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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (T.A.) No. 201 of 1987

I.S. Puri and others Applicants.
Versus

Commandant 508 Army Base
Workshop, Agra & another Respondents.

Hon'ble Ajay Johri, A.M.
Hon'ble G.S. Sharma, J.M.

(Delivered by Hon. Ajay Johri, A.M.)

By this Writ Petition, received on transfer from the High Court of Judicature at Allahabad under Section 29 of the Administrative Tribunals Act XIII of 1985, seventeen employees (the petitioners) of the Army Base Workshop (ABW), Agra, who were working till 1.3.1975 in the Equipment Workshop (EW), Agra and were transferred to the Base Workshop ^{or by} an order dated 25.2.1975. ^{or have challenged the fixation of seniority.} They had already worked in the Equipment Workshop for a number of years ranging between 6 and 18 years in different cases. When they reported to BW they were given seniority with effect from 1.3.1975. They represented against the same but their representation was rejected and they were told that their seniority was determined on the basis of CPRO 73/73. The petitioners' claim is that their seniority should be fixed on the basis of their length of service in the trade. According to them the posting within the units is governed by Army Regulations 433 and is controlled by Commander Tech. Group, EME, and that they were

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transferred because of fluctuation of work load, it was not due to abolition of ~~units~~^{or posts} and they had not become surplus, moreover their seniority is reckoned on all India Basis. They have further said that CPRO 73/73 has since been superseded by CPRO 73/79. The petitioners have prayed for issue of a writ of mandamus directing the respondents to prepare a seniority list afresh giving them seniority from the date of their appointment and not from 1.3.1975 and for quashing of the order dated 25.7.1980 and the 1979 seniority list.

2. The respondents in their reply to the Writ Petition have said that the petitioners were ordered for posting to the Base Workshop (BW) under the surplus/deficiencies scheme issued by EME Headquarters (HQ) on 18.2.1975. They are controlled by the units and are not centrally controlled. According to the respondents in case of surplus staff no benefit of past service is available for reckoning of seniority, and Army Regulation 433 does not apply to the petitioners' case and similarly CPRO 93/79 has no application.

3. In their replication the petitioners have said that those of them who are telecom. mechanics have their services regulated by EME Regulations, that they were not declared surplus in which case they should have been given notice, pay, gratuity, etc. They have further said that some BADLI workers who were also in the EW have been made regular after their transfer so the question of surplusage does not arise. They have reiterated that the seniority of all Workshops is

combined.

4. The contentions raised at the Bar by the learned counsel for the petitioners were that the petitioners were not surplus and the seniority being on all India basis they cannot be given a new position in the list on the basis of their transfer. To support their case the learned counsel cited the case of the regularisation of BADLI workers. He also said that no notice was given to the petitioners when they were made to lose the seniority. The learned counsel for the respondents submitted that the seniority of each unit is different and the seniority of the petitioners has been fixed strictly in terms of the rules.

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5. Annexure 'I' to the petition is an order dated 25.2.1975 where certain staff of the Equipment Depot, Agra were transferred to ABW, Agra and to some other places. This order says that the staff will be absorbed against the regular establishment of the units in the existing vacancies of the concerned trades and that the personnel will submit a certificate to the effect that they are willing to accept the above post of 27.2.1975. The authority of this posting has been quoted as some letter of HQ EME dated 18.2.1975. The letter of 18.2.1975 has been filed now by the respondents along with their reply to the petition. This letter is in the context of adjustment of surplus/ deficiencies and reads as follows :

"The following disposal and adjustment will be carried out forthwith under intimation

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to this HQ and all concerned :

<u>Details</u>	<u>From</u>	<u>To</u>
TCM - 12	Eqpt Depot, Agra	509 ABW, Agra
✓ TCM - 2	-do-	TG 15 (Insp) 509 ABW, Agra
.....
.....
Painter & Decorator - 1	-do-	509 ABW, Agra
Labourer - 6	-do-	-do-

The letter says that the staff so adjusted will be absorbed against the regular Industrial Establishment of the unit in existing vacancies of concerned trades and the Term Rules governing the terms and conditions of service with regard to seniority, pay, etc. will be binding on the individuals concerned. It further required that the willingness from the individuals to the effect that they are willing to accept the post is obtained.

6. Out of the 17 petitioners 12 are TCMs, 1 Painter and 4 Labourer, It would thus appear that since the posting orders which has been annexed as Annexure 'I' to the petition have been issued on the authority of the letter of 18.2.1985. The petitioners were transferred and posted to ABW as a result of adjustment of surplus/deficiencies. The petitioners' claim that they were not rendered surplus because certain BADLI workers were subsequently regularised and, therefore, it could not be said that the work did not exist for them or that the post had become redundant. They

thus claim that their transfers were only as a result of administrative grounds for adjusting workload and not as a result of adjustment of surplus/deficiencies.

7. Annexure '3' to the writ petition is a representation made by one of the petitioners, viz. I.S. Puri, in regard to the fixation of seniority. In this he has said that due to reduction in PE of EDW, Agra he was posted to ABW. While clarifying the position by the letter of 22.11.1978 the Establishment Officer had advised the petitioner that since the adjustments were made under surplus/deficiencies scheme the seniority cannot be safeguarded, though the pay and pension, etc. is duly protected under the existing rules. The grounds on which the representation was made was that the transfer was in public interest and without any break and with work content. It was also claimed that since no notice was served for termination of service the transfer cannot be treated as on account of surplusage. A reply was given, copy of which has been annexed as Annexure '7' to the petition, saying that the seniority of the adjusted individual has to be determined strictly in accordance with the principles of seniority laid down under CPRO 73/73. It is thus clear that there was a reduction of work and, therefore, there was no more any requirement of certain staff in ED at Agra and, therefore, they had to be transferred out of the Depot or their services had to be terminated. But since they had put in a number of years of service and also perhaps attained a quasi-permanent status the respondents decided to absorb them in the same trade against

vacancies in other units.

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8. CPRO 73/73 deals with the principles for determining seniority of various categories of persons employed in Central services. In accordance with the revised principles of seniority no benefit of past service is given to the surplus staff adjusted in other units for purposes of fixation of seniority in the grade in which they are adjusted. Their seniority on their adjustment is determined in accordance with their date of joining the new unit. Since the order under which the petitioners were transferred was on the basis of the order of 18.2.1975 which was issued as a result of post not being required any more in ED and the persons occupying them having become surplus the rules of seniority as enjoined in CPRO 73/73 and as modified from time to time would be applicable to the petitioners. It was in this background that the order placed as Annexure 'I' to the petition required that the concerned persons will submit a certificate to the effect that they are willing to accept the above post by 27.2.1975. If the petitioners had any grievance against this order they should have objected at the time when they moved on transfer in pursuance of the impugned order.

9. In Service Jurisprudence any rule of seniority has to satisfy the test of equality of opportunity in public service. When principles have already been enunciated in regard to determining the seniority of surplus staff it cannot be said that no rules exist [✓] and that there has been a violation of Service Rules which have already framed and available. It is also

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the right of the Government to regulate or determine inter se seniority in such cases and the petitioners had ~~xxxxxx~~³¹ represented their case which was considered in the light of the relevant rules and rejected. It is not a question of alteration of seniority inter se between the petitioners of particular category and neither has it resulted in any promotions having been taken away. The seniority in the new establishment according to the facts of the case has been based on well ~~out~~³¹ laid out rules and ~~principles~~³¹ ~~and~~³¹ in our opinion the question is not justiciable. The worst that could have happened is that the petitioners, on being not required any more in ED, could have been finally settled and they would have been without the job. The petitioners cannot take shelter behind the fact that they were not given their final settlement or notice etc. before they were found surplus in the previous job. The respondents seem to have considered this aspect and must have done an exercise to find out ³¹ ~~the~~ ^{place where} vacancies were available in other units to absorb ³¹ the staff who are no more required in ~~another~~³¹ ~~the present~~ unit. As a matter of fact the petitioners should have been thankful for this act instead by this petition they are trying to jeopardise the seniority of their counter parts in the host unit, which naturally is against all canons of propriety or social justice.

10. On the above considerations we do not find that the petitioners have any case for counting their previous service for purposes of seniority in the new unit. We, therefore, dismiss the petition with costs

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on parties.

Signature

MEMBER (J)

Signature

MEMBER (A).

Dated: September 26th, 1988.

PG.