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Reserved:

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

...

Registration O.A. No. 1311 of 1993

Somra and 26 others ... Applicants.

Versus

Union of India
and others ... Respondents.

...

Hon. Mr. S. Das Gupta, Member(A)
Hon. Mr. T.L. Verma, Member(J)

(By Hon. Mr. S. Das Gupta, Member(A))

Through this Original Application No. 1311 of 1993, filed under Section 19 of the Administrative Tribunals Act, 1985, 27 applicants have approached this Tribunal seeking the relief of quashing the order dated 23.8.1993 (Annexure- A 1) by which the applicants have been returned to their unit from Flash Butt Welding Plant(F.B.W.P. for short) and that they be deemed to continue service in their respective posts in FBWP with all benefits attached to the said posts.

2. The applicants were holding different posts in the Railways at Mughalsarai. They opted for working in FBWP where second shift was to be opened requiring additional man power. They were posted to FBWP in various grades w.e.f. 19.8.1985 vide several orders dated 16.8.1985 collectively marked as Annexure- A 2. They have thus been working in FBWP ^u ~~in this regard~~ ^u until their repatriation was ordered by the impugned order dated 23.8.1993. It is this order for their ^u ~~repatriation~~ ^u

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to parent unit which is under challenge in this petition.

3. The applicants have stated that they were all promoted to higher posts on being posted to FBWP and with their transfer to FBWP, they severed their connections with their parent unit and got absorbed in FBWP. They have been working continuously for about 8 years and during this period, their services were quite satisfactory. The posts in which they were working continue to remain temporary although 8 years have passed despite the departmental rules for conversion of temporary ^{work posts} into permanent ones on their continuation beyond a period of 3 years. Their seniority in FBWP was thus being shown separately against the work charged posts. The applicants contended that the temporary work charged posts against which they were appointed in FBWP are still continuing and the work of FBWP has been increasing day by day rather than ~~diminishing~~ ^{diminishing} deminution. Therefore, their repatriation to the parent unit is arbitrary and is tantamount to major punishment of reversion from a higher grade to a lower grade.

4. Resisting the claim of the applicants, the respondents have stated in their counter reply that the applicants were appointed in FBWP against work charged posts from different Shops/Sections of the Plant Depot maintaining their lien in the parent unit. They have also submitted that not all of the applicants were appointed to higher posts on being posted to FBWP but that only some of them were so appointed, the rest being appointed in the same ^{grade} ~~grade~~ ^{code} ~~code~~ in which they were working in their parent unit.

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Vide Railway Board letter dated 7.1.1993 (Annexure-C.A.1) the restructuring of certain Group-C & D cadres has been ordered, by virtue of which a number of posts in the applicants' parent unit have been upgraded. It is because of this, the applicants have been returned back to their parent unit on promotion and not on reversion as alleged by the applicants. They have also submitted that the orders regarding restructuring do not cover the work-charged posts and as such, the posts which they are occupying in FBWP are outside the purview of the scheme of restructuring. ⁵ The point which requires the decision in this case is whether the applicants have acquired any right to continue working in the FBWP against the posts which they are holding now. We have given our anxious considerations to this question in the light of the arguments advanced by the learned counsel for both the parties and the averments made in the documents filed. We are of the view that in case these posts continue to be operated in FBWP, the applicants will have a right to continue against these posts in preference to a fresh set of personnel as long as their work is not found unsatisfactory. They cannot, however, claim any right of preference over the workers of FBWP who were working in the Plant against the permanent post before induction of the applicants, in the matter of promotion. The applicants do have a right to be considered for promotion against the higher

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posts in their parent unit and the respondents have, therefore, rightly considered them for promotion against the high posts created by restructuring of cadre. If, however, the applicants do not want to be repatriated and are ready to forego their promotions in the parent cadre, and the work which they are doing in the FBWP continues, the respondents cannot repatriate them against their will after they have already worked for more than 8 years unless their performance is found unsatisfactory and they have been given an opportunity to show cause. Infact, from the averments made by them in the counter reply, it does not appear that the respondents are averse to allow the applicants to continue against the work charged posts in FBWP but they have pointed out that in that event, the applicants will have to suffer certain consequences ^{h.} regarding which have been spelt out in para. 12 thereof.

Fribunal

6. Sri A.K. Gaur, learned counsel for the Respondents cited the decision dated 13.12.1993 of ^{his} in O.A. No. 1281 of 1993 in support of the case of the respondents. In that case, we find that the services of the applicants who were working in FBWP were no more required in that Plant and, therefore, they were repatriated to their parent unit. In the present application, it is nowhere been averred by the respondents that the services of the applicants are no longer required in FBWP, The only reason they have given for their being repatriated to their parent unit is that they

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have been promoted in their parent unit against restructured posts. This application, therefore, can be distinguished from O.A. No. 1281 of 1993 on facts.

6. In view of the foregoing discussions, we hold that in case the work which was being done by the applicants in FBWP, ^{is} still continuing, the applicants ~~will~~ ^{then} be allowed to work ~~their~~ ^{there}, after obtaining a clear under-taking from them that they are ready to suffer the consequences of such continuance in FBWP against the work charged posts. The consequences as per rules shall be clearly specified and communicated to the applicants before obtaining any undertaking from them in this regard.

7. The petition is disposed of with the above directions. Parties to bear their own costs.

H. Verma
Member(J)

W. S.
Member (A)₁

Dated: 23 February, 1994.

(n.u.)