

(21)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

.....

Date of order : 7.3.2000

1. ORIGINAL APPLICATION NO. 291/96

<u>SNO.</u>	<u>Name</u>	<u>F/Name</u>	<u>Age</u>	<u>Present Post</u>
1.	Sh.Udmi Ram	Sh.Nandu Ram	56	Carriage Fitter HSI
2.	Sh.Dana Ram	Sh.Nandu Ram	53	Carriage Fitter HSI
3.	Sh.Om Prakash	Sh.Ruldu Ram	51	Carriage Fitter HSI
4.	Sh.Rajinder Kumar	Sh.Fateh Chand	45	Elect.T.L.Fitter HS-I
5.	Sh.Panch	Sh.Kalu	52	Carriage Fitter HS-I
6.	Sh.Gokul	Sh.Jawali Ram	53	Carriage Fitter HSI
7.	Sh.Kashmir Singh	Sh.Bajir Singh	53	Carriage Fitter HSI
8.	Sh.Lala Ram	Sh.Her Ram	50	Carriage Fitter HSI
9.	Sh.Shiv Raj	Sh.Basti Ram	50	Carriage Fitter HSI
10.	Sh.Hulash Chand	Sh.Paima Ram	47	Carriage Fitter HSI
11.	Sh.Jogender Pal	Sh.Nathu Ram	49	Carriage Fitter HSI
12.	Sh.Mohd.Rafeek	Sh.Ramzan Baksh	51	Carriage Fitter HSI
13.	Sh.Pyare Lal	Sh.Moti Lal	50	Carriage Fitter HSI
14.	Sh.Ramesh Chand	Sh.Hardwari Lal	49	Carriage Fitter HSI
15.	Sh.Babu Lal	Sh.Veer Singh	42	Carriage Fitter HSI
16.	Sh.Daya Chand	Sh.Bhondu Lal	52	Carriage Fitter HSI
17.	Sh.Jagdishi Prasad	Sh.Banarsai Dass	49	Carriage Fitter HSI
18.	Sh.Chotu	Sh.Nopa	44	T.L.Fitter
19.	Sh.Tarkashwar Pandey	Sh.Sudarshan Pandey	45	T.L.Helper Khallasi
20.	Sh.Azgar	Sh.Fatu Khan	50	T.L.Helper Khallasi
21.	Sh.Mohd.Razak	Sh.Dil Mohd.	45	T.L.Helper Khallasi
22.	Sh.Laxmi Narain	Sh.Mool Chand	42	T.L.Helper Khallasi
23.	Sh.Prem Chand	Sh.Mata Deen	42	T.L.Helper Khallasi
24.	Sh.Falladud Din	Sh.Barruddin	42	T.L.Helper Khallasi
25.	Sh.Om Prakash	Sh.Hari Ram	41	T.L.Helper Khallasi
26.	Sh.Manohar Lal	Sh.Ram Chader	49	Carriage Fitter xxxx Helper Khallasi
27.	Sh.Ramesh Chand	Sh.Prithvi Raj	36	Carriage Safaiwala
28.	Sh.Abdul Hameed	Sh.Abdul Rahman	37	Carriage Safaiwala
29.	Sh.Chandan Singh	Sh.Gokul	37	Carriage Safaiwala
30.	Sh.Mahendra Pal	Sh.Deshraj	38	Carriage Safaiwala
31.	Sh.Ramesh Chander	Sh.Ram Chander	37	Carriage Fitter
32.	Sh.Mohan Lal	Sh.Rupa Ram	37	Carriage Fitter

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33. Sh.Govind Ram	Sh.Bhani Prakash	38	Carriage Fitter
34. Sh.Kailash	Sh.Nat Ram	36	Carriage Fitter
35. Sh.Heera Lal	Sh.Gareb Dass	35	Carriage Fitter
36. Sh.Mool Chand	Sh.Gulab Singh	37	Carriage Fitter
37. Sh.Om Prakash	Sh.Nauriya	38	Carriage Fitter
38. Sh.Gulam Qadir	Sh.Noor Mohd.	36	V.E.D.Khallasi
39. Sh.Kurda Ram	Sh.Mana Ram	38	Carriage Fitter HK
40. Sh.Brig Lal	Sh.Buddha Ram	38	Carriage Fitter HK
41. Sh.Gopi Ram	Sh.Nathu Ram	28	Safaiwala
42. Sh.Shiv Charan	Sh.Har Lal	43	Carriage Fitter HK

Office Add.:Applicants No.4,18,19to25 C/o Electric Foreman (Power&TL)Ganganagar,N.Rly. and Applicants lto3,5to17,26to42 C/o Carriage Foreman,Carriage and Wagon Deept. N/Rly.Ganganagar.

2.ORIGINAL APPLICATION NO. 292/96

43. PritemSingh	Sh.Nashib Singh	57	B/M Cd-I
44. Vijay Chendra	Sh.Babu Lal	57	Fitter Gd.III
45. Ram Kishan	Sh.Daya Ram	47	Fitter Gd.III
46. Mangal Chand	Sh.Ramji Lal	45	Fitter Gd.III
47. Sajjan Singh	Sh.Vajeer Singh	46	Fitter Gd.III
48. Ram Chandra	Sh.Ram Kumar	47	Fitter Gd.III
49. Om Prakesh	Sh.Matu Ram	40	Fitter Gd.III
50. Lal Chand	Sh.Sampat Ram	42	Helper Khal.
51. Pawan Kumar	Sh.Barj Lal	42	Helper Khal.
52. Ram Niwas	Sh.Chotu Ram	46	Helper Khal.
53. Shivji Morya	Sh.Vishvanath Morya	42	Helper Khal.
54. Mani Ram	Sh.Durga Ram	40	Khallasi
55. Ram Kumar	Sh.Bhulai	32	KhallasiRs

Add:C/o Shri Sajjan Singh,Ward No.35,H.No.9,Bhatha Basti,Hanuman Garh JN.through Coaching Depot.Officer,Carriage and Wagon Department,Hanumangarh JN N/Rly.

.....APPLICANTS

versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Personal Officer, Northern Railway,Bikaner Division, Bikaner.
3. Deen Dayal Poonia S/o Sh.Chandan Mal by caste Jat aged about 37 years, HS Gd-II

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4. Badri Prasad S/o Shri Nanda By caste Balai, aged about 46 years.
HS Gd II
5. Baktwar Singh S/o Shri Man Singh, HS Gd.III.

.....RESPONDENTS IN THE O.As

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Mr.J.K.Kaushik, Counsel for the applicants.

Mr.Ravi Bhansali, Counsel for the Official Respondents.

Mr.S.N.Trivedi, Counsel for the Private Respondents.

CORAM :

HON'BLE MR.A.K.MISRA, JUDICIAL MEMBER

HON'BLE MR.GOPAL SINGH, ADMINISTRATIVE MEMBER

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PER HON'BLE MR.A.K.MISRA, JUDICIAL MEMBER :

In both these O.As the applicants have challenged the letter of the Divisional Railway Manager dated 29.2.96 (Annex.A/1) by which extract of the joint meeting held with both the Unions were communicated by the Divisional Railway Manager, Bikaner. In both these O.As the controversy and the prayer being common, both the cases are disposed of by one single order.

2. In these O.As, the applicants have prayed that the impugned order dated 29.2.96 (Annex.A/1) be declared illegal and any order passed in consequence thereof, be also quashed. The applicants have further prayed that the respondents be directed to assign due seniority to the applicants from the entry into the grade and maintain single merged seniority in respect of all the employees of a particular cadre as per rules with all consequential benefits.

3. In both these cases the applicants had also

prayed for restraining the respondents from conducting the trade test for further promotion in artisan category till finalisation of this case. After hearing the parties, notices were directed to be issued to the respondents and in the mean time, respondents were directed that "if selection test indicated in Annex.A/4 dated 20.8.96 are held by the respondents the result of the same be not declared and the same be kept in sealed cover till the next date". Interim relief so granted is continuing in both these cases till today.

4. We have heard the learned counsel for the parties and have gone through the case file.

5. It is alleged by the respondents that due to closure of Loco Sheds in Bikaner Division in 1994-95 all the applicants and number of other employees of the Loco department became surplus. Options were called from the applicants and other loco staff members for absorption in other department. All the applicants gave their option for absorption against the vacancies in various departments situated at Hanumangarh. It is further alleged by the applicants that the Railway Board has issued specific instructions regarding absorption/utilisation of surplus staff vide Circular No. 106 of 1989. But the respondents did not adhere to the instructions issued by the Railway Board in absorbing surplus staff members. The respondents adopted pick choose policy and extended discriminatory treatment to the staff members who had become surplus due to closure of the Loco Sheds. It is also alleged by the applicants that the applicants were not absorbed as per their option.

but were transferred as per the vacancies available. Due to this action of the respondents, the applicants were assigned bottom seniority at the new place of their postings. In assigning the seniority to the applicants, Unions also played important part and an agreement was arrived at with the trade unions for maintaining separate seniority in respect of existing staff and in respect of deployed staff. The decision so arrived at was communicated vide Annex.A/1 which is under challenge.

6. The applicants have challenged the action of the respondents on the ground that due to absorption of surplus staff of loco sheds including the present applicants, the applicants and similarly situated staff members should have been accorded full seniority of the grade they were working in and assignment of separate seniority is against the rules and violative of the provisions of the Constitution. If the absorbed staff members are posted on supernumerary posts then only question of maintenance of separate seniority arises. In the absence of any such circumstances, maintenance of separate seniority list by the respondents is, therefore, illegal. The whole exercise has been undertaken in the interest of administration and therefore the applicants and such similarly placed other staff members cannot be made to suffer for no fault of theirs. Hence, the desired relief is required to be granted.

7. In both these O.As the official respondents have filed their reply in which it is stated that the surplus staff has been adjusted on various posts of

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equivalent grade which were lying vacant and few of the persons have been adjusted against the supernumerary posts. It is stated by the respondents that since great number of staff members became surplus due to closure of loco sheds in the Division, therefore, maintenance of separate seniority list of such deployed staff was held desirable and consequent orders were issued. The applicants are not entitled to integrated seniority as per the length of their earlier service. The action of the respondents is fully covered by the rules and circulars in force and the applicants are not entitled for any relief whatsoever.

8. Private respondents have also filed their reply in which they have supported the action of the respondents and have pleaded that the applicants are not entitled to merge seniority since the decision in this respect was taken after consultation of the various Unions. The applicants and others are members of the Union. They are estopped from questioning the actions of the official respondents which were taken as per the discussion with the Unions.

9. We have considered the rival arguments. In our opinion, the surplus staff members who were re-deployed are not entitled to claim seniority as per their earlier working in the same grade. In fact, whenever such staff members become surplus they are rendered job less and are marshalled to the surplus pool to await their postings. In the instant case, the Railways Administration had ordered their adjustment to various

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sections and branches consequent to their becoming surplus. In absence of such ^{action} ~~case~~ they would have been job less. Therefore, they can only be treated as new entrants for purposes of seniority in the new department. In (1992) 19 ATC 443 (Full Bench) - P.K.Das Vs. U.O.I. and Another, it was held as under :-

"Seniority-Surplus staff-Service rendered prior to redeployment-Does not count for seniority as otherwise it would affect interests of existing employees in new organisation."

In the same case, it was further held that "seniority of a person has hardly any relevance for determining eligibility for promotion in new department. The expression 'regular service in the grade' is significant. A redeployed employee joins the new department as a fresh entrant and his regular service has to be reckoned from the date of his redeployment."

10. The same controversy was dealt at length by Hon'ble the Supreme Court in Civil Appeals No. 2530/81 and 1730/86, South Eastern Railway through Chief Personnel Officer, Garden Reach, Calcutta & Ors. and Shripat Yadav & Ors. Vs. Ramanarain Singh & Others and Union of India and Ors., decided on 29.7.88. The relevant portions of judgment are extracted below :-

"The problem posed and the point raised in these appeals is squarely covered against the appellants by a decision of this Court rendered in Ramakant Chaturvedi & Ors. vs. Divisional Superintendent, Northern Railway, Moradabad and Ors. - 1980 (Supp.) SCC 621. In Ramakant case the question of seniority had arisen in the context of the employees working as Engine Drivers on the steam side who were posted on the Diesel side as Diesel Engine Drivers after completing the requisite training and qualifying at the requisite test. The problem

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arose on account of dieselization by switching over from steam engines to diesel engines. Consequently the engine drivers on the steam side were rendered surplus. The Railway administration instead of retrenching them gave them the option to take the training and to qualify themselves, for being posted on the diesel side. This operation was loosely referred to as 'transfer' to the diesel side though in reality it was an operation for 'absorbing' the steam side drivers on the diesel side upon their being qualified in this behalf after undergoing training. This Court has taken the view that those who were appointed or absorbed earlier in point of time on the Diesel side would be senior to those who were appointed or absorbed on the Diesel side at a later date; notwithstanding the fact that the latter were senior in the parent cadre on the steam side. This Court has formed the opinion that once they ceased to belong to the parent cadre on the steam side the seniority in the said cadre becomes irrelevant. And that seniority on the diesel side must depend on the length of service on the diesel side. xxxxxxxx

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In the present appeals the identical problem arises in the context of the employees who originally belong to the 'diesel side' but were subsequently absorbed and posted on the 'electrical side' in view of the electrifications of the tracks. Under the circumstances the view taken by the Madhya Pradesh High Court in conformity with the view taken by this Court in Ramakant's case (supra) cannot be faulted. It may also be mentioned that arranging seniority on the basis canvassed by the applicants will result in anomalous, and unjust consequences. xxxxxxxx

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Reliance was, however, placed on a decision on the Calcutta High Court in Divisional Personnel Officer, South Eastern Railway & Ors. vs. M.P.Ranga Reddy & Ors - 1978 (2) SLR 346. The Calcutta High Court has taken the view that the appointment on the diesel side of those who originally belongs to the steam side would fall under Rule 311 of Railway Establishment Manual Rules, and that under the circumstances, the seniority in the parent cadre on the steam side would prevail irrespective of the date of posting on the diesel cadre. We are unable to concur with the view taken by the Calcutta High Court. Rules 310, 311, 312 which were taken into account by the High Court do not apply to a situation like the present where on account of the modernization switch over from steam

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side to diesel side and subsequently from the diesel side to the electric side was necessitated. The Rules which have been relied upon by the High Court do not contemplate a situation arising in the context of such a switch over. The Rules only contemplate ordinary transfers and not situations arising from absorption of personnel from other cadres on compassionate grounds. So also the High Court was not right in taking the view that it was a 'transfer' in the interest of the administration. In fact it was not 'transfer' in the real sense at all. It was absorption of employees on the diesel side or the electric side upon their acquiring the qualification requisite for being absorbed. So also it was made on compassionate grounds and not in the interest of administration. The point is squarely covered against the applicants by the decision in Ramakant's case. The appeals, therefore, fail and are dismissed. Interim orders will stand vacated. There will be no order as to costs."

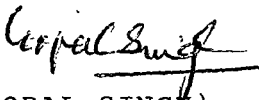
11. The Allahabad Bench of the Central Administrative Tribunal has also followed the law laid down by Hon'ble the Supreme Court in regard to fixation of seniority of surplus staff redeployed in another Wing/Department in O.A. No. 1024/95 - Raj Kishore Singh vs. Union of India and Others, decided on 18.12.96.

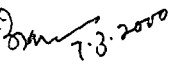
12. Following the principle laid down by Hon'ble the Supreme Court, we had decided O.A. No. 165/98 on 24.12.99 holding that deployed staff members are entitled for seniority from the date of their deployment on the new post. It was also held by us that they are not entitled to seniority of their parent cadre from when they were rendered surplus.

13. In view of the above discussions and the rule propounded by Hon'ble the Supreme Court and followed by us in earlier O.A., we do not have any reason to differ.

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from the earlier decisions. In our opinion, the O.As are devoid of merit. The applicants are not entitled to claim seniority from the entry into the grade and to claim single merged seniority. The O.As. deserve to be dismissed. The O.As are, therefore, dismissed. The parties are left to bear their own costs.


(GOPAL SINGH)
Adm.Member


(A.K.MISRA)
Judl.Member

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