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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.950/2000

New Delhi this the 6th day of March, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri M.P.Singh, Member (A)

1. Chiranjee Lal
S/O Late Sh.Khamani Lal
R/O Qr.N.750, Loco Shed,
Moradabad (UP)
2. Chetan Pal
S/O Sh.Ram Sukh
R/O Govind Ballabh Pant
Vidyalaya near Shahpur Tigari,
Moradabad (UP)
3. Sarafat Khan
S/O Shazad Khan
R/O 74 F, Loco Shed,
Moradabad (UP)

..Applicants
(By Advocate Shri R.K.Shukla)

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Union of India, through

1. General Manager,
Northern Railway, Baroda House,
New Delhi.
2. Divisional Railway Manager,
Moradabad (UP)

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

O R D E R (ORAL)

(Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)

In this application, applicants, three in number are aggrieved by the seniority list issued by the respondents dated 10.3.2000 assigning them the seniority in the grade of Guard (Goods) at Serial Nos. 173, 169 and 168, respectively.

2. The brief relevant facts of the case are that admittedly the applicants who were working earlier as Fitters Grade I in the scale of Rs.1320-2040 were declared surplus and thereafter, they passed the

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necessary screening tests and ~~they~~ were absorbed as Guard (Goods) in the pay scale of Rs.1200-2040. The respondents have submitted that when the applicants were working as highly skilled Fitters Grade I in the scale of Rs.1320-2040, they belonged to non-running staff cadre i.e. stationary posts. On the other hand, when they were absorbed as Guards (Goods) in the grade of Rs.1200-2040, they were in the running staff cadre which is equivalent to Rs.1400-2300 of non-running stationary post, which they earlier held. The main contention of the learned counsel for the applicants is that while the applicants are fully satisfied with regard to the action taken by the respondents regarding fixation of their pay scale, which admittedly is higher than what they earlier held before being declared surplus, they are aggrieved by the fixation of their seniority which is the only issue raised in this application. Shri R.K.Shukla, learned counsel submits that the respondents have not taken into account Paragraph 17 of the Master Circular issued by the Railway Board dated 21.4.1989.

3. Shri R.L.Dhawan, learned counsel for the respondents, on the other hand, has submitted that the seniority of the applicants in the grade of Guards (Goods) has been correctly fixed. It is relevant to mention that the respondents have been given an opportunity to file additional affidavit to explain the position and the rule/instructions they have relied upon while fixing the seniority of the applicants in issuing the impugned seniority list dated 10.3.2000. This has, however, not been done but the learned counsel has explained that as the applicants have been absorbed after they were declared surplus in a higher grade, they have been assigned seniority at the bottom of the Guards (Goods) who

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were already working in the new unit where they were absorbed. He has submitted that the applicants were working in Loco-shed but due to the closure of steam sheds and hence the applicants were declared surplus. In the facts and circumstances of the case, he has submitted that the applicants have no grievance regarding fixation of their pay which has been done in the higher pay scale and accordingly their seniority has to be fixed below the other persons who are working in that grade in the Unit where they were absorbed. He has also referred to certain options that the applicants have been given at the relevant time but these options have not been produced by the respondents or placed on record. He has relied on the observations of the Hon'ble Supreme Court in South Eastern Rly Vs. Ram Narain Singh and Ors. (Civil Appeals No.2530/81 and 1730/86) dated 29.7.1998 dated 29.7.1998 which they have reproduced in the counter affidavit. Learned counsel has submitted that the applicants in the present case were also absorbed in the higher posts due to ^{their} gesture of generosity and compassion.

4. Paragraph 17 of the Master Circular issued by the Railway Board dated 21.4.1989 reads as follows:-

"V. Seniority of Staff rendered surplus on deployment.

17. When re-deploying the surplus staff to other Units/Departments, which constitute a different seniority unit, the following methods could be adopted:

(i) If only a small number of staff are being rendered surplus and they have to be transferred to various Units of other departments against vacancies of duly sanctioned posts, they can be suitably adjusted in these units with their full seniority and merging their seniority in the respective units;

(ii) When a larger number of staff are being transferred to new units that are being set up, they should be given their full

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seniority. No minimum educational qualifications should be prescribed. It should be sufficient if they pass the re-training/conversion training tests at the end of their training, subject to course their medical fitness.

(iii) Wherever a large number of staff have to be transferred to existing units against vacancies or additional sanctioned posts, the views of the Unions may be taken as to whether the seniority of the staff being shifted should be kept separate against the "Special Supernumerary" posts, so that their promotional prospects are kept separate and identical to what they would have achieved in the old Unit and it does not jeopardise the promotional prospects of the staff in the Units in which they are being inducted. In such cases, the application of percentage distribution of posts would be separate for the existing cadre posts and the surplus staff who have been brought into the cadre, the latter being controlled by the percentage as applicable to their previous cadre. However, as and when there is wastage through retirement, promotion etc. in the seniority unit of shifted staff charged against "Special Supernumerary" posts in the direct recruitment grades, the direct recruitment quota of the same should be merged with the existing cadre seniority of that unit i.e. the Unit to which they had been re-deployed on being surplus".

5. Learned counsel for the applicants has referred to two Circular orders issued by the respondents dated 4.9.1996 and 14.5.1996 totalling seven persons who have been declared surplus, including two of the applicants who have been later absorbed in other Units. He submits that he does not have a copy of the letter declaring applicant No.2 as surplus at the relevant time. Therefore, from the documents on record, it is not possible to ascertain what was the total number of persons/had been declared surplus by the respondents particularly, in the context of the provisions of Paragraph 17 of the Master Circular. This circular has used the expressions 'small number' in contrast 'large number' of staff who have been declared surplus and transferred to new Units and their assignment of respective

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seniority. In the circumstances of the case, we find that Paragraph 17 of the Master Circular is vague as the respondents have not stipulated the numbers of staff rendered surplus who are to be termed as 'small' or 'large' for the purposes of the further actions to be taken. It is also not possible to state from the documents relied upon by the learned counsel for the applicants what was the total number of persons who have been declared surplus in 1996 and later transferred to other Units, on the basis of which their seniority has to be determined. Prima facie, we see merit in the submissions made by Shri R.L.Dhawan, learned counsel for the respondents that normally the rule is that when a person is declared surplus from one Unit and transferred/ absorbed in another Unit, he ought to be given bottom seniority in that grade to the persons already existing in that Unit, see Govt.of India, Department of Personnel and Training OM dated 28.2.1990 as amended from time to time, which provisions are applicable to other Ministries/Departments. The judgement of the Hon'ble Supreme Court in South Eastern Rly's V. Ram Narain case (supra) relied upon by the respondents would also be applicable to the facts in the present case.

6. However, in view of what has been stated above and taking note of Para 17 of the Railway Board's Master Circular dated 21.4.1989 regarding fixation of seniority of staff rendered surplus and transferred to other Units, this is a question for the respondents to consider while fixing the seniority of the applicants. Options, if any, given by the applicants which were also not produced though referred to by the learned counsel for the respondents should also be kept in view in re-considering the issue of applicants' seniority in terms of this Circular.

7. In the facts and circumstances of the case, we do not consider it necessary at this stage to quash and set aside the impugned seniority list dated 10.3.2000. However, the respondents are directed to re-consider the claim of the applicants for fixation of their seniority in terms of the provisions mentioned above, which shall be done within two months from the date of receipt of a copy of this order, with intimation to the applicants. In case, there is need to revise the seniority list, they shall do so in accordance with the relevant law and rules.

No order as to costs.

MPS
(M.P. Singh)
Member (A)

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

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