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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 970 of 1991

New Delhi this the 17th day of October, 1996

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)
HON'BLE MR. T.N. BHAT, MEMBER (J)

1. Shri A.N. Khanna
S/o Shri Sadanand Khanna
Quarter No.302/B-I,
Type-III, New Railway Colony,
Tughlakabad,
New Delhi-110 44.Applicant

By Advocate Shri R.K. Relan

Versus

Union of India through

1. The General Manager,
Western Railway,
Churchgate,
Bombay.
2. The Chief Electrical Engineer (E),
Western Railway,
Churchgate,
Bombay.
3. The Divisional Railway Manager,
Western Railway, Kota,
Rajasthan.
4. Senior Divisional Electrical Engineer,
T.R.S., Electric Loco Shed,
Tughlakabad,
New Delhi-110 044.
5. Shri H.K. Minocha
J.E.F.
through Sr. Divisional Electrical Engineer,
Electric Loco Shed,
T.R.S.,
Tughlakabad,
New Delhi-110 044.

6. Shri Avtar Singh
J.E.F.
through Sr. Divisional Electrical
Engineer,
Electric Loco Shed,
T.R.S. Tughlakabad,
New Delhi.

7. Shri R.A. Ram Gupta
J.E.F.
through Sr. Divisional Electrical Engineer,
Electric Loco Shed,
T.R.S. Tughlakabad,
New Delhi-110 044. Respondents

By Advocate Mrs. B. Sunita Rao

ORDER

Hon'ble Mr. T.N. Bhat, Member (J)

Briefly stated, the facts giving rise to the filing of this O.A. under Section 19 of Administrative Tribunals Act, 1985, are as follows:

2. In pursuance to the letter dated 30.04.1986 of the Headquarter Office, Western Railway, Churchgate, Bombay-20, calling options from all serving employees of the Electrical Department of the Railways as well as Steam and Diesel Loco Sheds of Mechanical Department to join the newly created Electrical Loco Shed at Tughlakabad (KTT Division), the applicant by his letter dated 13.6.186 (Annexure A-2), gave his option. At that time, the applicant was working as Electrical Foreman in the scale of Rs.550-750 at BRC Western

Railway but was on deputation with the Railway Electrification sub-station, Kota (KTT). The applicant's option was accepted and his services were transferred to the new organisation ("Activity" is the term used in the letter calling options). The applicant was given the grade of Rs.1640-2900.

3. The applicant later filed an O.A. before this Tribunal seeking promotion to the next higher grade in the scale of Rs.2000-3200 with effect from 1.1.1984 and by the judgment-order dated 18.12.1989 (copy at Annexure A-4), the Tribunal allowed his O.A. and directed the respondents in the O.A. to grant promotion to the applicant w.e.f. 1.1.1984 with consequential benefits. It is not disputed that this judgment-order of the Tribunal was implemented and applicant was not only placed in the higher grade of Rs.2000-3200 but was also paid the arrears. There is also a specific order passed by the authorities of the Loco Shed, Tughlakabad "retaining" the applicant in that organisation .

4. The applicant is aggrieved by the order dated 1.12.1990/1.1.1991 by which a person junior to the applicant, namely, Shri H.K. Minocha has been promoted to the next higher grade of Rs.2375-3500. The applicant has also stated

that the official respondents are contemplating steps to promote respondent Nos. 6 and 7, namely, S/Shri Avtar Singh and R.A. Ram Gupta also to the next higher grade, who are also junior to the applicant. He has further sought directions to the respondents to declare the seniority position of the applicant at the appropriate place and to give him the consequential benefits and promotion etc. from the date it became due to him.

5. The respondents have filed a detailed reply, in which, while admitting that options were called and the applicant had opted in pursuance to which he was appointed/transferred to the new organisation, the respondents have taken the plea that since the applicant continued to maintain his lien in his parent organisation and, further, that the applicant being from the General Service had secured promotion in general service w.e.f. 1.1.1984, he cannot claim seniority in the Electrical Loco Shed.

6. The applicant has also filed a rejoinder. He has further filed an additional affidavit with the permission of the Tribunal to which a number of documents have been annexed.

7. We have heard at length the arguments of the learned counsel for the parties and have

also perused the material on record.

8. In the course of her arguments, the learned counsel for the respondents laid much emphasis on the fact that even after coming over to the Electrical Loco Shed (TKD), the applicant claimed and secured promotion in his parent cadre to the higher pay scale of, Rs.2000-3200 and that too, with effect from 1.1.1984. On this ground, the learned counsel wants us to hold that the applicant continued to be borne on his parent cadre, particularly so when he was maintaining his lien there.

9. In reply, the learned counsel for the applicant has argued that the controversy which led to the filing of the O.A. 967 of 1989 related to a period prior to the applicant's coming over to the Electrical Loco Shed. We are inclined to agree with the learned counsel for the applicant. Admittedly, the applicant joined the new activity sometime in the year 1988, while in the O.A. filed earlier by him, he had claimed promotion in his parent cadre w.e.f. 1.1.1984, which was conceded to him by the Western Railway authorities by the order dated 29.11.1989. The Bench of the Tribunal while disposing of the aforesaid O.A. held that the applicant was entitled not merely to proforma promotion and fixation of pay but also to the

arrears of pay and allowances right from the year 1.1.1984 as, admittedly, promotion had been denied to him from the aforesaid date by the Western Railway authorities on the basis of wrong seniority assigned to him in that cadre. It follows from the above, that the promotion secured by the applicant did not relate to a period subsequent to his coming over to the Electrical Loco Shed (TKD) though at the time when he got the benefit of promotion, he was working as Assistant Electrical Foreman in this organisation.

10. Next, it is argued that the applicant had not specifically mentioned the group in the new organisation for which he had given his option. We do not find any merit in this contention either. Although in para 4 of the letter at Annexure A-3/4, there is a mention of the fact that such of the staff who are desirous of being considered for final absorption in the new Elec. Loco Shed Tuglakabad - KTT Division, should forward their options for the specific group, yet on going through the proforma (Annexure -3) which the optees were required to fill in, there is no column for indicating the group for which the option was to be given. The learned counsel for the applicant rightly argues that an option for coming over to the Electrical Loco Shed, Tuglakabad was sufficient

compliance with the conditions given in Annexure A-3/1, which is the letter from the Western Railway Headquarters Office calling options. It may be stated that the Western Railway through the Divisional Office, Kota by the letter/OM dated 6.5.1987 (Annexure A-14) issued a list of employees who had opted for being absorbed in the new organisation and were screened and found suitable for final absorption. It is stated clearly in this letter that the absorption was in TRS/TRB/DRO Wing of AC Traction. Since no final orders absorbing the said staff appeared to have been passed by the respondents, it was natural for the said staff to retain their lien in their parent departments. But, since they were allowed to continue in the new organisation for years together, and at no time were they asked to give any fresh options, the contention of the learned counsel for the respondents that the applicant was required to give fresh option and that too for absorption in the Traction Rolling Stock (TRS, for short) and only then could his claim for promotion to the next higher grade ~~to~~ be considered, cannot be accepted. It may be mentioned ^{here} that during the course of her arguments, the learned counsel for the respondents referred to the case of Shri P.S. Negi and contended that since he

had given an option for absorption in TRS cadre, he was considered for promotion while the applicant had not given any such option. We do not find any provision in the letter of Western Railways (Annexure A-3/1) whereunder even after coming over to the Electrical Loco Shed (TKD), the optees were required to give any such fresh option. It is true, as contended by the learned counsel for the respondents, that at the time of induction into the new organisation, preference was to be given for "lateral induction" of supervisors working in the Electrical Loco Shed maintenance side and only then persons belonging to the other streams of the electrical side were to be considered. But it is equally true so far as the question of inter-se seniority was considered, this was to be determined in each group "as per extant rules" on their absorption. This is stated in sub-clause (ii) of Clause (c) of para III of the said letter.

11. The learned counsel for the applicant has urged before us that as a matter of fact, the entire cadre of the new organisation, namely, The Electrical Loco Shed, Tuglakabad was the Traction Rolling Stock cadre (TRS) and, therefore, there was no question of any employee joining that organisation to give a specific option for absorption

in that cadre. We find much force in this contention.

12. Coming once again to the case of Shri P.S. Negi referred to hereinabove, we may state that according to Annexure 4/1 annexed to the additional affidavit filed by the applicant, the said Shri Negi stood at S.No.8 in the seniority list while the applicant's name was at S.No.3. Even so, the said Shri P.S. Negi was promoted to the higher scale of Rs.2375-3500, though on temporary and ad hoc basis, by the order dated 2.11.1994 (Annexure VI) to the additional affidavit. The learned counsel for the respondents has sought to justify this promotion on the ground that Shri Negi had given an option for absorption in TRS cadre. As already mentioned, we do not find any merit in this contention of the learned counsel.

13. The learned counsel for the applicant further assails the seniority list of Junior Electrical Foreman in the scale of Rs.2000-3200 in the Rolling Stock AC(TRS) cadre, a copy of which has been annexed as Annexure A-12/1 to the O.A., insofar as it excludes the name of the applicant but includes the names of persons who are junior to him, namely, respondent Nos. 5 to 7. As already mentioned, the respondents have sought to justify the exclusion of the applicant from consideration for promotion

to the higher scale as also his exclusion from the seniority list only on the ground that he continued to maintain his lien in the General Service, which is his parent cadre. This contention of the respondents has already been rejected above and, therefore, the seniority list cannot be allowed to stand so far as it excluded the name of the applicant.

14. We further notice that the counter-reply in this case has been filed by one Shri K. Gopinathan who was only an Assistant Personnel Officer at Kota. The applicant has challenged the authority of the said APO to act for and on behalf of the respondents and to verify the pleadings. The learned counsel for the respondents has not been able to produce any order or notification by which an Assistant Personnel Officer can sign and verify pleadings before the Tribunal. On the contrary, the learned counsel for the applicant has filed before us a copy of Notification dation 5.8.1991 in which the officers of the Railways/are authorised to act on behalf of the Central Government in respect of any judicial proceedings relating to the Railway Administration have been enumerated and Assistant Personnel Officer does not find a place in that list. The learned counsel for the applicant has, therefore, rightly contended that

the counter-reply filed by the respondents should be struck off from consideration.

15. Even assuming that the counter-reply filed in this case can be considered, we do not find any merit in any of the contentions raised in that counter-reply. The reasons have already been given above.

16. Even assuming that the applicant has not so far been permanently absorbed or cannot even be deemed to have been permanently absorbed in the new organisation, the applicant can at least claim the benefit of seniority on the basis of his transfer on administrative grounds to the new organisation. Furthermore, the question of inter-se seniority, as already mentioned, is to be determined in accordance with the extant rules.

17. A similar question arose before the Ahmedabad Bench of this Tribunal in O.A. filed by one Shri K.L. Mittal, who had also been transferred from the post of Electrical Foreman in the General grade but was denied seniority on the basis of total length of service. He had claimed seniority over one Shri R.J. Bhatt who was the respondent No.5 in that O.A. on the basis of the initial appointment in the parent cadre. Rejecting the contention of the Department of Railways that

since respondent No.5 in that case had applied for absorption in the new cadre earlier to the applicant in the O.A. and was, therefore, senior to him, ~~It~~ was held on the strength of para 311 (now re-numbered as 320) and 321/ of the Indian Railway Establishment Manual, Volume I, that the inter-se seniority in cases where the employees are inducted from different seniority units, is to be determined on the basis of total length of continuous service in the same or equivalent grade held by the employees. It may be stated that under para 311 in case of transfer in the interest of administration, the seniority of Railway servant on transfer from one cadre to another cadre is to be regulated by the date of promotion/date of appointment to the grade, as the case may be.

18. Before we close, we may state that the learned counsel for the respondents has fairly conceded that the applicant was eligible for induction in the Electrical Loco Shed (TKD) and that he had in fact opted for induction in that organisation, which option was accepted.

19. In view of what has been held and discussed above, we allow this O.A. and direct the respondents to consider the applicant's case for promotion to the grade of Rs.2375-3500 from a date from which his juniors in terms of total length of service including the service rendered in their

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parent departments have been considered and to grant him promotion accordingly, if otherwise found eligible. The respondents are further directed to issue a correct seniority list of the officials in the Electrical Loco Shed Tuglakabad in the light of the observations made by us hereinabove and to give all concerned an opportunity to file objections against the same and then issue a final seniority list. Both the above directions shall be implemented within a period of 3 months from the date of receipt of a copy of this order.

There shall be no order as to costs.

T.N. Bhat
(T.N. BHAT) 17-10-1996
MEMBER (J)

K. Muthukumar
(K. MUTHUKUMAR)
MEMBER (A)

RKS