

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/11/2012

Jabalpur, this Wednesday, the 08th day of May, 2019

HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

1. Birendra Kumar Shukla, aged 45 years, S/o Shri Ramdev Shukla, R/o, C/o Shri Rajnish Dwivedi, H.No.316, Gayatri Nagar, Sourabh Bhavan, Gali No.18, Katni (MP) 483502.
2. Chhabilal Sahu, aged 42 years, S/o Shri Sunderlal Sahu, Near Baghirath Welding Shop, Nayagaon, Katni (MP) 483502.
3. Sunil Kumar Sahu, aged 38 years, S/o Shri Govind Pd. Sahu, R/o Rajiv Gandhi Ward, Goutam Ka Bandhwa, Katni (MP) 483501.
4. Stenil David, aged 48 years, S/o Shri Patric David, R/o Opposite Neeraj Talkies, Gayatri Nagar, Katni (MP) 483502.
5. Devendra Goswami, aged 49 years, S/o Shri Daya Shanker Goswami, R/o Opposite RPF Than, New Katni Jn. Katni (MP) 483502.
6. Balram, aged 45 years, S/o Shri Mannoolal, R/o Opp – Vaishya Dairy, Gayatri Nagar, Katni (MP) 483502.
7. Hari Shanker Tiwari, aged 32 years, S/o Shri Gouri Shanker Tiwari, R/o Near RPF Police Station, New Katni Jn. Katni (MP) 483502.
8. Alwini Victor, aged 45 years, S/o Shri Victor, Near Markaz Masjid, Roshan Nagar, Katni (MP) 483502.
9. Jai Prakash Singh, aged 55 years, S/o Shri Badrasen Singh, R/o RB-II-331-B, Opp-Rly. Hospital, New Katni Jn. Katni (MP) 483502.

10. Afzal Khan, aged 41 years, S/o Shri Rasool Khan, Rafi Ahmd Kidwai Ward, Roshan Nagar, Katni (MP) 483502.

11. Anand Tiwari, aged 34 years, S/o K.P. Tiwari, Near Durga Mandir, Railway Colony, New Katni Jn. Katni (MP) 483502.

12. Rama Shanker, aged 42 years, S/o Shri Ramavtar, R/o C/o Nand Kumar Rai, Opp. Sourabh Bhavan Gali, Gayatri Nagar, Katni (MP) 483502.

13. Radheshyam Singh, aged 38 years, S/o Shri Kallu, R/o Near Ram Kumar School, Nayagaon, New Katni Jn. Katni (MP) 483502.

14. Arunlal Gupta, aged 52 years, S/o Shri O.N. Gupta, R/o, C/o Shri Vijay Shanker Tiwari, Gopal Bagh, Gayatri Nagar, Katni (MP) 483502.

15. Dilip Kumar Patel, aged 43 years, S/o Shri Narayan Patel, R/o Vill-Padariya, P.O. Katangikala, Tehsil – Katni, Katni (MP) 483502.

16. Moolchand, aged – 57 years, S/o Shri Gajdhar, R/o Opp-RPF Thana, House – Bhola Madam, New Katni Jn. Katni (MP) 483502.

17. Maan Singh, aged 39 years, S/o Shri Lotan Ram, R/o-C/o 286-A-RB-II, SKP Colony, Katni (MP) 483502.

18. Ram Bhavan, aged 43 years, S/o Shri Gilla Pd. R/o – C/o Shri Sambhulal, Near Airtel Tower, Gayatri Nagar, Katni (MP) 483502.

19. Laljiram, aged 52 years, S/o Late Gurudayal Bathare, Gayatri Nagar, Katni (MP) 483502.

20. Rajendra Singh Kushwaha, aged 44 years, S/o Shri Bhagirath Kushwaha, R/o Near Ramkumar School, New Katni Jn. Katni (MP) 483502.

21. Ramesh Chaturvedi, aged 42 years, S/o Shri Jai Narayan Chaturvedi, R/o Mitra Vihar Colony, Gayatri Nagar, Katni (MP) 483502.

All the employees are working under Sr. DEE, TRS Shed, W.C. Rly, New Katni Jn. Katni (MP) 483502

-Applicants

(By Advocate – Shri Pankaj Dubey)

V e r s u s

1. Union of India through the General Manager, West Central Railway, Indra Market Road, Jabalpur (MP) 482001.
 2. The Divisional Railway Manager, West Central Railway, Jabalpur (MP) 482001.
 3. Sr. Divisional Electrical Engineer, TRS-Shed, New Katni Jn. Katni (MP) 483502.
 4. Sr. Divisional Personnel Officer, West Central Railway, Jabalpur (MP) 482001
- Respondents**

(By Advocate – Shri N.S. Ruprah)

(Date of reserving order : 10.10.2018)

ORDER

By Navin Tandon, AM.

The applicants are aggrieved that they have not been promoted from 20.08.2002 when the cadre was closed. Further, they were not granted the benefit of cadre review and cadre restructuring w.e.f. 01.04.2003 and 01.11.2003 respectively, when it was due.

2. The brief background of the case is as under:

2.1 On closure of Steam Locos and introduction of electrification of Railways, an Electric Loco Shed (ELS) was set up at New Katni Junction (NKJ). The Supervisors, Artisans and Khalasis working at this place are referred to as Traction Rolling Stock (**TRS**) cadre. This was opened in the year 1994-95 in

Jabalpur Division under the administrative control of erstwhile Central Railway (Headquarter – Mumbai).

2.2 The employees were called on option from various Railway Divisions/Sheds/Workshops of Indian Railways.

2.3 The Central Railway Headquarters vide letter No.HPB/228/EL/ELS/NKJ/Jabalpur dated 30.07.2002 (Annexure R-2) issued a letter which communicated the decision taken after joint meeting with the recognised Unions to close the TRS cadre of ELS/NKJ on 20.08.2002. It mentions to again invite applications to join ELS/NKJ by 12.08.2002. Those working in ELS/NKJ were also allowed to exercise option to go back to their parent unit by 12.08.2002. All promotion orders issued for this cadre prior to the date of closure of the cadre, i.e. 20.08.2002 were to be deemed fortuitous and purely ad-hoc. However, the seniority of staff transferred from different units of Central Railway on or before 20.08.2002 shall be based on rules applicable to inter-se seniority depending upon the length of substantive post held by these staff in their parent cadre as on 20.8.2002.

2.4 It has been brought out that litigations regarding seniority and ad-hoc promotions prior to 12.08.2002 were taken up in this Tribunal as well as Hon'ble High Court of Madhya Pradesh, which

was finally decided on 17.12.2012. The Hon'ble High Court of Madhya Pradesh in its order dated 17.12.2012 in Writ Petition No.7135/2008 has held that all the ad-hoc promotions prior to closure of TRS cadre on 20.08.2002 will be deemed purely ad-hoc.

3. The applicants have submitted as under:

3.1 The TRS/NKJ cadre was closed on 20.08.2002. After the reversion order of ad-hoc promotions under which persons junior to the applicants were working in higher posts, there were 76 posts of Technician-II, which were vacant and available for promotion and the applicants being senior could have been promoted on or from 20.08.2002. Further vacancies also arose subsequent to cadre review w.e.f. 01.04.2003 and cadre restructuring w.e.f. 01.11.2003. However, the applicants were promoted in the year 2005.

4. They have sought for the following reliefs:

“8. RELIEF (S) SOUGHT

That, in view of the facts and grounds mentioned in para-4 & 5, the applicants prays for the following reliefs before this Hon'ble Tribunal.

(i) That, the applicants submit that the respondents may kindly be directed to promote them as Tech-II, from 20.08.2002.

(ii) That, the further promotions as Tech-I & MCM according to the Cadre review from 1.4.03 and Cadre Restructuring from 1.11.03.

(iii) That, the consequential benefits if any due to promotion as Tech-II, Tech-I and MCM may be given from the original orders.”

5. The respondents, in their reply, have stated as under:

5.1 They have denied that there were 76 posts of Tech-II on 21.08.2002.

5.2 Reversion orders were issued on 30.02.2003 (Annexure A-3) and 11.09.2003 (Annexure A-4). However, the said posts were continued to be occupied by ad-hoc promotees till 17.12.2004, when the final orders were pronounced in OA 857/2003 by this Tribunal.

5.3 The applicants were subjected to Trade Test on 08.01.2005 and 09.02.2005 and were promoted on 30.03.2005 as Tech-II.

5.4 Cadre review was done on 01.04.2003 in which some posts were changed, but it was not implemented. The cadre restructuring was done on 01.11.2003, which was duly implemented. As both the cadre review and cadre restructuring came at the same time, the competent authority decided to only implement the cadre restructuring.

6. While hearing the case on 21.12.2017, the following was ordered:

“On perusal it is found that the seniority list of Artisan Staff Master Craftsman (MCM), Tech-I and Tech-II and Tech-III of TRS JBP Division was issued by the respondent-department on 05.04.2004 (Annexure A-5). In this list, the gradewise Sanction Strength (SS), Men on Roll (MOR) is as below:-

1. MCM (Rs.5000-8000/-)(SS-8) (MOR-7)
2. Tech-I (Rs.4500-7000/-) (SS-53)(MOR-45)
3. Tech-II (Rs.4000-6000/-) (SS-77)(MOR-34)(out of which 7 working as adhoc Tech-I)
4. Tech-III (Rs.3050-4590/-)(SS-230)(MOR-180)

The vacancy position of all the grades indicated above as on the date of closure of cadre (20.08.2002) may be indicated by the respondent-department.

The Sanction Strength(SS) and Men On Roll (MOR) prior to restructuring and after restructuring as on 01.11.2003 may also be furnished by the respondent-department.”

7. Respondent No.2 has submitted an affidavit, which shows the vacancy position as on 19.06.2002. Thereafter no other information is available in the record of the respondents. Reference has been made to their office procedure as per which the records were permitted to be destroyed on 03.08.2011. The instant O.A has been filed on 28.12.2011, i.e. after the date when the documents were permitted to be destroyed. Therefore, as far as information of sanctioned strength and men-on-roll prior to restructuring and after restructuring as on 01.11.2003 is concerned, the same is not

available in the office of the respondents. The only document which they have is dated 19.06.2002 (Annexure R-4).

8. Heard learned counsel for the parties and perused the pleadings and documents available on record.

9. This is the second round of litigation by the same applicants. They had earlier approached this Tribunal in OA 47 of 2011, which was disposed of on 24.01.2011 (Annexure A-2) directing the respondents to decide the representation of the applicants. Accordingly, vide order dated 18.07.2011 (Annexure A-1), it has been stated that there was no vacancy of Tech-II on 20.08.2002 and, therefore, promotion w.e.f. 2002 is not possible. After the cadre restructuring was implemented, the consequential vacancies were filled in and the applicants were promoted in March, 2005.

10. Learned counsel for the applicants submitted that the affidavit is talking about document dated 19.06.2002. This is prior to the date of cadre closing. The affidavit does not say anything about Annexure A-5.

11. On the other hand, learned counsel for the respondents submitted that the applicants can be promoted only after passing Trade Test and, therefore, it was not possible to promote them

earlier. Further, all the previous records have been destroyed in August, 2011 as per establishment office procedure.

FINDINGS

12. Respondents in their amended reply have stated as under:-

“18. **Reply to para 4.19 & 4.20** : This averment is replied earlier in para 4.17. “The language of the circular dt. 06.01.04 (A-6) is as follows:

“All vacancies arising out of restructuring should be filled up by senior employees who should be given benefit of the promotion w.e.f. 01.11.2003 whereas for the normal vacancies existing on 01.11.2003, junior employees should be posted by modified selection procedure but they will get promotion and higher pay from the date of taking over the post as per normal rules. Thus the special benefit of the promotion w.e.f. 01.11.2003 is available only for vacancies arising out of restructuring and for other vacancies and the normal rule of prospective promotion from the date of filling up vacancies will apply.”

The applicants have not correctly reproduced the effect of the circular dt. 06.01.04 (A-6) in this para. It is further stated that the impugned order is correct. Para 2 of the impugned order dt. 18.07.11 (A-1) only says that the applicants will not get any benefit of promotion because the posts were not increased as a result of restructuring. Rather the posts of Tech II were decreased from 110 to 93. The question of promotion of senior employees to the increased posts does not arise as there was no increase.”

XXX

XXX

XXX

32. *The TRS/NKJ cadre was created in 1994-95. The employees who joined were granted seniority from the respective dates when they joined TRS/NKJ. The rule of seniority was changed/specified vide circular dated 30.07.2002*

(R-2) whereby it was declared that seniority would be counted from the respective dates of appointments in the parent cadre. As per this circular, many of the employees who were earlier considered senior on the basis of their date of joining TRS/NKJ became junior to many of those who joined subsequently. This resulted in the reversion of many such adhoc promotees by way of the order dated 30.02.2003 (A-3) and 11.09.2003 (A-4) were approved vide order dated 17.12.2004 (R-10). This order dated 17.12.2004 was confirmed by the High Court on 17.12.2012 vide Annexure (R-6). Consequently the reversion orders dated 30.02.2003 (A-3) and 11.09.2003 (A-4), reverting the ad-hoc promotees stood approved by the High Court as well. The posts of TECH-II fell vacant only upon the implementation of the reversion orders and not prior thereto. Mere availability of the post for promoting the applicants as TECH-II is not sufficient to promote them. Rules do not permit the promotion of an employee to the post of TECH-II until and unless he passes the trade test. (See Rule 214(1) of IREM Vo-I (R-3). These trade tests were conducted on 08.01.2005 and 09.02.2005 and the applicants passed the same and promoted on 30.03.2005 (A-7). Thus the twin requirement of availability of vacancy and passing of trade tests were satisfied and the applicants were promoted to the posts of TECH-II. The respondents respectfully submit that in view of the facts and circumstances of the case, it was not possible to promote the applicants prior to 30.03.2005 vide Annexure A-7. The contention of the applicant that they should be promoted from 20.08.2002 is therefore absolutely incorrect and liable to be rejected.”

13. From the above, it is clear that the respondent department had granted ad-hoc promotions to several employees which was not as per rules. Accordingly, after receipt of policy guidelines dated 30.07.2002 (Annexure R-2) from Central Railway Headquarters, steps were taken

to undo the wrong. Reversion orders were issued on 30.02.2003 (Annexure A-3) and 11.09.2003 (Annexure A-4).

14. It is the case of the applicants that there were vacancies in Tech-II after reversion orders were issued. The respondents submit that reversion orders were implemented after orders dated 17.12.2004 (Annexure R-10) were passed by this Tribunal in OA 857/2003. Therefore, vacancies occurred only on 17.12.2004.

15. The operative part of the orders dated 17.12.2004 in OA 857/2003 read as under:-

“9. In the result, for the reasons stated above, the OA is devoid of merits and is accordingly dismissed, however, without any order as to costs. Interim orders, if any, stand vacated.”

16. The inference drawn from the orders of this Tribunal in OA 857/2003 as well as submission of the respondents is that there were interim orders of this Tribunal against reversion of the applicants therein (ad-hoc promotees), which continued till 17.12.2004.

17. The Hon’ble Apex Court in the matters of **Asis Kumar Samanta and ors. vs. State of West Bengal and ors.**, (2014) 10 SCC 357, has held as under:

“4. The legal position in U.D. Lama [U.D. Lama v. State of Sikkim, (1997) 1 SCC 111 : 1997 SCC (L&S) 142] squarely applies to the present fact situation. The private

respondents could not have been made to suffer because of intervention by the Court by way of interim relief. The State Government was not in a position to proceed with the selection by way of promotion under the Rules in view of the stay order passed by the Court. No sooner the stay order was vacated, the process for the selection by way of promotion commenced....”

17.1 In view of the law declared by the Hon’ble Apex Court, as quoted above, the applicants cannot be allowed to suffer due to interim order of a court of law and injustice done to them has to be remedied as ultimately the indicated case was dismissed.

18. It is undisputed that after the reversion of the ad-hoc promotees on 17.12.2004, the applicants were due for promotion as Tech-II and they were granted promotion to Tech-II on 30.03.2005 (Annexure A-7) after passing the Trade Test.

19. Considering the judgment of the Hon’ble Apex Court in **Asis Kumar Samanta** (supra), we hold that all the candidates, who were promoted subsequent to the reversion of the ad-hoc promotees as Tech-II vide order dated 30.03.2005 are eligible to be given the notional seniority of Tech-II w.e.f. 11.09.2003, when the latter of the two reversion orders of ad-hoc promotees were issued.

20. Respondent No.2 in his affidavit has submitted that apart from the document of 19.06.2002, no other information is available in the record of the respondents. However, the applicants have submitted

their objection to the affidavit vide MA No.200/1057/2018, wherein they have filed the following documents received through RTI vide letter dated 07.09.2011 (Annexure AR-2) enclosing letter No.जबल/का/टी.आर.एस/आर.टी.आई dated 18.08.2011 signed by APO, Jabalpur.

A- Letter No.JBP/P/201/G/Cadre Review/VII dated 04.06.2004 from DRM (P) JBP to Sr.DEE/TRS/NKJ giving the cadre review of TRS department as on 01.04.2003, which has been concurred by Sr.DFM/JBP and approved by DRM/JBP.

B- Office Order No.14/TRS/2004 dated 09.09.2004 granting promotions from Tech-II to MCM under cadre restructuring (Annexure AR-3).

C- Office Order No.27/TRS/2004 dated 01.12.2004 (Annexure AR-4) granting promotions from Tech-II to Tech-I under cadre restructuring.

21. Perusal of Office Order dated 01.12.2004 (Annexure AR-4) indicates that there were 53 sanctioned posts of Tech-I as on 31.10.2003. On cadre restructuring on 01.11.2003, the number comes to 146. To fill up the additional posts through modified screening, 30 Tech-II were promoted to Tech-I through the said order. This clearly indicates that though the increase in posts were $146-53=93$, only 30 Tech-II were promoted to Tech-I. It is clear that $93-30=63$ more promotions under cadre restructuring could have been done through

the modified selection procedures only. We presume this is due to non availability of Tech-II persons.

22. Therefore, 63 senior most Tech-II are eligible to be granted the grade of Tech-I w.e.f. 01.11.2003 on cadre restructuring.

23. Accordingly, we direct the respondents to take following actions:

“(i) All the candidates who were promoted as Tech-II vide order dated 30.03.2005 (Annexure A-7) be given the notional seniority of Tech-II w.e.f. 11.09.2003.

(ii) Sixty Three (63) senior most Tech-II be granted the benefit of cadre restructuring on notional basis for promotion to Tech-I through modified screening.”

24. We reiterate that promotions to all the applicants as well as similarly placed persons included in promotion order dated 30.03.2005 (Annexure A-7) be granted on notional basis only. However, the applicants in this case shall be granted the arrears from three years prior to the date of filing this Original Application, which is 05.01.2012. No interest shall be payable.

25. Before we part, we would like to mention that perusal of Para 32 of reply clearly indicates that the litigation regarding promotion, seniority, reversion etc. were pending in this Tribunal and Hon’ble

High Court of Madhya Pradesh, which attained finality only on 17.12.2012. Therefore, we find it very surprising that the respondents were in such unseemly hurry to destroy the documents even during pendency of court cases. Further, it is surprising while the respondents have vacancy position as on 19.06.2002, but do not have the same position for 20.08.2002 (date of closure of cadre) and 01.11.2003 (date of restructuring of cadre). Respondents have reasons for introspection and take corrective action.

25. In the result, the Original Application is allowed. The respondents are directed to complete the aforesaid exercise, within a period of three months from the date of receipt of a certified copy of this order. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

am/-