

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD

(THIS THE 13th DAY OF Nov, 2011)

Hon'ble Dr.K.B.S. Rajan, Member (J)

Hon'ble Mr. S. N. Shukla, Member (A)

Original Application No.1581 of 2005
(U/s 19, Administrative Tribunal Act, 1985)

1. Hira Singh, S/o Sri Late Durga Singh, Resident of 433 CD Indian Institute Colony, Mughalsarai, District - Chandauli.
2. Kedar Nath Singh, S/o Late Vindhyachal Singh, Resident of 709/G.H. New Central Colony, Mughalsarai, District - Chandauli.
3. Jai Prakash Singh Kushwaha, S/o Late Basgit Kusdhwaha, R/o 207/C.D. Basant Bihar Colony, Mughalsarai, District - Chandauli.
4. Dinesh Kumar Upadhya, S/o Sri Sharda Prasad, R/o 1355/G Manas Nagar Colony, Mughalsarai, District - Chandauli.

..... Applicant

By Advocate : Shri M. K. Upadhya
Shri Satish Mandhyan

Versus

1. Union of India, through the General Manager, East Central Railway Hazipur.
2. Divisional Railway Manager, Mughalsarai, East Central Railway.
3. Divisional Railway Manager, East Central Railway, Dhanbad.

4. Divisional Railway Manager, East Central Railway, Samastipur.

..... Respondents

By Advocate : Shri K. P. Singh

ORDER

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

1. The legal question is pregnant in substance. At the time of restructuring, whether the zonal seniority or divisional Seniority would prevail, is the question involved.

2. **Brief facts:** the applicants to the OA are working as Junior Engineer I (Loco) in the scale of pay of Rs 5500 -9000 in the diesel Shed, East Central Railway Mughalsarai. The respondents maintained a zonal seniority of the supervisory staff in which the names of the applicants do figure in, vide Annexure A-

1. An order of restructuring was passed on 09-10-2003 in respect of all Group C and D categories of staff as indicated in annexure to that order. The post of Junior engineer I (Loco) in grade of Rs 5500 - 9000 in the Diesel Department of the Eastern Railway were controlled by the Headquarters upto 10-12-2003 and thereafter, the posts were decentralized and became divisional Control Posts. The Railway Board issued letter dated 09-10-2003

asking the General Manager of all the zones for cadre review and

restructuring w.e.f. 01-11-2003 of various cadre including cadre of the applicants. The case of the applicants is that for effecting restructuring, the zonal seniority should be the criterion and not the divisional seniority. According to the applicants, if seniority on Divisional Railway basis is followed, juniors to them would steal a march over the applicants and other seniors. Two examples of Ghanshyam singh and M.M. Ansari have been furnished.

3. An identical situation is stated to have had arisen earlier in 1984 and an O.A. No. 397 of 1987 (Syed Mohd Hasan & Others vs Union of India and others) was filed. The said OA was stated to have been allowed by the Tribunal vide order dated 13-09-1993 which the direction to the respondents that the order of restructuring the post of Pharmacists w.e.f. 01-01-1984 the implemented on the basis of the combined seniority on Zonal basis. Annexure A-4 refers. When the above said judgment is followed in the case of the applicants, they too would be benefitted.

4. There was a clarification from the Railway Board to the effect that the benefit of promotion in respect of vacancies arising due to chain/resultant vacancies in the wake of implementation of restructuring should also be given w.e.f. 01-11-

2003, if such vacancies arise purely due to restructuring.

Communication dated 25-03-2004 of the Railway Board refers.

5. Though the applicants had made various representations, since there had been no fruitful result, the applicants have moved this OA seeking the following relief(s):-

- i. That, the Hon'ble Tribunal may graciously be pleased to direct the respondents to give the benefits of the restructuring scheme w.e.f. 01.11.2003 on the basis of the combined (Zonal) Seniority lists.
- ii. That, the Hon'ble Tribunal may graciously be pleased to direct to the respondents that for restructuring of the pay of the applicants in grade Rs. 6500-10500/- w.e.f. 1-11-2003 on the basis of combined (Zonal) seniority list) of junior Engineer - 1 (Loco) East Central Railway Mughalsarai.
- iii. That, the Hon'ble Tribunal may graciously be pleased to direct the respondents to pay the arrears of pay of applicants.
- iv. That, the Hon'ble Tribunal may graciously be pleased to grant any further relief/direction order as deem and fit proper in the circumstances of the case, in favour of the applicants.
- v. That, the Hon'ble Tribunal may graciously be pleased to award costs in the favour of the applicants.

6. Respondents have contested the O.A. The fact of decision relating to decentralization from Zonal to Divisional Railways and the fact of restructuring effective from 01-11-2003

have been fully admitted by the respondents. They have further stated that the examples cited by the applicants relating to juniors are working in the DHN Division and the seniority of both the staff as well as the applicants is separate as the seniority of Staff working in the divisions are maintained by the concerned division. As regards the earlier decision of the Tribunal it was contended that in 1984, there was no Eastern Central Railways in existence nor the same, which relates to pharmacists, would apply to the mechanical department. As the applicants' case is not covered under the Rules they were not being promoted.

7. The applicants have filed their rejoinder in which they had reiterated the contentions as raised in the O.A. It has also been contended that prior to 01-10-2003, there being no divisional seniority and zonal seniority along being in vogue, the only appropriate method of promotion at the time of restructuring is to give effect to zonal seniority and follow the same ratio as had been held in the case of Syed Mohd. Hassan in OA No. 397 of 1987 which also related to one of the earlier restructurings.

8. Certain individuals filed M.A. No. 4272 of 2009 to get themselves impleaded in this O.A. These had been allowed as

a decision in this OA might prejudicially affect the interest of some of the applicants.

9. Parties had filed their respective written submissions. In their written submission, counsel for the applicants reiterated the contentions raised in the O.A. while in the written submission of the impleaded respondents, it has been contended that in all the 16 Zonal Railways, seniority of such supervisory staff is Division based and decentralization being one of policy matter, the same, unless encroaches substantially upon the provisions of Art. 14 and 16 should not normally be interfered with.

10. Written arguments were perused and also the pleadings scanned. While various zonal railways function independently, when the instructions are issued by the Railway Board, they have to go in tandem. In this regard, for maintaining uniform policy, the apex court has, in the case of held as under:-

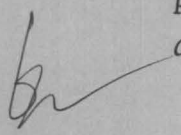
Abid Hussain v. Union of India, (1987) 1 SCC 532,
which reads as under:-

It is not disputed that the Air-conditioned Coach-In-Charges-Attendants are being paid overtime allowances for extra duty hours exceeding 96 hours in two weeks in the Western Railway, Central Railway and Eastern Railway. There is no justification for denying overtime allowances on

the same basis to the Air-conditioned Coach-In-Charges-Attendants in the Northern Railway. We accordingly direct the Union of India and the Railway Administration to pay with effect from July 1, 1984 the overtime allowances to the Air-conditioned Coach-In-Charges-Attendants working in the Northern Railway on the same basis on which the Air-conditioned Coach-In-Charges-Attendants in the other three Railways, referred to above, are paid. All arrears of such allowances up to date shall be paid as early as possible and in any event not later than four months from today. The benefit of this order shall be extended to all such employees including those who have retired and those who have not joined as petitioners herein.

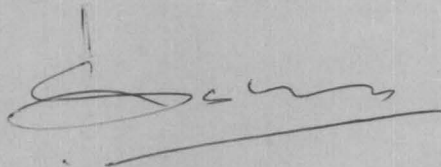
11. Thus, if the Board had decided to follow decentralized seniority, that is a policy matter and judicial intervention is least called for. In this regard the decision of the Apex court in the case of Constitutional Bench judgment in the case of *Ashoka Kumar Thakur v. Union of India*, (2008) 6 SCC 1, is very much relevant:-

“37. The Indian courts have scrupulously refrained from entering into the domain of policy determination or policy evaluation while exercising the power of judicial review. This Court has emphasised that it does not sit in appeal over a policy decision and does not substitute nor does it examine the wisdom of the policy choice. It interferes with policy decision only when it finds the policy to be palpably arbitrary, mala fide or discriminatory.”

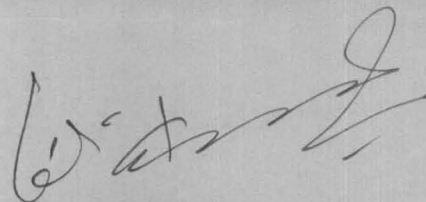


12. When a policy decision is taken for decentralization of seniority, the Board does not think in terms of individuals. Organizational interests pre-dominate and individual interest take the rear seat. Again, when a decision is taken for the benefit of majority, as held in the case of *Kerala Magistrates' (Judicial) Assn. v. State of Kerala, (2001) 3 SCC 521*, "in doing broad justice to many, some bruise to a few cannot be ruled out." If the applicants come under the minority category (bruise to a few), it cannot be stated that the action is illegal.

13. In view of the above, the applicants have failed to make out a case. Hence, the O.A. is dismissed. No cost.



(S.N. Shukla)
Member-A



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

Sushil