

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH: JODHPUR

Date of order : 24.12.1999

O.A. No. 165/98

1. Shri Surendra Prakash son of Shri Somnath, aged about 37 years, resident of 17/617, Chopasani Housing Board, Jodhpur, working as Air Condition Coaching Fitter Grade-III, Northern Railway, Jodhpur.
2. Shri Hari Ram son of Shri Bhajni Ram aged about 39 years, resident of plot No. 9, Dadmatinagar, Bhadwasia, Jodhpur, working as Air Condition Coaching Fitter Grade-III, Northern Railway, Jodhpur.

... Applicants.

v e r s u s



1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Electrical Engineer, Northern Railway, Jodhpur.
3. Assistant Electrical Engineer, Northern Railway, Jodhpur.
4. Assistant Personnel Officer, Northern Railway, Jodhpur.
5. Shri Rajendra Kumar son of Shri Pratap Singh, Air Condition Coaching Fitter, Grade-III, Northern Railway, Jodhpur.
6. Shri Abdul Hasib son of Shri Abdul Afiz, Air Condition Coaching Fitter, Grade-III, Northern Railway, Jodhpur.
7. Shri Babu Lal son of Shri Shivji, working as Air Condition Coaching Fitter, Grade-III, Northern Railway, Jodhpur.

... Respondents.

Mr. Y.K. Sharma, Counsel for the applicants.

Mr. S.S. Vyas, Counsel for the respondents Nos. 1 to 4.

None is present for the respondents Nos. 5 to 7.

CORAM:

Hon'ble Mr. A.K. Misra, Judicial Member.

Hon'ble Mr. Gopal Singh, Administrative Member.

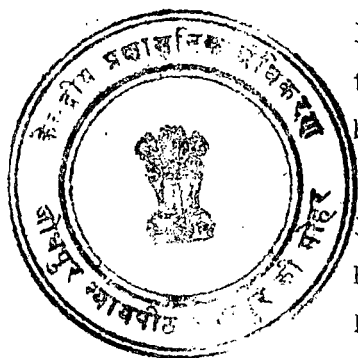
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O R D E R

(Per Hon'ble Mr. Gopal Singh)

Applicants, Surendra Prakash and Hari Ram, have filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for setting aside the impugned order dated 24.6.98 at Annexure A/1, qua the respondents Nos. 5 to 7, and for a direction to the respondents restraining them to redeploy or absorb the surplus maintenance staff/electrical cadre and if the redeployment or absorption is inescapable then the seniority of the staff who are so redeployed should be reckoned from the date of their joining the post at the lower rung of the cadre at which the direct recruitment is made.

2. By way of our interim order dated 18.7.98, the respondents were directed that if the official respondents proceed to undertake the exercise of trade test on 13.7.98 as per their letter dated 24.6.98 (Annexure A/1), then such trade test and the consequential selection of the successful candidates shall be subject to the result of the O.A.



3. Both the applicants are working as Air Condition Coaching Fitter Grade-III in Jodhpur Division of the Northern Railway. Due to closure of Steam Loco-sheds in Jodhpur Division of Northern Railway, a large number of maintenance staff have been rendered surplus. The surplus staff have been re-deployed in various departments, like Carriage and Wagon, Signal and Telecommunication and Diesel Shed Maintenance etc. A number of such surplus staff have also been redeployed in Electrical cadre. The respondents Nos. 5 to 7 have been redeployed as Air Condition Coaching Fitter Grade-III and they are being deputed for trade test for appointment to the post of Air Condition Coaching Grade-II. When the applicants came to know of it, they represented to the authorities claiming seniority over the redeployed staff, but to no avail. Feeling aggrieved, the applicants have approached this Tribunal.

4. Notices were issued to the respondents and they have filed their reply. It has been stated by the official respondents that the respondents Nos. 5 to 7 are redeployed on administrative ground against direct recruitment quota and

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accordingly, they had been given seniority from the date of their promotion in Grade-III as per specific provisions contained in para 311 of Indian Railway Establishment Manual, Volume 1 and as such respondents Nos. 5 to 7 have become senior to the applicants and therefore, there is no illegality in trade testing respondents Nos. 5 to 7 for the post of Air Condition Coaching Fitter Grade-II.

5. We have heard the learned counsel for the parties and perused the records of the case.

6. The controversy in hand has been dealt with at length by Hon'ble the Supreme Court in Civil Appeal Nos. 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 & Ors., decided on 29.7.88. The relevant portions of judgement 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's 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 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. xxxxxxxxxx

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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 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."



7. 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 & Ors. vs. Union of India & Others, decided on 18.12.96.

8. In the light of the above discussion, we do not have any reasons to deviate from the law laid down by Hon'ble the Supreme Court in this regard.

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9. The O.A. is accordingly allowed with the following directions:-

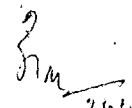
(i) The respondents Nos. 5 to 7 would be entitled for seniority in the redeployed cadre, i.e., Air Condition Coaching Fitter Grade-III from the date they were redeployed on the said post. They will not be entitled for seniority of their parent cadre from where they were rendered surplus.



(ii) In the light of our above order, applicants would remain senior to respondents Nos. 5 to 7 and they would be entitled for trade test for the post of Air Condition Coaching Fitter Grade-II as per their seniority.

10. Parties are left to bear their own costs.


(GOPAL SINGH)
Adm. Member


29/11/99
(A.K. MISRA)
Judl. Member

CVR.