

Central Administrative Tribunal: Principal Bench

O.A. No. 2360/2001

New Delhi this the 25th day of September, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)
Hon'ble Shri V.K. Majotra, Member (A)

Shri Ashok Kumar Pathak, AC Fitter Gr.II,
Workshop Electrical Engineer,
Daya Basti, Delhi.

-Applicant

(By Advocate: Shri R.A. Vashisht)

Versus

1. Union of India through
General Manager, Northern Railway,
Baroda House, New Delhi.
2. Shri Bijender Singh, AC Fitter Gr. II
Office of Workshop Electrical Engineer,
Daya Basti, Delhi.

-Respondents

(By Advocate: Shri Rajinder Khatter)

ORDER (Oral)

Shri V.K. Majotra, Member (A)

The applicant is working as Air Condition Fitter Grade II in the office of the Workshop Electrical Engineer, Northern Railway in the pay scale of Rs.4000-6000. He was initially appointed as Khalasi on 9.4.1985 and subsequently promoted from time to time. He was promoted as Skilled AC Fitter Grade II w.e.f. 1.5.1994 and Highly Skilled AC Fitter Grade II w.e.f. 26.5.1997. He is aggrieved that respondent No.2, Shri Bijender Singh who was initially appointed later than the applicant, i.e., on 26.5.1988 as Khalasi and was later on promoted as Moulder Grade III w.e.f. 2.3.1993 and Moulder Grade II w.e.f. 8.8.2000, had been declared surplus and was re-deployed from Moulding Section to Air Condition Department where the applicant was working, but instead of being allocated bottom seniority on re-deployment, he was made senior to the applicant.

V.K. Majotra

(18)

2. Learned counsel of the applicant drew our attention to Annexure A-1 dated 6.1.2001 which is seniority list of Air Condition Section. Whereas applicant ~~h-a-d b-e-e-n~~ promoted in the grade of Technical Grade II on 26.5.1997, he has been shown junior to respondent No.2 who was promoted as such on 8.8.2000. The learned counsel stated that as respondent No.2 had been redeployed in the Air Condition Section on having been declared surplus, he could not have been placed higher in seniority than the applicant.

3. On the other hand, learned counsel of the respondents stated that respondents have merely implemented the directions contained in order dated 17.9.99 in OA No.1359/95 : Shri Bijender Singh Vs. Union of India & Others. He stated that it had been held in that order that Shri Bijender Singh's case was not of having been declared surplus but that only posts were readjusted on administrative ground depending on administrative exigencies, and the court had directed the respondents to fix Shri Bijender Singh's seniority as AC Fitter Grade III on the basis of his date of promotion as Moulder Gr.III w.e.f. 2.3.93.

4. We have carefully perused Annexure A-2, i.e., order dated 17.9.99 of the Tribunal in OA-1359/95. The relevant circumstances and the direction relating to respondent No.2 are reproduced below:-

"The other question that remains to be considered is whether the applicant on being posted as AC Gr.III should be assigned bottom seniority. It was contended by the learned counsel for the

Hb

respondents that the AC Fitter trade is entirely different to the Moulder's trade and as such the applicant has to receive fresh training in order to discharge his duties as AC Fitter. He also produced a copy of the notice purported to have been issued on 31.5.1994 in which it was stated that the staff such as the applicant working against the posts declared as surplus should give their option for redeployment on the condition that they will be assigned only bottom seniority in the new Section. Nothing about the notice has been stated by the respondents in their affidavit. In any case the impugned order of redeployment, Annexure A1 dated 8.8.1994 does not speak of any condition of bottom seniority. On the other hand, the preamble of the order reads as follows:

"The undernoted posts along with their incumbents have been redesignated and employed in the respective sections to cope with the increased work load in these section:"

Clearly this is not a case of persons being declared surplus but of posts having been redeployed on administrative grounds. For this reason the applicant who went to the AC Section along with his post cannot be made thereby to lose his seniority.

In the result, the OA is partly allowed. The applicant will be entitled to his old seniority. The respondents are directed to fix the applicant's seniority as AC Fitter Gr.III on the basis of his date of promotion as Moulder Gr.III within three months from the date of receipt of a copy of this order. There shall be no order as to costs".

5. It is clear from the Tribunal's order dated 17.9.99 why respondent No.2 was not accepted to have been declared surplus. The court had stated that, that was a case of persons having been redeployed on administrative grounds and as such they were entitled to their old seniority and respondents were directed to fix Bijender Singh's seniority as AC Fitter Gr.III on the basis of his date of promotion as Moulder Gr.III, i.e., 2.3.93. Arguments advanced by the applicant in the present case

W

that Shri Bijender Singh had been declared surplus and ought to have been allocated bottom seniority was considered in the aforestated judgment. It seems that the remarks made by respondents in Annexure A-1 against the name of Shri Bijender Singh "redeployed from Moulding Section on 31.5.1994 on bottom seniority. Seniority decided by CAT" are totally misleading and caused confusion compelling the applicant to come up in this OA. When the respondents were fixing Shri Bijender Singh's seniority in terms of the CAT order, they could not have stated that he was redeployed on bottom seniority etc. Respondents have also not mentioned the date of the order of the Tribunal and the OA number in the remarks column. It shows non-application of mind on the part of the respondents. Be that as it may, the position of the applicant vis-a-vis Shri Bijender Singh in the seniority list would not have changed even if the respondents had chaneged their remarks to reflect the position correctly. The ultimate position of the applicant as well as Shri Bijender Singh in the seniority list is absolutely in terms of the C.A.T orders. We hope that respondents would be careful and not make such types of mistakes in future.

6. Having regard to the discussion made above, we do not find any merit in the OA, which is dismissed. No costs.

V.K.Majotra
(V.K. Majotra)
Member (A)

cc.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice-Chairman (J)