

हरीश चन्द्र जोशी

महाप्रबंधक

H.C. Joshi

General Manager

उत्तर मध्य रेलवे

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North Cenral Railway

Subedarganj

Allahabad-211033

स्पीकिंग आर्डर एक कला

के.वी.नगायच, 'आई.आर.पी.एस.'

मुख्य कार्मिक अधिकारी/प्रशासन

उत्तर मध्य रेलवे, इलाहाबाद

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INTRODUCTION

Speaking order means an order which speaks in itself. An order having civil consequences must contain reasons for support of it. The affected party must know why and on what grounds an order has been passed against him as one has the right to know not only the result of his appeal but also the reasons in support of the decision. This is a cardinal principle of Natural Justice.

The compulsion of disclosure of reasons guarantees consideration. The condition to give reasons minimizes arbitrariness, it gives satisfaction to the party against whom order is made and it also enables an appellate court to keep the Tribunal within bounds. (MP Industries –vs- Union of India AIR 1966 SC 671). Speaking orders are necessary to make judicial review effective.

The obligation to give a reasoned decision is a substantial check upon the abuse of power; a decision supported by reasons is much less likely to rest on caprice or careless consideration. Therefore, what is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy.

Reasoned decision give clear indication that the administrative authority has exercised the discretion with which it has been empowered. Such a decision is subject to judicial review and the courts cannot exercise their duty to review unless they are advised on the considerations underlying the

action under review. Further, the orderly functioning of the process of “review” requires that the grounds upon which the administrative agency acted be clearly disclosed and adequately sustained.

A statement of reasons promote thought by an authority and compels it to cover the relevant points and eschew irrelevancies and ensures careful administrative consideration. The giving of reasons is one of the fundamentals of good administration and failure to give reasons amounts to denial of justice.

Any party affected by a decision should be informed of the reasons on which the decision is based. The rule of “***Audi Alterram Partem***” i.e. “no one should be condemned unheard” as one of the main constituent of principle of Natural Justice demands that the points of defense raised by the party are necessarily to be considered before passing the decision on the appeal of the party.

It can be summarized that while passing a reasoned speaking order, the administrative authority must thoroughly analysis the various points raised by the applicant in the light of rules and procedures and base its order on the analysis so done. The order should reflect clearly that the administrative authority has applied its mind carefully while passing such an orders.

Author

SPEAKING ORDER

OA No. 1149/ 08, Surendra Kumar,
Compassionate Appointment

In compliance of Hon'ble Central Administrative Tribunal, Allahabad's order dated 15.12.2009 passed in OA No. 1149 of 2008, filed by Sh. Surendra Kumar son of Sh. Shobha Ram, I have gone through the representations of the applicant dated 05.08.2008 and 29.12.2009 carefully vide which the applicant has requested for a job on compassionate ground in place of his medically invalidated father.

On going through the records, it is revealed that the applicant's father Sh. Shobha Ram, Ex-Leverman, while in service met with an accident and declared unfit from A-2 to C-2 categories but fit as visually handicapped. He was assigned various duties subsequently but was unable to perform the duties due to bad eye vision. On 18.12.2006, he was asked to submit application for voluntary retirement so that his ward may be considered for appointment on compassionate ground. While the request for voluntary retirement was accepted, the request of the ward (applicant) for compassionate ground appointment rejected in terms of Railway Board letter dated

14.6.2006 according to which, compassionate ground appointment can be given in cases where partially de-categorized employee had at least 5 years or more service balance.

I have reviewed the entire case again and found that the applicant's request was rejected in terms of Railway Board's letter no. E(NG)II/95/RC-I/94 dated 14.6.2006, as Shri Shobha Ram, the father of the applicant was declared as partially medically de-categorized. On review of the matter by higher medical authority, it has been clarified that the partial medical de-categorization was incorrect decision and it is to be treated as a case of total invalidation.

Therefore, in terms of Para 3 of Railway Board's letter no. E(NG)II/95/RC-1/94 dated 18.1.2000, I have decided to consider applicant's request for appointment on compassionate ground, subject to fulfillment of eligibility and other terms and conditions over Allahabad Division.

General Manager

SPEAKING ORDER

O.A. No. 474 of 2010, Shri Leela Dhar,
Re Medial Examination

In compliance of Hon'ble Central Administrative Tribunal, Allahabad's order dated 07.04.2010 passed in O.A. No. 474 of 2010, filed by Shri Leela Dhar, I have gone through the representations of the applicant dated 11.02.2008 and 27.11.2008 carefully vide which the applicant has requested for re-medial examination and appointment in Group 'D' service.

I found that Shri Leeladhar S/o Pyare Lal, while working as casual labour under SSE (P.Way)/ Hathras, was sent for Medical examination on 04.04.1986 to Sr.DMO/TDL, wherein he was declared unfit temporarily for six months. When the Applicant reported for re-medical after 07 months, he was directed to Divisional Hospital Allahabad for re-medical examination as per extant rules and a letter in this regard was sent to DEN/TDL. However the applicant never turned up for the same at Divisional Hospital, Allahabad.

After 22 years, the applicant again represented his case. The representation of the applicant dated 10.02.08 was decided by CMD rejecting his case on the ground of being Time Barred, duly advising the applicant.

I found that the applicant is about 53 years of age now and in terms of Railway Board's letter No. E (NG)II/99/CL/19

dated 20.09.2001, he does not fulfill the prescribed age for absorption in Railway service. The maximum age for absorption is 40 years for General candidates, 43 years for OBC and 45 years for SC/ST candidates.

In a recently decided case of M. Lal Vs CAT & others, Hon'ble High Court/Allahabad vide order dated 28.01.2008 have held that "it is settled legal proposition of Law, that a person who is not in service since long, can not claim any relief of regularization."

Keeping in view all the above facts, I do not find any merit in the claim of the applicant and his request for re- medical examination for absorption in Railway service is rejected..

The applicant may be advised suitably.

General Manager

SPEAKING ORDER

OA no. 1034 /06 Shri. Dilip Kumar Srivastava
- Cultural quota

In compliance of Hon'ble Central Administrative Tribunal, Allahabad's order dated 07.12.2009 passed in OA no. 1034 of 2006 filed by Shri. Dilip Kumar Srivastava, I have gone through the representations of the applicant dated 09.08.2005 and 14.3.2005 addressed to Minister of Railways and representation dated 27.3.2006 addressed to Dy. Director/PG, Railway Board carefully. I have also gone through the rules of appointment against Cultural Quota carefully. The applicant has requested to appoint him in Railway services against Cultural quota for the vacancies which have not been filled up in previous years. I have also gone through the records available in the office carefully.

I found that notification for appointment against Cultural Quota for the year 2003-04 was issued on 11.3.2004 in Employment News. Against this notification, 156 eligible candidates out of 891 were subjected to written test and two candidates were finally recruited. No recruitment for the year 2004-05, 2005-06, 2006-07 and 2007-08 were made due to administrative reasons. In terms of Railway Board's letter no. E(NG)II/90/RR-2/1 dated 04.04.1997, the Cultural quota of these years stands lapsed as the quota shall not be brought forward to subsequent years.

The Cultural Quota for the year 2008-09 and 2009-10 have been filled up after due process of recruitment in the field of Music-Vocal & Instrumental and Classical Dance & Music-Vocal Hindustani Light respectively. It is also evident from the representation of the applicant that he has never applied for appointment against the notifications issued by this Railway in various years. I have also examined the testimonials of the applicant and found that the applicant does not fulfill the eligibility criteria for consideration against the Cultural Quota recruitment as per the terms and conditions as laid down in Railway Board's letter no. E(NG)II/90/RR-2-1 dated 19.6.2000. A candidate should possess Diploma/Degree in the field of Cultural activity from Government recognized University/ Institution which the applicant does not possess.

In view of above, I do not find any merit in the request of the applicant for appointment against Cultural Quota.

The applicant may be informed accordingly.

General Manager

SPEAKING ORDER

OA No. 1047/09, . Rameshwar Singh,
Safety Related Retirement Scheme

In compliance of the orders of Hon'ble CAT/ALD dated 18.9.2009 passed in OA No. 1047 of 2009, filed by Shri. Rameshwar Singh, RamShankar, Ramesh Chand Srivastav, V.N.Chitransi, Bal Gopal, NandLal, R.C.Mishra, Visunoeo Ram ,and Ramshankar Lal, all loco pilots, I have examined the representation (Annexure – 4 of the OA) of the applicants carefully. I have also gone through the judgment dated 04.05.2009 passed by Hon'ble CAT (PB), New Delhi in OA No. 2176 of 2008 and policy directives issued by Railway Ministry on Safety Related Retirement Scheme. The applicants have prayed for granting them voluntary retirement under Safety Related Retirement Scheme and appointment of their wards in Railway services.

I find that Railway Board have issued instructions vide their letter no. E(P&A)/I-2001/RT-2(KW), dated 02.01.2004 regarding Safety Related Retirement Scheme. As per this scheme, only the Drivers and Gangmen with 33 years of qualifying service and in the age group of 55 to 57 years may seek voluntary retirement. Employment to a suitable ward of such employees, whose application for voluntary retirement under the scheme is accepted, will also be considered in the lowest recruitment grade of the respective category only, subject to their eligibility and suitability. The conditions of eligibility of the ward would be the same as prescribed for

recruitment in the lowest category of the services from which the employee seeks the voluntary retirement.

On scrutiny of documents of the wards of the applicants, it is revealed that Mr Abhishekh S/o Sh.Rameshwar Singh, Mr.Nandji S/o Visunoeo Ram, Mr.Ashish Gupta.S/o Sri Ramshankar Lal and Mr.RajKumar S/o Sri Nand Lal do not fulfill the eligibility conditions of technical qualifications .

Similarly the documents of three Applicants namely V.N.Chitransi, Sh.BalGopal and Sh.R.C.Mishra-II reveal that they have crossed the prescribed age limit of 57 years also as envisaged in the scheme and Sh.Ram Shankar is underage as he has not completed minimum prescribed age of 55 years on the cut off date i.e. 30th june 2007 and therefore ,their requests for voluntary retirement could not be considered under the scheme.

I further find that only one of the applicant's namely Sh. Ramesh Chandra Srivastava is fulfilling all the conditions hence his ward may be called for the test and if found suitable be appointed as Assistant Loco Pilot after accepting the request of applicant for voluntary retirement.

The applicants may be informed accordingly.

General Manager

SPEAKING ORDER

O.A. No. 835/ 09 - Ramesh Chandra
- Safety Related Retirement Scheme

In compliance of the orders of Hon'ble CAT (PB), New Delhi dated 01.4.2009 passed in O.A. No. 835 of 2009 in the case of Ramesh Chandra Vs. Union of India & Others, I have gone through the representation of the applicant dated 01.05.2007 (Annexure-A3 of the OA) vide which the applicant has prayed for granting him voluntary retirement and appointment of his son in Railway service in terms of Railway Board's "Safety Related Retirement Scheme." I have also carefully gone through the policy directives issued from the Railway Board on this subject.

The Railway Board vide their letter dated 02.1.2004 had issued instructions regarding voluntary retirement under Safety Related Retirement Scheme, for employees in Drivers and Gangman categories, with 33 years of qualifying service and in the age group of 55-57 years, envisaging recruitment of one ward in lowest recruitment grade of the respective category from which the employee sought retirement. All conditions for appointment of such wards, such as age limits, qualifications, etc. are to be determined w.e.f. 30th of June of the relevant year. Conditions of eligibility of the wards would be the same as prescribed for recruitment in the lowest category of the service from which the employee seeks retirement.

Railway Board in their letter No.E(NG)II/2000/RR-1/47 dated 03.8.2001 laid down the minimum qualification for Assistant Loco Pilots as Matriculation pass plus ITI in specified trades i.e. Fitter, Electrician, Instrument Mechanic, Mill Wright/Maintenance Mechanic, Mechanic (Radio & TV), Electronic Mechanic, Mechanic (Motor Vehicle), Wireman, Tractor Mechanic, Armature and Coil Winder, Mechanic Diesel, Heat Engine or Act Apprenticeship or Diploma in the specified trades.

The applicant opted for and applied for voluntary retirement on 01.5.2007 (Annexure-A3) and requested for recruitment of his son under this scheme. While scrutinizing the application and other documents submitted by the applicant it was noticed that the educational qualification possessed by the son of the applicant was 'high school pass' and no proof of additional qualification of ITI certificate in the relevant trade or any other qualification, as mentioned in the preceding paragraph, having been submitted with the application. As such, the applicant's son Shri Sachin Kumar, does not fulfill the specified qualification standards for the post of Assistant Loco Driver and cannot be considered for appointment for this post. Under the scheme there is also no provision for appointing the ward of such applicant to any other post on the Railways.

In view of the above, the applicant is not entitled to get the benefit of voluntary retirement under the said scheme.

The applicant may be informed accordingly.

General Manager

SPEAKING ORDER

O.A. No. 599 / 08 Sudha, Ex-Hot Weather Casual Labour

I have gone through the judgment of Hon'ble Central Administrative Tribunal, Allahabad dated 22.5.09 passed in O.A. No. 599 / 2008 filed by Smt. Sudha W/o Late Shri Munna Raja, Ex-Hot Weather Waterman/Casual Labour, Jhansi wherein Hon'ble Court have directed GM/N.C. Railway to consider and decide the claim of the applicant in accordance with rules and also taking into consideration the relevant Railway Board's circular dated 01.4.1997 and pass appropriate reasoned and speaking order within a period of three months. Accordingly, I have examined the documents available on record and reconsider the entire matter.

I find that Late Shri Munna Raja was engaged on 06.5.1976 as Hot Weather Waterman for summer season and worked upto 22.07.1991 in broken periods. The policy of engagement of Hot Weather Casual Waterman was later on withdrawn by Railway Board vide their letter dated 03.2.1992 and as such all casual waterman were disengaged including Shri Munna Raja. Shri Munna Raja expired (natural death) on 13.12.2002 when he was no longer in service.

Prior to his death Shri Munna Raja was a party in CGIT cases regarding regularization of services of Hot Weather Casual Waterman in which Hon'ble High Court Allahabad in case No. 930/1997 did not agree with the orders passed by

CGIT and set aside the order of CGIT/Kanpur remanding the case back to them. It is also observed that Late Shri Munna Raja i.e. husband of Smt. Sudha had also applied for regularization in group 'D' in response to notification dated 30.8.2001 but was found over aged, hence not regularized.

I also find that as per Railway Board's instructions dated 01.4.1997 (as referred in this judgment), in cases where casual labour die in harness i.e. during the employment with the Railways and if case presents features constituting extreme hardship, meriting special consideration, the General Manager may appoint eligible wards of the casual labour on compassionate grounds in casual capacity. As Late Shri Munna Raja was no longer in railway services w.e.f. 22.07.1991, the case of the applicant is not covered under the rules. Further Railway Board have prescribed 5 years time limit for making compassionate appointment from the date of occurrence of death of the employee. The records show that the applicant Smt. Sudha had applied for compassionate ground appointment after approximately 6 years after the death of her husband. Therefore, her case is not covered under the rules for any relaxation of time limit of 5 years..

Hon'ble Supreme Court in their judgment dated 10.4.2006 in Civil Appeal 3595 - 3612 of 1999, and 9168 of 2006 regarding regularization of persons employed temporarily, casual capacity or on contractual basis have held that "when a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not

based on a proper selection as recognized by the relevant rules or procedures, he is aware of the consequences of appointment being temporary, casual or contractual in nature, such persons cannot invoke the theory of legitimate expectation for being confirmed in the post” Hon’ble Supreme Court had further held that there is no fundamental right to those who have been employed as daily basis or temporary or on contractual basis to claim that they have a right to be absorbed in service.

I find that Late Shri Munna Raja had worked only upto 22.7.1991 as Hot Weather Casual Waterman during summer season and died on 13.12.2002. The engagement of Hot Weather Casual Waterman was discontinued w.e.f. 03.2.1992 on withdrawal of the policy of engagement of Hot Weather Casual Waterman by Railway Board’s letter dated 03.2.1992. Shri Munna Raja was also extended an opportunity for consideration against the notification dated 30.8.2001 but found “not eligible” due to overage.

Keeping in view the above facts I do not find any merit in the request of Smt. Sudha w/o Late Shri Munna Raja for her appointment on compassionate grounds. She may be informed accordingly.

General Manager

SPEAKING ORDER

O.A. No. 502/2009 Sh.Karan Kumar
- Compassionate Appointment

I have gone through the Hon’ble Central Administrative Tribunal, Allahabad’s order dated 15.05.2009 in OA No.502/2009 filed by Shri Karan Kumar Vs. Union of India and others as well as representation of Shri Karan Kumar dated 02.06.09.

Hon’ble Central Administrative Tribunal/Allahabad have directed that the applicant may file “Revision Petition” before General Manager along with OA (both compilation I & II) as well as certified copy of this (OA) within four week from today and, in case, review petition is filed before the General Manager, N C Rly, Allahabad, the said authority shall consider the same within two months of receipt of representation. If Review Petition is not filed within the time stipulated above, this order will loose efficacy and rendered inoperative automatically.

I have gone through the representation dated 02.06.09 of Shri Karan Kumar carefully. The applicant has stated that his father late Shri Shanker Lal s/o Ram Dayal was a casual labour with temporary status, who died on 19.06.91 while in service. At the time of his father’s death Sh Karan Kumar was only 2 years 10 months old and his mother re-married just after the death of applicant’s father leaving the applicant with his grand parents. Shri Karan Kumar has requested to consider

his case on the ground that his mother has left the applicant at his father's house many years ago. He has further stated that he filed OA No. 1086 of 2008 which was decided by CAT/ALD on 10.11.2008 with direction to respondents to decide the representation dated 06.08.08 in accordance with law and pass reasoned and speaking orders. The representation was rejected by DRM/JHS.

I find that late Shri Shanker Lal was appointed as Casual Hot Weather Waterman on 01.04.1989, was granted temporary status on 03.04.90 and worked upto 07.06.1991 in broken periods, aggregating to 8 months and 13 days before he expired on 19.06.91. I also find that the purpose of compassionate ground appointment is to provide immediate relief to the dependent of the deceased, namely the widow, so that she may emerge out of immediate financial crises in time of grief and in case the widow remarries, the requirement of immediate relief is solved as she gets her new spouse as the bread winner for herself and family. After remarriage, she and her children become the responsibility of the person with whom she is married. Therefore, in such cases, appointments to the wards of the deceased are not permissible in terms of para 3 (III) of Railway Board's letter No. E(NG)II-84/RC1 dated 18.04.1985 as has happened in the instant case.

Thus Shri Karan Kumar's request for considering him for compassionate ground appointment is not covered under the rules. Further as per Railway Board's directions dated

01.04.97, the cases of Casual Labour with Temporary Status can not be dealt on the line of regular employee and should be considered in the cases meriting special consideration. As late Shri Shanker Lal was temporary Hot Weather Casual Labour, therefore, the applicant's request for C.G. appointment cannot be compared with the cases of regularly appointed railway employees. Hon'ble Supreme Court have also held in Civil Appeal No. 3595 - 3612 decided on 10.4.2006 that those employed on date on temporary basis or on contractual basis have no right to absorption in permanent capacity. As such late Shri Shankar Lal had no claim for absorption in railway service. Hon'ble Supreme Court have also held in number of his decisions that C.G. appointment cannot be claimed as a matter of right.

In view of above, I do not find any merit in the request of Shri Karan Kumar for appointment on compassionate ground.

He may be informed accordingly.

General Manager

SPEAKING ORDER

O. A. No. 47 / 2009 Smt. Brijrani
Compassionate Appointment.

In terms of the direction issued by Hon'ble Central Administrative Tribunal, Allahabad vide their order dated 29.1.2009 in O. A. No. 47 of 2009, I have gone through the representation dated 23.2.2009 of Smt. Brijrani wife of Late Shri Gangadin, MRCL under IOW/Juhi for appointment of her son Shri Ramjas on compassionate ground.

On going through the records available, I find that Shri Gangadin son of Shri Ramdin, MRCL while working under IO7W/Juhi died on 06.11.1997 due to sickness. As Shri Gangadin had not been regularised in service before his death, his family is not in receipt of family pension. However, widow was paid an amount of Rs. 11,505/- as DCRG towards the settlement dues.

The Railway Board's instructions with regard to appointment on compassionate ground of ward of Casual Labour with temporary status, who died in harness are contained in their letter No. E(NG)II/84/CL/28 dated 31.12.1986. In terms of the above instructions, if a Casual Labour with temporary status dies in harness i.e. during his employment with Railways and if the case presents features constituting extreme hardship, meriting special consideration, the General Manager could exercise his personal discretionary

power for giving appointment to eligible and suitable ward of such casual labour on compassionate grounds. Such appointment will be only in the form of engagement as Casual Labour (fresh face) or as substitute.

After having gone through the details of the case submitted by Divisional Railway Manager, Jhansi, I find that the financial condition of the family of the deceased is such that it merits appointment on compassionate ground in terms of the instructions of the Railway Board referred to above. Accordingly, I decide that Shri Ramjas son of the deceased Shri Gangadin be appointed as Substitute Trackman in Group 'D' in Jhansi Division on compassionate ground.

Necessary instructions in this regard may be issued to DRM/Jhansi and Smt. Brijrani be also informed of the above decision.

General Manager

SPEAKING ORDER

OA No.794/2008- Shanti Devi, Compassionate Appointment

In terms of direction issued by the Hon'ble Administrative Tribunal/Allahabad vide their order dated 05.8.2008 in O. A. No. 794 of 2008, I have gone through the representation dated 16.8.2008 of Smt. Shanti Devi w/o Late Panna Lal Maurya, Ex-Technician (C&W), North Central Railway, Kanpur for appointment of Shri Kailash Pati Maurya son of deceased employee on compassionate ground.

As has already been noted by the Hon'ble Tribunal in their order referred to above, Shri Kailash Pati Maurya has duly been considered for such an appointment but unfortunately he does not fulfil the medical standard prescribed for Railway service in any category to be eligible for appointment on the Railways. Though Indian Railways are part of Central Government, however different medical standard have been prescribed by the government for service under the Railways due to their operational requirements. Hence, medical examination of the candidates is conducted for Railway Service as per the requirements laid down in Indian Railway Medical Manual. Hon'ble Tribunal in their order referred to above have made specific reference to the provisions and instructions of Government of India issued vide OM dated 17.3.1988 wherein it has been clarified that a candidate having got a pacemaker implant may be considered for Government service except the candidates selected for the posts which

inter alia include Railway or Bus drivers (Annexure-A-9 to the OA).

In this connection, it would be pertinent to mention here that the case of Shri Kailash Pati Maurya has been considered at the level of Chief Medical Director on this Railway who has observed that "the disease from which the patient is suffering can recur at any point of time in patient's life despite the surgical correction done on the patient as in the present case. That taking into consideration the recurrence factor of the disease and special working condition of the Railways in various categories, the current fitness of the candidate is not acceptable on initial appointment."

In view of the facts and the settled legal position that compassionate appointment cannot be claimed by way of right as decided by Hon'ble Supreme Court, I do not find it appropriate to offer compassionate ground appointment to Shri Kailash Pati Maurya when he has not been able to meet minimum medical standard prescribed for Railway Service. Smt. Shanti Devi may be informed accordingly.

General Manager

SPEAKING ORDER

O A No.390/ 2007, Shri Hemraj s/o Gangadeen
Compassionate Appointment

I have gone through Hon'ble Central Administrative Tribunal, Allahabad Bench's order dated 4.7.2008 passed in Original Application No. 390 of 2007 filed by Shri Hemraj S/o Late Gangadeen (Ex-Tech-I, C&W/Jhansi). I have also perused the records wherein a request of Shri Hemraj for compassionate ground appointment was dealt with in Headquarters office of North Central Railway.

I find that Shri Gangadeen, Ex-Tech-I under C&W/Jhansi was declared medically unfit for further service in all medical categories after prolonged sickness on 15.3.2005 by a duly constituted Medical Board at North Central Railway Hospital, Jhansi. In terms of extant instructions, he was retired from railway service w.e.f. 24.3.2005 at the age of 59 years 8 months and 24 days. He subsequently expired on 16.5.2005.

Smt. Beni Bai wife of the deceased ex-employee made a request for appointment of her son Shri Hemraj on compassionate ground on 10.8.2005. I find that the request of Smt. Beni Bai for appointment of her son Shri Hemraj on compassionate ground was examined on Jhansi Division and matter was referred to headquarters office for consideration of General Manager as was mandatory under the rules for considering such requests of employees who were declared medically unfit after attaining the age of 57 years.

After going through the concerned file dealing with the case, I find that all relevant facts such as service particulars of the deceased, his family details, payment of settlement dues, particulars of the applicant as also the relevant instructions/guidelines issued by Railway Board from time to time were brought on record before the matter was submitted for consideration of the then General Manager. It was inter alia found that the ex-employee had almost served railways for more than 39 years and was due for superannuation under the normal rules also in about 3-1/2 months time. He got full retirement benefits admissible under the rules and out of the 5 children, he left behind 3 daughters were already married. After his death, his widow was getting a family pension of Rs. 2950/- + 1475/- D.P. + 24% D.A. and Rs. 4,86,716/- were paid as settlement dues.

In terms of the extant instructions, appointment of wards of employees who are over 57 years old and are medically unfit for further service should be done only in circumstances considered as a special case and not as a matter of course.

In view of the above, the then General Manager of North Central Railway did not consider this case fit for compassionate ground appointment.

After going through the records once again, I do not find any reason to differ from my predecessor. Hence, I regret this case and this decision be communicated to the applicant in terms of orders of Central Administrative Tribunal/Allahabad referred to above.

General Manager

SPEAKING ORDER

OA No. 1148/08, Shri Jagat Pal
Compassionate Appointment

In compliance of Hon'ble CAT/Allahabad order dated 15.12.2009 passed in OA No. 1148 of 2008, filed by Shri Jagat Pal son of Shri Pancham Lal, I have gone through the applicant's representations dated 5.8.2008 and 29.12.2009 vide which, the applicant has requested to provide him appointment on compassionate ground in place of his father. I have also carefully gone through the circulars and rules on the subject.

I found that Shri Pancham Lal (ex-Railway employee) was medically invalidated on 05.5.2005 at an age of 56 and half years and settled. He had two married sons besides his wife at the time of medical invalidation and his wife was only a dependent family member on him. Shri Pancham Lal's two sons aged 41 and 37 years respectively, being major and married, having their own independent families, were not the part of Shri Pancham Lal's family as per rules. In terms of Para 2(d)(ii) of Railway Servants Pass Rules, The sons upto age of 21 years and wholly dependent upon the employee are eligible to be considered for appointment on compassionate ground if otherwise eligible for appointment.

As none of his sons including the applicant was dependent upon Shri Pancham Lal at the time of his medicaly

invalidation the applicant does not come under the purview of extant rules. As such, considering the applicant's request for compassionate ground appointment in Railway service is not justified. It is settled legal position that compassionate appointment cannot be claimed by way of right as decided by Hon'ble Supreme Court. Shri Pancham Lal has been paid all settlement dues and getting pension regularly for his livelihood.

In view of above, I do not find any merit in the applicant's request to consider him for appointment on compassionate ground.

The applicant may be informed accordingly.

General Manager

SPEAKING ORDER

O.A. No. 767/08, Rajendra Lal, Parcel Labour Engagement

I have gone through the judgement of Hon'ble Central Administrative Tribunal, Allahabad's Bench dated 05.8.2008 in O.A. No. 767 of 2008 filed by S/Shri Rajendra Lal & Ram Babu for their absorption in Railway Service. I have also gone through their representation dated 14.8.2008 wherein they have sought similar relief. After going through the relevant records, I find that during year 1981 Parcel Handling Contract of Parcel Office at Kanpur was terminated and new contract was awarded w.e.f. 01.5.1982. During the intervening period the parcel handling work was done departmentally by engaging labour from open market. From the records available in Parcel Office at Kanpur, it could not be verified by the Chief Parcel Supervisor that the applicants worked as parcel labour during the relevant period.

Hon'ble High Court at Allahabad has observed in a recent judgement that it is settled legal position of law, that a person, who is not in service since long cannot claim any relief of regularisation. Further, Hon'ble Supreme Court in their judgement dated 10.4.2006 in Civil Appeal No. 3595-3612 of 1999, 1861-2063 and 3849/2001, 3520-24/2002 and 1968/2006 (Arising out of SLP (C) 9103-9105 of 2001) regarding regularisation of person employed temporary, casual or on contract basis, have clearly held that when a person enters a

temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection, as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post. The Hon'ble Supreme Court has further held that there is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service.

In view of the aforementioned facts and judgements of Hon'ble High Court at Allahabad as well as Supreme Court of India, I do not find any merit in the claim of aforementioned applicants for absorption in Railway service. They may be informed accordingly.

General Manager

SPEAKING ORDER

Diary No. 1322 / 07 Shri Manoj Kumar Srivastava
-Regularisation

I have gone through the orders of Hon'ble Central Admn. Tribunal, Allahabad passed in the matter filed by Shri Manoj Kumar Srivastava vide Diary No. 1322 of 2007. I have also gone through the applicant's representation dated 27.11.2007.

As per records available at Allahabad Division, the date of birth of the applicant is 03.1.1964 and he belongs to general community. In terms of earlier instructions of Railway Board contained in their order dated 20.9.2001 (RBE No. 190/2001) age relaxation could be given to ex-casual labour at the time of absorption in Railway service upto the age of 40 years only for general candidates. The above circular of Railway Board was contested in the court, however, the same was upheld by Hon'ble High Court at Allahabad in CMWP No. 21799/2006, Union Of India & Others V/s Shri Ajay Kumar & another.

Hon'ble High Court, Allahabad have observed in a recent judgement that it is settled legal position of law, that a person, who is not in service since long cannot claim any relief of regularisation. Further, Hon'ble Supreme Court in their judgement dated 10.4.2006 in Civil Appeal No. 3595-3612 of 1999, 1861-2063 and 3849/2001, 3520-24/2002 and 1968/2006 (arising out of SLP (C) 9103 – 9105 of 2001) have held that when a person enters a temporary employment or gets

engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of his appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post. The Hon'ble Supreme Court have further held that there is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service.

In view of the aforementioned facts and judgements of Hon'ble High Court, Allahabad as well as Supreme Court of India, I do not find any merit in the claim of applicant Shri Manoj Kumar Srivastava for absorption in Railway service. He may be informed accordingly.

General Manager

SPEAKING ORDER

O.A. No. 778/2005 Smt. Ram Kali - Family Pension

In compliance of the Hon'ble Central Administrative Tribunal, Allahabad's order dated 24.07.2009 passed in O.A. No. 778/2005, I have gone through the representation of the applicant Smt. Ram Kali w/o late Sh.Gendalal dated 12-8-2009 in which she has requested to set aside the decision of DRM/Allahabad dated 15.7.2005 vide which family pension is denied to her. I have also carefully gone through the policy guidelines issued on the subject by Railway Board.

I found that the applicant's husband late Gendalal, Ex. Gangman was engaged as a Daily Rated Casual Labour and granted Temporary Status w.e.f 01.1.1985. His services were regularized as Gangman w.e.f. 01.4.1990, after following the due process of regularization vide AEN/FTP's letter No. E/4/ Transfer/C IV/89 dated 01.4.1990. He was medically decategorized for the post of Gangman and considered fit for sedentary job vide memo No. 136305 dated 02.9.1994. Subsequently he was discharged from service on 30.6.1995, for want of suitable post having sedentary nature of work.

It is noted that the provisions of keeping a medically decategorised employee on supernumerary post till his final posting on alternative post came into effect on 29.4.1999 vide Railway Board's letter No. E(NG)I-96/RE-3/9/2 dated 29.4.1999. Earlier there were no such provisions in existence. In view of the aforesaid, the contention of the applicant that

her husband should have been adjusted on a supernumerary post after his medical invalidation does not hold good.

The applicant has also represented that the period of casual service from 14-1-1968 to 31.12.84 has not been taken into account while working out the qualifying service resulting in denial of invalid pension to her husband.

It is noted that as per Railway Board's circular No. E(NG)II/70/CL/12 dated 11.09.86 those project casual labours who have completed 3 yrs of continuous employment but less than 5 yrs service as on 1/1/84, are to be given temporary status w.e.f. 01/1/85. The records show that Late. Sh. Gendalal had never worked on continuous basis between 14/1/1968 to 14/12/77. The first period of his continuous work is from 6/11/80 to 5/9/83 which is less than three years. Still he was granted temporary status w.e.f. 1/1/85. According to the circular his case should have been considered under para 5.1(b) (iii) and given temporary status w.e.f 1/1/86. This mistake can not be rectified now as the employee has died long back.

Further it is noted that Late Gendalal was engaged as casual labour (daily rate basis) w.e.f. 14.1.1968 and had worked in broken spells upto 14.12.77. In terms of Rly. Board's letter E(NG)II/70 /CL /12 dated 14.10.80, the weightage of only 50% of service in between grant of temporary status and regular absorption is counted for qualifying service for pensionary benefits but not the casual service prior to

temporary status. The service records of Shri Gandalal reveal that he had worked on continuous basis after grant of temporary status from 01.01.85 to 31.03.1990 of which half of the period i.e. 2 years 7 months and 05 days. (10 days LWP) which had been added to his regular service while working out the total qualifying service as per extant rules.

In terms of rule 69 of Railway Service Pension rules 1993, minimum 10 years qualifying service is required for granting the pension to an employee or family pension to his family. As Late Sh.Genda Lal did not complete minimum qualifying service upto the date of his discharge on 30-6-1995, hence he was not entitled for any kind of pension on the date of discharge.

Similarly, the applicant is also not entitled in terms of rule 75 (2)(c) of Railway Service Pension rules 1993, for grant of family pension. The retirement benefits, such as, Service Gratuity Rs. 22,458/-, leave encashment Rs. 1069/- and insurance Rs. 2047/- as admissible under the rules were paid to him at the time of discharge.

In view of the above, I do not find any ground to set aside the orders dated 15.07.2005 passed by DRM/Allahabad under extant rules.

The applicant may be informed accordingly.

General Manager

SPEAKING ORDER

OA No. 1319/2006, Swarnjeet Singh
Fixation on Supernumerary post

In compliance of Hon'ble CAT/ALD's direction dated 13.5.2009 passed in O. A. No. 1319/2006 in the case of Shri Swarnjeet Singh Vs. Union of India & others, I have gone through the representations of applicant dated 10.4.2006 and 07.09.2006 in the light of RBO No. 93/2005 carefully. In his representations the applicant has requested to review his case from the year 1997 for absorption in proper grade, early payment of all the dues, grant compensation for ill-treatment in Railway Hospital and consider his case at par with Shri Mehboob Ali, Care Taker for whom supernumerary post had been created.

I find that the applicant was initially appointed as Commercial Clerk over Ratlam Division, Western Railway on and from 15.09.1977 in grade Rs. 260-430 (975-1540/3200-4900/5200 - 20200 + GP 2000). He was promoted as Guard - C on and from 24.01.1985 in grade Rs. 330-530 (revised w.e.f. 01.1.1985 and 330-560) (330-560/1200-2040/4500-7000/5200-20200 + GP 2800). Subsequently, he came on transfer to Central Railway, Jhansi Division on his own request and joined on 06.5.1990.

While working as Guard in grade Rs. 4500 - 7000, he was declared medically unfit in Aye Two, Aye Three, Bee One,

Bee Two & fit C1 and under with glasses for DV/MV for sedentary job on 22.09.1997. He was screened for alternative job by a Committee and posted as Janitor in Gr. Rs. 1200 - 2040/4000-6000 (RSRP). As he could not perform the duty of Jaintor, he was screened again and was posted as Caretaker in Grade Rs. 3050-4590 (RSRP).

On his joining the new post of Caretaker grade Rs. 3050-4590 his pay was fixed at the maximum of scale of new post at Rs. 4590/- and the remaining part of basic pay i.e. Rs. 3210/- was allowed as personal pay to him as per prevailing rules. He was not entitled for the Non Running Allowance as it is paid only to running staff.

I also noticed that the applicant was a known diabetic patient for quite a long time, neither taking regular treatment nor attending the railway hospital regularly. The applicant was decategorised for deafness developed because of long diabetic history. The CMS/JHS has also certified that there is no mistake or negligence on the part of Medical Department and extant rules do not permit compensation in such cases.

It is also evident from records that the applicant had no leave at his credit and as per rules, he was granted Extra Ordinary Leave without pay on his sickness. Vide his request dated 09.5.1997, he applied for "Leave Not Due" for 90 days (February/97 to April/97) which was also sanctioned and salary on half average pay basis for 90 days paid to him under the extant rules.

It is also seen that in a similar case of medical decategorisation of Shri Mehboob Ali, Ex-Assistant Loco Driver, adjustment against a special supernumerary post in the same grade was done. Same course of action should also have taken in case of the applicant.

It is also seen that while finding alternate job for the applicant, the provisions contained in para 1309 (IV) of IREM Vol.-I 1989 edition, as well as other provisions of IREM Vol-I as amended time to time, have not followed.

Therefore, considering all the above facts and rules on the subject, I decide that the applicant should also be adjusted against a special supernumerary post in grade Rs. 1200 - 2040/4500 - 7000 w.e.f. the date of his decategorisation i.e. 22.9.1997 as per instructions contained in Railway Board's letter dated 31.12.2005. Further, he should be screened afresh by a committee and provide a suitable alternative job by adding 30% of running allowance to the minimum and maximum of the grade to the post held by him at the time of medical decategorisation.

The applicant may be informed accordingly.

General Manager

SPEAKING ORDER

O.A. No. 405/2006, Shri Tej Singh - Seniority in New Zones

In compliance of Hon'ble Central Administrative Tribunal, Allahabad's order dated 10.09.2009 passed in O.A. No. 405/2006, I have gone through the letter dated 16.11.2005 of General Manager /CORE/ALD vide which they have requested to interpolate the name of Shri Tej Singh, OS-I, Grade Rs. 6500 – 10500 (RSRP) at the appropriate place in the seniority list of Store Department of NCR/HQ.

I have also gone through the representation dated 22.12.2004 of Shri Tej Singh and found that in terms of Railway Board's letter dated 06.12.1996 regarding calling of option from staff to serve in Headquarters of New Railway Zones, Shri Tej Singh, OS-I/CORE/ALD has submitted his option to serve in Headquarters office, NCR and erroneously acceptance order was issued on 28.3.2003 in favour of Shri Tej Singh as per his option and his name was interpolated in provisional seniority list dated 15.12.2003 in Store Department NCR/HQ under intimation to GM(P)/Western Railway, although it was not covered under the para 2.2 of Railway Board's letter No. E(NG)I-96/TR/36 dated 06.12.1996.

In reply of this office letter No. 797-E(NCR)/MOU/04 dated 29.10.2004, Western Railway replied vide their letter No. E(HQ)740/2/1 (NCR) dated 23.2.2004 that in terms of para 2.2. of Railway Board's letter dated 06.12.1996, staff in Workshop, Stores Depot and RPF are not included in the scheme for calling option for transfer to new zones. As such

acceptance of the following employees were not considered :

1. Shri Doodh Nath Pasi – OS-II
2. Shri Ramsuchit Bhulan, OS-II
3. Shri Surendra Pal Singh – OS-II
4. Shri Tej Singh, OS-I

As regards to Board's letter No. 101/97 dated 23.7.1997, it is stated that amendment of letter dated 06.12.1996 is only for the staff of extra divisional units including the staff working in Workshop & Stores Depot locating in the territorial jurisdiction of affected divisions. As Mahalaxmi Stores Depot, Parel orkshop and Dahod Workshop of Western Railway do not fall under the jurisdiction of North Central Railway, the transfer of above employees on option cannot be considered.

Due to reasons mentioned above, the name of Shri Tej Singh, OS-I was deleted from provisional seniority list dated 02.9.2004.

In view of the above, I am of the opinion that name of Shri Tej Singh may not be considered to maintain his lien in NCR/HQ in the light of refusal given by Western Railway.

The case of applicant in the light of letter dated 16.11.2005 of GM(P)/CORE/ALD is disposed off accordingly. The applicant may be advised suitably.

General Manager

SPEAKING ORDER

Shri Hari Prasad Ext. Educator (F&W)
Revision D&AR Case

I have carefully perused the relevant records as well as the Revision Appeal of the Charged Employee Shri Hari Prasad, dated 18.12.2009. My observations in the matter are as under :-

1. Shri. Hari Prasad was issued SF-11 on 15.1.2009. The charge leveled against him was that :

Shri Hari Prasad, Extension Educator (F&W), Allahabad was found responsible for getting a room constructed in an unauthorized and illegal manner in the Railway Quarter No. 696-A (Type-II), Railway Colony, Allahabad, allotted to him.

Shri Hari Prasad had, therefore, failed to maintain absolute integrity, which was unbecoming of a Railway official. He was, therefore, charged with violating Rule 3.1 (i) & (iii) of the Railway Service Conduct Rules, 1966.

2. I find that the Disciplinary Authority had carefully considered the case and come to the conclusion that "...it was well established that Shri Hari Prasad Extension Educator had made unauthorised construction on his Railway Quarter No. 696-A, which was violation of Railway Rules..."

The Disciplinary Authority had thus held the charge to be proved and imposed the penalty of withholding of four sets of privilege passes.

I also find that the Appellate Authority considered the appeal of the Charged Employee and came to a similar conclusion regarding the charges against the Charged Employee. He stated that "... After careful consideration on the Appeal dated 28.5.09... the undersigned reached to the conclusion that there is no substance in the appeal dated 28.5.09, hence the charges are established." He further stated that the situation did not warrant changing the penalty already imposed. He, however, reduced the penalty to stoppage of two privilege passes, "... purely on basis of good 'working' for the last one year and on humanitarian grounds..."

I, further find that a suo moto Revision was done by the Revisionary Authority, whereby the penalty imposed by the Disciplinary Authority was upheld.

3. On careful examination of the entire matter, I come to the following conclusions:
 - (i) The charge leveled against the Charged Employee is evident and proved beyond doubt.
 - (ii) Both the Disciplinary and Appellate Authorities have also come to a similar conclusion in their orders dated 15.5.2009 and 19.8.2009 respectively.

- (iii) I, therefore, uphold the penalty originally imposed by the Disciplinary Authority as the correct decision.
 - (iv) It is pertinent to mention that the case stems from a Vigilance check and, therefore, the Vigilance Department is within its rights to tender advice. It is for the Disciplinary, Appellate and Revisionary Authorities to take into consideration, objectively, any advice tendered in the matter. This does not constitute interference or creating illegal pressure by the Vigilance Organization.
- 4. I, therefore, dispose off the Revision Appeal by upholding the decision of the Disciplinary Authority.
 - 5. The above Speaking Order may be informed to Charged Employee accordingly.

General Manager

SPEAKING ORDER

Naseem Khan, CIT/ALD- Appeal in D&AR Case

- 1.1 Shri Naseem Khan, CIT/ALD, was given a personal hearing on 3.3.09. During his oral representation he mentioned that on the said day i.e. 12.12.05, he was incharge of HA-1, A-1, A-2 & A-3 coaches. He began ticket checking and verification of passengers who boarded, from AC-1st class and could complete the verification of passengers of coaches up to A-3 by the time when the train was approaching Fatehpur i.e. by about 22.30 hours. By then, the traveler on berth 15 (the said Justice Shri R.K. Shukla) had already slept. Shri Naseem Khan said that he did not have the gumption to wake up the justice and that even the Board's Vigilance team, boarding at ALJN, waited for dawn and the train to cross GZB before checking the passenger at berth 15. Shri Naseem Khan said that his dilemma was whether or not to wake up the VIP and this was consideration that he was pleading for.
- 1.1.1 Shri Naseem Khan also mentioned that it was beyond his comprehension that a member of judiciary was likely to misuse authority and since the reservation chart showed the travelers as the Hon'ble Justice and the companion, he took it for granted, when he had inquired from the occupant of berth no. 13 about the travel authority and he had been informed by him that the authority was in possession of the Hon'ble Justice who was asleep.

- 1.2 On a pointed query that in his appeal he states that it was at his instance that the passengers on berth nos. 13 & 15 were confronted by the vigilance team, he clarified that when the vigilance team boarded the train at ALJN, he immediately informed them that the travel authorities of those 2 passengers remained to be checked because of the Hon'ble Justice had fallen asleep by the time train had reached Fatehpur. Shri Naseem Khan also mentioned that when the check was conducted after GZB, Mr. Naseem Khan was himself surprised that the occupant of berth no.13 said that he was in possession of a second class mail/express ticket, wanting an upgradation, whereas the passenger had earlier claimed to be the companion of the said Hon'ble Justice traveling on berth no.15.
- 1.3 Towards the end of oral hearing Shri Naseem Khan appealed that he requested for a favourable consideration on grounds that :
- (a) It was not possible for Shri Naseem Khan to have, by any imagination, suspected that a person traveling as a "Justice" could be defrauding the railway and hence he thought it would have been better to cross check the authority of the particular traveller when he woke up, and
 - (b) His past meritorious service, certificates of good work and awards, be given consideration so that he could retire with honour in August, 2011. The punishment of reduction of pay by 3 stages in the same time scale for 3 years with cumulative effect was harsh.

- 2.1 I find that there was no reason why the travel authority of the VIPs could not have been checked up when the train had just started. In fact Shri Naseem Khan has stated that he knew the justice who traveled frequently (page 22 & page 20 of the file).
- 2.2 I am also of the opinion that if consideration is to be recognized about the said dilemma of Shri Naseem Khan, he could have checked the authority at start of train, particularly when high dignitaries travel, the staff are expected to meet them when journey begins.
- 2.3 I find from the deposition of a third person witness (page 90 of file) that the traveler on berth 13 had mentioned of the travel authority being with the person at berth 15. In his statement recorded on 13.12.2005 (page 20 of file) Shri Naseem Khan has acknowledged of non-realisation of fare from the ticket holder, who (at page 15 of the file) admitted that he had been permitted to travel on berth 13. I arrive at the conclusion that Shri Naseem Khan was aware of the passenger at berth no. 13 being in possession of a 2nd class M/E ticket to be upgraded.
- 2.4 The retirement of Shri Naseem Khan being in August, 2011, the punishment being effective from Nov. 07 is expected to complete by October 2010. Similar punishment has also been awarded to other officials charged with similar negligence and I do not, therefore, see any reason to revise the punishment order in the instant case of appeal by the revising authority.

Sd/- 5.3.2009

General Manager

SPEAKING ORDER

Shri xxxx - D&AR Case

I have gone through the D&AR case including the charges against the CO in the charged memorandum No. E-307 / NCR / Mech / Gaz / 04 / 2008 dated 6.5.08, the Inquiry report, findings of Enquiry officer and the defense statement of CO.

The statement of the Article of charges in the Major Penalty charge memorandum against the CO are:- "Whereas it is alleged that Sh. xxxx, while posted and functioning as WM / P and SPO, in Wagon Repair Workshop, Jhansi had committed gross misconduct and failed to maintain absolute integrity and utmost devotion to duty, in as much as, he had given verbal orders to Head clerk, Personnel Deptt. Wagon Repair Workshop, Jhansi and got the promotion orders of 69 employees in Ministerial category in various cadres on 25.4.08 and 26.4.08 issued showing utter disregard to the stay orders granted by the Hon'ble CAT/ALD and Hon'ble High Court, Allahabad. Whereas the Head clerk while complying with the instructions of the WM/P and CWM had clearly brought out the facts in his noting regarding the stay order granted by the Hon'ble CAT and Hon'ble High Court, Allahabad. The said Shri xxxx ignoring the facts brought out in the noting of by the Head clerk and OS-I, Personnel Deptt. proposed to CWM for approval of promotion orders indicating that the petitions filed in the Hon'ble Courts have been withdrawn by the applicants for which no records were available. By acting in the above

manner Shri xxxx has contravened the provision of Rule 3(1) (i), (ii) & (iii) of Railway Service Conduct Rules, 1966."

A D & AR enquiry was conducted in this case. The enquiry officer has given the following findings in respect of three charges of article I :-

- (i) not proved as the verbal order have not been given by CO but by the then CWM to him and his staff.
- (ii) proved to the extent that CO has signed the promotional orders but that too on the orders of CWM.
- (iii) not proved as the promotion orders were subject to final outcome of various court cases pending on the issue.

Enquiry officer was subsequently asked to clarify para (ii) of his findings vide Dy.CPO/Gaz.'s letter dated 10.7.09. The same has been clarified by the EO vide his letter dated 10.8.09. Herein, EO has stated that charge in para (ii) has been proved to the extent that CO has wrongly informed CWM about the withdrawal of the Court cases and also signed the promotional orders. However, the EO has also mentioned that CO has acted under orders of the then CWM who has also agreed during his deposition as witness in the enquiry that he has ordered to issue promotion orders to all concerned.

On careful perusal of the enquire case, I agree with the findings of EO. The CO has carried out the orders of CWM which he was duty bound to follow as per Rule 3(2)(ii) of the

Railway Service Conduct Rules 1966. He signed the promotion orders also on the orders of CWM. However, he failed to the extent of not correctly bringing out the fact that applicants vide their letter dated 22.4.08 to CWM had only given their intention to withdraw the court cases as against the actual withdrawal of court cases.

However, it is also true that subsequently based on the application of the applicants the Hon'ble High Court vide their order dated 13.8.08 dismissed the writ petition No. 37186 as withdrawn. Further, the promotion orders issued were subject to final outcome of various Court cases pending on the issue.

Taking into account all the facts, evidences and the findings of EO, I consider that the CO's failure was only to the extent of not correctly bringing out the fact that applicants vide their letter dated 22.4.08 to CWM had stated that they were withdrawing their cases from Courts as against actual withdrawal of Court Cases. However, there was no malafide motive attached to the same. The ends of Justice in this case, thus, would be met by counseling the CO, Shri xxxx in this regard so that in future he is careful in properly presenting the facts to his superiors.

General Manager

SPEAKING ORDER

Charged Officer Shri XXXX / NC Railway - D&AR case

The Competent Authority has carefully considered in consultation with the Union Public Service Commission, the appeal preferred by Charged Officer /NC Railway dated 12.2.2008 against the penalty of "Reduction of lower stage in the time scale of pay by one stage for a period of one year without cumulative effect and not affecting pension" imposed on him by the General Manager/NC Railway vide his orders No.xxx dated xxxxx. After considering the aforesaid appeal and all other relevant records/aspects of the disciplinary case in which Charged Officer was imposed the aforesaid penalty by the GM/N.C. Railway, the Competent Officer has come to the conclusion that the charge of unauthorized absence from 5.5.2003 till 15.5.2006 is proved against Charged Officer. In this connection, the observation are as under :-

- (1) "The Appellant has behaved in a highly irresponsible manner as much as he proceeded on leave without obtaining proper sanction of competent authority. Simply submitting an application for sanction of EOL for 3 years should not have been construed by him as an automatic permission for admission in P.G. Course and sanction of leave. Appellant's irresponsible behavior is substantiated from the fact that he has not informed the administration, at any stage, where he is pursuing P.G. Course. As a result of this, the administration had to communicate at his permanent address. The behavior of the Appellant is

not above board and the sequence of events clearly shows that even though he was fully aware that his leave has not been sanctioned, he neither followed it with the administrative authorities nor did he bother to join his duty.”

2. In this connection, it has been further observed that nothing gives liberty to Charged Officer for proceeding on leave without its sanction especially, as leave is not a matter of right under the Rules. With regard to the proportionality of the penalty also, the Competent Authority is of the view that the minor penalty imposed on Charged Officer is not excessive considering all the factors and in fact a lenient view has already been taken against him by the DA.
3. In the light of the above findings/observations and considering that there is no merit in the appeal preferred by Charged Officer, the Comp.Authority, accepting the Union Public Service Commission’s advice, has decided to reject the appeal of Charged Officer. This is hereby done.

By order and in the name of Competent Authority.

Joint Secretary/E

SPEAKING ORDER

Charged Officer XXXX/NC Railway – D&AR Case

1. I have examined the case papers relating to Shri XXXX , charged officer along with Vigilance investigation report, representation of Shri XXXX dated XXXX other material on record and have the following observations to record:
2. Shri XXXX, the then AEN, Jarsuguda now XXXX, has been charged for having made a substantial enhancement of marks awarded to one particular candidate on 08.09.1998, as a Member of the interview committee for selection of Gangmen in Chakradharpur Division (SER). On account of this alteration, the said candidate viz. Shri XXXX could get empanelled for engagement in Railways. The correction/enhancement of awards of marks was also made after the conclusion of the viva-voce of the candidate and apparently with motive to get the above said empanelled, as otherwise on basis of original marks allocated to the candidate, he was apparently beyond purview of consideration for empanelment.
3. The pleas taken by the CO in his representation dated 27.09.2004 that the change in the marks for Shri XXXX was undertaken by him along with other members of the interview committee, and that, as otherwise it would tantamount to gross injustice to the candidate in case the interview marks were not corrected, do not appear to be tenable.

4. I am of the opinion that any subsequent changes, corrections, upgradations or otherwise made in the marks after the interview should be undertaken only in rare and extenuating circumstances. Besides, any alterations should also not enable particular candidate to get empanelled, as these aberrations can subsequently be perceived as an overt or covert measure to assist any particular participant.
5. However, in this particular case it is also observed that Shri XXXX, the then AEN, was on his first posting after probation period and in all likelihood was not duly aware of intricacies involved in selection process with implications thereof. Benefit of doubt should hence be accorded to him of any malafide intention on his part.
6. Considering all the facts and circumstances evidence on record, ends of justice in this case would be met by imposing the penalty of "withholding of two sets of P.T.O.s" against Shri XXXX Concerned officer may be suitably informed.

General Manager

SPEAKING ORDER

O.A. No. 314 / 2006, Shri Virendra Prasad
Compassionate Appointment

In compliance of Hon'ble Central Administrative Tribunal, Allahabad's order dated 20.4.2010 passed in O.A. No. 314 of 2006, Shri Virendra Prasad Vs Union of India & others, wherein directions were given to the undersigned to consider and dispose of the matter in the light of the representation dated 08.7.2003 submitted by the applicant, within a period of three months from the date of receipt of copy of this order.

I have carefully considered the representation of applicant dated 08.7.2003. On perusal of the application, it is seen that applicant has essentially demanded that Railway should provide him Compassionate Appointment on account of the death of his father, Late Yad Ram.

Applicant's father Late Yad Ram was Ex Fitter under Loco Foreman / NR now NCR / Tundla and died (natural death) on 17.02.1968. After the death of Late Yad Ram, the widow of Late Yad Ram did not apply for appointment on Compassionate Ground.

After a lapse of 15 years from the death of Late Yad Ram, Smt. Baikunthi Devi widow of Late Yad Ram applied for appointment to her son Shri Rajendra Prasad on Compassionate Ground on 25.02.1983, stating that at the time of death of her husband, he was a minor. Same was rejected

and replied by the DRM/NCR/Allahabad vide his letter dated 07.3.1983 stating that as per extant rules there is no provision for consideration of appointment on Compassionate Ground after five years. If her son was a minor, she should have requested for appointment for herself, as there is provision of appointment on Compassionate Ground for illiterate widows also.

Applicant Shri Virendra Prasad had applied for seeking appointment on Compassionate Ground after 15 years of attaining the age of majority and after 31 years of the death of his father.

The case of the applicant has already been dealt by the DRM / NCR/ Allahabad in the light of policies of Railway Board, who found the case to be badly time barred and not fit to consider for appointment on Compassionate Ground. Thus decision has already been communicated by the DRM/NCR/ Allahabad vide his letter dated 02.8.1999, 30.12.1999 & 18.02.2000.

In the matter of Shri Umesh Kumar Nagpal Vs State of Haryana & others and Shri Anil Malik vs State of Haryana & others {JT 1994 (3) SC 525}, Hon'ble Supreme Court of India held that:

“The consideration of such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of

the sole bread winner, the compassionate employment can not be claimed and offered whatever the lapse of time and the crisis is over.”

The case of applicant for consideration for appointment on Compassionate Ground is badly time barred and is not covered under the rules framed by the Railway Board on the subject of appointment on Compassionate Ground.

It is also evident that the demand of the applicant has been considered on merits in the past and not found to be acceptable. I have again reviewed the case in the light of the Hon'ble CAT's orders. I, however, do not find any grounds to warrant any change of earlier decision. I, therefore, reject his representation.

The applicant may be advised accordingly.

General Manager

SPEAKING ORDER

O.A. No. 1327 / 2008 Smt. Raj Kumari
Compassionate Appointment

I have gone through the Hon'ble Central Administrative Tribunal, Allahabad's order dated 5.2.2009 passed in O.A. No. 1327 of 2008 filed by Smt. Raj Kumari w/o Late Shri Ramesh Chandra Ex-Hot Weather Casual Waterman, Jhansi wherein Hon'ble Court have directed the General Manager, North Central Railway, Allahabad to reconsider the matter in accordance with the provision of rule within a period of 3 months from the date of receipt of copy of this order. Accordingly I have examined the entire documents available on records carefully and reconsidered the entire matter.

I find that Late Shri Ramesh Chandra was engaged on 01.4.1986 as Hot Weather Casual Waterman for summer seasons and worked up to 22.7.1991 in broken periods. Railway Board vide their letter dated 03.2.1992 withdrew the policy of engagements of Hot Weather Casual Waterman and as such all casual watermen were disengaged in 1992 including late Shri Ramesh Chandra. Six years later, Shri Ramesh Chandra expired (natural death) on 12.10.1998 when he was no longer in service.

Prior to his death Shri Ramesh Chandra was a party in CGIT cases/writ petitions regarding regularization of services of Hot Weather Casual Waterman in which Hon'ble High Court,

Allahabad in case No. 930/1997 did not agree and set aside the order of CGIT Kanpur remanding the case back to them.

Smt. Raj Kumari widow of Late Shri Ramesh Chandra filed O.A. No. 477/08 before Hon'ble CAT/ALD for her compassionate appointment. Hon'ble CAT/ALD disposed the case on 12.5.2008 directing DRM/JHS to take decision on the request of the applicant for compassionate appointment within a period of 3 months. The judgment was implemented by DRM/JHS disposing her representation dated 22.5.2008 with issuance of letter No. JHS/P/Wel/CG/Court Case dated 17.6.2008 rejecting the request of Smt. Raj Kumari on the ground that Shri Ramesh Chandra was not in Railway service at the time of death and as such, the benefit of compassionate appointment is not admissible.

She again filed O.A. No. 1327/2008 before Hon'ble CAT/ALD. The Hon'ble Court vide their order and judgment dated 5.2.2009 quashed and set aside the orders passed by DRM/JHS dated 17.6.2008 and directed General Manager, N.C. Railway to reconsider the matter in accordance with the provisions of the rule, within a period of 3 months from the date of receipt of copy of this order.

I have gone through the instructions of Railway Board as well as judgments of Hon'ble Supreme Court & High Courts. Hon'ble Supreme Court in their judgment dated 10.4.2006 in Civil Appeal 3595-3612 of 1999, 1861-2063 and 3849-2001, 3520-3524/2002 and 9168 of 2006 (Arising out of SLP (C)

9103-9105 of 2001) regarding regularization of persons employed temporarily, casual capacity or on contractual basis have held that “when a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules of procedures, he is aware of the consequences of appointment being temporary, casual or contractual in nature, such person cannot invoke the theory of legitimate expectation for being confirmed in the post.”

The Hon’ble Supreme Court have further held that there is no fundamental right to those who have been employed as daily basis or temporary or on contractual basis to claim that they have a right to be absorbed in service. Hon’ble Supreme Court has also decided that compassionate ground appointment cannot be claimed by way or right.

I find that as per Railway Board’s instructions dated 01.4.1997, in cases where casual labour with temporary status die in harness i.e. during the employment with the Railways and if the case presents features constituting extreme hardship meriting special consideration, the GM may appoint eligible and suitable wards of such casual labours on compassionate grounds as casual labour (fresh face). I also find that Railway Board have prescribed 5 years time limit for making compassionate appointments from the date of occurrence of death of the employee. The records show that Smt. Raj Kumari applied for the first time for her appointment on compassionate ground on 04.1.2005 i.e. after approximate 7 years after the

death of her husband. Thus the case is not covered under rules and also there is no circumstance such as to warrant relaxation to the time limit of five years.

Late Shri Ramesh Chandra had worked only upto 22.7.1991 as Hot Weather Casual Waterman during summer season and died on 12.10.1998. Engagement of Hot Weather Casual Waterman was discontinued w.e.f. 03.2.1992 on withdrawal of the policy of engagement of Hot Weather Casual Waterman by Railway Board’s letter dated 03.2.1992.

Keeping in view the facts mentioned above, I do not find the request of Smt. Raj Kumari w/o Late Shri Ramesh Chandra for her appointment on compassionate grounds as tenable. She may be informed accordingly.

General Manager.

SPEAKING ORDER

O.A. No. 1328 / 08 Smt. Usha Parihar
Compassionate Appointment

I have gone through the Hon'ble Central Administrative Tribunal, Allahabad's order dated 05.2.2009 passed in O.A. No. 1328 of 2008 filed by Smt. Usha Parihar w/o Late Shri Dilip Singh Ex-Hot Weather Casual Waterman, Jhansi wherein Hon'ble Court have directed the General Manager, North Central Railway, Allahabad to reconsider the matter in accordance with the provision of rule within a period of 3 months from the date of receipt of copy of this order. Accordingly, I have examined the entire documents available on records as well as your representation dated 13.2.2009 carefully and reconsider the entire matter.

I find that Late Shri Dilip Singh was engaged on 09.4.1976 as Hot Weather Casual Waterman for summer seasons and worked up to 22.09.1991 in broken periods. Railway Board vide their letter dated 03.2.1992 withdrew the policy of engagement of Hot Weather Casual Waterman and as such, all casual watermen were disengaged in 1992 including late Shri Dilip Singh.

Shri Dilip Singh was expired (Accident) on 08.05.1993. Prior to his death Shri Dilip Singh was party in a CGIT case regarding regularization of services of Hot Weather Casual Waterman. The Hon'ble CGIT/Kanpur vide their judgment dated 26.4.96 has passed the following orders :-

“In this it is established that the services of all the applicants have been put to an end and which certainly amounts to change in condition of service. It is also not disputed that the opposite party had not taken prior permission of this tribunal before effecting this change of service condition. In this way there has been utter breach of Section 9-A and 33 of I.D.Act, in terminating the services of the applicants. As such the applicants are entitled for reinstatement in service.”

The above award was challenged in Hon'ble High Court/Allahabad and ultimately the award dated 26.4.96 was set aside by the Hon'ble High Court vide their judgment dated 24.9.2004 in Civil Misc. Writ Petition no. 930/1997.

Smt. Usha Parihar widow of Late Shri Dilip Singh filed O.A. No. 508/08 before Hon'ble CAT/ALD for compassionate appointment. Hon'ble CAT/ALD disposed off the case on 12.5.2008 directing DRM/JHS to take decision on the request of the applicant for compassionate appointment within a period of 3 months. The judgment was implemented by DRM/JHS by disposing her representation dated 19.5.2008 with issuance of letter No. JHS/P/Wel/CG/Court Case dated 17.6.2008 rejecting the request of Smt. Usha Parihar on the ground that Shri Dilip Singh was not in Railway service at the time of death. Hence as per rules benefit of compassionate appointment is not admissible.

She filed again an O.A. No. 1328/2008 before Hon'ble CAT/ALD. The Hon'ble Court vide their order and judgment dated 5.2.2009 quashed and set aside the orders passed by

DRM/JHS dated 17.06.2008 and directed to General Manager, N.C. Railway to reconsider the matter in accordance with the provisions of the rule, within a period of 3 months from the date of receipt of copy of this order.

I have gone through the representation dated 13.2.2009 submitted by Smt. Usha Parihar vide which Smt. Parihar stated that Hon'ble CGIT/Kanpur in their award dated 26.4.1996 held that termination was not justified and ordered to reinstate all of them in service. In this contest it is already clarified in foregoing paras that CGIT's order dated 26.4.1996 was challenged before Hon'ble High Court/Allahabad through petition No. 930/97 and Hon'ble High Court Allahabad vide their judgment dated 24.9.2004 has quashed the CGIT's order dated 26.4.1996.

I have also gone through the instructions of Railway Board letter dated 01.4.1997 as indicated by Hon'ble CAT/Allahabad in their judgment dated 05.2.2009, in which Railway Boards has clearly instructed that "cases where the casual labour with temporary status die in harness i.e. during his employment with Railways and the case presents feature considering extreme hardship, meriting special consideration, the General Manager could exercise his personal discretionary powers for giving appointment to eligible and suitable wards of such casual labour on compassionate grounds as casual labour (fresh face)/substitutes".

I have also gone through the judgments of Hon'ble Supreme Court dated 10.4.2006 as circulated under Railway

Board's letter dated 23.6.2006. Hon'ble Supreme Court in their judgment dated 10.4.2006 in Civil Appeal 3595-3612 of 1999, 1861-2063 and 3849-2001, 3520-3524/2002 and 9168 of 2006 (Arising out of SLP (C) 9103-9105 of 2001) regarding regularization of persons employed temporarily, casual capacity or on contractual basis have held that when a person enters a temporary engagement which is not based on a proper selection as recognized by relevant rules and procedures, he is aware of consequences of appointment being temporary, casual or on contractual in nature, such person cannot invoke the theory of legitimate expectation for being confirmed on the post.

The Hon'ble Supreme Court have further held that there is no fundamental right to those who have been employed as daily basis or temporary or on contractual basis to claim that they have a right to be absorbed in service.

I find that Railway Board's instructions dated 01.4.1997 are that, in cases where casual labours with temporary status die in harness i.e. **during the employment with the Railways** and if the case presents features constituting extreme hardship meriting special consideration, the GM may appoint eligible and suitable wards of such casual labours on compassionate appointment from the date of occurrence of death of the employee. Smt. Usha Parihar applied for the first time for her appointment on compassionate ground on 04.1.2005 i.e. after approximate 11 years 06 months after the death of her husband. Hon'ble Supreme Court in its judgment dated 04.5.1994 in the cases of Shri Umesh Kumar Nagpal v/s State

of Hariyana & Ors and Anil Malik v/s State of Hariyana & Ors (JT19949 (3) SC.525) as circulated by Railway Board vide their letter dated 28.2.95 held that the compassionate employment cannot be granted after a lapse of a reasonable period which must be Specified in the rules. The consideration of such appointment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the immediate financial crisis which it bears at the time of the death of the sole bread-winner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.

Since late Dilip Singh at the time of death was not in Railway Service and Smt. Parihar has applied for appointment of her son after gap of eleven years, the case does not come under the ambit of compassionate appointment.

Keeping in view the facts mentioned above, I do not find request of Smt. Usha Parihar w/o Late Sheri Dilip Singh for appointment to her son Shri Shekhar Singh on compassionate grounds as tenable.

She may be informed accordingly.

General Manager

SPEAKING ORDER

OA No 1597 of 2009-Shri Hukum Singh
Quasi Admn. office

In compliance of order dated 29.12.2009 of Hon'ble CAT Allahabad passed in OA No 1597 of 2009 Shri Hukum Singh Vs UOI, I have gone through the representation dated 09.03.2009 of Shri Hukum Singh Ex Part time Library Clerk in Institute, Agra Cantt Central Railway now N.C.Railway carefully. I have also gone through Railway Board's relevant letters no. E(NG)II/99/RR.1/15 dated 30.5.2000, E(NG)II/99/RR.1/15/II dated 22.11.2001, E(NG)II/99/RR-1/15 Vol-IV dated 3.5.2006 and the letters referred by the applicant in his representation.

Shri Hukum Singh has requested for appointment in Railway service as he had worked at Railway Institute, Agra from 1/12/93 till cut off date i.e10.06.1997 and also afterwards.

I found that Sh. Hukum Singh was engaged on 1.12.1993 by Management Committee Railway Institute, Agra Cantt. As per record, the date of birth of Sh. Hukum Singh is 07.02.1977, therefore, it is clear that at the time of engagement he was minor and attained majority on 07.02.1995. As per the policy, the engagement of any minor is prohibited under Child Labour Act and services so rendered are not taken into consideration for any purpose.

It is also seen that Railway Board's vide their letter no. E(NG)II/99/TT-1/15 (II) dated 22.11.2001 has clarified that such workers of quasi-administrative offices may be absorbed only

if they fulfill the conditions laid down in Board's letter dated 30.05.2000, which inter-alia lays down as follows :-

- i. The workers should be on roll for a period of at least 3 years as on 10/06/1997 and are still on roll.
- ii. Should fulfill the prescribed minimum educational qualification which is at present class –VIII pass.
- iii. Should have been engaged within the prescribed age limit.
- iv. The absorption should be restored only after exhausting the list of ex casual laborers borne on Live/Supplementary Live Register.

The applicant had put in only 2 years 4 months & 3 days service on the prescribed cut off date i.e. 10.6.1997 after he attained majority on 07.02.1995. The underage period of service is a void period and cannot be taken into account. As such he is not fulfilling the prescribed conditions I & III for absorption on group 'D' post.

From the aforesaid, it is clear that the engagement of the applicant, as minor, was ab-initio void, his total service after attaining the majority also worked out to only 2 years 4 months & 3 days which is less than the prescribed period of three years. Therefore, the claim of the applicant for absorption in Railway Service is not acceptable.

In view of the above, I reject the request of the applicant for absorption in Railway. The applicant may be advised accordingly.

General Manager

SPEAKING ORDER

OA No. 497 / 2010, Sh. Devendra Kumar Pathak
-Promotion

In compliance of Hon'ble Central Administration Tribunal order dated 3.5.2010 passed in Original Application no. 497 of 2010 Sh. Devendra Kumar Pathak, Sh. Sourin Pal, Sh. A.N. Dhawan and Sh. Kamal Kishore, I have gone through the representation of applicants dated 15.6.2009 carefully. I have also gone through the Original Application filed by the applicants and the policy guidelines issued by Railway Board on the subject. The applicants have sought promotion in the category of Commercial Inspector Gr. 5000-8000 under the cadre restructuring by way of modified procedure w.e.f. 1.11.2003, as has been done on Northern Railway.

It is noted that the applicants were working as Claim Tracer Gr. Rs. 4000-6000 under Dy.CCM/Claims/Varanasi in 2001. On being declared surplus there, they were redeployed as TTE Gr. Rs. 4000-6000 and posted under LKO/Divn of N.Railway on 13.8.2001. After formation of new zone i.e. North Central Railway, the applicants opted for their posting in N.C. Railway and were absorbed against the post of Claim Tracer in the same grade on the basis of their options w.e.f. 10.5.2004.

It is seen that the orders for cadre restructuring were issued by Railway Board vide their letter no. PC-III/2003/CRC/6 dated 9.10.2003, in which the category of Claim Tracer was not covered for restructuring. Accordingly, the cadre

restructuring was not implemented in this category on N.C. Railway. Promotions, if any, given to the category of Claim Tracer by any other Railway under restructuring is against the spirit of the orders of cadre restructuring issued by Railway Board on 9.10.2003 and cannot form the basis for extending similar benefit on NCR.

I also find that the category of Commercial Inspector on N.C. Railway is a unified cadre of Commercial, Rates, Claims, R&D & Marketing streams of Commercial Department. The Commercial Inspector category grade Rs.5000-8000 is an open category in which the posts are filled up by way of selection as per the procedure prescribed in the AVC circulated vide No. NCRPS 2287/06 dated 03-8-2006 wherein the employees from the categories of Booking Clerk, Parcel Clerk, Goods Clerk and Claim Tracer in grade Rs. 4000-6000 are considered for selection. Therefore, the request of the applicants to consider them for promotion under cadre restructuring by way of modified procedure of selection is not agreeable as per extant rules.

In view of the above, I do not find any merit in the claim of the applicants for giving them promotion under restructuring.

The applicants may be advised accordingly.

General Manager

SPEAKING ORDER

OA No. 560 of 2010-Shri S.M.Mitra
Change in Date of Birth

In compliance of Hon'ble CAT Allahabad's directions dated 21.04.2010 in OA No. 560 of 2010, I have gone through the application dated 06.08.2009 submitted by Shri S.M.Mitra, Executive Engineer, TMC/Line Allahabad to GM/P NC Railway Allahabad regarding correction of Date of Birth in his Service Record from 20.02.1951 to 20.05.1951. In his application, he has brought out mainly the following points:-

- (i) During scrutiny of his service record in November 2000, it came to his notice that his Date of Birth has wrongly been mentioned as 20.02.1951, which should be 20.05.1951. In support of his plea, he has enclosed the attested photocopy of High School Certificate issued on 14.06.1966 in which his Date of Birth is mentioned as 20.05.1951.
- (ii) He made correspondence with FA&CAO/NR for correcting his Date of Birth from 20.02.1951 to 20.05.1951. FA&CAO/NR in turn made several correspondence with Sr.AO/CSP, the last one made vide letter No. 202/Accounts/CSP/Engineering dated 05.03.2002 to ascertain the correct Date of Birth which authenticates that his correct Date of Birth is 20.05.1951.
- (iii) GM/NR vide letter No. 726E/1897/E1A dated 26.05.2003 asked Sr.AFA/CSP for sending the Service Record but due to some reasons the same could not be sent.

- (iv) After formation of North Central Railway, as mentioned by him, he had also submitted a letter on 22.07.2006 to GM/P/NCR and another letter to FA&CAO/NCR on 10.10.2006 on this issue. In this regard, Sr.AFA/CSP/ALD has also written a letter to Dy.CPO/HQ, but till date, he has not been intimated whether his correct DOB i.e. 20.05.1951 has been recorded in his Service Book or not.

The points raised by Shri Mitra in his application dated 06.08.2009 have been examined and considered in light of prevailing rule dealing with Date of Birth as contained in rule 225, Chapter-II of IREC Vol-I and enjoined events that took place in the service career of a Railway employee, and I find that ;

- a) As per provision in Rule 225 sub rule (1), Chapter-II IREC Vol-I, every person, on entering Railway service shall declare his Date of Birth which shall not differ from any declaration expressed or implied for any public purpose before entering Railway service. In the case of literate staff as per this rule, the Date of Birth shall be entered in the record of service in the Railway servant's own handwriting. Rule 225, sub rule (4), Chapter-II of IREC Vol-I further provide that the date of birth as recorded in accordance with these rules shall be held to be binding and no alteration of such date shall ordinarily be permitted subsequently.
- b) Alteration in Date of Birth should not be entertained after completion of the probation period or 03 years service

whichever is earlier as per provision in rule 225 sub rule (4)(iii).

- c) Shri Mitra on the first page of the record of service below column No. 8 has himself declared that "as per the High School Certificate" his Date of Birth entered as 20.02.1951 is correct. He has verified his Date of Birth by putting his signature and left thumb impression below column No. 8. In the Leave Record also, his Date of Birth has been entered as 20.02.1951.
- d) Shri Mitra joined Railway service on 21.03.1976 as temporary PWI in Grade 425-700 in Bikaner division and during 24 years service from 21.03.1976 to till November 2000, he did not make any representation about the wrong entry of his date of birth in the service record.
- (e) Shri Mitra was promoted in Group 'B' on 12.07.1994 and the Date of Birth in all the records of his Gazetted and NG service is entered as 20.02.1951.
- (f) In the correspondence between FA&CAO/NR and Sr.AFA/CSP nowhere it is indicated that his correct Date of Birth is 20.05.1951. In Sr.AFA/CSP's letter it is only mentioned that in High School certificate his Date of Birth is shown as 20.05.1951. Therefore, his contention that Sr.AFA/CSP has mentioned in his letter that his correct Date of Birth is 20.05.1951 is incorrect.

On going through the provisions in rule 225 Chapter-II of IREC volume-I and facts brought out from paras (a) to (f)

above, his request for change in Date of Birth from 20.02.1951 to 20.05.1951 cannot be acceded due to the following reasons:-

- (i) At the time of entering the Railway service, Shri Mitra himself has declared that as per High School certificate his Date of Birth is 20.02.1951. This has been verified by him by putting his LTI and signatures, on the first page of SR below column No. 8. If his Date of Birth entered in the service record was wrong, he should not have verified the same by putting his LTI and signatures below column No.8 and the error should have been brought by him to the notice of the authority concerned. He did not make any representation during his 24 years service.
- (ii) In the SR and Leave record of NG period of Shri Mitra which are authentic documents for all purposes, his Date of Birth is entered as 20.02.1951. These documents clearly establish that his Date of Birth is 20.02.1951. This has also been verified by him on the first page of SR in his declaration given at the time of first appointment.
- (iii) Alteration in DOB as per rule 225, Sub rule (4) (iii) of IREC Vol-I is not permissible after completion of probation period or three years service whichever is earlier.

In view of above, his request for correction in Date of Birth from 20.02.1951 to 20.05.1951 is not feasible for acceptance. The representation dated 06.08.2009 is disposed of and Shri Mitra may be apprised.

General Manager

SPEAKING ORDER

OA No. 1035/2010 Shri Mohd. Hanif - Gr.B Selection

In compliance of Hon'ble CAT, Principal Bench, New Delhi's orders dated 22.04.10 in OA No. 1035/2010, I have gone through the representation dated 18.09.2009 submitted by Shri Mohd. Hanif, SSE (P-Way)/AGC to GM/P. On going through his representation, I have observed that his main grievance is for promotion from Gr. 'C' to Gr. 'B' to the post of AEN against 70% quota vacancies for the assessment year 2005-07 in Civil Engineering Department. The background of the case as per the facts available on record is as under:-

1. He was called in the selection as per the seniority position assigned to him in the seniority list dated 26.10.06. He had passed the written test and became eligible for calling in the viva-voce test. He appeared in the viva-voce test but due to pendency of a major penalty chargesheet against him in a Vigilance oriented case as on the date of declaration of panel on 07.11.2007, his result was kept in sealed cover and was not declared in terms of instructions contained in paras 2(ii) and 3.1 of Railway Board's letter No. E (D&A) 92 RG 6-149 (A) dated 21.01.1993. In this charge sheet, he was imposed the penalty of reduction of pay by three stages below reducing his pay from Rs. 22,330 to Rs. 20,420 in PB Rs. 9300-34800+ GP-4600 on 17.06.2009 for a period of 01 year without cumulative effect by the DA. In the appeal, the appellate authority on 29.04.2009 reduced the penalty of reduction in pay from

Rs. 22,330 to Rs. 20,420 imposed by the DA from one year to six months without cumulative effect. Thus the penalty imposed on him expired on 17.09.2009.

2. In the meanwhile, a new development about wrong assignment of seniority to him took place as a result of which the matter was examined in threadbare by Agra division and the following facts came to light:-

2.1 Initially, when integrated seniority list for selection to the post of AEN against 70% quota vacancies was issued on 26.10.2006 vide letter No. 797-E/NCR/Group 'B'/Inter-se-seniority/Engg. by the Headquarters Office, the date of regular promotion in Grade 6500-10,500 of Shri Mohd. Hanif, SE(P-Way) was shown as 25.08.1994 on the basis of the position received from AGC division. Accordingly, he was placed at SN-71 in the integrated seniority list. However, subsequently on scrutiny of his service record, it came to the notice of AGC division that his date of regular promotion in Grade 6500-10,500 is 13.05.1999 and not 25.08.1994 as shown earlier which is his date of ad-hoc promotion. Accordingly, on the basis of revised seniority position received from AGC division vide letter No P/Agra/Seniority/Engg./4 dated 26.11.2008, his date of regular promotion was rectified from 25.08.1994 to 13.05.1999 and his seniority was determined on the basis of his non-fortuitous length of service in Grade 6500-10500 which counts from 13.05.1999. On the basis of his revised seniority position, his name in the integrated seniority list dated 26.10.2006 was shifted from SN-71 to 191-A placing him below Shri J.L. Sharma, SE/W and above Shri A.K.Sharma, SE/W.

2.2 Before changing his seniority, AGC Division has issued a notice to all concerned vide letter No P/Agra/Seniority/Engg/4 dated 18.07.2008 that Shri Mohd. Hanif has been assigned correct seniority in Grade 6500-10500 w.e.f. 13.05.1999 modifying his incorrect seniority position assigned earlier w.e.f. 25.08.1994 in Grade 6500-10,500. For this, objections if any were also invited from the employees within one months time. Accordingly, Shri Mohd. Hanif gave a representation on 11.08.2008 objecting the change in his seniority. After considering his representation, a final decision was taken by the competent authority to modify his seniority and he was assigned seniority on the basis of his date of regular promotion Grade in 6500-10,500 w.e.f.13.05.1999. He was communicated the decision vide AGC division's letter No. P/Agra/Seniority/Engg/4 dated 25.11.2008 through a common notice and individual letter dated 25.11.2008.

As per provision in para 203.5, Chapter-II, Section-A of IREM Vol-I, the seniority for Group 'B' selection is to be determined on the basis of non-fortuitous length of service in Grade 6500-10500. He was assigned seniority on the basis of his ad-hoc date of promotion in Grade 6500-10500 by AGC division which is against the provision of para 203.5 of IREM Vol-I. The Date of ad-hoc promotion in Grade 6500-10,500 i.e. 25.08.1994 was not to be reckoned for seniority purpose but inadvertently and by oversight, AGC division committed this mistake which was later rectified when the mistake come to notice.

4. On the basis of his revised date of regular promotion i.e. 13.05.1999 in Grade 6500-10,500 and modified seniority

assigned to him vide letter No. 797-E/NCR/Civil Engineering/70%/seniority/08 dated 31.03.10, he does not come in turn for placement in the panel of AEN as 08 UR employees senior to him who have also passed the selection could not find a place in the provisional panel for want of UR vacancies. It is mentioned here that as per instructions contained in Board's letter No. E(GP) 78/2/107 dated 08.12.1978 and the provision in para 204.9 of IREM Vol-I, the panel against 70% quota selection is to be formed in order of seniority. I have seen that the panel was to be formed for 74 vacancies (UR-57, SC-11 & ST-06) against which 64 employees (UR- 56, SC-07 & ST-01) were placed in the panel. Against 57 UR vacancies, 56 UR employees senior to him have already been placed in the panel and against 01 UR vacancy, Shri Baburam (SC) S/o Shri Chinkara who has earlier been placed in the panel against reserved vacancy for SC, is required to be adjusted in the panel against UR post in seniority order.

In light of the facts that 08 employees senior to Shri Mohd. Hanif have also passed the selection but could not find a place in the panel for want of the UR vacancy and his seniority position in the integrated seniority list issued on 26.10.2006 has undergone a change from SN-71 to 191-A and he ranks below in seniority to 08 employees, it is not possible to promote him to the post of AEN(Gr. B) against 70% quota vacancies.

This disposes of his representation dated 18.09.2009. The orders may be communicated to him.

General Manger

SPEAKING ORDER

O.A. NO. 1569/09, Neetu Srivastava
scout quota appointment

In compliance of the Hon'ble Central Administrative Tribunal, Allahabad's order dated 09.01.2010 passed in O.A. NO. 1569/2009, (Neetu Srivastava W/o Shri Prem Prakash Srivastava Vs UOI) I have gone through the representation of the applicant Smt Neetu Srivastava dated 22.01.2010, 23.11.2009 and her mother's representation dated 28.07.2009 alongwith O.A.No. 1569/2009. Consequent to examining the case, my observations are as under:-

1. In the representation, Smt. Neetu Srivastava has submitted that in terms of Railway ard's letter No. E(NG)II/99/RR-2/3 dated 04.05.2000, she should be awarded 7 and 5 marks in the Column No. 08 and 12 of the evaluation sheet, respectively, so that she may be declared passed in the selection for Group 'D' post against Scout & Guide quota of JHS Division. She has claimed that 5 marks should be awarded to her for specialized Scout/Guides Course of Pioneering/Mapping and Standard judging Course/ Vocational Craft Course.
2. She has further stated that she had participated in the 10th & 11th International Adventure Programs held at National Adventure Institute, Pachmarhi from 16.02.2008 to 25.02.2008 and from 16.02.2009 to 25.02.2009, which entitles her for award of 7 marks for the same, in the International category of events. She further states that if

she would have been awarded the above marks she would have become entitled to be placed on the panel for recruitment in Group 'D' post against Scout and Guides quota.

3. I have carefully gone through the facts of the case and find that:-

(i) In terms of Railway Board's letter NO. E(NG)II/99/RR-2/3 dated 04.05.2000 para 2 (x) (B) (a) maximum 7 marks for participation in an International event (one event-5 marks, two or more events – 7 marks) are to be awarded.

(ii) In terms of Railways Board's letter NO. E(NG)II/99/RR-2/3 dated 04.05.2000 para 2 (x) (B) (e) maximum 7 marks for specialized Scout/Guide Course, Pioneering/Mapping and Standard Judging Course/ Vocational Craft Course (one course-5 marks, two or more courses-7 marks) (Column No. 8) are to be awarded.

(iii) In her application dt. 23.11.09 & 28.07.09, it has been mentioned that the certificates of 10th & 11th International Adventure Programme issued by National Adventure Institute, Pachmarhi have been submitted along with her application form.

a) On perusal of her application, submitted for the said recruitment, it is clear that she has only submitted the certificate of 10th International Adventure Program issued by National Adventure Institute, Pachmarhi.

Hence, her contention that she has submitted the certificate of 11th International Adventure Program issued by National Adventure Institute, Pachmarhi is not correct and hence not acceptable.

b) The 10th International Adventure Programme has been classified as a National level programme by the National Headquarters of Bharat Scout & Guides in the magazine "The Bharat Scouts & Guides" for the month of December 2007, published by National Headquarters. At the time of recruitment, therefore, this classification was in existence.

(c) Therefore, Zero marks awarded to her in the category of International events in column No. 8 of the tabulation sheet by the Recruitment Committee of Jhansi Division is correct.

(iv) Further, it has also been mentioned that five marks should have been awarded in the column 12 of tabulation sheet (specialized course) for participation in Pioneering cum Estimation Training Camp, State Award and Nipun Chayan Camp as a trainer. In this connection it is seen that:-

(a) She has participated in Pioneering cum Estimation Training Camp w.e.f. 24.03.08 to 28.03.08 organized by N.E.Railway, State Headquarter, Bharat Scouts & Guides at Varanasi and participated in Nipun Chayan Camp between 11.06.08 to 15.06.08 at Kathgodam. However, this participation was not as a trainee but as a trainer which do not entitle her for the said marks.

- b) Moreover, the said certificate has been issued by District Commissioner (Guide) Varanasi and not by any authority of N.E. Railway, State Headquarters. This Certificate is also not issued in the prescribed format. The District Commissioner (Guide) Varanasi is not competent to issue a certificate for participation in camp/course of State Headquarters.
- c) In view of above mentioned reasons, the Certificates issued by the District Commissioner (Guide), Varanasi cannot be treated as valid and sufficient for awarding marks in column 12 of tabulation sheet. Hence, the marks awarded by the Recruitment Committee at Jhansi Division are correct.

In view of the above, I find the marks to have been correctly awarded. The claim of the applicant is, therefore, rejected.

With the above observations, I dispose off the representations of Smt. Neetu Srivastava dated 22.01.2010, 23.11.2009 and her mother's representation dated 28.07.2009 along with O.A.No. 1569/2009.

General Manager

SPEAKING ORDER

OA No.1241/2009 Shri R. C. Sharma - D&AR

In compliance of Hon'ble CAT/NDLS (PB)'s order dated 29.04.2010 passed in OA No.1241/2009 Shri R. C. Sharma Vs. UOI & others, I have carefully examined the Revision Appeal dated 26.05.08, Supplementary Appeal dated 25/28.07.2008 (Annexure-A21) and other relevant documents pertaining to the case.

Shri R. C. Sharma has essentially pointed out two procedural flaws in the dealing of the case:-

1. Annexure-II (Statement of imputations of misconduct or misbehavior in support of the article of charges) was not issued along with charge sheet (SF-5) by the Disciplinary Authority.
2. The Appellate Order was enhanced on Revision by the Revising Authority, without issue of Show Cause Notice.

Brief History of the case:

Shri Sharma was working as Chief Trains Clerk in the office of Sr. Divisional Operations Manager, Jhansi till 06.09.1994. On 07.09.1994 an order was issued for his transfer from Sr. Divisional Operations Manager's office/Jhansi to Chief Yard Master/Jhansi, where as he was on sick list w.e.f.

30.08.1994 to 08.12.1994 and again from 09.12.1994. Since he did not attend the Health Unit he was discharged from sick list from 10.12.1994 as advised by CMS/Jhansi. Due to prolonged absence, a decision was taken by the competent authority on 02.08.1995 to get Shri Sharma examined by a Board of Railway Doctors. However, Shri Sharma did not co-operate with the administration due to which Medical examination by one Board of Railway Doctors could not be carried out. Later on a Major Penalty charge sheet (SF-5) was issued on 11.08.1995 to Shri Sharma for his prolonged absence. Shri V. N. Dwivedi TI/HQ/Jhansi was nominated as Inquiry Officer. Inquiry Officer submitted an ex-party report on the basis of available record as Shri Sharma did not co-operate with the Inquiry Officer. The Disciplinary Authority (i.e. Sr.DOM/Jhansi) after supplying the Inquiry Report and considering the reply of Shri Sharma, imposed the penalty of "Removal from Service". Shri Sharma preferred an appeal which was considered by ADRM/Jhansi who did not find any reasons to modify the penalty already imposed by the Disciplinary Authority and the Appeal was rejected.

Shri Sharma then filed an OA No.390/97, against the Appellate Authorities decision. Hon'ble CAT/ALD vide their order dated 23rd July 2003 quashed the Appellate Order and remitted the case back to the Appellate Authority for reconsideration. In compliance of Hon'ble CAT/ ALD's order, the Appellate Authority re-considered the Appeal and taking a lenient view, the punishment of "Removal from Service" was reduced to "Reduction in lower Time Scale of Jr.TNC Gr.

Rs.3050-4590 and pay was fixed on Rs.4030/- for a period of seven years with cumulative effect."

Shri Sharma, thereafter, submitted a Revision Appeal to COM/NCR/ALD on 10.01.2004. Shri Sharma was advised to report for duty and till he reported for duty his Revision Appeal was pended. But even than Shri Sharma did not report for duty and approached Hon'ble CAT/NDLS (PB) by filing OA No.1876/06. Hon'ble CAT/NDLS vide their order dated 1st day of November 2007 directed Respondent No.4 (Sr.DOM/JHS) to examine the Revision Application filed by the Applicant on merit, after affording an opportunity to him. Since the Revisionary Authority was COM/NCR, therefore the revision was considered by the COM/NCR. The Revising Authority after considering the Revision in compliance of Hon'ble CAT/NDLS orders, enhanced the penalty of reduction in lower time scale of Jr.TNC Gr. Rs.3050-4590 to that of "Removal from service".

Shri Sharma again filed an OA No.1241/2009 before Hon'ble CAT/ NDLS in which Hon'ble CAT/NDLS vide order dated 29.04.2010 directed the Respondents to deal with the Appeal of the applicant at Annexure-A-21 of the OA, in terms of the rules and instructions and pass a Speaking Order in accordance with law, within a period of three months.

According to D&A Rules, Annexure-II (statement of imputation of misconduct or misbehavior in support of Article of Charges) is an essential document, which must be supplied along with Memorandum of Major Penalty charge sheet. Also

according to Rule 25 of D&A Rules 1968, though Revising Authority can confirm, reduce, enhance or set aside the penalty imposed, but no order imposing or enhancing any penalty shall be made by any Revising Authority, unless the Railway Servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed.

From above I find that though Shri Sharma was correctly taken up under D&AR, however, to set right the procedural lacuna as raised by Shri Sharma, the orders passed by the Disciplinary authority, Appellate authority and Revising Authority are set aside and the case is referred back to the Disciplinary Authority for taking de-novo action, from the stage from where the procedural lacuna occurred.

Applicant may be informed accordingly.

General Manager

SPEAKING ORDER

OA No. 188 / 2010, Sh. Bagda Ram- Selection

As per Hon'ble CAT Allahabad's directions dated 23.03.2010 in OA No. 188 of 2010, Shri Bagdaram was required to submit a comprehensive representation within two weeks from the date of receipt of certified copy of the order. But he has not submitted any representation and has sent only the copy of the Hon'ble CAT's order vide his letter dated 12.04.2010. However, in compliance of the Hon'ble CAT's directions, I have taken the OA as a representation in which the applicant has brought out mainly the following points:-

- (i) The respondent has manipulated the entire written examination under the pressure of Ministry of Railways, the DPC has adopted a biased view to promote respondent No. 4 & 5 who used colored ink to give indication to the evaluator and the assessment of vacancies was not done correctly.
- (ii) The answer sheets of all the candidates may be re-evaluated on the basis of the model answers if so available otherwise the entire selection may be set aside.

I have examined the above points taking into account the selection procedure and Railway Board's guidelines in vogue for conducting the selections. I find that;

1. The assessment of vacancies for the assessment year 2005-07 was as under;

- | | | | |
|---|---|---|----|
| 1 | Existing vacancies | = | 01 |
| | Addition of 30% vacancies of the JS cadre
(Construction reserve posts) | = | 04 |
| 1 | Resultant vacancies in JS
on promotion of one JS officer to SS. | = | 01 |
| 1 | Net vacancies | = | 06 |
2. The vacancies in anticipation of repatriation of 04 officers of Northern Railway were not taken into assessment, as per orders of the competent authority who decided to retain them in NCR on the basis of mutual understanding with CCM/NR. The net 6 vacancies were distributed into 70% and 30% quota selections. On bifurcation of quota only two vacancies came to the share of 30% quota selection and as per PBR roster point no 1 and 2 were operated. The roster point for SC community falls at point No. 4 as such no post was coming to the share of the SC community. In view of this, his contention that he could have been considered and promoted against SC post is not tenable.
 2. The selection is conducted in accordance guidelines issued by the Railway Board which is a full proof system and there is no scope for committing any anomaly and irregularity for anyone. In selections, full confidentiality is maintained and no pressure can be built up by any official irrespective of the status on evaluators and DPC as alleged by Shri Bagdaram. Here, for information of Shri Bagdaram, the procedure outlined and adopted for maintaining secrecy and confidentiality is elaborated in brief as below:-
 - 2.1 As soon as the written test is over, a dummy roll number is given on the fly leaves attached to each answer sheet

and the fly leaves containing the original Roll Number as well as the dummy number are separated and kept in sealed cover in safe custody of the officer nominated for keeping the fly leaves and other papers connected with the selection. The answer sheets then are sent to the evaluating officer containing only the dummy Roll Number so that the evaluating officer will not know the identity of the candidates. After the evaluated answer sheets are received from the evaluator, the fly leaves kept in the sealed cover are opened and the result is decoded and declared by the nominated officer. It will thus be seen that the evaluating officer does not know the name/identity of the candidates..

3. The job of evaluation of answer sheets was entrusted to the competent officers of requisite status who are well versed in commercial matters. Therefore, I have no reason to doubt the competency of the officers who have evaluated the answer sheets as such I find no merit in the allegation of Shri Bagdaram that the answer sheets have been evaluated without the model answer key to favour Shri Anupam Saxena and Shri Ashutosh Mishra and the answers to particular questions were not tallying with the commercial manual. It is for the evaluating officer to assess the correctness of the answers and the marks allotted by him represent the extent to which he is satisfied by the answer given by the candidates. Therefore, the allegations made by Shri Bagdaram that the answer were wrong and not tallying with the commercial manual are not correct. In view of this, the contention of Shri Bagdaram that the answer sheets of all the candidates should be re-evaluated is not acceptable for which there is no provision also in the rules.

4. No instructions were given to the candidates for refraining from using the red and green ink. Normally there is a tendency on the part of every candidate to use sketch pen of red, green, blue and black ink to give a beautiful look to the answers given by him. Therefore, the allegations made by Shri Bagdaram that the respondent No. 4 and 5 have used red and green ink to give indication to the evaluating officer to identify their answer sheets are baseless. The sketch pens of different inks could have been used by any candidate for which there was no restriction. It is important to mention that the marks are awarded on the basis of the quality of answers given by the candidates and not on the basis of any pressure and position held by an individual candidate, the identity of which infact is not known to the evaluator. Therefore, the allegation made by Shri Bagdaram that Shri Ashutosh Mishra's posting in vigilance directorate of Railway Board influenced the DPC is totally baseless and unconvincing. He is making the allegations on presumption basis and is blaming the entire system on his own concocted stories .
5. The panel against 30% LDCE quota is formed strictly in order of merit on the basis of overall performance of the candidates as per Railway Board's guidelines. The promotion of Shri Anupam Saxena and Shri Ashutosh Mishra to the post of ACM has been done on the basis of their performance and the marks secured in the written examination, viva-voce and record of service. Therefore, there is no merit in the allegations made by Shri Bagdaram that they have been shown favour in the selection by the DPC.

In view of the above facts, there is no merit in his grievance. Accordingly, his grievance is disposed of. He may be apprised.

General Manager