

17

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,  
NEW DELHI.

O.A.No2015 of 1990

Date of Decision. 11.6.93

Zameer Hussain .....Applicant.

Versus

Union of India & others .....Respondents.

CORAM:

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

Hon'ble Mr.S.R.Adige,Member(A)

For the applicant: Shri S.N.Shukla,Counsel.

For the respondents: Shri B.P.Khurana

JUDGMENT

(By Hon'ble Mr.S.R. Adige,Member(A).)

In this application, Shri Zameer Hussain, Generator Operator-cum-Senior Plant Operative, Delhi Milk Scheme has impugned the order dated 29.3.90 passed by the Deputy General Manager, Delhi Milk Scheme(Annexure-A4) declaring the applicant to have been identified as surplus, consequent upon the reduction of staff by SIU, Department of Expenditure, and his transfer to the Surplus Staff Establishment w.e.f. 1.4.90 for further re-deployment.

2. The applicant's case is that SIU's report is fallacious and unscientific; that in fact more persons are required to operate the Compressor in the Refrigeration Section and Electrical Section of the DMS; that those juniors to him have been adjusted against the posts of Plant Operator (ETP) while he has been left over; that the impugned order is retrenchment within the meaning of Section 2(ee) of the Industrial Disputes Act and the procedure laid down in Sections 25F, 25G, 25H and 25N of IDA has not been followed and the impugned order has been passed with malafide intention to get rid of the applicant and to make a room for others; that the applicant was not given any show cause notice before issue of order declaring him surplus.

3. The respondents have contested the application and in their counter affidavit, it has been stated that the applicant had been declared surplus strictly in reverse orders of seniority as a result of recommendation of the SIU of the Department of Expenditure. It has been stated that the respondent no.2 Duryodhan Singh is junior to the applicant whereas respondent no.3 Khursheed Hussain is senior to the applicant.

4. We have heard Shri V.P.Sharma-learned counsel for the applicant and Shri P.P.Khurana-learned counsel for the respondents.

5. Shri Khurana has drawn attention to Para 3.8 of Annexure-1 of Department of Personnel & Training O.M. No.1/18/88-CS III dated 1.4.89 regarding re-deployment of staff rendered surplus wherein it has been stated that where the number of Scheduled Caste officials in the remaining cadre falls short of the percentage prescribed for their recruitment to the cadre/post in question; if so, to the extent of deficiency, the scheduled caste employees, if any, amongst those identified to be declared surplus, should be retained and equal number of juniormost persons belonging to the general category added to the list of persons to be declared surplus. It is stated that Shri Duryodhan Singh is junior to the applicant. He, being a scheduled caste employee has to be retained in the department as per the above rules.

6. For the present, it appears that the applicant is continuing to work on the present post in DMS, and in the counter affidavit, the respondents have categorically stated that the applicant will continue to draw his salary and other benefits of DMS till he is provided an alternative job by the surplus cell or till his superannuation, resignation, or retirement, whichever is earlier. As the applicant continues to be

19

on the pay roll of DMS, and as presumably, some work is being taken from him, we direct that this arrangement should continue for the present and in the meantime the respondents should try to adjust the applicant against a non-surplus post within their organization which is commensurated with his seniority, experience etc. Meanwhile, if as a result of his name being sent to the Surplus Cell, the applicant is compelled to accept a post which involves a reduction in rank, status, emoluments etc, and if any grievance survives after he has exhausted the departmental and statutory remedy available to him, he will be at liberty to approach this Tribunal afresh, if so advised.

7. In this connection, Shri Sharma has conceded at the Bar that in the event, the applicant is finally declared surplus, he may be given the option of seeking voluntary retirement as per rules. If the applicant makes any such prayer to the respondents for voluntary retirement, the respondents are directed to consider the same and pass necessary orders thereon with the utmost expedition.

8. This application is disposed of in terms of the directions given above. No costs.

*S.R. Adige*  
(S.R. ADIGE)  
MEMBER(A)

*J.P. Sharma*  
(J.P. SHARMA)  
MEMBER(J)  
11.6.93

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