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... Vs... General Manager, N.E.Rly.  
and others.

Hon'ble G.S.Sharma-JM

( Delivered by Hon'ble D.S.Misra)

This is an original suit no.152 of 1983, which was pending in the court of Munsif(City) Bareilly and has come on transfer under Section 29 of the A.T. Act XIII of 1985. This suit is for declaration that the orders dated 13.4.1982 and 5.11.1982 passed by APO II N.R.Moradabad sending the plaintiff from Traffic Department to Loco shed as void.

2. The plaintiff's case is that he has been working as Crane man in the grade of Rs.210-290<sup>(R.S)</sup>/in TPT Goods Northern Railway, at Bareilly Junction in Traffic Department against a permanent post since 1964; that the plaintiff had passed the training of Steam Coal Crane Driver in 1961 and that of a Crane-man in the year 1964; that the plaintiff passed the training for Diesel Crane Driver in 1967; that in the cadre of Cane-men ,the plaintiff was shown as senior in the seniority list, issued in 1973 by the Traffic Department; that the plaintiff approached the General Manager, N.R.(defendant no.1) and the D.R.M. N.R. Moradabad(defendant no.2) for fixing his payab Rs.282/- in the grade of Rs.210-290 whereupon they were highly annoyed and prejudiced and with a view to harass the plaintiff passed the orders dated 13.4.1982 and 5.11.1982 for transferring him to Loco Department; that even according to Railway Board Circular no.E(NG) 66-PB 2/20 dated 27.7.1966 in the case of curtailment

66-PB 2/20 dated 27.7.1966 in the case of curtailment



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of cadre , the junior-most should be transferred and Sri Om Prakash(defendant no.3) who is junior to the plaintiff should have been transferred and not the plaintiff; that defendant no.3 being the junior most Crane man in 1974 was reverted to the post of Crane operator when one post of Crane man was declared surplus and he was promoted as Crane man on 31.7.1975 on the retirement of Sri Ganesh Prasad Craneman; that the plaintiff is working in the Traffic Department since 1964 and he cannot be shifted to Loco Department from which all his connections were severed after his absorption in the seniority list in the Traffic Department. The plaintiff has prayed that defendant nos. 1 and 2 be restrained from sending and shifting the plaintiff from Traffic Department to Loco shed Department on the basis of the order dated 13.4.1982 and 5.11.82.

3. In the reply, filed on behalf of defendants nos. 1 & 2, it is stated that the plaintiff was promoted initially as Steam Coal Crane Driver at Roza under Loco Foreman Roza, vide office order dated 10.12.1962 and was transferred to Bareilly under Station Superintendent Bareilly on the same pay and grade on and from 13.1.1964, as per his own request ~~that~~ he was returned to his parent Loco Department <sup>on 3.6.69</sup> and again posted under Station Superintendent Bareilly in Jan. 1972; that it is incorrect that the plaintiff was promoted as Crane man in the year 1964; that Sri Om Prakash Crane operator Bareilly, who was promoted as Craneman Bareilly, vide Office Order dated 25.6.1969, while the plaintiff was already spared to his parent Loco Department on 3.6.1969; that it is incorrect



to say that Sri Om Prakash is junior to the plaintiff; that the plaintiff worked as Steam Coal Crane Driver in Loco Department upto 19.1.1972, whereas Sri Om Prakash was already promoted as Crane man on 25.6.69 when the plaintiff was not working in Traffic Department; that the plaintiff has already shifted and the relief claimed in the plaint has become infructuous; that the suit has been filed on wrong facts and is liable to be dismissed with costs. The suit is not contested by defendant no.3.

4. The applicant has filed copies of the impugned orders dated 13.4.1982(9Ga), and 5.11.82 (10-Ga). It is mentioned in the letter dated 13.4.1982 that as a result of acceptance<sup>of</sup>/work study (utilization of cranes) recommendation nos. 50 and 54, post of one Crane Driver in the scale of Rs.210-270 and one Crane man in the scale of Rs. 210-290 have been surrendered vide Office Letter dated 20.3.1982. It further goes on to say that Sri Ram Murti Crane man BE, who is the junior most Crane man in the T&C Department, is transferred back to his parent Loco Department. In the order dated 5.11.1982, it is mentioned that Sri Ram Murti, Crane man under SMBE, being surplus is transferred to Moradabad shed as SCC Driver Grade Rs.210-290 on the same pay in his parent Department. The words SCC Driver used in the Order dated 5.11.1982 stand for Steam Coal Crane Driver. It appears to us that the transfer of the plaintiff from the post of Crane Driver to that of Steam Coal men Driver does not involve any loss in his emoluments or the Grade of pay.

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5. The defendants have filed the Service Record of the plaintiff as well as defendant no.3, the personal file of the Cadre of Cranemen and the seniority list of Steam Coal Crane Driver issued in the year 1978 (Paper no.41 Kha). In this seniority list of Steam Coal <sup>LT Crane</sup> Drivers of Moradabad Division, the name of the applicant is at sl.no.6 and the date of his initial appointment is shown as 16.5.1958 : This list does not include the name of Sri Om Prakash, defendant no.3. In the seniority list of Cranemen issued from the office of the Divisional Railway Manager, Moradabad on 5.1.81 (42-Khe), the name of the plaintiff is at sl.no.12 and the date of appointment as 16.5.58. In this list, the name of Sri Om Prakash is at sl.no.11 and his date of appointment is given as 19.12.1957.

-6- We have heard the argument of the learned counsel for the parties and we have also gone through the records of the case. Learned counsel for the plaintiff contended that although the applicant initially belonged to the Establishment of the Local <sup>be</sup> shed Moradabad, but by virtue of his having been working in the Traffic Department as Crane Driver/ Craneman from a date earlier than Sri Om Prakash, he should be deemed as permanent hand of the Traffic Department and should also be deemed senior to Sri Om Prakash (defendant no.3). Learned counsel for the defendants contended that the plaintiff was working on deputation in the Traffic Department as a Crane man and he was junior to defendant no.3 and his transfer as Steam Coal Crane Driver in the Loco Department is a correct order. He also contends that on the

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reduction of the sanctioned strength of crane men at Bareilly, the plaintiff being the junior most Crane man, he has been reverted to his parent department and that there is no illegality in this order.

7. We have considered the matter and we find that the plaintiff has failed to produce any reliable evidence in support of his various contentions claiming to be senior than defendant no.3 in the cadre of Crane men or his regular absorption in the Traffic Department. The papers filed by the defendants show that the initial date of appointment of the plaintiff (6.5.58) is of a later date than that of defendant no.3 (1912.1957). In the seniority list of Steam Coal Crane Driver, the name of the plaintiff finds place at sl.no.6 and it also indicates that he was confirmed as Steam Coal Crane Driver in the Scale of Rs.260-400 w.e.f. 18.12.1983. These papers clearly prove that the permanent post held by the plaintiff is that of Steam Coal Crane Driver and he does not have a higher claim than that of defendant no.3 for working as Crane Driver. We are therefore, of the opinion that the plaintiff has failed to prove his case and the suit is fit for dismissal.

Accordingly, we dismiss the suit and pass no order as to costs.

*A.M.*  
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A.M.

*J.M.*  
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J.M.

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