

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NUMBER 169 OF 2003

ALLAHABAD, THIS THE 05th DAY OF AUGUST, 2003

HON'BLE MR. JUSTICE R.R.K. TRIVEDI, VICE-CHAIRMAN
HON'BLE MR. D. R. TIWARI, MEMBER (A)

1. Surya Prakash Srivastava
s/o Shri Ganga Pd. Srivastava,
r/o Qr.No.247/3 New Loco Colony,
N.E. Railway, Lahartara,
Varanasi.
2. Shafeeq Ahmad
s/o late Nabi Husain,
r/o Indara Land Mission Road,
District- Mau.Applicants

(By Advocate : Shri T. S. Pandey)

V E R S U S

1. Union of India through General Manager,
North Eastern Railway, Gorakhpur.
2. Divisional Railway Manager,
N.E. Railway, Varanasi Division,
Varanasi.
3. Senior Divisional Personnel Officer,
N.E. Railway, Varanasi Division,
Varanasi.
4. Senior Divisional Operating Manager,
N.E. Railway, Varanasi Division,
Varanasi.Respondents

(By Advocate : Shri K.P. Singh)

O R D E R

By Hon'ble Mr. Justice R.R.K. Trivedi, Vice-Chairman

By this O.A. filed under section 19 of Administrative
Tribunals Act, 1985, applicants have challenged the order
dated 05.03.2002 (Anneuxre-I) by which they ^{were} ~~are being~~
rendered surplus as Assistant Guards. They have been posted

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at Kantawala in the pay-scale of Rs.3050-4590/- including 30% running allowance. Before filing the present O.A. applicants have filed Diary No.1270 of 2002 which was decided finally on 20.03.2002 by this Tribunal with following directions:-

"We find it appropriate that the O.A. may be disposed of at the admission stage itself with the permission to applicants to represent before the competent authority for their grievance by filing a detailed representation, which will be considered by the competent authority within a period of 3 months from the date of receipt of such representation. There shall be no order as to costs."

2. In pursuance of the above order, representation of the applicants was decided by order dated 04.06.2002. This order was challenged by filing O.A. No.1509/2002 which was decided by order dated 20.12.2002(Annexure-9) and respondents were directed to pass a fresh order within three months. The operative part of the order is being reproduced below:-

"In pursuance of the aforesaid direction the impugned order has been passed on 04.06.2002(Annexure 2). In this order, controversy as to whether applicants were promoted as Assistant Guard on regular basis then how they could be reverted to the post of Kantawala, has not been dealt with and decided. The applicants are stating that they are not interested in promotion as Goods Guard. They only want to continue as Assistant Guard, for which they faced selection and were promoted. In our opinion, the respondents No.3 Divisional Railway Manager (P) ought to have give a pointed decision on this controversy, which has not been done. Shri K.P. Singh, learned counsel for the respondents on the other hand submitted that the applicants were declared surplus as Assistant Guard and thereafter they were absorbed as Pointsman (Kantawala). It is not that they have been reverted from Assistant Guard to Pointsman. However, such position is not clear from the impugned order. If it was so, it should have been mentioned in the order. In the circumstances, the order dated 04.06.2002 is quashed. The respondent No.3 is directed to decide the controversy by fresh order. In the light of the order dated 20.03.2002 and the order passed in this O.A. Fresh order shall be passed within 3 months from the date a copy of this order is filed. Till then, the status quo as on today, shall be maintained. No order as to costs. Copy of the order shall be given to the counsel for the parties within 3 days."

3. In pursuance of the aforesaid order of this Tribunal, respondents have passed the order dated 20.02.2003(Annexure-2). The representation of the applicants has been rejected and it has been held that they have been rightly redeployed at Kantawala and order does not suffer from any error of law and illegality.

4. The learned counsel for the applicants submitted that the next promotion available to the applicants from Assistant Guard was as Goods Guard. For this promotion, applicants were not required to appear in any test. Learned counsel for the applicants has placed before us an example of one Shri Ayaz Ahmad Ansari, who on being rendered surplus, was sent for training and was accommodated as Goods Guard. The result of the training has been filed as Annexure-6A with the O.A. Learned counsel for the applicants has also challenged the order on the ground that competent authority has not fixed the pay-scale of the applicants on being accommodated at Kantawala and the order is liable to be quashed on this ground also. In short the submission is that on the basis of order dated 20.12.2002 passed by Tribunal, respondents have illegally passed the order dated 20.02.2003 for redeployment of surplus staff and for fixation of the pay. Counsel for the applicant has placed reliance on the following Judgments:-

(i) SMT. V. KAMESHWARI VS. UNION OF INDIA & ORS.
1993(2)UPLBEC 898(SC)

(ii) V.K. DUBEY AND OTHERS VS. UNION OF INDIA
AND OTHERS. 1997 SCC(L&S) 1123

5. Shri K.P. Singh, counsel for the respondents, on the other hand, has submitted that large number of Assistant Guards were

surplus and they could be redeployed only when the vacancies were available. It is also submitted that the applicants have not suffered any kind of disadvantage so far as pay and running allowance is concerned. It is also submitted that they will have the chance of promotion as Goods Guard and may appear in the selection test. It is further submitted that once they have been offered the chance for promotion, but they refuse to participate. Thus, the order is justified and does not suffer from any error of law.

5. We have carefully considered the submissions of the counsel for the parties.

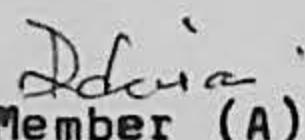
6. Counsel for the applicants has submitted that there is no mention as how the seniority of the applicants shall be determined at Kantawala. Counsel for the applicants has placed before us the order dated 20.02.2003 which contains procedure for dealing with manual man as surplus post and redeployment of surplus staff. However, we do not find any illegality in the order dated 20.02.2003. Applicants have been retained in employment and their pay has been protected including running allowances. In the impugned order, it is specifically mentioned that they were called to appear in the test for promotion as Goods Guard on 15.11.2002 and 30.11.2002 but they refused to participate. Learned counsel for the applicant submitted that they were entitled for promotion without any test.

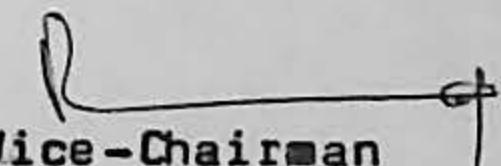
7. Counsel for the respondents, on the other hand, submitted



that post of Goods Guard is a selection post and applicants could not be promoted without selection test. Be that as it may, the promotion cannot be claimed as of right. The applicants can only claim to be considered for promotion. They have been given one opportunity and for second opportunity they have ^{been} ~~assured~~. The example given of Shri Ayaz Ahamad Ansari that he was promoted as Goods Guard without selection is distinguishable on the ground that it was a solitary case, whereas the applicants were being considered for redeployed and number was much larger.

8. In the circumstances, we do not find any good ground for our interference in the impugned order so far as promotion is concerned. The applicants have been recently redeployed and whenever the issue of seniority is raised, it would be open to the applicants to challenge the same. No order is required at this stage. Whenever, seniority is determined, it shall be open for the applicants to challenge the same if their interest has been prejudiced in any manner. Subject to aforesaid, the O.A. is dismissed with no order as to costs.


Member (A)


Vice-Chairman

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