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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 304/2002
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DATE OF DECISION 21.04.2004

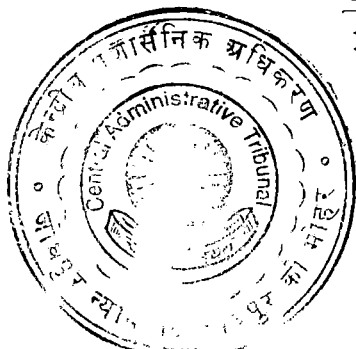
Balvinder Singh & Ors. Petitioner

Mr. K.S. Gill Advocate for the Petitioner(s)

Versus

The Union of India & Ors. Respondent

Mr. Manoj Bhandari, for Respondent No. 1 to 4 Advocate for the Respondent(s)
None present for respondent No. 5 to 8.



CORAM :

The Hon'ble Mr. J.K. Kaushik, Judicial Member

The Hon'ble Mr. M.K. Misra, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? *W*
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *yes*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *yes*

(Signature)
(M.K. Misra)
Adm. Member

(Signature)
(J.K. Kaushik)
Judl. Member

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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO. 304/2002

Date of decision: 21.04.2004

CORAM:

Hon'ble Mr. J. K. Kaushik, Judicial Member

Hon'ble Mr. M.K. MISRA, Administrative Member

1. Balvinder Singh S/o Shri Som Nath resident of Gandhi Nagar, Ward No. 37 Hanumangarh Junction.
2. Mohan Lal S/o Shri Nobat aged about 42 years, resident of New Dhillon Colony Sector 12 Hanumangarh Jn.
3. Ramji Lal S/o Sohan Lal aged about 38 years, resident of Traffic Colony ENT 12 (C) Hanumangarh Jn.
4. Chiman Lal S/o Shri Yad Ram aged about 39 years, resident of Railway Medical Colony House No. 32 B Hanumangarh Junction.

(All employed on the post of Khalasi in the office of A.E.N.-1st Hanumangarh Junction, North-West Railway.

...Applicants



Mr. K.S. Gill, counsel for the applicants

Versus

- (1) The Union of India through General Manager North-West Railway, Jaipur.
- (2) The Divisional Railway Manager, North-West Railway, Bikaner Divisional, Bikaner.
- (3) The Divisional Personnel Officer, North-West Railway, Bikaner Divisional, Bikaner.
- (4) The I.O.W. 1st (A.E.N.-1st Hanumangarh Jn.)

... Official Respondents.

(5) Vasu Dev S/o Shri Chandan Singh.

(6) smt. Guna Devi W/o Bhani Ram

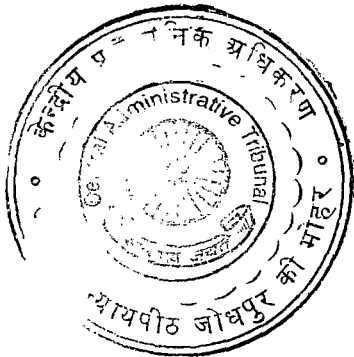
(7) Kailash S/o Sri Chhote Lal

(8) Smt. Phul Bai W/o Dwarika Prasad

(All employed as Khallasi under A.E.N.-1st Hanumangarh Jn.)

.....Performa Respondents.

Mr. Manoj Bhandari, counsel for the respondent No. 1 to 4.
None present for respondent No. 5 to 8.



ORDER

PER J.K. KAUSHIK, JUDICIAL MEMBER

Shri Balvinder Singh and three others have filed this Original Application assailing the order at Annexure A/2 and A/3 and have prayed for quashment of the same with a further direction to the official respondents not to declare them as surplus.

2. The pleadings are complete and the case was listed today for admission. Keeping in view the urgency we proposed to hear the case for final disposal. Accordingly, we have heard the arguments advanced by the learned counsel for the parties and have carefully perused the pleadings and records of this case.

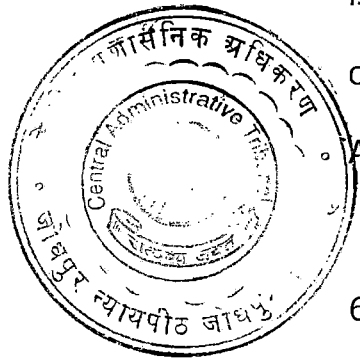
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3. The factual matrix of this case as may be succinctly put is that applicants were initially appointed on dated 24.4.84, 15.1.84, 6.1.84 and 1.1.84, respectively, and are presently employed on the post of Khallasi in the office of IOW 1st (AEN - 1st Hanumangarh Jn). They have been assigned their due seniority as per seniority list at A/1. Their names are placed at Sl. No. 61, 62, 55 and 64, respectively. The applicants are not the junior most employees on the cadre of Khallasi. But still they have been declared as surplus vide Annexure A/2 and A/3 and have been ordered to be redeployed on the post of Gangman. But their juniors respondents No. 5 to 8, finding their names in seniority list at Sl. Nos. 71, 72, 79 and 82, respectively, have not been so decaled as surplus and are being continued in their original cadre.



4. The applicants have been ordered to be redeployed on the post of gang-man without taking any option from them in particular and other khallasis in the cadre in general as per the rules in force. The grounds on which the applicants have assailed the impugned orders are intermixed with the facts of the case. The applicants also belongs to schedule case and have adjusted their children with the meagre income, they get. The action of the authorities is arbitrary and without application of mind.

5. The official respondents have contested the case and have filed a detailed counter reply to the Original Application. It is averred that 22 posts were declared as surplus. Junior most employees were to be declared as surplus. However, the female employees were not declared as surplus and were ordered to be continues in the cadre of Khallasi. They also could not be posted as gang-man due to hazard working. Shri Kailash and Smt Phul Bai are employed in construction organisation and are out of the cadre of Khallasi. The respondent No. 5 is not having the requisite medical standard of B/1 for the post of Gang man and is fit only in C/one medical category, so he could not be posted on the post of gang man. The grounds enunciated in Original Application have been generally denied.



6. A short rejoinder to the reply has also been filed controverting the averments made in the reply. Certain examples have been given indicating that women are employed on the post of Gang man.

7. A reply to rejoinder has also been filed. There is no such provision in the rules for filing reply to rejoinder. Such pleading can not be allowed to form part of the records of this case as per rule 33 of the CAT Rules of Practice 1993 and ought to have been returned to the respondents as prescribed in said rules

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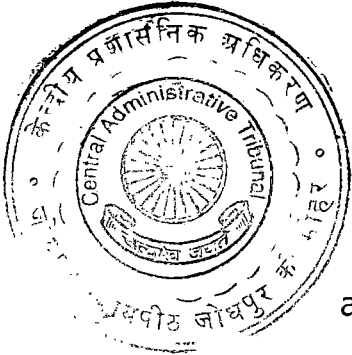
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itself. The relevant portion of the said rule is extracted as under:-

" 33. Papers not to form part of the records.- (a) Except with the leave of the Tribunal, the following shall not form part of the records of the case:-

- (i) Reply statement filed after the expiry of the time granted for the purpose.
- (ii) Rejoinder filed without the leave of the Bench/Registrar or filed after the expiry of the time granted.
- (iii) Additional pleadings filed without the leave of the Bench/Registrar or filed after the expiry of the time granted.

(b) The Above papers treated as not forming part of the record shall be notified on the Notice Board of the Registry requiring the party to take them back within four weeks from the date of the Notification, failing which the Registry shall take steps to destroy the same.



Thus the reply to rejoinder or items like additional/supplementary reply can not being treated as a part of records of the Original Application, for resolving the controversy involved herein.

8. The learned counsel for the applicant has reiterated the facts and grounds mentioned in the Original Application as noticed above. He has endeavoured to show us that the respondents 5 to 8 are junior to the applicants but instead of declaring them surplus, the applicants have been so declared. The reasons adduced by the respondents are not envisaged in any of the rules. He has next contended that respondents even did not call willingness from the employees and have declared the applicants as surplus on pick and choose basis. And given a discriminatory treatment to them.

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9. The learned counsel for the respondents vehemently opposed the contentions raised on behalf of the applicants and has drawn our attention towards the averments relating to the defence as set out in the reply. It has been submitted that no injustice has been done to the applicants. It was incumbent upon the official respondents to safeguard the interest of the women candidates. The respondent No. is not fit in the requisite medical category B/1, thus could not be absorbed as gang man. The other two employees are on deputation in the construction organisation and employed higher posts. They are not likely to return to the cadre of khallasi. There no fault can be fastened to them since they have acted fairly and without causing any injustice to the applicants. The Original Application deserves to be dismissed with costs.



10. We have given thoughtful consideration to the rival contentions raised by the learned counsel for the parties. As far as factual part of the case is concerned, it is admitted that respondents 5 to 8 are junior to the applicant. But said junior have not been declared as surplus. There is no dispute that the post of Gang Man needs B/one medical category. It is also a fact that all the applicants belongs to SC category.

11. To facilitate appreciation of pleas and counter-pleas canvassed in this application, it would be useful to reproduce the relevant provisions under the rules. The basic rules have been

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envisaged in RBE NO. 106/89. The relevant para is 5 and contents of it are as under:

"5. Normally, the junior most of the employees should be rendered surplus, irrespective of the manner in which they entered the grade. However, where staffs 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."

In chapter 'Seniority rule' at page No. 363 in Railway Establishment Manual by M L Jand 2nd Edn, following has been provided:

"4.2. Surplus staff: When staff are to be rendered surplus the order of seniority should be the criterion for deciding the employees who are to be rendered surplus, the junior employees being rendered surplus earlier than seniors irrespective of the manner in which they entered the grade i.e. the fact that the employee is a direct recruit of promotee is immaterial. The junior most must be rendered surplus."



These instructions do not however apply in case of scheduled caste and schedules Tribes. (E (NG) 67 RE 1/49 of 18.10.68)

An employee of scheduled caste or schedules Tribes, though junior may be retained provided he was appointed against an earlier post in the roster. (E (SCT) 65 RM 1/6 & 21.10.68)."

12. The bare reading of the aforesaid provision makes it evident that as far as the declaring the surplus in concerned, it is to be strictly done as per the seniority as the junior most is to be declared as surplus first. If at there is any exception, it in regard to the SC/ST candidates to which the applicants belong. Regarding the willingness clause some of the junior person can get advantage if some seniors get redeployed and such procedure has not been adopted here. In this view of the legal

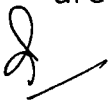
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position, there is no difficulty to reach to a conclusion that official respondents have not followed the rules in force. The submission of the learned counsel for the applicant that before declaring the applicants as surplus, the respondents' No. 5 to 8 ought to have been so declared. In other words, the applicants could not have been declared surplus so long any of their juniors i.e. respondents No. 5 to 8 were not so declared.

13. We are also equally unimpressed with the submissions of the learned counsel for the respondents that looking to the nature of job for gang man post, the women employees, and person of low medical category like respondent No. 5 could not be absorbed on the post of gang man. The argument though looks attractive and plausible but in fact it is deceptive in substance and if accepted would lead to absurdity. It is not necessary that all khallasij declared surplus would be absorbed only on the post of gang man. The person declared surplus is to be absorbed as per his suitability and his medical category against a vacant post. Here it would be suffice to mention that if there is no suitable post, available, a surplus employee could be even discharged from service, and there is no indefeasible right to an employee declared surplus as such for redeployment.


14. A feeble ground of defence has been set out on behalf of the official respondents that two persons i.e. respondents 7 & 8 are employed in separate Construction organisation is



concerned, we find that the authorities seem to be not aware of the relevant rules. Ever since 1972, the concept of single seniority is in vogue in regard to open line and construction organisation. One may be working in construction organisation, but his lien is maintained in open line. In such circumstances, the plea of the respondents is only meant to be rejected and does not, in any, strengthen their defence.

15. In view of what has been said and discussed above, we reach to an inescapable conclusion that the Original Application has merits and substance and the stands allowed accordingly. The impugned orders at Annexure A/2 and A/3, so far they relate to the applicants, are hereby quashed and the applicants shall be entitled for all consequential benefits. The rule already issued is made absolute. The parties are directed to bear their respective costs

16. The registry is directed to take judicial notice of Rule 33 of CAT (Rules of Practice) 1993 as indicated in para 7 above and scrupulously adhere to the same in future.


(M.K. Misra)
Administrative Member


(J.K. Kaushik)
Judicial Member

KUMAWAT

Part II and III destroyed
in my presence on
under the supervision of
section officer () as per
order dated
Section officer (Record)

Recd Copy
with reply to your letter at original
with original
sent.

Shan
7/05/04

*PK
his
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Part II and III destroyed
in my presence on 24/10/13
under the supervision of
section officer () as per
order dated 18/10/13

P.R. Shan 24.10.2013
Section officer (Record)