

RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

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Allahabad : Dated this 7th day November of 1997

Original Application No.1089 of 1995

District : Allahabad

CORAM:-

Hon'ble Mr. R.K. Saxena, J.M.

Hon'ble Mr. D.S. Baweja, A.M.

1. I.W. Naquvi S/o Late W.H. Naquvi
R/o R/61190-ABC, 8th Avenue,
Nawab Yousuf Road, Allahabad.
2. Riyaj Ahmad S/o Late Mustq Ahmad
R/o Railway Quarter No.11, ABC Loco Colony,
Allahabad.
3. Gayasuddin S/o Late Mohuddin
R/o 126-D, Dariyabad, Allahabad.

(By Sri Sudhir Agrawal, Advocate)

.Applicants

Versus

1. Union of India through General Manager,
Northern Railway, Baroda House,
New Delhi.
2. Chief Motive Power Engineer (Diesel),
Northern Railway, Baroda House,
New Delhi.
3. Divisional Railway Manager,
Northern Railway, Allahabad.
4. Divisional Divisional Mechanical Engineer,
Northern Railway, Allahabad.

(By Sri BB Paul, Advocate)

.Respondents

ORDER

By Hon'ble Mr. D.S. Baweja, A.M.

This application has been filed jointly by three applicants praying for relief of quashing the order dated 17-5-1995 and also to direct the respondents to issue a fresh order promoting the applicants under the upgradation scheme ~~for the applicants~~ in the scale of Rs.2000/-Rs.3200/- in the Diesel Trade from 1-3-1993 ^{their} in the same way as ~~the~~ juniors of Lucknow Division

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have been promoted.

2. The applicants were appointed as Fitter Incharge in Grade 'B' in the scale of Rs. 1400-2300 during 1975-76 in the Allahabad Division, Northern Railway. They were further promoted as Fitter Incharge Grade 'A' in the scale of Rs. 1600-2600 as per the order dated 7-2-1983. They continued in this grade till 1992 when Allahabad Steam Loco Shed was closed on 30-6-1992. Due to closer of the Steam Loco Shed, 148 Group 'D' Staff became surplus which included the applicants ^{also} and they were to be re-deployed in various departments of the Allahabad Division against the existing vacancies. The applicants gave option for absorption in the Diesel Trade. They were sent for training at Diesel Training Centre, Sakurbasti. They were also sent for six months to Supervisory Training ^{/Centre, Lucknow} in terms of para 2(iii) of the Railway Board's Circular dated 27-3-1991. After completion of the training, the applicants were allotted work on the Diesel side and continued thereafter on the Diesel side but no orders for redeployment in the Diesel Cadre have been issued. As per the order dated 17-5-1995, promotion orders for the post of Foreman (Diesel) Grade Rs. 2000-3200 were issued by the Headquarters Office ^{giving} ~~during~~ promotion with effect from 1-3-1993 under the Cadre Restructuring Scheme. In this promotion order, respondent no. 5 and 7 belonging to the Steam Shed Cadre of Lucknow Division have been promoted. Respondent no. 5 was appointed as Fitter Incharge Grade 'B' on 3-5-1975 while respondent nos. 6 and 7 were ^{appointed} ~~promoted~~ during December, 1986. They were promoted as Fitter Incharge Grade 'A' from 1-1-1984. Accordingly respondent nos. 5 to 7

were junior to the applicants. Respondent nos.5 to 7 were redeployed in the Diesel Cadre and, therefore, their names were sent to the Headquarters office for consideration for the promotion to the post of Foreman (Diesel) in the Grade of Rs.2000-3200/-. However, Allahabad Division did not redeploy the applicants in the Diesel Cadre and ^{/also} did not send their names to the Headquarters office. As a result, juniors to the applicants were promoted as per the impugned order ignoring seniority of the applicants. The applicants made representation on 19-6-1995 followed by reminders but did not get any relief. Feeling aggrieved, the present application has been filed on 17-10-1995.

3. The main thrust of the averments of the applicants in seeking the relief is that the applicants were entitled for redeployment on the diesel side as per their option on ^{/the} closure of the steam shed on 30-6-1992 and ^{/after} undergoing required training. By promoting juniors of the other divisions as Foreman (Diesel) in the Grade of Rs.2000-3200, the applicants have been discriminated and thereby violating the provisions of Articles 14 and 16 of the Constitution of India.

4. The respondents have opposed the application by filing their counter reply. The respondents have submitted that since the closure of the Steam Shed at Allahabad, the applicants are working in the Diesel Shed as per their option. The respondents further contend that no junior to the applicants have been promoted and thus there is no discrimination as

as alleged by the applicants. The respondents contend that the grounds taken by the applicants in seeking the relief are not sustainable and, therefore, the application deserves to be dismissed.

5. The applicants have filed rejoinder reply to the short counter reply controverting the averments of the respondents. The applicants have reiterated their stand in the OA. The applicants have also submitted that the respondents have avoided giving reply to paras 4(7) to 4(11).

6. During the pendency of the OA, the respondents notified selection to the post of Foreman (Diesel Loco) in the scale of Rs.2000-3200 as per letter dated 24-1-1993, after the decentralisation for promotion to this grade was done and a list of 8 eligible candidates was issued which included the applicants. The applicants filed MA.No.620 of 1997, making ^{/a}prayer to stay the selection ^{process} ~~order~~ as per the notification dated 24-1-1997. As per the order dated 17-2-1997, it was laid down that the applicants may or may not appear in the selection at their own risk. However, if they appear in the selection, then it is provided that their appearance in the examination will be without prejudice to whatever right that may have accrued to them either as a result of the earlier examination held in 1990 or restructuring of the cadre w.e.f. 1.3.1993. The stay order was extended from time to time and continued till the pronouncement of the order.

7. The matter was heard at the stage of admission with the consent of the counsel of the either side.

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Shri Sudhir Agarwal appeared on behalf of the applicants while Shri BB Paul represented the respondents. During the arguments, the learned counsel for the respondents was asked to indicate whether the applicants and other staff which ^{was declared} ~~kept~~ surplus on the closure of the steam shed at Allahabad was ~~redeployed~~ ~~xxxxx~~ and if so, whether the inter-se seniority on the diesel side was determined. Learned counsel for the respondents was not ready with the details and sought time to bring these details on record. Subsequently, the supplementary counter affidavit was filed by the respondents. In the supplementary counter affidavit, the respondents have given the details of the selection conducted in pursuance of the notification dated 24-1-1997. It is submitted that the promotion to the post of Foreman (Diesel Loco) in the grade of Rs.2000-3200 was earlier controlled by the Headquarters and the same was decentralised for promotion by the respective divisions w.e.f. 14-6-1996. The respondents have further stated that as per their seniority on the diesel side, the applicants were eligible for appearing ^{this} in ~~the~~ selection and accordingly appeared in the selection. The panel has been finalised and issued vide letter dated 10-4-1997 placing three persons on the panel, which includes applicant no.1 The promotion orders have also been issued vide order dated 12-5-1997. The respondents have ^{however} ~~not~~ directly replied the query raised with regard to the redeployment of the applicants and other surplus staff on the diesel side but by furnishing ~~of~~ the details of the selection, the respondents have contended that the applicants

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had been redeployed on the diesel side and as a consequence of that only the applicants were eligible for ^{/the} selection under reference.

8. The applicants have filed rejoinder reply to the ^{supplementary} ~~short~~ counter reply. The applicants have contended that the respondents have avoided to give direct reply to the queries raised ^{/by the Bench} as per the order dated 16-6-1997 to show as to ~~why~~ and when the applicants were redeployed on the diesel side.

9. On going through the averments made in the MA No.620/97, the reply given to the objections raised by the respondents for grant of interim stay order prayed in this Miscellaneous Application and also in the supplementary rejoinder affidavit, it is noted that the applicants have changed their stand. The averments in these documents do not correspond with the reliefs prayed for in the OA and detailed in para 1 above. In these documents, the applicants have made averments that they were subject to the written examination ^{/and} viv voce test for promotion to the grade of Rs.2000-3200 on the steam side on 28-5-1990 but the result of the same was not declared. Subsequently, the Steam Loco Shed was closed on 30-6-1992. As a result of the vacancies notified in 1990 in the steam side remained vacant. ~~on~~ Not only this, subsequently, three posts on the steam side were ~~were~~ upgraded to the grade of Rs.2375-3500 from 1-3-1993 ^{under} ~~in~~ the cadre restructuring scheme. Thus, there were seven vacancies in the grade of Rs.2000-3200 on the steam side ~~on~~ 1-3-1993 but the applicants were not considered for promotion, under the modified selection procedure without written and viva voce test. The applicants have further submitted in the

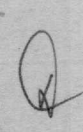
rejoinder affidavit filed to the objections raised by the respondents against the Misc.Applications filed praying for interim stay as well as the supplementary rejoinder affidavit that the applicants were declared surplus on the steam side and since they were not redeployed on the Diesel side as per their options, then in terms of para 15 of the Railway Board's Circular dated 27-3-1991, the applicants were required to be continued to have their lien in the old cadre till such time they are absorbed on the Diesel side. Therefore, the applicants were required to be considered for promotion from 01-3-1993 under the cadre restructuring scheme as per the modified selection procedure on the steam side. In fact, in par 4 of the rejoinder affidavit filed against the objections raised by the respondents, for grant of interim relief, the applicants have averred as under :-

"4. That in reply to the contents of para 2 of the counter-affidavit it is not disputed that the post of Foreman Grade Rs.2000-3200 is a selection post. However, the applicants are not claiming promotion against the post of Foreman (Diesel) but they are claiming right of consideration for promotion to the post of Foreman Loco/F.O.M. in the Grade of Rs.2000-3200 in accordance with the Railway Board Restructuring Order dated 27-1-1993 readwith in the light of Circular dated 27-3-1991 on the subject of absorption and utilisation of surplus staff, para 15....."

From the above facts, it would be seen that the applicants have shifted the focus of their case and are claiming promotion in the grade of Rs.2000-3200 from 01-3-1993 on the steam side and not on the diesel side. However, neither the averments to this effect nor amendment to the relief has been made based on the averments made in the subsequent documents. Therefore,

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the reliefs as prayed for remain the same as brought out in para 1 i.e. seeking quashing of the order dated 17-5-1995 according to which promotions to the post of Foreman (Diesel) has been ordered and the respondents no.5 to 7 have been promoted. New grounds and prayer for relief based on the same cannot be advanced in the rejoinder reply or through Misc.Applications. If it becomes necessary to modify the relief prayed for based on the facts disclosed by the respondents in the counter reply, then it would be necessary to incorporate appropriate amendment in the OA. In the absence of any such amendment in the OA, the fresh grounds taken in the rejoinder affidavit cannot be taken into consideration while considering the merits and the reliefs prayed for and not included in the OA. In the light of these observations, we are not inclined to go into the merits of the reliefs with regard to granting of promotion in the grade of Rs.2000-3200 from 1-3-1993 on the steam side. 10. Now coming to the relief prayed for in the OA, with regard to quashing of the impugned order dated 17-5-1995, we note that the applicants have challenged the impugned order through which respondent nos.5 to 7 have been promoted mainly on the ground that the respondent nos. 5 to 7 were junior to the applicants in the steam cadre. The respondents have contended that the seniority on the steam side in respect of Fitter Incharge Grade 'A' and Grade 'B' was divisionwise and, therefore, the relative dates of promotion/appointment will be of no consequence. This argument of the respondents is tenable only as long as the promotions are confined within the same seniority unit i.e. the division. However, when promotions to a grade are



controlled by Headquarter covering all the divisions, then the seniority in lower grade comes into play for framing inter se seniority for the purposes of considering for promotion. In the present case, the promotion to the grade of Rs.2000-3200 as Foreman(Diesel) was controlled by Headquarter and, therefore, the seniority in the grade of Rs.1600-2600 was crucial. In case, the steam surplus staff is redeployed into diesel cadre with seniority on the respective divisions, then for the purposes of inter se seniority, the date of promotion as Fitter Incharge Grade 'A' will form the basis for considering promotion to the grade of Rs.2000-3200 controlled from Headquarter. Respondent nos.5 to 7 belong to Lucknow Division and were also rendered surplus and absorbed in the diesel cadre and have been promoted as Foreman (Diesel) from 1-3-1993. The Steam Loco Shed at Allahabad was closed from 30-6-1992 and the applicants were rendered surplus. They had given their option for absorption on the diesel side. The applicants could be considered for promotion from 1-3-1993 on diesel side only if they had been inducted into diesel cadre before this date. Therefore, the core issue to be determined is the date of redeployment of the applicants in the diesel cadre. The respondents in the counter reply have submitted that the applicants have been redeployed into the diesel cadre but have not disclosed any details with regard to the date of redeployment and the seniority assigned. These details are vital to the issue involved but the respondents have avoided to give any details and in fact did not give any reply to para 4(7) application. to 4(11) of the original ~~XXXXXX~~ In view of the evasive

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and vague averments made in the counter reply, the counsel for the respondents, during the hearing was asked pointedly to indicate as to when the applicants were redeployed on the diesel side. The counsel for the respondents could not answer this query and sought time to bring these details on record. As a result, ~~the~~ supplementary counter reply was filed. However, it is noted that in the supplementary counter reply ^{also} the respondents have again chosen to keep silent on the issue and instead have furnished details of the selection to the grade of Rs.2000-3200, as already brought out earlier in para 7 above. During further hearing, the learned counsel for the respondents was again asked to indicate the date of redeployment and details of Office Order issued thereof. However, the learned counsel for the respondents expressed inability to furnish these details. Keeping these facts in view, it would be seen that the attitude of the respondents has been most unhelpful in furnishing details necessary for resolving the issue. We cannot help but to deprecate such approach of the respondents, we are compelled to go into the merits of the issue based on ^{the} sketchy details furnished by the respondents.

11. Allahabad Steam Shed was closed on 30-6-1992. The letter dated 4-9-1992 at Annexure-A-5 indicates that the staff rendered surplus had been screened and they were to be redeployed in the various departments against the existing vacancies. The details of the staff to be redeployed in other departments are indicated in Annexure-1 to this letter. The applicants have not enclosed Annexure-1 ^{with} ~~in~~ the copy of the letter at Annexure-A-5. However, from the letters at Annexure-A6 and A-7, we find that the applicants were allotted

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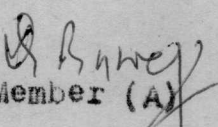
duties on the Diesel side on closure of the Steam Shed. Further, the applicants were sent for training on the Diesel side. There is no denial of the facts disclosed in Annexures-A-6 and A-7 by the respondents, in the counter reply as well as in the supplementary counter reply^{it is submitted} that the applicants have been absorbed on the Diesel side. This would imply that the vacancies for absorption of the applicants on the Diesel side were available when the letter dated 4-9-1992 was issued^{later} for screening of the surplus staff. In the background of these facts, we are not able to understand as to what was the impediment in redeployment of the applicants on the Diesel side and determine their seniority. Based on the facts and^{we are of the view that} circumstances as revealed from the material on record, the applicants were entitled to be inducted on the Diesel side after issue of the letter dated 4-9-1992. The seniority of the applicant should have been shown on the Diesel side in the division and their names should have been advised to Headquarter. If this was done, then when the promotions under the cadre restructuring were considered by the Headquarter in 1995, the applicant would have been eligible for promotion as Foreman(Diesel) being senior to the respondent nos.5 and 7 based on the date of promotion as Fitter Incharge Grade 'A'. As brought out earlier in para 9 above, the applicants have made a plea that neither they have been considered for promotion from 1-3-1993 on the Steam side nor on the Diesel side. We find merit in the contention of the applicants in case the applicant have not been redeployed on the diesel side, then they were required to be considered continuing in the same cadre and should have been considered promotion from 1-3-1993. However, as indicated earlier, we are not going into the merits of the issue

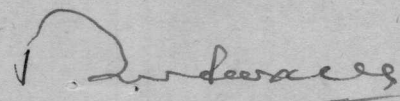
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with regard to their eligibility for promotion from 1-3-1993 on the steam side. However, ^{we have} ~~no~~ hesitation to come to the conclusion considering the facts detailed earlier that the applicants were entitled to be considered for promotion as Foreman (Diesel) from 1-3-1993 as they stood inducted into Diesel Cadre by the issue of letter dated 4-9-1992.

12. In the result of the above, we find merit in the application and the same is allowed with the direction that the applicants shall be treated as inducted into Diesel cadre and eligible for consideration for promotion under cadre restructuring from 1-3-1993 ^{as per seniority.} ~~It round fit~~ for promotion as per the extant rules, the applicants shall ^{including} ~~the~~ be allowed all the consequential benefits, the seniority and arrears of pay as admissible. The compliance shall be done within a period of three months. No order as to costs.

13. The interim stay order granted as per order dated 17-2-1997 is vacated.


Member (A)


Member (J)

Dube/