

ALLAHABAD this the 8<sup>th</sup> day of December, 2010.

HON'BLE MR. JUSTICE S. C. SHARMA, MEMBER- J  
HON'BLE MRS. MANJULIKA GAUTAM, MMBER- A

ORIGINAL APPLICATION NO. 1239 OF 2006  
U/s 19 of the Administrative Tribunal's Act 1985

Bhanu Pratap, aged about 46 years, Son of Late Jokhan, Resident of Qr. No. 30-C, Bhojipura Railway Colony, Bareilly.

.....Applicant

V E R S U S

1. The Union of India through the General Manager, North Eastern Railway, Gorakhpur.
2. The Divisional Railway Manager, North Eastern Railway, Izzat Nagar Division, Bareilly.
3. The Senior Divisional Personnel Officer, North Eastern Railway, Izzat Nagar Division, Bareilly.
4. A.E.N. (Line), North Eastern Railway, Izzat Nagar Division, Bareilly.

.....Respondents

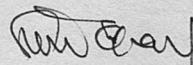
Advocate for the applicant:- Sri T. S. Pandey

Advocate for the Respondents:- Sri Ravi Ranjan  
Sri P. Mathur

ORDER

DELIVERED BY:- HON'BLE MR. JUSTICE S. C. SHARMA, JM

Under challenge in this O.A. is the order dated 10<sup>th</sup> April, 2006 passed by the Respondents. It has been prayed that the order dated 10<sup>th</sup> April, 2006 be quashed. Further prayer has also been made in order to give a direction to the Respondents to redeploy the applicant on



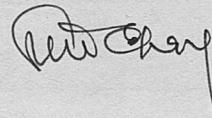
the post of helper-I in the pay scale of '2650-4000/-'. Pleadings of the parties in brief are as follows:-

2. That the applicant was initially appointed as helper-II in the pay scale of ₹2550-3200/- in the Railway Department under Section Engineer (Works), Bhojipura and subsequently promoted on the post of Helper-I vide order dated 31<sup>st</sup> May, 2001 due to change of traction in the entire Indian Railways from Locomotive to Electrification and dieselization, Railway Board issued a Policy decision and the circular vide order dated 21<sup>st</sup> April, 1989 and subsequently amended the same vide order 28<sup>th</sup> November, 2000 providing the mode and procedure for declaring the staff surplus and redeploying them in the other categories. Annexure2 and 3 are the copies of the circular letter of the Railway. On 07<sup>th</sup> May, 2005 seniority list of the applicant's cadre was issued and the applicant has been shown at serial No.47. The total sanctioned post of the Helper-I as on 01<sup>st</sup> April, 2006 is only 48. And against these sanctioned post of 48, 82 employees were working which was not permissible in law. That the employees whose names have been indicated in the seniority list after applicant's name at Sl. No. 47 were not declared surplus staff despite the fact that they are junior to the applicant who deserves to be declared surplus in accordance of the Railway Board Circular dated 21<sup>st</sup> April, 1989 and 28<sup>th</sup> November, 2000 and hence the order dated 10<sup>th</sup> April, 2006.

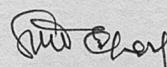


against the spirit of these letters. There had been discrimination in the case of the applicant as he had been declared surplus, whereas, his juniors were permitted to work in the grade Helper-I. That, three posts of Trackman were declared surplus and were surrendered vide order dated 06<sup>th</sup> April, 2006 and it is against the provisions of paragraph 2(iv) of the circular dated 21<sup>st</sup> April, 1989. It has been provided in this circular that the surplus staff and redeployed on such posts going to be declared surplus, the Respondent No.2, violated this provisions a representation was submitted on 10<sup>th</sup> April 2006, but nothing has been done on the representation of the applicant by the Respondents.

3. Respondents have filed Counter Reply. It has been alleged that the order dated 10<sup>th</sup> April, 2006 is self explanatory on the subject. The respondents is pursuance of the Statutory circular and direction issued by the Railway Board for redeployment of surplus staff in the respective category of Trackman as per their seniority. That the applicant alongwith others were declared medically fit and ordered to be absorbed as Trackman with due approval of the Competent Authority, it is not violative of Article 14 that the O.A. is premature as filed prior to the disposal of the representation. That the applicant was appointed as Casual labour on 17<sup>th</sup> November, 1980 and his services were regularized on 25<sup>th</sup> September, 1987 as Khalashi. By

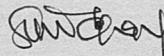


virtue of his working applicant was promoted on the post of Helper-I vide order dated 31<sup>st</sup> May, 2001. Circulars were issued by Railway Board providing guidelines for redeployment of surplus staff who had been declared surplus as a change of traction in the entire Indian Railways. It has also been alleged that the name of the applicant is at serial No.47. It has also been admitted that the total sanctioned strength of Helper Gr.-I was 45 on 01<sup>st</sup> April, 2006. Certain employees were transferred from Helper Khalashi-I on Administrative ground vide order dated 19<sup>th</sup> September, 2005 under ATN's section against the vacancies. Regarding those transferred employees who have been transferred under Assistant Engineer (Town) Izzatnagar are having the separate jurisdiction. Apart from this six ladies Helper-I have also been excluded on necessary administrative decision in consultation with the union. Lady Helper-I cannot be utilized as Tackman, hence there was no other option for the respondents but to take administrative decision. Thirteen (13) posts of Helper-I and Helper-II were declared surplus and the name of the applicant comes within the zone of consideration being junior. Leaving the ladies Helper-I no Helper-I junior to the applicant have been redeployed. The facts alleged in this O.A. are misconstrued. That the case of the applicant is fully covered by amended instruction dated 28<sup>th</sup> November, 2000 that the cadre of Helper-I and Helper-II are separate and as such any decision taken by the Railway



Administration cannot be said to be in contravention of the Railway Board's circular dated 21<sup>st</sup> April, 1989 amended by letter dated 28<sup>th</sup> November, 2000. It has wrongly alleged that the applicant had been singled out whereas, juniors were retained. There were vacancies in the cadre of Trackman and 13 posts of Helper-I and Helper-II were declared surplus, hence as per policy of the Railway Board the surplus staff was absorbed in the same cadre as Trackman in the vacant posts. The order dated 06<sup>th</sup> April, 2006 has no nexus with the order dated 10<sup>th</sup> April, 2006 which is an independent order. That the action taken by the respondents is perfectly in accordance with law and conformity with rules. That the O.A. is liable to be dismissed. After Counter of respondents' applicant has also filed Rejoinder which shall be discussed at the relevant place.

**4.** We have heard Mr. T. S. Pandey, Advocate for the applicant and Mr. Prashant Mathur, Advocate for the Respondents and perused the entire material available on record. From perusal of the pleading it is evident that it is undisputed fact that the applicant was appointed as Helper-II on 25<sup>th</sup> September, 1987 and afterwards promoted on the post of Helper-I vide order dated 31<sup>st</sup> May, 2001. It is also undisputed fact that due to change of traction in the entire Indian Railways from Locomotive to Electrification and dieselization, Railway Board issued a Policy decision and the circular on dated 21<sup>st</sup> April, 1989 and



subsequently amended the same vide order 28<sup>th</sup> November, 2000 providing the mode and procedure for declaring the staff surplus and redeploying them. The controversy is to the effect that whether the applicant has been singled out and hence ordered to be redeployed as Trackman after declaring him surplus. It has been alleged by the applicant that there are numerous persons who are junior to the applicant but retained on the post of Helper-I and-II with these facts respondents were discriminatory. It has been argued by the learned counsel for the applicant that certain policy was laid down by the Railway Board regarding mode and absorption of the surplus staff. That firstly the circular was issued on 21<sup>st</sup> April, 1989 and subsequently it was amended vide order dated 28<sup>th</sup> November, 2000. Initially all the facts had been admitted by the parties. But learned counsel for the respondents in this connection also argued that these surplus employees who were medically fit were redeployed as Trackman. That there are certain ladies workers on the post of Helper-I and Helper-II but they cannot be deployed as Trackman and hence they were retained on the post of Helper-I and Helper-II. That a meeting was convened with the leaders of the union and the matter was settled with them in order to retain the lady employees. There is no such other employee who were junior to the applicant were absorbed and deployed as Trackman.

*new entry*

5. Annexure-II is the copy of the Policy of the Railway Board dated 21<sup>st</sup> April, 1989. And it was issued in order to laid down the guidelines for absorption of the surplus declared employees. This fact has not been disputed that certain posts were declared surplus in Helper-I and Helper-II. In the application it has been alleged by the applicant that the sanctioned posts in Grade-I is 48 and whereas, against these sanctioned strength of 48, 82 employees were working as Helper-I. It has also been alleged that the name of the applicant appeared in the seniority list issued by the Respondents on dated 07<sup>th</sup> May, 2005 and is at serial No.47. And the respondents in the Counter Reply admitted the position of the applicant as per seniority list. Under these circumstances learned counsel for the applicant argued that as the position of the applicant as appeared at serial No.47 and as the sanctioned strength was 48, hence the applicant was working within the sanctioned strength. Detailed instructions have been given in the letter dated 21st April, 1989 that how the surplus employees shall be absorbed. It has been provided in i ad ii "*As soon as the posts are identified as surplus, a formal office order should be issued immediately surrendering surplus posts. Where the posts are not vacant and staffs are working against them. Special supernumerary posts in the same grade should be created. Simultaneously they should be credited as "Special Supernumerary" posts to the "bank of surplus posts" and mentioned the respective*

*W.W.C. 2005*

*billing units.*" In the present case the relevant portion of the policy of the Railway is para No. 5 essential to be reproduced:-

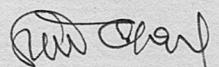
*"Normally, the junior most of the employees should be rendered surplus, irrespective of the manner in which they had entered the grade. However, where staff give their willingness to go on bottom seniority in recruitment grads to other departments, such volunteers should be given preference depending upon the availability of vacancies in the other cadre and their suitability, including medical fitness."*

6. Hence, in view of these rules firstly, the junior most employees should be rendered surplus. There is no denial of this provision of the Railway policy by the Respondents also. But it has been argued by the respondents advocate that the applicant's name is within the zone of consideration of the surplus employees. Learned counsel for the applicant in this connection cited names of the several employees who have been retained in Helper-I and Helper-II post irrespective of the fact that they are junior to the applicant.

7. We have also perused the relevant para of the Counter, in this connection para No. 10 of the Counter Reply is material. It has been alleged that *"as the name of those employees, who have been transferred under Assistant Engineer (Town) Izzatnagar is having the separate jurisdiction. Apart from this, the six lady Helper-I have also been excluded as the necessary administrative decision had been taken with consultation with the union. Since the ladies Helper-I*

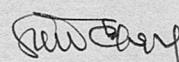
*R.W. Chary*

cannot be utilized as Trackman and for that reason there was no other option but to take necessary administrative action passing impugned order dated 10<sup>th</sup> April, 2006. A photocopy of the minutes of Informal meeting with the union is enclosed as Annexure-4. As a result of being declared 13 posts of Helper-I and Helper-II surplus, the applicant's name comes within the zone of the consideration being junior. As such leaving the ladies Helper no Helper-I junior to the applicant have been redeployed." It has specifically been alleged that the 13 posts of Helper-I and Helper-II were declared surplus. And only six ladies Helper-I and Helper-II were retained because they cannot be utilized as Trackman. And then there were no juniors to the applicant who had been retained. Annexure-IV is alleged to be minutes of the meetings with Railway union. It has been alleged in this document that 58 posts of Helper category working on the post of Helper-I and Helper-II were declared surplus and they were redeployed as Gangman. But on it the employees union express their dissent or disagreement and it has been stated by them that some of the employees are above 55 years of age, certain employees were deployed as Gangman and without medical examination hence matter must be reviewed. And after medical examination the employees be deployed. Learned counsel for the applicant argued that in view of this decision of Railway union



leaders certain employees who were not medically fit were retained on the post Helper-I and Helper-II.

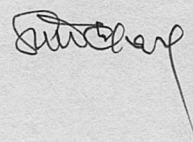
8. Rejoinder Reply was filed by the applicant and it was alleged and perusal of the order dated 07<sup>th</sup> March, 2002 shows that S/Sri Munshi Lal, Popi Ram, Dhanuweswari, Bhem Sen, Helper Khalashi-II are junior to the applicant. That they were declared surplus and were redeployed on the post of Trackman, but by a subsequent order dated 03/08 December, 2004 these persons were redeployed on the same post of Trakman. But by another order dated 19<sup>th</sup> September, 2005 these persons have been redeployed as Helper Khalashi Grade-II vide order dated 09<sup>th</sup> September, 2005 Annexure-CA-3 and it is self contradictory orders. The perusal of Annexure-CA-3 shows that whatever has been stated in the Rejoinder Reply is correct as certain employees have been redeployed as Helper-I and Helper-II. In view of the Railway Policy dated 25<sup>th</sup> April, 1989 it is evident that in case employees declared surplus then the junior most of the employees should be rendered surplus first. Learned counsel for the respondents himself admitted that this policy of the Railway Board has not been followed in letter and spirit. There are numerous exceptions to this Railway Board's Policy. Due to Electrification and dieselization, employees were declared surplus and the post on which the applicant was working the employees of that post were also



declared surplus. And that principle as has been laid down in the policy of the Railway Board must be followed and according to this policy the junior most of the employees should be rendered surplus. Seniority list has been filed by the applicant and the same has been accepted by the Respondents. According to this seniority list the name of the applicant is at serial No. 47. And this fact has also been admitted by the respondents in the Counter Reply and against these sanctioned posts of 48, 82 employees were working on the post of Helper-I. In case of surplus employees they are to be redeployed as Trackman but in the matter of redeployment the policy of the Railway must be followed and junior most employees must go first. Beside ladies employees there are numerous employees who have been retained as Helper-I and Helper-II. Some of the employees are junior to the applicant. There is no justification that as to how and why respondents retained the junior employees on the post of Helper-I and Helper-II whereas, applicant was redeployed on the post of Trackman. If there are junior persons retained on the post of Helper-I and Helper-II then the applicant has got the right to be redeployed on the post of Helper-I and Helper-II. It has been argued by the learned counsel for the respondents that the matter was discussed with the employees union and the union objected that ladies employees and certain other employees who were not medically fit were retained on the post Helper-I and Helper-II. And



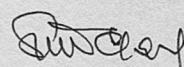
they may not be redeployed as Trackman/Gangman. Learned counsel or the respondents alleged that a decision was taken which is Annexure-CA-IV. We have perused that whether this decision taken in consultation with the employees union is in conformity with the Railway Board's policy. It has been provided in the Railway Board's policy that if there are certain medically unfit employees then they are to be retained. However, it has certainly been provided that where staff give their willingness to go on bottom seniority in recruitment grades to other departments, such volunteers should be given preference depending upon the availability of vacancies in the other cadre and their suitability, including medical fitness. There is a condition that in case employee opted to go to some other department then he should be placed at bottom seniority but he should be medically fit, but this principle has not been followed in the case who had not been given their willingness to go on the bottom seniority to other department. Hence in the circular on this point nothing has been alleged regarding absorption of lady employees. It may be correct that the respondents are justified in retaining the ladies employees as they cannot be redeployed on the post of Trackman. But it must be in conformity with the Railway Board's policy also. Beside the ladies employees there are numerous other employees who are junior to the applicant and are retained on the

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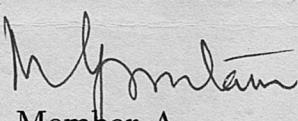
post of Helper-I and Helper-II and absolutely it is violative and discriminatory.

9. For the reasons mentioned above we are of the opinion that as per Railway Board's policy dated 21<sup>st</sup> April 1989 the junior most employees should be rendered surplus and it is only the junior most employees redeployed as Trackman. Whereas, there are juniors to the applicant who have been retained on the post of Helper-I and Helper-II. Under these circumstances applicant has also got the right to be retained himself on the post of Helper-I and Helper-II. If a single employee junior to the applicant is retained on the post of Helper-I and Helper-II then the applicant has got the preferential right to be retained on the post, there must not be any discrimination of the policy if an employee is medically unfit and cannot work on the post of Trakman/Gangman then such case must be discussed and speaking order be passed in this connection. As there has been discrimination hence the applicant is entitled for the relief claimed and the O.A. deserves to be allowed.

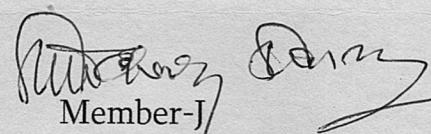
10. O.A. is allowed.order dated 10<sup>th</sup> April, 2006 is quashed and set aside,respondents are directed to reconsider the case of the applicant for re-deployment on the post of Trackman perfectly in accordance with the policy of the Railway Board. And in case juniors to the



applicant are working on the post of Helper-I and Helper-II then the applicant must be redeployed on the post of Helper-I and Helper-II. Respondents shall pass speaking and reasoned order in the matter within a period of three months from the date when the copy of this order is produce before them.

  
Member-A

/Dev/

  
Member-J