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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 693/2001

This the 21st day of March, 2002.

HON'BLE SMT. LAKSHMI SWAMINATHAN, VICE-CHAIRMAN (J)

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

Pritpal Singh S/O Karnail Singh,
Material Checking Clerk (Ad hoc),
under Dy.C.S.T.E.(C) (PS),
Northern Railway, DRM Office,
New Delhi.

... Applicant

(By Shri B.S.Maine, Advocate)

-versus-

1. Union of India through
General Manager, Northern Railway,
Baroda House, New Delhi.
2. Chief Administrative Officer (Constn.),
Northern Railway, Kashmeri Gate,
Delhi.
3. Dy.C.S.T.E.(C) (PS),
Northern Railway,
DRN Office, New Delhi.
4. Divisional Railway Manager,
Northern Railway,
Ambala Cantt.

... Respondents

(By Shri H.K.Gangwani, Advocate)

O R D E R

Hon'ble Shri V.K.Majotra, Member (A) :

Applicant appointed as casual labour Wireman on 28.4.1978 was granted temporary status as Office Khalasi/Store Khalasi w.e.f. 1.1.1983. His services were regularised in Group 'D' w.e.f. 30.5.1990 by DPO/UMB. On 10.12.1991 he was put to work as Material Checking Clerk (MCC) in construction organisation on a temporary and ad hoc basis. Applicant's grievance is that instead of considering his claim for regularisation,

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by the impugned order passed on 27.2.2001 (Annexure A-1) he is sought to be reverted to his substantive post of Khalasi, a Group 'D' post, on repatriation to his parent division. On 19.3.2001, pending further orders, an ad interim order was passed restraining respondents from reverting applicant from the post of MCC, on repatriation to his parent division.

2. At the outset, learned counsel of respondents, Shri H.K.Gangwani, took a preliminary objection that applicant has challenged Annexure A-1 dated 27.2.2001 which is merely a covering letter without any annexure relating to repatriation orders. Shri B.S.Mainee, learned counsel of applicant, accepted the factum of non-enclosure of the notice of repatriation and stated that it was an inadvertent mistake that the annexure could not be enclosed with Annexure A-1. In our view, this is merely a technical objection. Looking to the pleadings and objective behind the filing of the OA, objection of respondents is rejected and it is deemed that applicant has impugned the order dated 27.2.2001 by which it was sought to repatriate applicant to his parent cadre. Applicant also seeks regularisation of his services as MCC on which post he claims to have worked for more than 10 years, with all consequential benefits.

3. Learned counsel of applicant relied on order dated 6.11.2001 in OA No.781/2001 : **Sulakhan Singh v. Union of India**, wherein placing reliance on instructions issued in December, 1991 to the effect that those who have completed three years of requisite service, are

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eligible for being considered for regularisation as MCC; respondents were directed to consider applicant's claim for regularisation as MCC.

4. On the other hand, learned counsel of respondents relied on order dated 6.9.2001 in OA No.860/2001 : **Vijay Kumar Singh v. Union of India**, in which too notice dated 27.2.2001 was assailed. It was held in that case that applicant had developed no right to continue in the construction division which is a temporary division and when there is a paucity of work in that division, the employees sent on loan to the division have to be repatriated to their parent divisions and on such repatriation, they have to be put in place in terms of their seniority *in* substantive posts. The Full Bench decision dated 4.12.2000 in the matter of **Ram Lubhaya & Ors. v. Union of India** (OA No.103/1997 and connected matters) was also relied upon. In that case it was held as follows :

"(a) Railway servants hold lien in their parent cadre under a division of the Railways and on being deputed to construction organisation and there having been promoted on a higher post on ad hoc basis and continue to function on that post on ad hoc basis for a very long time would not be entitled to regularisation on that post in their parent division/office. They are entitled to regularisation in their turn, in the parent division/office strictly in accordance with the rules and instructions on the subject."

It was further held in **Vijay Kumar Singh** (supra) that such persons cannot be regularised in construction division despite having worked there for several years.

It was ~~also~~ held that when the work is dwindling in the construction division, it is imperative that applicant has to be repatriated and on such repatriation he has to wait in the queue in terms of his seniority in the substantive post for further promotions. No exception can be had to such repatriation on the requirements of the parent organisation.

5. Lastly, in order dated 6.3.2002 in OA No.583/2001 : Surinder Kumar v. Union of India, the Principal Bench again considered the order dated 27.2.2001 which has been impugned in the present OA. After considering various orders such as Ram Lubhaya (supra); order dated 30.10.2000 in OA No.57/1996 : Aslam Khan v. Union of India (Jaipur Bench); order dated 30.3.2000 in OA No.1697/1996 : Yad Ram & Anr. v. Union of India (Principal Bench); order dated 25.10.1996 in SLP No.12947/1993 : Union of India v. Vijay Prakash, against CAT Allahabad Bench's order in OA No.355/1989; and order dated 15.2.2001 in OA No.1941/1999 : Badri Prasad & Ors. v. Union of India, it was held, "we are bound absolutely by the orders of the Full Bench in Ram Lubhaya's case (supra), as well as in Aslam Khan's case (supra), neither of which has been shown to us to have been stayed, modified or set aside by any superior Court of Law." It was further held as follows :

"...Under the circumstances we hold that applicant has no enforceable legal right to compel respondents to regularise him as MCC in Construction Organisation, from where he has been declared surplus. However, nothing contained in this order will preclude respondents themselves from considering the recall of the applicant and placing him where

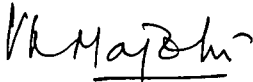
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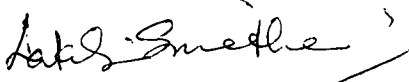
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he had been working earlier, in terms of joint meeting held in CE/CEIW on 28.7.97 if they are so disposed of. We also hold that pursuant to impugned order dated 27.2.2001 by which applicant has been repatriated to his parent division, he shall be entitled to pay protection in accordance with rules and instructions and judicial pronouncements on the subject."

6. In view of the fact that the impugned order dated 27.2.2001 relating to applicant's repatriation to his parent division in substantive cadre has been considered in the case of **Surinder Kumar** (supra), in all aspects of the matter, we also hold that applicant has no enforceable legal right to compel respondents to regularise him as MCC in the construction organisation. Respondents are not precluded from seeking repatriation of applicant to his parent organisation in his substantive cadre. However, we also hold that applicant shall be entitled to pay protection in accordance with rules, instructions and judicial pronouncements on the subject.

7. The OA is disposed of in the aforestated terms.
No costs.


(V.K. Majotra)
Member(A)


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

/as/