

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 836 of 1997

New Delhi this the 25 day of September, 1998

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Smt. Azadwanti Hooda
W/o Shri Rajender Singh Hooda
R/o B-75, Mansaram Park, Najafgarh Road,
New Delhi-110 059.

By Advocate S/Shri R. Doraiswami & Sant Singh. ...Applicant

Versus

Union of India - through

1. Executive Director,
Ministry of Railways/Railway Board,
Rail Bhavan,
Rafi Marg,
New Delhi-1.
2. General Manager,
Northern Railway (HQ),
Baroda House,
New Delhi-1.

By Advocate Shri R.L. Dhawan. ...Respondents

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

With the transfer of certain purchase functions from Directorate General of Supplies and Disposals (DGS&D for short) to various Ministries/Departments, certain officers and staff were transferred along with the work. In the case of officers and staff to Ministry of Railways, it was decided by the Government that pending completion of the absorption process, corresponding number of officers and staff will be transferred on deputation with the option to get absorbed in the Ministry of Railways. The applicant an Upper Division Clerk who belonged to the Central Secretariat Clerical Service, was one such staff member transferred to the Ministry of Railways on

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deputation. She is aggrieved that the respondents, instead of giving her opportunity to get absorbed in the Railway Board Clerical Secretariat Service (RBCS for short) was unilaterally absorbed in the Zonal Northern Railway. In this application, she has prayed for a direction to the Railway Board to assign and absorb her in the RBCS with appropriate inter-se seniority in accordance with extant provisions.

2. Respondents contend that out of the 40 staff members who belonged to CSCS/CSS/CSSS, it was possible to accommodate only 23 in Board's office and the remaining staff were deployed in the Northern Railway. They aver that initially the applicant was posted in RCF, Kapurthala but at her request in her representation for posting in Railway Board or Northern Railway, she was posted to Northern Railway, Baroda House. Respondents also submit that on 18.10.1994 the Board issued orders for absorbing all the staff who were transferred from DGS&D and deployed in Zonal Railways and Production Units, in the Railway's Production to which they were transferred. Accordingly, the applicant was also absorbed in the Northern Railway and was assigned due seniority. Respondents maintain that merely considering the eligibility for absorption only on the basis of similarity of CSCS Rules, under which applicant was governed with RBSCS Rules, for absorbing her in the Railway Board Secretariat, would not be appropriate and it was not found possible to do so, keeping in view the functional requirements in the Board's office.

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3 The learned counsel for the applicant argued that the applicant along with other staff of DGS&D were initially taken on deputation basis to the Ministry of Railways. As she belonged to Central Secretariat Clerical Service, her service condition should not be varied to her disadvantage. She was, though initially posted to Railways, entitled to be considered for absorption on an equivalent service as that of CSCS and that was why, she represented for her absorption within the Railway Board Secretariat Service. Railways had unilaterally absorbed her in Northern Railway, where there were no posts equivalent to the UDCs in CSCS or RBSC - and this would adversely affect her promotional avenues. The learned counsel argued that the respondents by a policy of pick and choose, had taken her colleagues who were similarly placed in the Railway Board Secretariat Service and absorbed them, on the basis of their option in response to their circular dated 9.2.1996 (Anneuxre-A). The learned argued that the applicant was not given any option. Absorption of deputationists unilaterally in an organisation without their option being specifically exercised would not be in consonance with the Rules governing absorption. The learned counsel for the respondents, on the other hand, argued in the facts and circumstances of the case and in the background of the history of deployment of DGS&D staff to various Ministries including Railways, the applicant cannot claim absorption only in the Railway Board Secretariat Service. She herself exercised her preference for posting in Northern Railway or Railway Board as early as in 1992,

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when the deployment initially took place. It was the policy decision of the Railways to absorb all the staff taken from DGS&D among all the Zonal Railways and Railway Production Units. He, therefore, argued that applicant did not have a vested right of absorption only in the Railway Board Secretariat. During the hearing, the respondents were asked to clarify whether, any instructions were issued after the Board's instructions dated 18.10.1994 regarding absorption of staff. It was clarified by the respondents in their additional reply to para 3 of the rejoinder of the applicant, that the applicant was absorbed in terms of Railway Board's instruction dated 18.10.1994. The learned counsel further argued that the application is also time barred, as she was absorbed and her name was included in the seniority list issued on 13.2.1995 and she had not represented against this. The respondents have referred to the decisions in *P.K. Ramachander Vs. State of Kerala*, JT 1997 (8) SC 189, and *Ex. Capt. Harsh Uppal Vs. U.O.I.*, SLJ 1994 (2) SC 177 and also *State of Karnataka Vs. S.M. Kotrayya*, 1996 SCC (L&S) 1488 to support their contention on the grounds of limitation.

4. We have given our anxious consideration to the rival contentions and have heard the learned counsel for the parties and perused the record.

5. The respondents in their letter dated 30.12.1991 (Annexure A-1) indicated officers and staff of DGS&D transferred to Ministry of Railways, will be absorbed in

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the respective cadres of the Indian Railways, and pending completion of the absorption process, they will be transferred on deputation with the option to get absorbed in the Ministry of Railways. Thereafter, the applicant was transferred to Ministry of Railways and was initially posted to RCF, Kapurthala, but was later, at her request for being posted either in Railway Board or in Northern Railway was posted to Northern Railway. On 18th October, 1994, the Railway Board Secretariat, advised (Annexure R-2) that the question of absorbing the employees transferred to different Railways and Production Units was considered and it was decided that they might be absorbed in the Railways to which they were transferred and directed that necessary action be taken to complete the process of absorption. In their letter addressed to G.M., Northern Railway dated 21.2.1998, during the course of the hearing, and in response to our enquiry whether any further instructions had been issued after the aforesaid instructions dated 18.10.1994, respondents informed that subsequent action was to be taken by the relevant Railway/Production Units. They informed that in the case of the applicant, in pursuance of her request for posting either in Railway Board or in Northern Railway in April, 1992, she was posted to Northern Railway, since that was the only alternative available for the posting. Subsequently, the Northern Railway informed the Board by with certain other officials) were absorbed/regularised in Northern Railway w.e.f. 18.4.1991. There is no averment in the reply of the respondents or in the additional reply filed by them that applicant was given the option and that

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she had exercised the same. In respect of those staff who were initially transferred from DGS&D and posted in Railway Board Secretariat, the Board had issued their letter dated 9.2.1996 inviting their option to be absorbed in different Secretariat offices of the Railway Board. No similar action was taken by the Northern Railway in respect of the applicant, who was transferred and posted there. Therefore, the applicant's cause of action arose in our view, only after the letter inviting option from similarly placed officials, who were transferred to Railway Board Secretariat offices initially on deputation, when the applicant was posted to the Zonal Railway. In view of this matter, we are unable to accept the contention of the respondents that the application is time barred and the contentions is, therefore, rejected. Where it is decided to absorb the transferred official initially on deputation, it is a fundamental requirement that there is proper and valid option for absorption. The Northern Railway has, apparently, absorbed the applicant unilaterally without her exercising her option for absorption, and, therefore, to this extent, the action of the respondents cannot be sustained. Such unilateral absorption not only affect the rights of the official absorbed in an organisation but also of those who are already a part of their original cadre in the organisation, as absorption involves fixation of inter-se seniority of the officials absorbed vis-a-vis others in the cadre. It is only for this purpose, that absorption

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is to be exercised by the official concerned. The Railway Board, had, by their letter dated 18.10.1994 intended this course of action. But the Northern Railway had not apparently followed the prescribed procedure.

6. In the conspectus of the above discussion, we are of the considered view that the unilateral absorption of the applicant in the Northern Railway without her specific consent for such absorption, cannot be upheld. Respondents are, therefore, directed to reconsider her case and take appropriate decision regarding her absorption in the Railway Board Secretariat Service on the basis of her option sent to the respondents by her letter dated 19.8.1996 (Annexure A-9) in accordance with law and communicate their decision within 3 months from the date of receipt of a copy of this order. In the circumstances, there shall be no order as to costs.

A. Veda Valli

(DR. A. VEDAVALLI)
MEMBER (J)

K. Muthukumar

(K. MUTHUKUMAR)
MEMBER (A)

Rakesh