

Reserved

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

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Allahabad : this 17th day of November 1995

Original Application No.229 of 1992

QUORUM :-

Hon'ble Mr. S. Das Gupta, A.M.

Hon'ble Mr. T.L. Verma, J.M.

V.K. Tewari son of Shri Haare Krishan Tewari
at present working as Assistant Electrical
Engineer, North Eastern Railway, Gorakhpur,
R/o 29-A, Kauwa Bagh, Railway Colony,
District-Gorakhpur.

(By Shri Anil Kumar, Advocate)

. Applicant

Versus

1. Union of India
through its Dy. Director Estt.(Trg)
Ministry of Railways (Railway Board)
Rail Bhawan, New Delhi.
2. General Manager (P)
North Eastern Railway,
Gorakhpur.

(By Shri Lalji Sinha, Advocate)

. Respondents

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By Hon'ble Mr. S. Das Gupta, A.M.

The relief which the Applicant seeks through this O.A. filed under Section 19 of the Act is that the Applicant's services as Assistant Electrical Engineer be regularised w.e.f. 7-7-1983 and the seniority be refixed accordingly with consequential benefits including proforma seniority as Divisional Electrical Engineer w.e.f. 14-9-1983 with all consequential benefits.

2. The facts of the case giving rise to this Application lie within a short compass. The Applicant was a direct recruit as an Assistant Lecturer (Engg) to which post he was appointed on 9-7-1964 on being selected by the Railway Service Commission. There being no promotional avenue from this post, in pursuance of the Railway Board direction contained in the letter dated 2-11-1963 for prescribing avenue of promotion for such posts, the Applicant was absorbed in the electrical department on the post of Assistant Shop Superintendent by an order dated 25-3-1977 and he was assigned seniority below one Shri R.K. Murthy and ^{above} one Shri KK Agarwal in the seniority list on 1-4-1975, counting his past service in the System Technical School in an equivalent grade. Thereafter, his selection for promotion to the post of Assistant Electrical Engineer was twice proposed to be held in 1977 and on both the occasions, the Applicant's name appeared in the list of candidates. The selection, however, did not take place. On the contrary, the Railway Board vide its letter dated 17-3-1979 communicated

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the decision that the Applicant should be allowed to appear at the limited departmental competitive examination for promotion to the post of Assistant Engineer against 25% quota of the vacancy. This decision was communicated to the Applicant by letter dated 31-5-1979, a copy of which is at Annexure-A-15. The Applicant represented against the decision but no action was taken. The Applicant was, however, promoted on adhoc basis to the post of Assistant Electrical Engineer by the order dated 21/22-2-1980. A copy of this order of promotion is at Annexure-A-20. Thereafter, the Railway Board decided by its letter dated 30-1-1980 communicated to the Applicant by the General Manager (P) letter dated 25-3-1980 (Annexure-A-21 and 22 respectively), that the Applicant should get seniority from the date, he was given lien i.e. 25-3-1977. The Applicant represented against the re-assignment of seniority but to no avail. Subsequently, the Applicant had attended the course of training at the Railway Staff College meant for the Assistant Electrical Engineer and had passed this course standing first in order of merit. He also passed efficiency bar test. Later on it was decided to hold the selection for forming a panel of 14 persons for the post of Assistant Electrical Engineer against 75% of vacancies and eligibility list of 46 candidates entitled to appear in the above selection was published vide letter dated 24-5-1983. The Applicant's name was shown at Serial

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No.2, above that of Shri KK Agarwal but by a letter dated 3-6-1983 it was notified that the Applicant was not eligible to appear in the said selection test and his name was deleted from the list. The Applicant filed a suit before the Court of Munsif, Gorakhpur and obtained an interim injunction to the effect that one post of Assistant Electrical Engineer shall be kept vacant till the disposal of the suit. The examination, however, was held and 10 candidates were declared successful which included 9 persons from Serial Nos.2 to 10 who were junior to the Applicant in the earlier seniority list vide order dated 7-7-1983. 8 persons were regularised on the post of Assistant Electrical Engineer w.e.f. 7-7-1983 out of whom all the persons including Serial No.1 were junior to the Applicant. The suit pending before the Learned Munsif was transferred to this Tribunal on its constitution & this transfer Application was decided by an order dated 4-3-1987. By this order a Bench of this Tribunal quashed the order dated 3-6-1983 deleting the name of the Applicant from the list of candidates for selection test and directed that the Respondents shall consider the Applicant for regularisation by permitting him to appear in the next examination and in case he qualifies, to regularise his adhoc services as Assistant Electrical Engineer from due date.

3. The present grievance of the Applicant arises out of the fact that although the Applicant appeared in a selection test in pursuance of a notification dated 24-3-1988 and qualified in the same, his services as

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Assistant Electrical Engineer were regularised only w.e.f. 10-10-1988 instead of 7-7-1983 when his juniors were regularly promoted to the post of Assistant Electrical Engineer. This, the Applicant contends, is in contravention of the direction of the Tribunal and also the direction of the Railway Board to the local administration to the effect that if the Applicant qualifies in the first selection that he is allowed to take, his case for inclusion in the appropriate earlier panel should be properly examined and the proposal sent to the Railway Board.

4. The Applicant's case is that his seniority on his absorption in the Electrical Department was correctly fixed taking into account the past services rendered by him in an equivalent grade. This, he contends, is in conformity with the provisions contained in Para 311 ~~(xx)~~ of the Indian Railway Establishment Manual. He has also contended that similar decisions were taken when the seniority of the temporary grain shop staff on absorption in other departments and also the seniority of family planning staff who were directly recruited through the Railway Service Commission or by departmental selection, was fixed by the Railway Board. The order by which his seniority has been fixed w.e.f. the date on which he was given lien in the Electrical Department, is

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therefor arbitrary and illegal, he asserts.

5. The Respondents have filed a written reply that in terms of Railway Board instruction contained in the letter dated 2-11-1963, the directly recruited Lecturers like the Applicants were to be given avenue of promotion in the different department of Railways. The Applicant was accordingly given a lien in the Electrical Deptt w.e.f. 25.3.1977 and his seniority also fixed from the same date. This decision was conveyed by the Railway Board vide letter dated 30-1-1980. It is further contended that this was not a case of transfer from one cadre to another but was a case of absorption of a directly recruited Lecturer in ~~xxx~~ another department only to give him further avenue of advancement. As regards the seniority assigned to the ex grain shop staff and family planning staff, it has been stated by the Respondents that the decision in regard to such employees has no application to the present Applicant. As regards earlier assignment of seniority of the Applicant in the seniority list as on 1-4-1975, the Respondents have stated that such assignment of seniority was erroneous and his seniority should have been fixed below one Shri R.B. Singh, at Serial No.22 ^{above} and ^{above} Shri S.S. Das at Serial No.23. It has been emphasised that there has been no contravention of the orders of this Tribunal.

6. The Applicant has filed a rejoinder affidavit reiterating his contention to the Original Application.

It has further been specifically stated that the

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principle of determination of seniority of the family planning staff giving benefit of their past service in their parent cadre on absorption in other departments, is equally applicable to him.

7. The controversy which squarely falls for our consideration in this case is whether the Applicant's seniority on his absorption in an equivalent grade in the Electrical Department shall be counted by giving him benefit of past service in another department or it should be reckoned from the date on which he was absorbed in the Electrical Department. The Applicant's case is that he should have been given the benefit of past service and the initial assignment of seniority in the seniority list as on 1-4-1975 was in accordance with the extant rules, contained in Para 311 of the Indian Railway Establishment Manual. It is also in consonance with the principles enunciated for determination of seniority of the grain shop staff and family planning staff on their absorption in the other departments. The Respondents on the other hand have contended that the seniority of the Applicant in the adoptive department shall be reckoned from the date he was absorbed in the department and not by reckoning past services.

8. The Applicant has annexed photocopy of the relevant pages of the Indian Railway Establishment Manual. Paragraph No.311 of the Indian Railway Establishment Rules on which the Applicant seeks reliance, reads as under :-

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"311. Transfer in the interest of administration.-

Seniority of railway servants on transfer from one cadre to another in the interest of the administration is regulated by the date of promotion/date of appointment to the grade as the case may be."

9. The plain reading of Paragraph No.311 of the IREM makes it clear that this provision would be applicable to such cases where the railway servant is transferred from one cadre to another in the interest of administration. In the case before us, the Applicant's transfer from the cadre of Lecturer to that of the Electrical Department cannot be held as a transfer in the interest of administration. This was in the interest of the Applicant who was otherwise without any avenue of promotion. The provision of Paragraph No.311 of IREM cannot, therefore, be made applicable to the present Applicant.

10. The Learned Counsel for the Applicant also sought reliance on the decision in several cases. We may briefly refer to such decisions. The first decision on which the Applicant seeks reliance is that of the Hon'ble Supreme Court in the case of V.S. Murthy Vs. Deputy Chief Accounts Officer reported in 1983 Vol I SLR 655. In Paragraph 20 of the decision it was inter alia observed that if the transfer was on administrative ground from one department or office to another, the seniority of the transferred Govt. servant shall

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be fixed with reference to his first appointment in the former department or office from where he is transferred.

This decision would have been applicable to the Applicant ^{/had} his transfer from the post of Lecturer to the cadre of Electrical Department been on administrative ground. The Applicant's transfer cannot, however, be treated as a transfer on administrative ground since no interest of the administration was involved, in such a transfer. It was only in the interest of the Applicant and, therefore, the request of the Applicant for such a transfer is implied. In the aforesaid decision of the Hon'ble Supreme Court, it has also been held that if his transfer is on the request of the transferee, his seniority has to be determined with reference to the date on which he came to be transferred to the organisation.

11. The next case referred to by the Learned Counsel for the Applicant is that of D.K. Jain Vs. Union of India reported in (1988) 8 ATC 374. In this case, the Applicants were asked to give their willingness for being absorbed as Assistant Permanent Way Inspectors as they might be rendered surplus. While one of such persons was allowed benefit of past service for reckoning seniority as Assistant Permanent Way Inspector, the Applicants were denied such benefit. The Ahmedabad Bench of the Tribunal held that the Applicants should also be given similar benefits. The facts of this case are totally different from the fact of the case before us and, therefore, this decision has no applicability to the present Applicant.

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12. The next decision relied upon by the Learned Counsel for the Applicant is that of the Madras Bench of the Tribunal in the case of S. Mookiah and Ors Vs. Union of India and Others reported in (1992) 19 ATC 552. In this case certain Sr. Signallers/Signallers, on being rendered surplus, were asked to indicate their willingness for absorption in the clerical cadre without indicating any likelihood of loss of seniority. In such circumstances, the Tribunal held that the assigning of bottom seniority to the Applicants in the clerical cadre was arbitrary. The facts of this case are totally different ^{from} the facts of the present case. The Applicant in the case before us was not rendered surplus which necessitated his absorption in the Electrical Department. The ratio of S. Mookiah's case cannot, therefore, be applied to the present Applicant.

13. The Applicant has also sought reliance on the decision taken by the Railway Board with regard to the seniority to be assigned to the grain shop staff and the family planning staff on their absorption in the other department of the Railways. So far as the grain shop staff is concerned, the decision of the Railway Board is in pursuance of the decision of the Hon'ble Supreme Court in the case of General Manager South Central Railway Vs. AVR Siddhanti reported in AIR 1974 S.C. 1755. This case arose out of the Railway Board decision to treat the persons who were directly recruited to the grain shop department, those who were directly recruited for other Departments but were

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straightway posted to the grain shop and the persons who were initially appointed in other permanent department and later transferred to the grain shop, differently in the matter of seniority. While the seniority of the third category was not affected by their transfer to the grain shop, the persons belonging to the second category were to get their seniority from the date of their joining grain shop department, while for the personnel belonging to the 1st category, the seniority was to be fixed from the date of absorption in the permanent department irrespective of their length of service in the grain shop department.

14. The Hon'ble Supreme Court held that while there was a rationale for giving the differential treatment to the persons belonging to the third category, the persons coming from the second and first categories having become members of the same class or unit governed by service the same condition of work were entitled to be treated alike. On this basis the Railway Board Circular dated 1-2-1975 was issued treating the personnel belonging to the second and third categories alike for the purposes of seniority.

15. The facts of the aforementioned case are totally different from the facts in the case before us. The ratio of this decision cannot, therefore, apply to the present Applicants. In fact, the Applicant had not ~~xxxxxx~~ pressed this point in the rejoinder affidavit.

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16. So far as the seniority of the family planning staff is concerned, the Respondents have stated that this decision of the Railway Board in their case is not applicable to the Applicants. The Applicant has annexed a copy of the relevant circular dated 1/8-9-1979 dealing with this matter. It appears that the Railway Board has revised their earlier decision and had directed that the seniority of the family planning staff shall be reckoned from the date of their entry in equivalent grades and not from the date of issue of the letter. The context in which this order was issued is not clear from the circular. Neither the Applicant nor the Respondents have stated in what circumstances the family planning staff were absorbed in other departments and what were the considerations for granting them seniority on the basis of their past services. In the absence of any specific averments in this regard either by the Applicants or by the Respondents, we are unable to apply ~~xx~~ the principles enunciated by the Railway Board for reckoning the seniority of the family planning staff to the present Applicants.

17. Coming back to the circumstances in which the Applicant was accommodated in the Electrical Department, we may recall that this absorption was only to provide a promotional avenue to the Applicant who had no such avenue while working as a Lecturer in the System Training School. We have not been shown any rule

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~~rule~~ under which the Applicant could have been given the benefit of his past services for the purpose of seniority on absorption in the Electrical Department only for affording him an avenue of promotion. In the at absence of any such rule, we can only consider this matter ~~inconsonance~~ with with the principles of natural justice. From the point of view of the Applicant ~~at it will no doubt~~ be it just that he is given the benefit of the past services for the purposes of seniority in the adoptive department, but, then would it be just in respect of those persons who were already serving in the department? If the Applicant is given the benefit of past service, the persons in the adoptive department who were recruited in the equivalent grade subsequent to the recruitment of the Applicant in his parent department, will stand to lose in the matter of seniority. Thus, while it may be just and fair to induct the Applicant in another department in order to give him an avenue of promotion, it would be unjust to the existing personnel to give the Applicant seniority over them. In our view the principles of natural justice would work against the Petitioner in the matter of assigning seniority counting his past service in the parent department.

18. In view of the foregoing we are not convinced that the Applicant should be given seniority counting

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the past services in the parent department. The Application, therefore, fails and the same is dismissed. There shall, however, no order as to costs.

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Member (J)

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Member (A)

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