

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.NO.1740 OF 2016
New Delhi, this the 21st day of March 2018

**CORAM:
HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER
AND
HON'BLE MS.PRAVEEN MAHAJAN, ADMINISTRATIVE MEMBER**

.....

1. Shri Rohit, aged 22 years,
s/o Shri Kailash,
Trackman,
Under P.Way Inspector,
Hapur (Moradabad Division),
R/o Vill & Post Kirshtal, Distt.Baghpath Tehsil-Badhot
2. Shri Amit Kumar, aged 29 years,
S/o Shri Karan Singh,
Trackman,
Under P.Way Inspector,
Hapur (Moradabad Division),
R/o Vill & Post Jugatha Gurjar, Dist.Saharanpur U.P.
3. Shri Suresh Kumar, aged 25 years,
S/o Shri Kailash,
Trackman,
Under P.Way Inspector,
Hapur (Moradabad Division),
R/o Vill Jakhwala & Post-Ambetha Sekha Kirshtal,
Saharanpur U.P.
4. Shri Laxmi Kant Yadav, aged 25 years,
S/o Shri Ram Narayan Yadav,
Trackman,
Under P.Way Inspector,
Hapur (Moradabad Division),
R/o Vill & Post-Hindi Bhagila, Distt.Jaunpur U.P.
5. Shri Deepak Kumar, aged 26 years,
S/o Shri Sukhlal Singh,
Trackman,
Under P.Way Inspector,
Hapur (Moradabad Division),
R/o Village Sikraudha & Post Himpur Distt.Bijnaur.

6. Shri Navin Kumar, aged 23 years,
S/o Shri Savraj Singh,
Trackman,
Under P.Way,
O/o ADEN-II Hardoi,
R/o Village Haripur & Post Behat Sharapur UP
7. Shri Jitender Kumar Meena, aged 29 years,
S/o Shri Radha Kishan Meena,
Trackman,
Under P.Way Inspector,
O/o ADEN-II Hardoi,
R/o Village & Post Mainapura Tehsil Bhusavar Distt. Bharatpur
8. Shri Prem Pal, aged 24 years,
s/o Shri Jai Prakash,
Trackman,
Under P.Way Inspector,
O/o ADEN-II, Hardoi,
R/o Village & Post Khapur, Distt. Amroha U.P.
9. Shri Vishant, aged 28 years,
S/o Shri Hetram Singh,
Trackman,
Under P.Way Inspector,
O/o ADEN-II Hardoi,
R/o Village Kanvi & Post Pilakhua Hapur U.P.
10. Shri Vishal Kumar, aged 32 years,
S/o Shri Ramvir Singh,
Trackman,
Under P.Way Inspector,
Hapur (Moradabad Division),
R/o 1707 Jajjapuri Hapur U.P.
11. Shri Ravi Kumar, aged 26 years,
S/o Shri Om Vir Singh,
Trackman under P.Way Inspector,
O/o ADEN-II Hardoi,
R/o Village Tejpura & Post Behsoma Dist. Meerut
12. Shri Neeraj Kumar, aged 27 years,
S/o Shri Ramesh Kumar,
Trackman under P.Way,
O/o ADEN II Hardoi,
R/o Village & Post Sankhol Jhajjar
13. Shri Surender Kumar, aged 36 years,

s/o Shri Om Prakash,
Trackman under P.Way Inspector,
O/o ADEN-II Hardoi,
R/o Village & Post Chhilital Guljarbagh Patna

14. Shri Sonu Kumar Gupta, aged 23 years,
S/o Shri Kishan Prasad Gupta,
Trackman under P.Way Inspector,
Hapur (Moradabad Division),
R/o Village & post Jamalpur Distt. Munger Bihar

15. Shri Rohit Kumar, aged 24 years,
S/o Shri Desh Pal Singh,
Trackman under P.Way Inspector,
Hapur (Moradabad Division),
R/o vill Ranlar & Post Ranlar, Distt. Baghpath

16. Shri Sachin Malik, aged 24 years,
S/o Shri Om Pal Singh,
Trackman under P.Way Inspector,
Hapur (Moradabad Division),
R/o Vill Jhall & Post Kabruti Distt. Samli U.P.

17. Shri Rahul Kumar, aged 34 years,
S/o Shri Gulab Singh,
Trackman under P.Way Inspector,
O/o ADEN-II Hardoi,
R/o Vill Sikohpur & Post Sikohpur Dist. Baghpath

....Applicants

(By Advocate: Ms.Meenu Mainee)

Vs.

1. General Manager,
Northern Railway,
Baroda House, New Delhi.
2. Chief Personnel Officer,
Northern Railway,
Baroda House, New Delhi.
3. Divisional Railway Manager,
Northern Railway,
Moradabad Respondents

(By Advocate: Mr.A.K.Srivastava)

ORDER

Per RAJ VIR SHARMA, MEMBER(J):

The applicants have filed this O.A. seeking the following reliefs:

- “8.1 That the Hon’ble Tribunal may be graciously pleased to allow this application and quash the impugned orders.
- 8.2 That the Hon’ble Tribunal may also be graciously pleased to direct the respondents to post the applicants as Carriage Cleaner in the Mechanical Engineering department for which post they had selected and for which post their option had been accepted by the Headquarters Office and give all consequential benefits.
- 8.3 That the Hon’ble Tribunal may further graciously be pleased to pass any other or further order as may be deemed fit and proper on the facts and circumstances of the case.
- 8.4 That the Hon’ble Tribunal may further be graciously pleased to grant costs against the respondents and in favour of the applicants.”

2. Resisting the O.A. the respondents have filed a counter reply.
3. The applicants have also filed a rejoinder reply refuting the stand taken by the respondents in their counter reply.
4. We have carefully perused the record and have heard Ms. Meenu Maine, learned counsel appearing for the applicants, and Mr. A.K. Srivastava, learned counsel appearing for the respondents.
5. Brief facts of the case, which are relevant for the purpose of deciding the issue and are not disputed by either side, are that in pursuance of the Employment Notification No. 220E/Open Mkt/RRC/2012 dated 30.8.2012, the recruitment process to fill 7368 vacancies in Pay Band-I Rs. 5200-20200 + GP Rs. 1800/- Group ‘D’ posts (including the posts of Trackman in the Civil Engineering Department and of Carriage Cleaner in the Mechanical Department) was initiated by the Railway Recruitment Cell of the Northern Railway. In

response thereto, the applicants applied and offered their candidatures. They appeared in the written examination. Having qualified the written examination, they were called for Physical Efficiency Test (PET). After conducting the PET, the Railway Recruitment Cell of the Northern Railway prepared a panel and called upon the selected candidates (including the applicants) to exercise their options for appointment to different categories of posts advertised in the employment notification. All the applicants opted for appointment to the post of Carriage Cleaner in the Mechanical Engineering Department. Thereafter, the Railway Recruitment Cell of the Northern Railway conducted the medial examination of the applicants. On medical examination, the applicants were found medically fit for the post of Carriage Cleaner. Accordingly, the Railway Recruitment Cell of the Northern Railway allotted the applicants and others to the Moradabad Division of the Northern Railway (respondent no.3) for appointing them as Carriage Cleaners in the Mechanical Department of the Moradabad Division. Instead of appointing the applicants as Carriage Cleaners in the Mechanical Department of the Moradabad Division, respondent no.3, i.e., the Divisional Railway Manager, Moradabad Division, Northern Railway, issued orders in August 2014 appointing the applicants as Trackmen in the Civil Engineering Department, with the direction to report for duty in September 2014. While protesting against the orders appointing them as Trackmen in the Civil Engineering Department, all the applicants reported for duty as Trackmen in the Civil Engineering Department and made representations in September 2014 and February 2015 requesting the respondents to appoint them as Carriage Cleaners in the Mechanical Department for which they were selected. There being no response, the applicants filed the present O.A. on 19.4.2016 seeking the reliefs as aforesaid.

6. In the above backdrop, the applicants have contended that the respondents acted arbitrarily and illegally in appointing them as Trackmen in the Civil Engineering Department, though they were duly selected and allotted to the Moradabad Division for their appointment as Carriage Cleaners in the Mechanical Department. It has also been contended by the applicants that no consent was ever obtained from them by respondent no.3 before issuing orders appointing them as Trackmen in the Civil Engineering Department, instead of Carriage Cleaners in the Mechanical Department of the Moradabad Division.

7. On the other hand, it is the stand of the respondents that vacancies in the post of Trackman in the Civil Engineering Department were lying for several years. With the approval of the competent authority, i.e., Divisional Railway Manager, Moradabad Division, all the candidates allotted to the Moradabad Division were appointed as Trackmen as per the requirement of the Railway administration and for smooth running of trains. Accordingly, the applicants were appointed as Trackmen in the Civil Engineering Department. Therefore, there is no infirmity or illegality in appointing the applicants as Trackmen in the Civil Engineering Department.

8. After having given our thoughtful consideration to the rival contentions, we have found no substance in the contentions of the respondents.

9. It is not the case of the respondents that no selected candidates were allotted to the Moradabad Division for appointment against the vacancies in the post of Trackman in the Civil Engineering Department. It is also not the case of the respondents that at the relevant point of time, vacancies in the post of Carriage Cleaner in the Mechanical Department of Moradabad Division were not available. The entire recruitment process and allotment of the selected candidates to different

Divisions of the Northern Railway pursuant to Employment Notification No.220E/Open Mkt/RRC/2012 dated 30.8.2012(ibid) were done by the Railway Recruitment Cell of the Northern Railway on the basis of the vacancies in various posts, including the posts of Carriage Cleaner in the Mechanical Department and Trackman in the Civil Engineering Department, reported by different Divisions to the Railway Recruitment Cell of the Northern Railway. The respondents have also not produced before this Tribunal any material showing that all the selected candidates for different categories of Group D posts, who were allotted to Moradabad Division, were appointed as Trackmen in the Civil Engineering Department. Therefore, the plea taken by the respondents that a number of vacancies were lying in the post of Trackmen in the Civil Engineering Department of Moradabad Division for long years and all the selected candidates allotted to Moradabad Division were appointed as Trackmen in the Civil Engineering Department, besides being unsubstantiated, is untenable. Even if it is assumed for a moment that vacancies in the post of Trackmen in the Civil Engineering Department of Moradabad Division were lying for long and were, therefore, required to be filled by appointing the applicants and others allotted for appointment as Carriage Cleaners in the Mechanical Department, the respondents ought to have intimated such situation to the applicants and others, and obtained their consent before issuing orders appointing them as Trackmen in the Civil Engineering Department. In the absence of such an opportunity being given to the applicants, the respondents cannot be said to be justified in appointing the applicants as Trackmen in the Civil Engineering Department, instead of Carriage Cleaners in the Mechanical Department. Furthermore, the respondents have not

placed before this Tribunal any rule or instructions issued by the Railway Board in support of their decision.

10. In the light of what has been discussed above, we direct the respondents to take appropriate decision appointing the applicants as Carriage Cleaners in the Mechanical Department of Moradabad Division of the Northern Railway with all consequential benefits pursuant to the Employment Notification No.220E/Open Mkt/RRC/2012 dated 30.8.2012(ibid) within a period of six months from today.

11. Resultantly, the O.A. is partly allowed to the extent indicated above. All the pending MAs are accordingly disposed of. No costs.

(PRAVEEN MAHAJAN)
ADMINISTRATIVE MEMBER

(RAJ VIR SHARMA)
JUDICIAL MEMBER

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