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Central Administrative Tribunal
Principal Bench

O.A.No.1359/95

Hon'ble Shri Justice K.M.Agarwal, Chairman
Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this the 17th day of September, 1999

Shri Bijender Singh
s/o Shri Omprakash
Skilled Moulder Gr.III
A.C.Section, Electrical Repair Workshop
Northern Railway
Daya Basti
Delhi - 45. .. Applicant

(By Shri B.S.Mainee, Advocate)

Vs.

Union of India through

1. The General Manager
Northern Railway
Baroda House
New Delhi.
2. The Chief Electrical Engineer
Northern Railway
Baroda House
New Delhi.
3. The Chief Electrical Engineer (PS)
Northern Railway
Baroda House
New Delhi.
4. The Workshop Electrical Engineer
Northern Railway
Daya Basti
Delhi - 45. ... Respondents

(By Shri R.L.Dhawan, Advocate)

O R D E R

Hon'ble Shri R.K.Ahooja, Member(A)

The applicant who was appointed as a Khalasi on 26.5.1988 was in turn promoted as a Helper Khalasi in 1991 and after passing the Trade Test was promoted as a Skilled Moulder Gr.III w.e.f. 2.3.1993. He also took the trade test for the post of Skilled Moulder Gr.II in the month of July, 1994 and cleared the same. His contention is that there was a post of Moulder Gr.II available but the applicant was not promoted on

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the ground that he had not completed his two years service since his promotion as Moulder Gr.III. The applicant's grievance is that there was a provision as per the Railway Board's Circular, Copy annexed at Annexure-A4 whereby the condition of two years service could be relaxed in respect of running staff by one year. The applicant further submits that instead of promoting him against the post of Moulder Gr.II, the respondents transferred his services to AC Section by order dated 19.8.1994 and have also given him bottom seniority in the AC Section. His prayer is that the respondents be directed to adjust him against the post of Moulder Gr.II on the basis of his having passed the Trade Test instead of transferring him to the AC Section on bottom seniority.

2. The respondents, on the other hand, submit that there was a staff inspection unit study and their report recommended the reduction of certain posts including the post of Moulder Gr.III. The applicant thus became surplus and as per Rules on the redeployment, he has been assigned the bottom seniority in the new Section.

3. Shri B.S.Mainee, learned counsel for the applicant argued that the transfer of the applicant to the AC Section was in public interest and for administrative reasons and therefore there should have been no occasion of assigning new seniority. The applicant, according to the learned counsel was invited to take the trade test for promotion to Moulder Gr.II. The Circular, Annexure A4 provided for relaxation of the condition of 2 years Govt. service

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as Moulder Gr.III subject to the approval of the General Manager. However the respondents sent no proposal to the General Manager for such a relaxation. He pointed out that the post of Moulder Gr.II was lying vacant and therefore it was a matter of public interest to fill up the post by granting requisite relaxation which was within the powers of the General Manager.

4. It is an admitted position that the applicant was promoted as Moulder Gr.III from 2.3.1993. As such he was not entitled to be promoted in July, 1994 unless he was granted relaxation in the qualifying service. No directions can be given to the respondents to grant the relaxation in any case since it is for the respondents to determine whether public interest requires the exercise of powers of relaxing the rules. It is not the case of the applicant that the respondents have acted arbitrarily in granting relaxation in a similar case while refusing the same to the applicant. Hence the relief sought for by the applicant for directions to the respondents for relaxation of qualifying service has to be rejected.

5. 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 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

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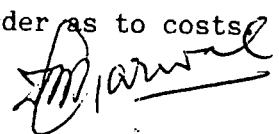
which it was stated that the staff such as the applicant working against the posts declared as surplus should give their option for redeployment on the condition that they will be assigned only bottom seniority in the new Section. Nothing about this notice has been stated by the respondents in their 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:

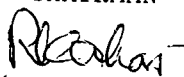
"The undernoted posts along with their incumbents have been redesignated and employed in the respective sections to cope with the increased work load in these section:"

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 this post cannot be made thereby to lose his seniority.

6. 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


(K.M. AGARWAL)
CHAIRMAN


(R.K. AHOOJA)
MEMBER (A)

/RAO/