

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD**

Original Application No. 749 of 2007.

Allahabad, this the 4 day of January, 2008.

Hon'ble Mr. A.K. Gaur, Member (J)
Hon'ble Mr. Shailendra Pandey, Member (A)

Yogesh Chandra Upadhyaya
 Aged about 54 years,
 Son of late Anshuman Upadhyaya,
 Resident of Quarter No. 53-D,
 Chaupla Railway Colony,
 Opposite Manoranjan Sansthan,
 Bareilly City.

...Applicant.

(By Advocate : Shri S. Dwivedi)

Versus

1. Union of India through the General Manager, North Eastern Railway, Gorakhpur.
2. The General Manager (P), North Eastern Railway, Gorakhpur.
3. The Divisional Railway Manager (P), North Eastern Railway, Izzatnagar.
4. The Sr. Divisional Mechanical Engineer (Diesel), North Eastern Railway, Izzatnagar.
5. Sri Ishwari Dutt Son of Sri Durga Dutt, Welder Grade-II posted under the Sr. Section Engineer, North Eastern Railway, Diesel Shed, Izzatnagar.

...Respondents.

(By Advocate : Shri P.N. Rai
 Shri T.S. Pandey

ORDER

By A.K. Gaur, Member (A) :

Through this OA, the applicant has prayed for following main reliefs :

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(a) That the order dated 28/29.6.2007 (Annexure-A-1) passed by Divisional Railway Manager (P), North Eastern Railway, Izzatnagar be declared illegal and same be quashed.

(b) That the respondent No.1 to 4 restrained from reverting the applicant on the basis of order dated 28/29.6.2007 (Annexure-A-1) from the post of Welder Grade-I (Pay scale 4500-7000) to the post of Welder Grade II (Pay scale 4000-6000).

(c) That the Railway Board Circular dated 25.5.2004 be declared illegal and the same may be quashed (Annexure No.A-11 (a) to the Compilation No.II).

2. Brief facts of the case are that on 15.9.75, the applicant was appointed on the post of Fitter Khalasi in Loco Shed North Eastern Railway and thereafter appointed on the post of Steam Man Cum Fitter against in the 25% quota after passing the requisite trade test under the respondents in the year 1985. The applicant was promoted to the post of Welder Grade III in the year 1986 and in the year 1990 he was allowed to appear in the trade test conducted for promotion to the post of Welder Grade II. Although the applicant was declared surplus vide order dated 21.10.93 of the competent authority but he was adjusted on the post of Coil Winder Grade II in the pay scale of Rs.1200-1800/-. According to the applicant he was given full seniority on the post of Coil Winder as per provisions contained in the Railway Board Circular Dated 21.4.89 (Annexure-A-5). The applicant was adjusted to the post of Coil Winder but the Railway administration never took work of the post of Coil Winder from the applicant and he was always given the work of Welder Grade II. The grievance of the applicant is that if

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the applicant would have been absorbed/adjusted on the post of Welder Grade II in place of Coil Winder Grade II he would have been promoted to the higher post and in the higher pay scale. Shri Ram Awtar being junior to the applicant was also declared surplus from the post of Fitter Grade II and was adjusted/absorbed in the Diesel Shed after the applicant's absorption as Coil Winder Grade II. In 2003, Shri Ram Awtar was further promoted to the post of Electrical Fitter Grade I (4500-7000) and he has been given full seniority. Apart from Shri Ram Awtar, Shri Nand Lal Welder grade II Shri Dilip Kumar Rai and Shri Alauddin Welder were adjusted/absorbed in the Diesel Shed and were given full seniority in accordance with the Railway Board Circular dated 21.4.89. The aforesaid persons were junior to the applicant. Aggrieved by the inaction of the respondents the applicant submitted representations to the competent authority raising his grievances in respect to no promotional avenues from the post of Coil Winder Grade II in Diesel Shed. In the year 1995 certain post of Welder Grade II was created for Diesel Shed Izzatnagar. On 18.4.1995, the applicant submitted a representation to Senior DME that he has been performing duty of Welder since 29.11.93 in Diesel Shed Izzatnagar and he may be posted on the post of Welder instead of Coil Winder. A series of representations were given by the applicant in this respect to the Competent authority. In view of the Railway Board circular dated 21.4.89, the applicant was placed in the seniority of Welder Grade II dated 21.4.2005 and was given full seniority with benefits of his past services. The applicant also appeared in the suitability test for promotion to the post of Welder Grade-I vide order dated 13/15.5.2006, the applicant was promoted to the post of Welder Grade I in the

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pay scale of Rs.4500-7000 and since then he was continuing on the said post and getting aforesaid pay scale. On 19.4.2007, the applicant received a show cause notice dated 16.4.2007 proposing to change his seniority in view of the Railway Board Circular dated 17.6.2004 and 25.5.2004 and he was also proposed to be given seniority in the seniority list of Welder grade II w.e.f 28.3.2005. The copy of show cause notice dated 16.4.2005 has been filed as Annexure-A-9). After receiving the copy of the Railway Board circular dated 25.5.2004 alongwith letter dated 17.6.2004 the applicant requested to know certain more informations and documents from DRM N.E. Railway, Izzatnagar for the purpose of giving reply to show cause notice. Although the applicant did not get the required information and documents but he submitted reply to show cause notice indicating correct position of fact and law and submitted the same on 7.6.2007 (Annexure -A-13).

3. The respondents did not consider the pleas mentioned in the reply dated 7.6.2007 and vide order dated 28/29.6.2007 the seniority position of the applicant was changed and respondent No.5 who is junior to the applicant has been placed above the applicant in the seniority list. It is also alleged by the applicant that the applicant's date of absorption in Diesel Shed as surplus staff of Loco shed is 21.10.1993. The order dated 28.3.2005 passed by the DRM changing the applicant's post from Coil Winder Grade II to the post of Welder gr. II in the same pay scale cannot be said to be an order of applicant's absorption as a surplus staff. The impugned order passed by the respondents, according to the applicant is arbitrary, illegal and unjustified in the law.

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4. The official respondents by filing counter reply denied the claim of the applicant and submitted that on being declared surplus from the post of Coil Winder, he was absorbed on the post of Welder Grade II erroneously, the seniority of the applicant was wrongly fixed above the respondent No.5 whereas the name of the respondent No.5 should have been above the applicant. Due to this error in the seniority list, while processing for promotion to the post of Welder-I, the applicant was erroneously promoted as Welder-I instead of respondent No.5. On receipt of representation from respondent No.5, the case was examined and it was found that instruction given by the Railway Board dated 25.5.2004 that the seniority of surplus staff on the absorbed post will be taken from the date of joining to the post but it was not followed while preparing the seniority list on 1.4.2005. Hence, by giving show cause notice to the applicant and taking into the consideration the reply submitted by the applicant the seniority list as on 1.4.2005 was revised. Respondents have also stated in the reply that while absorption of the applicant as Coil Winder the applicant appeared before the committee and has accepted/opted for the post of Coil Winder in writing on 15.9.93 before the committee. Accordingly, the committee ordered for absorption of the applicant as Coil Winder. As the post of Coil Winder II was surrendered vide order dated 7.3.2005 of the DRM N.E. Railway Izzatnagar, the applicant was rendered surplus. He was subsequently absorbed vide order dated 28.3.2005. The allegation of the applicant that in the order dated 28.3.2005 the applicant's name was wrongly mentioned as surplus is not correct and misleading. It is also submitted on behalf of the respondents that Shri Ishwari Dutt was promoted as Welder II in Diesel Shed on 1.11.2003,

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whereas the applicant who was on different seniority, on being declared surplus as Coil Winder was absorbed on the post of welder II on 28.3.2005. Thus, it is apparent that the applicant joined in the seniority unit of Coil Welder II, in Diesel shed after Shri Ishwari Dutt and therefore as per Railway Board order dated 25.5.2004 the applicant is junior to the Ishwari Dutt in the absorbed seniority list.

5. Shri Triveni Shanker Pandey, learned counsel for respondent No.5 also filed counter reply and submitted that the circulars dated 21.4.89 of the Railway Board contemplates the provisions for providing full seniority to the person having been declared surplus, and who were going to be redeployed in the other departments/cadre, but the said Railway Board circular is not in consonance with the constitutional provision and that is why this issue was taken by Hon'ble Supreme Court in the case of Rama Kant Chaturvedi case, the Hon'ble Apex Court categorically turned down the provisions of Railway Board circular, and held specifically that all those persons after being declared surplus and on being redeployed in other department will not retain their seniority over and above the seniority of the persons working in the department.

6. Learned counsel for the applicant has filed rejoinder reply and reiterated the same fact as indicated in the OA. It has been stated in the rejoinder that from the date of joining in the Diesel shed the applicant was performing the duties of Welder-II and never performed the duty of Coil Winder as there was no work of the post of Coil Winder in Diesel Shed Izzatnagar.

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7. We have heard Shri S. Dwivedi, learned counsel for the applicant and Shri P.N. Rai Advocate for official respondents and Shri T.S. Pandey learned counsel for private respondent No.5. We have carefully perused the Railway Board Circular dated 25.5.2004. It has been argued by the learned counsel for the applicant Shri S. Dwivedi that the Railway Board circular dated 17.6.2004 and 25.5.2004 are illegal and not sustainable in the law because it denies the benefits of the seniority already earned by the employee. No valid reason has been assigned for issuing this Railway Board circular. It has also been argued on behalf of the applicant that juniors to the applicant have already been promoted in Grade-I and are getting higher pay. Under the circumstances, of the case the action of the respondents in changing the seniority position of the applicant and his reversion to the post of Welder II is wholly illegal, arbitrary and without jurisdiction. On the other hand Shri T.S. Pandey learned counsel for the private Respondents and Shri P.N. Rai learned counsel for the railways have vehemently argued that ~~in~~ OA No.165/98 Shri Surendra Prakesh Vs. UOI & ors decided on 24.12.99 by a Bench of this Tribunal sitting at Jodhpur, has allowed the application filed by the Railway employee against the procedure of allowing full seniority to surplus staff on their absorption to another cadre. The Jodhpur Bench of the Tribunal has relied upon the judgment dated 29.7.98 of Hon'ble Apex Court in Civil Appeal No.2530 of 81 and 1730 of 87 in the case of South Eastern Railway and ors Vs. Ram Narain Singh & ors and also the judgment dated 18.11.1980 rendered in the case of Rama Kant Chaturvedi Vs, Divisional Supdt. N. Railway Moradabad & ors., reported in 1980 (Supplement) SCC 621. It has clearly been held that the surplus staff absorbed in

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other cadres/department will not count the service rendered by them in the parent cadre/department for the purpose of seniority in promotion.

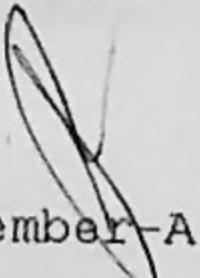
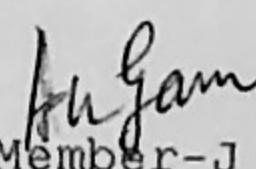
8. Learned counsel for the respondents has also submitted that in view of the aforesaid decisions of Hon. Supreme Court it has been decided that the service rendered by the surplus staff prior to redeployment will not count for seniority and promotion in the absorbing units.

9. From the aforesaid discussion we are fully convinced that there is no illegality in the modified circular of the Railway Board dated 25.5.2004.

10. Shri T.S. Pandey learned counsel for the private respondents has also placed reliance in the case of V.K. Dubey and others Vs. Union of India and others reported in 1997 SCC (L&S) 1123 and submitted that the previous seniority earned by persons shall not be counted in the new department after having been rendered surplus. We have carefully perused the decision of Hon' SC cited on behalf of the respondent No.5 and we are firmly of the view that the seniority list has rightly been revised in accordance with the Railway Board's order dated 25.5.2004. The Railway Board order and circulars dated 25.5.2004 was issued in strict compliance of the order and direction of the Hon'ble Apex Court. We have also seen from the records that while absorption of the applicant as Coil Winder he appeared before the committee and accepted the post of Coil Winder in writing on 15.9.93 before the committee. We have noticed that in the seniority list as on 1.4.2005 the name of the applicant was wrongly assigned due to non-adherence of the railway

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board order dated 25.5.2004. It is also seen from the record that seniority list has been altered and modified only after giving show cause notice to the applicant. We have also noticed from the record that Shri Ishwari Dutta was promoted as Welder II in Diesel Shed on 1.11.2003, whereas the applicant who was on different seniority unit on being declared surplus from the post of Coil Winder was absorbed as Welder II on 28.3.2005. Thus, it is manifestly clear that the applicant joined in the seniority unit of Welder II in Diesel shed after Shri Dutt and therefore as per Railway Board's order dated 25.5.2004 the applicant is junior to the respondent No.5 in the absorbed seniority unit. It is also noticed that the applicant has opted for the post of Coil Winder on 15.9.1993 in writing before the Committee, without any demur or protest and as such he is estopped from taking a different stand at this stage. His claim is barred by the principle of estoppel and acquiescence. In view of our aforesaid observations, the service rendered by the surplus staff prior to redeployment will not count for seniority and promotion in the absorbing units. The applicant has utterly failed to make out ~~any~~ case warranting our interference in the impugned order. The OA is accordingly dismissed. No order as to costs.


Member-A
Member-J

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