

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
ADDITIONAL BENCH, ALLAHABAD

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Allahabad : Dated 20th day of October, 1995

Original Application No.516 of 1995

QUORUM:-

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

1. Hari Chandra son of Shri Mohan Prasad
2. Suresh Chandra son of Shri Moti Ram
3. Kundan Lal son of Shri Ram Lal
4. Ramkishor Singh son of Shri Kushal Pal Singh
5. Jahir Khan son of Shri Persadi Khan.

(All applicants are IVth Class Employee
in Construction Division, Central Railway,
Agra.

(By Advocate Sri L.K. Dwivedi)

..... Applicants

Versus

1. General Manager Central Railway Bombay V.T.,
Bombay.
2. Chief Personnel Officer (E/C) Central
Railway, Bombay V.T. Bombay.
3. Deputy Chief Engineer (Construction), Gwalior
(Agra Cell), Central Railway, Gwalior.
4. Assistant Engineer (Construction), Central
Railway, Mathura Junction, Mathura.

(By Advocate Sri Prashant Mathur)

..... Respondents

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O R D E R

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

The five Applicants have approached this Tribunal through this O.A. seeking quashing of an order dated 15-2-1995 to the extent it relates to the repatriation of the Applicants to the Open Line and for their retention in the Construction Division and payment of regular salary.

2. ~~It is~~ ^{is} stated that the Applicants ~~have~~ ^{to} have been recruited initially in the Construction Division as casual labours on 18-5-1975 and to have acquired temporary status on 1-1-1994. He was regularised on the ~~post~~ ^{post} of ~~work~~ ^{work} on 16-5-1991 and it is stated that he is continuously working in the Construction Division without any break. The other four Applicants also are stated to have been initially appointed in the Construction Division as casual labours on various dates and to have acquired temporary status on 1-1-1984. All of them ~~have~~ also been stated to have been regularised on various dates. However, vide the impugned order dated 15-2-1995, the Applicants have been declared surplus and transferred to the Open Line. The Applicants allege that their transfer to the Open Line ~~for service~~ is totally arbitrary. They have taken ^a plea that several other persons who were also working in the Construction Division latter than the Applicants have been retained whereas the Applicants who were working from earlier dates have been transferred. Further, ~~plea~~ of the

Applicants is that there were several other projects in the Construction Division on which they could have been accommodated.

3. The Respondents have submitted a counter reply in which it has been stated that the Applicants have been transferred to the Open Line as the sanctioned work has already come to ^{a stage of completion} ~~the completion~~ and there is no work available at Mathura/Agra. The transfer has been made with a view to avoid retrenchment ^{as} in the exigencies of service. It is also stated ~~herewith~~ that the Applicants have been transferred to their parent ~~Operating~~ Department where they hold their liens and out of 50 persons in Group 'D', 47 persons have already been transferred including the Applicants to the Open Line. It is further stated that the Applicants could not have been accommodated on other projects as either requisite staff is already working on these projects or these are coming to the stage of completion or are not yet sanctioned.

4. I have heard the Learned Counsel for the parties and have gone through the pleadings carefully.

5. The Respondents have specifically pointed out that the work on which the Applicants were engaged has come to an end and, therefore, in order to avoid retrenchment, they have transferred them to their parent department which is Open Line. This averment

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has not been specifically denied in the Rejoinder Affidavit. It is not the case of the Applicants that they must be allowed to continue on the projects on which they are working even though it has come to an end. Their only case is that certain other persons who have joined the Construction Division later have not been transferred. This, however, has no force since the specific averments of the Respondents is that 47 out of 50 Group 'D' employees in the project stand transferred to the Open Line. As regards the engagement of the Applicants on other projects in the Construction Division, the Respondents have adequately explained the reasons why such engagement was not possible. It is quite clear that the only ~~possible~~ ^{possible} alternative to the transfer to Open Line was to avoid retrenchment of the Applicants. This has been avoided by the Respondents by repatriating them to the parent cadre. It is for the employer to decide how and where the services of the employees should be utilised. If in the exigencies of service and with a view to avoid retrenchment the Respondents have transferred the Applicants to the Open Line, their action cannot be faulted on any ground. The only point which, however, remains and which was also argued by the Learned Counsel of the Applicant is that the seniority of the Applicants shall be affected seriously as a result of such transfer. It would

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appear from the averments in the O.A. that all the Applicants are now regular employees and their lien is maintained in the Open Line. If that be so, the question of their seniority being affected does not arise. Their seniority in the parent department is already determined and their tenure in the Construction Division cannot affect such seniority position. If, however, they are not regular employees and are yet to be screened and regularised, the number of days worked in the Construction Division shall be taken into account for the purpose^s of determination of their seniority in the Open Line for the purpose^s of their screening and regularisation.

6. In view of the foregoing, the Application has no merit and is dismissed accordingly. The parties shall bear their own costs.


Member (A)

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