

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

(A2
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.....
(Registration T.A. No. 210 of 1987)

R.K. Agrawal.....Applicant

Vs.

General Manager Northern Railway.....Respondents.

Hon'ble Mr. D.K. Agrawal, Member(3)

Hon'ble Mr. A.B. Gorthi, Member(4)

(By Hon. Mr. A.B. Gorthi, A.M.)

Writ petition No. 13406 of 1985 filed by Shri R.K. Agrawal, having been transferred to the Tribunal under Section 29 of the Administrative Tribunals Act, 1985 is listed before us as T.A. No. 210 of 1987. The prayers as contained in the writ petition are that the seniority list dated 18.1.80/6.7.80 be quashed, that his name be shown at Serial No. 50 in the seniority list of 9.4.84 in accordance with the policy laid down in the Government of India's order dated 6.2.1969 and that the order dated 31.1.1985 by which respondent No. 1 rejected his representation, be set aside.

2. The applicant was appointed as an Assistant Inspector of Works (A.I.O.W.), Western Railway on 22.9.1962 in the grade of Rs. 205 - 280 and was retrenched w.e.f. 16.7.1967 alongwith some other employees due to administrative exigencies. He was, thereafter, informed vide Annexure-2, dated 16.8.1967 that Northern and North-Eastern Railways needed some Assistant Permanent Way Inspectors (A.P.W.I. for short) in the grade of Rs. 205 - 280 and accordingly, he was called upon to submit his willingness. He conveyed his willingness on 19.8.1967 through a letter addressed to the General Manager, Northern Railway and the General Manager North-Eastern Railway with a copy to the General

Manager, Western Railway, vide Annexure -3, but he did not receive any response thereto.

3. In the meantime, he was engaged as a Clerk in Western Railway in the Scale of Rs. 110 - 180 vide Annexure - 4, dated 16.9.1967.

4. It seems that the departmental order dated 8.4.1968 was circulated amongst the retrenched A.I.O.Ws of the Western Railway calling for their consent for absorption as A.P.W.I.s in the Northern Railway and such consent was to be given by 20.4.1968. The applicant could not take any action in this regard as, according to him, he did not receive the said departmental order dated 8.4.1968. Later, when he came to know that some of his erstwhile colleagues including some juniors were already called for training for appointment as A.P.W.I.s, he addressed a letter on 2.4.69 to the General Manager, Western Railway. As a reaction perhaps to the said communication, he was called for training on 31.5.1969 which he attended and successfully completed on 10.4.1970 on which date he was posted as A.P.W.I. in the grade of Rs. 205 - 280 in Allahabad Division of Northern Railway.

5. The respondents fixed the applicant's seniority below all those who had completed their training for A.P.W.I. in the previous batches, that is, prior to 10.4.1970. Some of the A.P.W.I.s shown as senior to the applicant are those who were junior to the applicant when they all served together as A.I.O.Ws in Western Railway prior to their retrenchment. The applicant's case is that in accordance with the policy on the "preservation of inter-se seniority of staff rendered surplus and redeployed on different occasions

but in the same Office", as spelt out in Government of India, Ministry of Home Affairs Office Memorandum dated 6.2.1969 (Annexure-7), his seniority over those who were junior to him in the grade of A.I.O.W. in the Western Railway should have been protected. The relevant portion of Annexure-7, dated 6.2.1969 reads as under:

It has now been decided that when two or more such surplus persons of an office are selected on different dates for absorption in a grade in another office, their inter-se seniority as it existed in the office in which they worked before being rendered surplus, should be maintained in the grade in which they are absorbed in the new organisation provided that:-

- (1) No direct recruit has been selected for appointment to that grade in between these dates, and
- (2) If there are no fixed quota for direct recruitment and promotion to the grade in question in the new office and no promotee has been approved for appointment to that grade in between these dates.

6. Whereas the applicant based his claim on the strength of the aforesaid policy letter, the respondents, in their Written Statement merely took a totally negative approach to the entire issue by merely denying certain averments and by declining to offer any comments on the other aspects of the writ petition. However, from Annexure-12, it is apparent that the contention of the respondents is that since the applicant completed his training course later, all those who had completed the said training before the applicant did, had to be shown senior to him.

7. Learned counsel for the respondents Shri A.K. Gaur, contended that the applicant's claim is time-barred and his request for quashing the seniority list prepared in 1980 should be rejected outright. Shri S.C. Budhuar, learned counsel for the applicant urged that the grievance of the applicant is a continuing one and that in any case the applicant's request to place his name at Serial No. 50 in the seniority list of 1985, was well within time when the writ petition was filed in August, 1985. We, therefore, accept the contention of the learned counsel for the applicant that the writ petition which is before us on transfer should not be rejected merely on the ground of limitation.

8. The respondents, have not been able to show us any rule or instruction which modifies or negatives the government's policy statement on the question of inter-se seniority of surplus staff on re-deployment in the same Ministry as contained in Annexure-7, dated 6.2.1969. According to the instructions contained therein, the applicant should have ^{been} given seniority over all those who were junior to him in the Western Railway where they had served together prior to their joining Northern Railway. As regards the applicant's failure to get nominated for a training course held prior to 1969, we are satisfied with the explanation offered by him that he did not receive the relevant circular letter dated 8.4.1968. He should not therefore, be made to suffer for something which was beyond his control.

9. Under the circumstances, it is apparent that the seniority of the applicant was not correctly assigned vis-a-vis his erstwhile colleagues in the Western Railway. However, it is neither possible nor desirable for us to determine the exact placement of the applicant

in the seniority list of 1985 (Annexure-13) as we have not had the benefit of comparing the career-graphs of all those shown in the said list vis-a-vis the applicant. We, therefore would not like to go beyond directing the respondents to fix the applicant's seniority strictly in accordance with the Government's policy as contained in Annexure-7, dated 6.2.1969.

10. The petition is thus partly allowed in the above terms without any order as to costs.

Manoj D.
Member (A)

DR Agarwal
Member (J)

14 August, 1991.