

IN THE CEDNTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI.

O.A. No. 780/88

Date of decision: 20.9.1993

Shri A.K. Mishra

.....Petitioner

V.S.

Union of India

..... Respondents

Coram: The Hon'ble Mr. I.K. Rasgotra, Member (A)

The Hon'ble Mr. J.P. Sharma, Member (J)

For the Petitioner

Shri K.N.R. Pillai, Counsel

For the Respondents

Shri B.K. Aggarwal, Counsel

JUDGEMENT (ORAL)

We have heard Shri K.N.R. Pillai and Shri B.R. Aggarwal, learned counsel for the petitioner and respondents. The petitioner was recruited in the Posts and Telegraph Department on 15.7.1968 as Telephone Mechanic in the scale of Rs. 110-240(AS). He was taken on deputation by the Northern Railway and posted as TCM in the pay scale of Rs. 175-240(AS). The terms of deputation laid down that the petitioner was on deputation for a period of one year initially but in no case the deputation will be extended beyond 3 years except in the public interest. The borrowing department viz., the respondents railway issued order on 11.10.1978 repatriating the applicant to his parent department in accordance with the orders of the

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General Manager (Personnel). The petitioner was, however, not keen to go back to his parent department and opted for his absorption in the railway in a grade one step lower than the TCM Grade I. i.e., he opted for absorption as TCM Grade II. These facts are not disputed. The case of the petitioner was referred to the Railway Board who approved his absorption vide letter dated 12.3.1979 as TCM Grade II viz., 130-212 (AS)/330-480(RS) in accordance with the option exercised by him. In this petition filed by the petitioner he had prayed for the following reliefs:

1. To quash the impugned order dated 26.4. 1988 assigning him the original seniority as per the seniority list issued in 1982. He further prays for restoration of his seniority fixed by letter dated 9.2.1988 and the benefit of substantive holder of the post of TCM Grade II. and efficiency as TCM Grade I from the same date continuously upto the present, cancelling the erroneous reversion to Grade II between April 1979 & December 1982.

The stand of the official respondents in this behalf is in the seniority list in July 1982 he was assigned Serial No. 55. They admit that the seniority list was revised vide the impugned order but the seniority list as per Annexure A-10 (Issued on 9.2.1988)



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was not final. It was subject to objections by the affected employees. There were in fact representations made by the affected employees. Among those who filed the representations are Respondent Nos. 2 to 5 against the seniority assigned in seniority list of 9.2.1988. The competent authority after consideration of all the representations restored the petitioner to original seniority as assigned to him in 1982. The Respondent Nos. 2 to 5 have also filed their counter affidavit. The petitioner has filed the rejoinder traversing broadly similar grounds as taken in the O.A.

The learned counsel for the petitioner in support of his case cited the following judicial pronouncements.

1982 (3) SLR

J.K. Mittal

Vs.

DDA & Ors

We have perused the J.K. Mittal (Supra) case and are of the opinion that the said case is distinguishable first because DDA has no statutory rules for regulating the seniority. Secondly the deputationist who had come to DDA had got himself absorbed and there after only his lien in BHEL was terminated.

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JT (1987) (4) P.43

K. Madhavan

Vs.

Union of India

Violation of principles of Natural Justice

In this case the petitioner was the Deputy Superintendent of Police who came on deputation to the CBI. The question that arose in CBI was whether the service rendered by him in the rank of Deputy Superintendent of Police should be combined with service rendered as Deputy Superintendent of Police in CBI for the purpose of determining his eligibility for promotion to the next higher grade. This case in our opinion is not germane to the issue before us.

We have considered the submissions made by the learned counsel for the petitioner and the respondents respectively and perused the record carefully. The petitioner was working as TCM Grade II when he came to the respondent Railways Administration TCM Grade I on deputation. He was ordered to be repatriated to his parent department on the expiry of his period of deputation. He, however, in his own interest chose to get absorbed in the respondent railway as TCM Grade II i.e. in which is one step lower. He was absorbed in the railways at TCM Grade II in accordance with the option

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after obtaining the approval of the Ministry of Railways in 1979. He had also given an undertaking that he will not claim the benefit of his service rendered in the Posts and Telegraph Department. In view of the above facts and circumstances of the case, we see no merit in the petitioner's claim for seniority from retrospective date i.e. the date on which he came on deputation. He has been assigned seniority correctly with reference to the date of his absorption. The O.A. is accordingly dismissed. No costs.

J.P. Sharma
(J.P. Sharma)

Member (J)

I.K. Rasgoptra
(I.K. Rasgoptra)

Member (A)

Mittal