”

12. Learned counsel for the applicant has filed a written argument on behalf of the applicant No. 1 on 05.09.2018. It is argued that in spite of joining on transfer, applicant's vested rights cannot be taken away. It is also submitted that after taking a policy decision, it will be binding on the policy makers also.

13. We are not able to accept the contention of the learned counsel for the applicant No. 1 in the written arguments. All the applicants (including applicant No. 1) have been given opportunity to give their willingness to be absorbed in DSO and it was not furnished by the applicant. Even conditional willingness subject to retaining their seniority was not furnished.

14. We are not able to accept the submissions that by not absorbing the applicants in DSO, their rights have been violated as the respondents had given them an opportunity to the applicants to give their willingness to be absorbed in DSO. When their willingness was invited, the applicants did not avail the opportunity as discussed in para 9 and 10 above. Nowhere in the order dated 13.2.2003, it was mentioned that the staffs will be absorbed on transfer in the interest of administration and it was the prerogative of the concerned authority to decide on what terms and conditions the absorption in DSO of the personnel of other departments working in the Store will be effected as per the order dated 13.2.2003.. The decision of the respondents about the manner in which such absorption of staffs of other departments in the Stores Department was not acceptable to the applicants, for which many of the applicant had submitted option to be repatriated to their parent departments. Hence, no illegalities or violation of any policy decision on the part of the respondents is established.

15. In view of the factual matrix of the case as discussed above, we are not able to accept the contention of the applicants that the respondents have not taken any steps for implementing the Railway Board circular dated 2.8.2002 for absorption of the applicants in the Store department. There is no justification for this Tribunal to interfere in the matter.

16. Accordingly, the OA, being devoid of merit, is dismissed. No costs.

(RAKESH SAGAR JAIN)
MEMBER-J

(GOKUL CHANDRA PATI)
MEMBER-A

Anand...