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Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD**

(THIS THE 4/16 DAY OF NOV, 2010)

**Hon'ble Dr.K.B.S. Rajan, Member (J)
Hon'ble Mr. S. N. Shukla, Member (A)**

**Original Application No.1239 of 2005
(U/S 19, Administrative Tribunal Act, 1985)**

1. Balak Ram Pal son of Sri Kamta Prasad, presently posted T.L.F. Grade II.
2. Ram Nath S/o Sri Ram Abhilakh Presently posted as T.L.F. Grade II.
3. Kamal Singh S/o Sri Mehtab Singh Presently posted as Elec. Fitter, Gr. II
4. Shabib Ahmad Presently posted as Elec. Fitter, Grade II.
5. Mohammad Daud Khan, S/o Lt. Mohd. Khan, Presently posted as Elec. Fitter Gr. II
6. Pramod Kumar Bhatnagar S/o late B.S. Bhatnagar, Presently posted as Elec. Fitter, Grade I.

All the applicants are working under Senior Divisional Engineer (Lighting), North Central Railway, Allahabad.

..... *Applicants*

*By Adv. : Shri Ishraullah,
Shri R.N. Pandey
Shri R.P. Singh*

Versus

1. Union of India, through the General Manager, North Central Railway, Allahabad.
2. The Divisional Railway Manager, North Central Railway, Allahabad.
3. The Senior Divisional Personnel Officer, North Central Railway, Allahabad.

b/

4. The Senior Divisional Engineer (Electrical) lighting, North Central Railway, Allahabad.
5. Deputy Chief Engineer, Concrete Sleeper Plant Subedarganj, Allahabad.

..... *Respondents*

By Adv.: Shri D. P. Singh

O R D E R

(Delivered by Hon. Dr. K.B.S. Rajan, Member-J)

The Applicants (six in number) while working as Electrical Fitter Gr.II under Respondent No.5 were declared surplus vide order dated 20.7.1996. Along with other surpluses the applicants were posted in Allahabad Division against supernumerary post. Some of the surpluses opted for being posted to other units accepting bottom seniority. The applicants in this OA and certain others were, however, reluctant to accept such bottom seniority. In January 1997, the applicants were posted as TLF Grade II under the Senior Electrical Engineer Lighting in Allahabad Division (Annexure A-3 refers). Later on they were sent for a Fresher Course from 18.1.1999 to 30.1.1999. As the applicants' seniority was not fixed at all they made representations in April 2001 for fixation of his seniority in the cadre of Electrical Fitter Grade II in Allahabad Division. The request of the applicants in such representations was renewed in September 2002. According to the consolidated instructions on redeployment of surplus staff, paragraph 10 of the circular dated 28.11.2000 provides for the mode of fixation of seniority of staff of both the classes, i.e. those who have opted for bottom seniority and those who have not so opted (Annexure A-7 refers). According to the applicants since they

had not accepted bottom seniority they are entitled to the benefit of counting of full length of service both in the cadre of Fitter Grade II while working under Respondent no.5 earlier and for the period thereafter when they were attached to Respondent No. 1 to 4. The grievance of the applicants is that the action on the part of the respondent in not fixing the seniority of the applicant as per Rules, contained in Railway Board's letter dated 21.4.1989 has substantially prejudiced the career prospectus of the applicant. The applicants had therefore made yet another representation vide Annexure A-9 dated 13.8.2004. Having failed to get any response much less positive response, the applicants have preferred this OA seeking the following reliefs:-

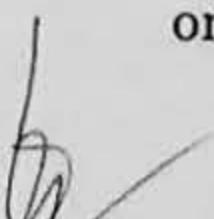
- (i) *Issue a suitable writ, order or direction in the Nature of mandamus directing the Respondents No. 1 to 4 to fix the seniority of the applicants. In the cadre of electrical Fitter Grade II of the Division by taking into account their total length of service as Fitter Grade II from the date of 1st vacancy accrued with all service benefits of further promotion seniority on the same and arrears of pay etc.*
- (ii) *issue a suitable writ, order of direction in the nature of mandamus directing the Respondents No. 1 to 4 to decide the representation of the applicants in accordance with Rules and to pass any such order as this Hon'ble Court may deem fit and proper.*

2. As per the Respondents the present OA is barred by limitation. The applicants had filed Original application No. 797/04 for fixing seniority in the cadre of Electrical Fitter (TL) in Electric Department Allahabad Division in which he had sought consequential relief and the said OA was decided on 4.8.2004 and the order passed by the

Tribunal had been duly complied with vide order dated 9.6.2005. It is this order that the applicants are challenging. According to the respondents, the surplus staff were employed against supernumerary posts and such persons so re-employed in the intermediate grade were not provided the lien in the Division or Open Line cadre but their lien and further promotion were maintained in the old place of posting till such time such staff do not give their option for absorption against the vacancies of Direct Recruitment Quota on bottom seniority in the Divisions/Open line. According to the Respondents the Circular dated 28.11.2000 vide Annexure A-7 relied upon by the applicant is not applicable to the surpluses of the CSP/SFG/Allahabad as the said Circular covers those rendered surplus from Open Line and absorbed in Open Line. Respondents contend that the Joint representations of the applicants submitted in August 2004 was considered sympathetically and the applicants were already informed of the decision vide impugned order dated 9.6.2005.

3. The applicants have furnished their Rejoinder in which they have reiterated the contentions raised in the OA and rebutted the contentions of the respondents. They have also added a copy of North Central Railway Order dated 19.10.2005 relating to result of Trade test for promotion of Helper to Electrician III.

4. Supplementary Counter has been filed by the respondents. To only reiterate the stand taken in the counter.



5. The applicants from his side have filed separately certain Policy and Administrative Instructions relating to surpluses. Affidavit dated 8.5.2007 refers. Like wise, by another affidavit the applicants have furnished circular No. 105 of 2004.

6. By consent of the parties, permission for filing of written arguments was granted and a week's time was scheduled for the same and both the sides, promptly furnished their written submissions, which reflect the earnest efforts of the counsel and cooperation by the parties concerned.

7. Pleadings perused and the written arguments considered. The question is what is the entitlement of a person rendered surplus.

8. Applicants contend that when they have refused to accept bottom seniority in other units and have been posted by the respondents to a particular unit, their seniority should be intact and promotion should be granted taking into account the seniority of the applicants in the parent unit without any depletion.

9. Respondents, however, submitted that the applicants, on refusing to move to other units accepting bottom seniority, are entitled to only to that seniority position as available under the Rule, i.e. they would be treated as fresher they are not entitled to any carry with them the seniority of their parent unit.

b

10. The relevant rule has been filed by the applicant in the supplementary affidavit, as also referred to in his written arguments.

Para 313-A of the I.R.E.M. Vol. I deals with fixation of seniority in respect of persons rendered surplus and the same is as under:-

"313A: Assignment of seniority to redeployed surplus staff: The surplus employees are not entitled for benefit of the past service rendered in the previous unit/department for the purpose of their seniority in the new unit/department. Such employees are to be treated as fresh entrants in the matter of their seniority, promotions etc.

Note I: When two or more surplus employees of a particular grade in a unit/department are selected on different dates for absorption in a grade in another unit/department, their inter-se seniority in the latter unit/department will be same as in their previous unit/department provided that –

- i) No direct recruit has been selected for appointment to that grade in between these dates; and
- ii) No promotee has been approved for appointment to that grade between these dates.

Note II: When two or more surplus employees of a particular grade in a unit/department are simultaneously selected for redeployment in another unit/department in a grade, their inter-se seniority in the particular grade, on redeployment in the latter unit/department, would be the same as in their previous unit/department.

(Authority: Ministry of Railway's letter No.E(NG)I-2000/SR6/28 dated 25.5.2004)

Inserted under Railway Board's letter No. E(NG)I-2000/SR6/23 dated 25.5.2004 (RBE 105/2004)

11. The applicants too have filed RBE 105/2004. The above rule does not reflect that the benefit of past service would be available to those who are posted to other unit.



12. The surpluses are generally to lose their job but they are accommodated more on compassionate grounds. Some of the surpluses choose certain units of their choice subject to availability of vacancy under the Direct Recruitment quota accepting the bottom seniority. Others who do not want to go to such other units remain in the same unit initially in supernumerary posts and are sent at the convenience of the employer to other units. By not opting to go to other units accepting bottom seniority, they cannot become better in any way than those who have gone out to the units of their choice. If they could be permitted to carry with them the seniority of the parent unit to the new unit, the same would on the one hand be detrimental to the interest of those already working in the new unit and in addition, it would also be discriminatory vis-à-vis those who went to other unit by accepting bottom seniority.

13. It is appropriate to refer to the decision of the Apex court in regard to fixation of seniority of surpluses individuals in the Railways. Two such cases came before the Apex Court – one when the steam engines were converted to diesel engine and another when from diesel to electrical. The same are as under:-

(a) **SOUTH EASTERN RAILWAY THRO' C.P.O.
GARDEN REACH, CALCUTTA AND OTHERS**
Versus
RAMANARAIN SINGH AND OTHERS
(Civil Appeals Nos. 2530 of 1981 decided on July 29, 1988)

ORDER

1.The problem arose on account of dieselization by switching over from steam engines to diesel engines. Consequently the engine drivers on the steam side were rendered surplus. The Railway administration instead of retrenching them

gave them the option to take the training and to qualify themselves, for being posted on the diesel side. This operation was loosely referred to as "transfer" to the diesel side though in reality it was an operation for "absorbing" the steam side drivers on the diesel side upon their being qualified in this behalf after undergoing training. This Court has taken the view that those who were appointed or absorbed earlier in point of time on the diesel side would be senior to those who were appointed or absorbed on the diesel side at a later date; notwithstanding the fact that the latter were senior in the parent cadre on the steam side. This Court has formed the opinion that once they ceased to belong to the parent cadre on the steam side the seniority in the said cadre becomes irrelevant. And that seniority on the diesel side must depend on the length of service on the diesel side. An illustration will be useful for proper comprehension of the point. Visualize the case of an employee of 'D' cadre being appointed in the 'E' cadre after training. He is assigned seniority, say, at Sl. No. 150. In case two new employees from the 'E' cadre itself are promoted later on, they will be assigned seniority at Sl. Nos. 151 and 152. If another employee from 'D' cadre subsequently appointed in 'E' cadre is required to be accorded seniority above Sl. No. 150 because the new appointee was senior vis-à-vis him in the parent cadre (Cadre 'D') can the seniority of those who are assigned Sl. Nos. 151 and 152 be disturbed? If the new appointee who should be at Sl. No. 153 is given seniority above Sl. No. 150, those from 'D' cadre who are assigned seniority at Sl. Nos. 151 and 152 will become juniors to the new appointee absorbed much later. It is thus evident that everything will be in utter chaos. Such a system is thus entirely unworkable apart from being unjust. The order under appeal cannot therefore be successfully assailed. It was absorption of the employees on the diesel side or the electric side upon their acquiring the qualification requisite for being absorbed. So also it was made on compassionate grounds and not in the interest of the administration.


(b) V.K. Dubey v. Union of India, (1997) 5 SCC 81 : In this judgment, the Apex court has inter-alia held as under:-

5. Shri Vijay Bahuguna, learned Senior Counsel appearing for the appellants, contends that since they had been working on the diesel side for a long number of years, merely because they were sent to training for three months to be absorbed in the electrical locomotive operations, their entire previous length of service cannot be wiped out causing detriment to their length of service and promotional avenues on account of the change in the policy. Therefore, the view taken by this Court requires reconsideration. We find no force in the contention. It is seen that the diesel engine drivers and the staff working with them operate in one sector, namely, diesel locomotive sector, while electrical engine drivers and the staff operating on the electrical engines operate on a different sector. Consequent upon the gradual displacement of diesel engines, instead of retrenching them from service they were sought to be absorbed by giving necessary training in the trains operating on electrical energy. As a consequence, they were shifted to a new cadre. Under these circumstances, they cannot have a lien on the posts on electrical side nor can they be entitled to seniority over the staff regularly working in the electrical locomotives department. Under those circumstances, this Court has held that they cannot have a seniority over them. However, the Tribunal in the impugned order has well protected the rights which had already accrued to them as under:

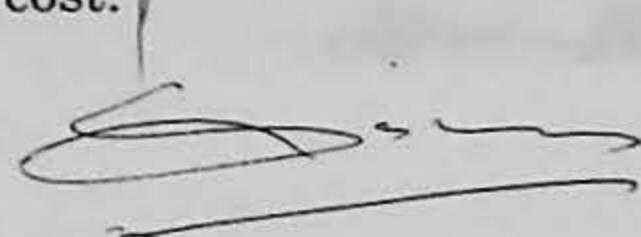
"We have been informed by the departmental representative that on such a redetermination of the seniority a large number of convertees who have already advanced several steps in the electrical side would face reversion resulting in not only hardship to such individual but also functional problem in running the locomotives. We, therefore, provide that on such redetermination of seniority, the persons who have already been promoted to higher grades in electrical side, shall not be reverted but their subsequent advancement to still higher grades shall be dependent on such redetermined seniority. However, no further promotions shall be made by the respondents, in the electrical side in contravention of the aforesaid principle of seniority."

6. In view of the above direction, the accrued rights are protected and being enjoyed by the appellants. The Tribunal's order, therefore, directed to safeguard the rights already had by the appellants. However, future promotions depend upon inter se seniority that may be determined by the authorities as directed by the Tribunal. Thus we find no flaw in the order passed by the Tribunal warranting interference.

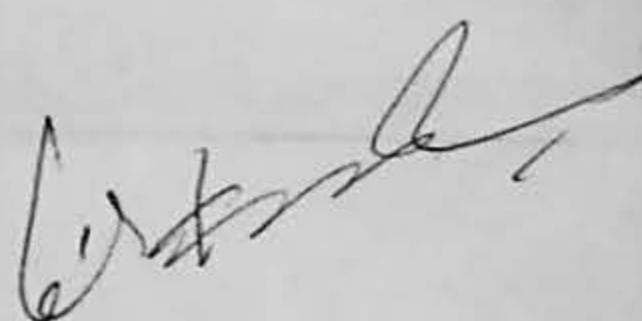
14. Though in the above two decisions, the reason for surpluses is that there was modernization and shift from steam to diesel and diesel to electric, the principle in matter of seniority in the new unit is one and the same.

15. Thus, the applicants are not entitled to the seniority of their parent unit. The OA therefore, stands **dismissed**.

16. No cost.



(S.N. Shukla)
Member-A



(Dr. K.B.S. Rajan)
Member-J

Sushil