

II/5

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR.**

Original Application No. 70/2004

Date of decision: 10.08.2005

**Hon'ble Mr. J K Kaushik, Judicial Member.
Hon'ble Mr. G R Patwardhan, Administrative Member.**

Naval Kishor, S/o Shri Hardawari Lal by caste, Brahmin, aged about 56 years, r/o Qr. No. L 56-C Loco Colony, Hanumangarh Junction, at present working as Coach Attendant in the office of Station Superintendent, Hanumangarh, Bikaner Division.

: Applicant.

Mr. Jitendra Singh proxy counsel for
Mr. H S Sidhu, Counsel for the applicant.

VERSUS

1. The Union of India through the General Manager, Head Quarter North Western Railway, Jaipur.
2. The Divisional Personnel Officer, North Western Railway, Bikaner.
3. Sh Kesar Dev S/o Dubey Ram,
4. Mahesh Chandra, S/o Sh Ram Chandra
5. Jagdish Prasad, S/o Sohan Lal
6. Krishan Kanhaiya, S/o Sh Satya Narayan
7. Roop Chand, s/o Sh Daulat Ram
8. Mahipal Singh, S/o Bakunth Ram

Respondents 3 to 8 are working as Coach Attendant, North Western Railway, Bikaner.

: Respondents.

Mr. Salil Trivedi, : Counsel for respondents 1 & 2.
Mr. B Khan: Counsel for respondents 3 to 8.

ORDER.

Per Mr. J K Kaushik, Judicial Member.

Shri Naval Kishore has invoked the jurisdiction of this Bench of the Tribunal and has sought for the following reliefs:

- (i) by an appropriate order or direction the impugned order dated 21.01.2004 (Annex. A/1) passed by the respondents No. 1 & 2 may kindly be quashed and set aside.
- (ii) By an appropriate order or direction, the respondents may kindly be directed to give the same relief to the applicant as given to the persons junior to the applicant vide Annex. A/1 dated 21.01.2004.

(iii) Any other appropriate order which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.

(iv) The cost of the application may also be awarded in favour of the applicant.

2. With the consent of the learned counsel for the contesting parties, the case was heard for final disposal at the admission stage keeping in view the urgency in the matter in as much as the interim order has been in operation. We have accordingly heard the arguments advanced at the Bar and perused the pleadings and records of this case.

3. The abridged material facts are that the applicant was initially appointed as Helper Khalasi in Loco Shed on 26.10.1975. In the year 1996 he was declared as surplus on closure of Loco Shed and was redeployed as Coach Attendant in the pay scale of Rs. 2650-4000. At present he is drawing salary in the scale of pay of Rs. 2750-4400 and employed as Coach attendant in the office of the CIT, TTE, Hanumangarh Junction. Private Respondents 3 to 8 are also holding the post of Coach Attendant and they are junior to the applicant. These private respondents have been declared as surplus vide order dated 21.01.2004. They are sought to be redeployed on the higher post of Ticket collector which is carrying the pay scale of Rs. 3050-4590. It has been averred that juniors are being appointed to an higher post in the garb of redeployment. The seniority position of the applicant vis-a-vis the private respondents is reflected in Annex. A/2. According to him a person on redeployment could be considered for appointment only on an equivalent post having



the same scale of pay. The Original Application is filed on diverse grounds intermixed with the facts in para 5 and its sub paras.

4. The respondents have contested the case and separate replies have been filed on behalf of official and the private respondents. The defence as set out in the reply of the official respondents indicates that 7 posts of coach attendants were identified as surplus and the respondents 3 to 8 were declared surplus being the junior most. They have been working against supernumerary posts. This has been done in accordance with the Railway Board Circular dated 21.04.89.

It has also been averred that the Headquarters Office vide letter dated 13.10.99, have decided that surplus coach attendant may be absorbed in the alternative category of Ticket Collector in the pay scale of Rs. 3050-4590, against direct recruitment quota vacancies as one time exemption after adjudging their suitability on the basis of a written examination. In pursuance with the same, the private respondents were subjected to appear in the written test and the same has been postponed till further orders. The grounds taken in the O.A are generally been denied. In the reply of the private respondents, it has been averred that the applicant is not a junior employee and he has not been declared as surplus and he is not at all affected and therefore he has no locus standii to file this O.A. The private respondents have been declared as surplus as per the instructions issued by the Railway Board and are sought to be absorbed against direct recruitment quota on the post of



Ticket Collector as one time exemption. Therefore the Original Application deserves to be dismissed.

5. The learned counsel representing the contesting parties have reiterated their facts and grounds mentioned in their respective pleadings as noticed above. The learned counsel for the applicant has tried to persuade us that in the garb of redeployment of surplus Coach Attendant, number of juniors to the applicant are being adjusted in a higher post and such course of action has not been found expedient in the case of the applicant. He has strived hard to submit that as per rules in force, one cannot be redeployed on higher pay scale.



6. The learned counsel for the official respondents has strenuously countered the submissions put forth on behalf of the applicant and has contended that the whole action has been taken well in consonance with the instructions issued by the Railway Board as well as orders issued by the Headquarters office. He has submitted that as per the rules in force it is only the junior most person who is to be declared as surplus and to be redeployed. He has next contended that it is the prerogative of the authorities as to on which post one could be redeployed on declaring surplus. The learned counsel for the private respondents has also made similar submissions.

7. We have anxiously considered the rival submissions put forth on behalf of the authorities. As far as the factual aspect of the matter is concerned there is absolutely no quarrel. It

is the fact that the applicant is senior to the private respondents. It is also the fact that private respondents were declared surplus and all of them holding the post of Coach Attendant. It is also the fact that action is being taken for absorption of surplus coach attendants who is in the pay scale of Rs. 2610-3540 and Rs. 2650-4000 and the post on which they are going to be redeployed is the post of ticket collector in the grade of Rs. 3050-4590. In other words, it is true that redeployment of the surplus coach attendant is being made on a higher post carrying higher pay scale.

8. Ostensibly, the contention of the private respondents that the applicant has no locus standii in the matter seems to be attractive but the same in fact is deceptive. However, help from the side of applicant has been scanty. We had to carry out a close analysis of the relevant rules which are prescribed by the Railway Board vide circular dated 21.04.89 (Annex. R/1) as well as Head Quarters Office letter dated 13.10.99 (Annex. R/2). Para 5 of the circular dated 21.04.89 would make this position amply clear and the contents of the same are extracted as under:

"5. 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 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."

The bare perusal of the aforesaid indicates that willingness is required to be called from all the staff holding the particular post. This Court insisted to know as to whether the said exercise has been carried out, the answer

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forthcoming from the official respondents was in negative.

We may point out and elaborate the objectives of the aforesaid clause. Its main objective is to avoid frustration among the junior staff for the reason if the senior staffs are willing to go on bottom seniority in recruitment cadres of other departments, that would mitigate the compulsion of declaring the junior staff as surplus to the extent the senior staff are willing to go on bottom seniority and the junior staff may escape from the suffering of the same. Even though it is not indicated in so many words, we find that in the instant case had the said procedure been adopted, even the frustration of senior persons like the applicant could have been avoided/ obliterated. In any case we find that the decision making process in the instant case has been quite faulty and in judicial review the Tribunal would be justified to right the wrong resulting from such faulty decision making process and therefore the O.A deserves to be accepted on this count alone.



9. Now adverting to the other issue, which has also seminal significance. It is regarding the question as to whether there could be any absorption on the higher post. A perusal of the very circular dated 21.04.89 indicates in para 3(ii) that surplus staff can be redeployed in the identical scales and suitable grades with certain relaxations in requisite qualifications. Otherwise also it is a matter of common sense that redeployment of surplus employee is painful to the employee and by no stretch of imagination the same could result as a favour in disguise. We are a little

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sad and surprised to see the order issued by the Head Quarters office on 13.10.99, (Annex. R/2) at the instance of a trade union where a coach attendant got redeployed against the post of Ticket collector in a higher scale of pay falling under direct recruitment quota. In any case we are unable to persuade ourselves that a surplus employee can be redeployed on a post carrying higher scale of pay than the one he had been holding at the time rendering him surplus, under the existing instructions. We also notice that the Railway Board instructions on the subject do not indicate that one can be redeployed on a higher post and therefore the order Annex. R/2 dated 13.10.99 is in clear contravention of the aforesaid instructions and therefore without any consequence.



10. In view of what has been said and discussed above, the O.A has ample force and the same stands allowed accordingly. The impugned order dated 21.01.2004 (Annex. A/1) is hereby quashed. The official respondents are directed to take judicial notice of para 5 of the Railway Board's circular dated 21.04.89 (supra) and redeploy the surplus staff on the posts with identical scale of pay to that of coach attendant. No costs.

DR
(G.R.Patwardhan)
Administrative Member.

J K Kaushik
(J K Kaushik)
Judicial Member.

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Section officer (Records)