

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 1038/88

Date of Decision: 21.10.1993

Shri Rajan Murthy

..... Petitioner

Vs

Union of India

..... Respondents

Coram

Hon'ble Shri J.P. Sharma, Member (J)
Hon'ble Shri B.K.Singh, Member (A)

For the petitioner

.... Shri B.S. Mainee, Counsel

For the respondents

.... None

JUDGMENT

Delivered by Shri J.P. Sharma, Member (J)

The applicant at the relevant time of filing this application on 30.5.1988 was working as Electrical Foreman (RE), Railway Electrification, Bhopal, Madhya Pradesh. The grievance of the applicant is that the staff working on the Railway Electrification has been absorbed on the northern railways after the screening. The screening was held in 1971 though it should have been held in 1966. Yet the lien of the applicant has been fixed in the northern railway with effect from 4.8.1971 in the grade of 130-212, although, the applicant was working in the higher grade with effect from 26.10.1963.

The applicant has prayed for the grant of the following relief :

The Order dated 8.2.1988 (Annexure AI) by which the seniority has been reassigned to the applicant at serial number of the seniority list of electrification at 40/B above Shri Deepak Lal Sharma, be quashed and the respondents be directed to assign the correct and proper seniority of the applicant in the grade of Rs. 205-280 (425-700) (RS) with effect from 1.5.1963.

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A notice was issued to the respondents who contested the application and filed the reply. The respondents have taken the stand that the application is barred by Section 20 of the Administrative Tribunal Act, 1985 as well as by the doctrine of estoppel. On merits it is contended that the applicant was appointed on local basis on railway electrification as temporary Work Mistry in the grade of Rs. 110-180 with effect from 21.5.1962 against a temporary post. Electrification department is a temporary establishment. It is further stated that the Zonal Railway staff working on Railway Electrification (RE) or local casual staff may be considered according to their suitability for local adhoc promotion as per vacancy available. Such adhoc promotion in the RE will not confer upon such staff any benefit of seniority irrespective of the period during which such officiating arrangement continues. The applicant was temporarily promoted on local adhoc basis as temporary Work Mistry in the grade of Rs. 110-212 with effect from 20.10.1962 and in the grade of Rs. 150-240 with effect from 1.5.1963. Further it is also stated that RE Organisation does not conduct selection but affect further promotions in RE to selection grade as a purely adhoc measure on reconsideration of suitability. The applicant was further promoted on adhoc basis as Electrical Chargeman in the Grade of Rs. 205-280 within RE Organisation according to vacancy available on 26.10.1963. The applicant was promoted in RE on purely temporary local adhoc and a stop gap arrangement without conferring upon him any perspective right in the grade of Rs. 550-750 to claim similar promotion over his seniors working either in the RE Organisation or in open line. Since RE is purely a temporary department and sanction for a specific period and in a certain area, the surplus casual staff.

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recruited locally would be put through the Screening Committee in terms of Para (II) of Railway Board's letter dated 23.8.1966 (Annexure II). The applicant, therefore, was called for screening immediately in August 1966 for the post available to judge his suitability and he was selected for the post of non technical category for which he was found suitable, but he refused to accept the post of non-technical category. He was again called for screening by the Screening Committee on 6.8.1971 by RSC (Allahabad) and found suitable for the post in the grade of Rs. 130-212 and absorbed in Allahabad Division of Northern Railway as highly skilled Grade I and his seniority and lien fixed with other staff working in Allahabad Division. He was promoted in Grade of Rs. 150-240 with effect from 17.10.1977 and grade 425-700 with effect from 17.3.1983 according to his seniority ^{by} ~~and~~ passing a selection test. He was again called for suitability test in the Grade of Rs. 1600-2600 on 9/10th July 1988 vide DRM(P) Allahabad's letter dated 13.6.1988 (Annexure III). The applicant has been assigned seniority alongwith his batch mate below Shri D.N. Shukla and above Shri Deepak Lal Sharma in the panel formed as a result of selection for the post of ELC in the grade of Rs. 425-700 in TRD cadre. The above selection was especially arranged for interpolation of the name of the applicant in the panel. It is further stated that the contention of the applicant is ⁱⁿ correct ₆ that his juniors are promoted in open line in Allahabad Division where his seniority and line ^{is} ~~is~~ fixed ~~in~~ ⁱⁿ RE Project in BPL. His substantive grade is Rs. 425-700. In view of the above the Impugned Order is not arbitrary or illegal, unconstitutional and discriminatory. The applicant has no case and the application is liable to be dismissed.

We have heard the learned counsel for the applicant at length and none appeared for the respondents. Shri K.K. Patel who appeared on 11.10.1993 stated that he has no instructions.

The letter dated 23.8.1966 on the question of absorption of the staff who are being rendered surplus on the Railway Electrification Project lays down the necessary guidelines and the Board has decided that the Railway Electrification Staff recruited from the agency of the RSC either for the RE or for the open line railways should be provided with lien on railways on whose portion such staff are working. Such staff should be provided lien from the date of their appointment on RE and in the grade for which they were recruited by the RSC. Their further position would be determined subject to a selection where prescribed for post in higher grades, inter se position of such staff not being disturbed. Secondly, for the staff, technical or non technical, recruited locally by the RE Administration either with or without a Member of the RSC being associated with the Selection Board, would be put through the Screening Committee in terms of the Board's letter dated 12.5.1966. The case of the applicant according to the learned counsel for the applicant is covered in the second category. In pursuance of the above the applicant was called for screening in August 1966 by DRM, Allahabad, for the post available to judge his suitability by the Screening committee. The applicant was selected for a post of a non-technical category which the applicant refused and he desired for posting his lien on the post of technical category. Since the applicant himself refused and did not accept the post of non technical category

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from the date he was selected for the non technical post, he has no right to claim for getting a lien in the open line from that date. In the meantime, the applicant got further promotions in the RE i.e. as Electricity Mistry from 1.5.1963 in the Grade of Rs. 150-240, for the post of Electrical Chargeman in the Grade of Rs. 205-280 (425-700 (RS) with effect from 26.10.1963. The Grade of Rs. 130-212 of Work Supervisor on which the applicant was working from 20.10.1962 was subsequently merged in the Grade of Rs. 150-240 AS (Rs. 380-560 Rs) in which the applicant was working with effect from 1.5.1963. The applicant was called again for screening on 6.8.1971 and was absorbed in Allahabad Division of Northern Railway as highly skilled Grade I in the Grade of Rs. 130-212 (AS). The grievance of the applicant is that his lien was fixed in the grade of Rs. 130-212 while at the time there was no such grade and the applicant was working as Electrical Chargeman in RE with effect from 26.10.1963 in the Grade of Rs. 205-280 (Rs. 425-700). The grievance of the applicant is that his lien should be fixed in the open line in the Grade of Rs. 205-280 so that he may be able to appear in the departmental test of the Northern Railway for better prospects. He made a representation against the recommendations of the Screening Committee declaring suitable for the post of Work Supervisor in the Grade of Rs. 130-212 as the said scale no longer existed and upgraded to the scale of Rs. 150-240 in terms of Board's letter dated 18.7.1962. He has also requested that he should also be provided a lien against the post in the Grade of Rs. 205-280 of Electrical Chargeman which was held by him at that time not for the post of Work Supervisor to which he was initially promoted after recruitment as Work Mistry. The claim of the applicant is hopelessly belated. The respondents have taken the stand that in the screening which was held on

6.8.1971, the applicant was found suitable only in the Grade of Rs. 130-212 (AS) which appears to have been merged in the Grade of Rs. 150-240 (AS). On the basis of this absorption and seniority on the Allahabad Division in the Grade of Rs. 425-700 he has been further called for suitability test for Electrical Chargeman in the Grade of Rs. 1600-2660 on 9.10.1988. Though the applicant had been representing for adjustment of his seniority on the date of his absorption in the open line, he could have assailed his grievance when his representation was not replied according to his claims. The relief claimed by the applicant is for assignment for correct and proper seniority in the grade of Rs. 425-700 with effect from 1.5.1963 and he bases his claim on the fact that Railway Electrification Organisation is almost a permanent department and the applicant had been promoted to various posts in RE, after having been subjected to various selections and on his being found fit for various higher grades and posts he has been given that grade and status. However, the fact remains that the applicant has to qualify for the selection in the open line so that those who are senior to the applicant should not be put in a disadvantageous position. On the basis of selection for the post of Electrical Chargeman in the Grade of Rs. 425-700 having been declared passed was placed on the panel and his seniority has been assigned below Shri D.N. Shukla and above Shri Deepak Lal Sharma in the panel. The applicant had filed a letter dated 10.12.1984 where it is shown that Shri D.N. Shukla has been assigned seniority as Electrical Chargeman at Serial No. 107 above the applicant who is at Serial No. 108 on Allahabad Division. The applicant had not given particulars about the seniority position vis-a-vis those who are working in open line and with whom the applicant claimed seniority even on the basis of his lien with effect


from 6.8.1971 on the basis of screening in the grade of Rs. 130-212. There is no question of long years of service of the applicant being not considered. The Screening was held in the year 1966 when the applicant refused to have a lien in the non technical category. On the claim of the applicant, he was considered for a lien in the technical side which was granted on 6.8.1971 after judging his suitability for the post.

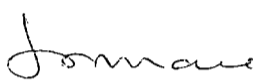
The applicant cannot get any benefit on adhoc promotion in the Grade of Rs. 550-50-750/1600-2660 with effect from 2.10.1981 in RE where he was promoted purely on temporary local and adhoc basis. The respondent with their counter had filed the circular of the Railway Board dated 25.8.1981 (Annexure I) regarding manpower mobilization for Railway Electrification Projects. The respondents have clearly denied in Para 6.3.1 that the juniors were promoted in the open line in the Allahabad Division. The averments of the applicant in the rejoinder is that the seniority of the applicant has been fixed on wrong notions and contrary to the principles of the seniority. The learned counsel for the applicant argued that the principles of giving benefit on adhoc and officiating service in particular grade should have been given to the applicant. As regards RE, the applicant had already ^{been} working in the higher grades with the seniority which he has earned in that Organisation but in the open line the applicant has to be given ^{Seniority} according to the rules and the circulars of the Railway Board dated 23.8.1966 (Annexure II). By the Impugned Order dated 8.2.1988, the seniority has been assigned to the applicant as Electrical Chargeman in TRD Division of Allahabad Division and his position in the seniority has been changed from Serial No. 56/B to Serial No. 40/B. The challenge to the seniority is based solely on the ground that initially the

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screening of the applicant was not done in the technical side in spite of the Circular of the Railway Board dated 23.8.1966. The applicant at that time was screened for the non technical post which he had refused. The second screening was done in August 1971 and that too in the Grade of Rs. 130-212. The respondents had sufficiently explained their stands in the reply in Para 6.10 to 6.15 at page 5 of the counter.

In view of the above facts and circumstances we hold that the present application is barred by time as well as is devoid of merit and dismissed leaving the parties to bear their own costs.


(B.K. Singh)
Member (A)


(J.P. Sharma) 21.10.93
Member (J)

Mittal