

CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH.

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O.A.No.73/2004

May 6, 2005

**CORAM : HON'BLE MR.KULDIP SINGH, VICE CHAIRMAN
HON'BLE MR.G.R.PATWARDHAN, MEMBER (A).**

Ashwani Sinha, S/o Shri I.D. Sinha, Aged about 43 years, working as Travelling Ticket Examiner, North West Railway, Abu Road, R/o C/o Satish Gupta, Mayur Studio, Parsi, Chal, Abu Road.



..... **Applicant**

By : Mr.H.S.Chowdhary, Advocate.

Versus

1. Union of India through General Manager, North Western Railway, Jaipur.
2. Divisional Railway Manager, Ajmer Division, North Western Railway, Ajmer.
3. Senior Divisional Personnel Officer, Ajmer Division, North Western Railway, Ajmer.
4. Senior Divisional Commercial Manager, Ajmer Division, North Western Railway, Ajmer.

By : Mr.Vinit Mathur, Advocate.

5. Shri Harish Chander S/o Shri U.C.Mishra, Laboratory Assistant (Physics), C/o Principal, Railway Senior Higher Secondary School, Abu Road (Rajasthan).

..... **Respondents.**

By : Mr.S.K.Malik & Mr.Dayaram, Advocate.

ORDER

KULDIP SINGH, VC

The applicant has filed this O.A. seeking the following reliefs :

"(i) By an appropriate writ, order or declaration, the respondents be restrained to redeploy and absorb respondent No.5 as Senior Ticket Collector/Travelling Ticket Examiner in the Scale of Rs.4000-6000 (R.P.S) by quashing and setting aside the order passed by respondents in their letter dated 15-12-2003 and 16-02-2004. If the redeployment or absorption is inescapable then respondent No.5 should be absorbed as Ticket Collector which is the lowest rung of the cadre of the Ticket Checking Staff at which the direct recruitment is made and his seniority should be reckoned from the date of joining on the post of Ticket Collector in the scale of Rs.3050-4500 (R.P.S). It may very kindly be directed that the respondent No.5 shall not be entitled for seniority of his parent cadre from where he has been rendered surplus.

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The grievance of the applicant is that the respondent no.5 has been illegally absorbed as Senior Ticket Collector (STC)/Travelling Ticket Examiner (TTE) in the scale of Rs.4000-6000 vide impugned order dated 10th December, 2003 (Annexure A-1), which has an adverse effect on the seniority of the existing staff on the commercial side who are working as STC/TTE. It is further stated that even if the re-deployment of the respondent no.5 was inescapable, he should have been absorbed as Ticket Collector in the lowest rung of the cadre of the Ticket Checking Staff for which the direct recruitment is made and his seniority should have been reckoned from the date of joining on the post of Ticket Collector in the scale of Rs.3050-4500. It has been alleged that the respondent no.5 is not entitled to the seniority of his parent cadre from where he has been rendered surplus.



The facts in brief as alleged by the applicant are that the applicant was initially appointed as Ticket Collector in the scale of Rs.3050-500 and thereafter he has been promoted as Travelling Ticket Examiner, which is next promotional post w.e.f. 12.12.2002.

It is submitted that respondent no.3 has illegally and unlawfully taken a decision vide impugned order dated 15.12.2003 to surrender the post of Laboratory Assistant (Physics) in the pay scale of Rs.4000-6000 under the Principal Railway Senior Secondary School, Abu Road. Under this letter, it has been decided that respondent no.5 who was holding the said post is to be re-deployed on being rendered surplus as STC/TTE in the scale of Rs.4000-6000 in the Ticket Checking Staff of the Commercial Department.

It is further stated that as per the correspondence available, the posts of Laboratory Assistants have not been completely abolished rather one post has been retained taking into account the number of Science students studying in the 12th Standard, as per letter dated

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1.8.2002 (Annexure A-3) and thus respondent no.5 should have been adjusted against the said post instead of being rendered surplus.

It is further submitted that the Ticket Checking Staff of Ajmer Division has been facing the the problems created by the redeployment of the surplus staff in this category since 1993 and repeated cycle of litigation is continuing. Respondent No.3 is well aware about these proceedings before various Courts being a party to such proceedings yet it has taken a decision which has created great discontentment in the Ticket Checking Staff of Ajmer Division. A joint representation was also preferred but no action has been taken. It is further stated that in the Ticket Checking Staff, lowest post is that of Ticket Collector and next higher posts in hierarchy are Senior Ticket Collector/Travelling Ticket Examiner; Head Ticket Collector/Senior Travelling Ticket Examiner; Travelling Ticket Inspector/Conductor and Chief Ticket Inspector. It is submitted that the lowest post is that of Ticket Collector and as per para 127 of the IREM, the initial recruitment is to be made only on the lowest post. The direct recruitment to the intermediate grades is not permissible in the category of Ticket Checking Staff. So, the respondent no.5 could have been appointed only as Ticket Collector.

It is submitted that though the respondent no.5 was still to complete the training, yet the respondents were bent upon to post him on the promotional post of Senior Ticket Collector/Traveling Ticket Examiner in the pay scale of Rs.4000-6000. It is claimed that action of the respondents in declaring the respondent no.5 as surplus and then to re-deploy him in the Ticket Checking Staff and that too in the intermediate grade is not bonafide.

The respondents who are contesting the O.A. submit that the respondent no.5 was appointed as Lab Assistant in the pay scale of Rs.4000-6000 under the Principal, Railway Senior Secondary School, but the General Manager (E) HQRs. Office, Churchgate, took a

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decision on 28th March, 2002 (Annexure R-1) and 9th July, 2002 (Annexure R-2), by which the post of applicant has been abolished. After abolition of the post, action was taken to absorb the respondent no.3 in other categories in the same scale and the case of the respondent no.5 was sent to the Headquarters Office, Jaipur seeking approval for absorption of respondent no.5 on the post of Senior Ticket Collector./Travelling Ticket Examiner. The Headquarter, Jaipur, advised by letter dated 13.10.2003 (Annexure R-4), that the power for absorbing the surplus staff is controlled under the Divisional Railway Manager, thus, necessary approval from the Headquarter is required. As per said letter, the President Railway School and Senior Divisional Personnel Officer, Ajmer took a decision to absorb the respondent no.5 as STC/TTE and sent him before the Screening Board who found the applicant suitable for the said post. Thereafter the impugned order, Annexure A-1 dated 15th April, 2003 has been issued and in terms of the letter, Annexure A-1, the respondent no.5 was sent for training under the Principal, Zonal Training School, Udaipur where the respondent no.5 completed his training successfully, as per the result declared vide, Annexure R-5. After the result was declared some of the employees made a representation through Chief Deputy Inspector, Ajmer and reply to the same has been given vide letter dated 8th January, 2004 mentioning therein that the post of Laboratory Assistant has been abolished and the surplus staff is being absorbed on option basis. Copy of the reply to the representation is at annexure R-6. On 20th May, 2004, the respondent no.5 has been posted as Senior Ticket Collector in the pay scale of Rs.4000-6000(Annexure R-7).

It is submitted that para 127 of the IREM is not applicable to the case of the respondent no.5 because he has been absorbed under the Surplus Scheme from one cadre to another on being rendered surplus. Similarly, para 102 of IREM is also not applicable as the

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respondent no.5 has not been transferred but he has been absorbed from one cadre to another cadre after having been rendered surplus under the Surplus Scheme. He was rightly absorbed on the post of STC/TTE on his option basis. It is further submitted that the reliance of the applicant on Annexure A-8, judgement is misplaced as the same is not applicable to his case because subsequently the Jaipur Bench of the Tribunal in another similar matter, vide orders dated 22nd February, 2002 in O.A.No.529/1994 has held that surplus staff has rightly been absorbed in terms of the Railway Board's letter dated



21.4.1989 and accordingly the seniority was assigned (Annexure R-1). They have also relied upon judgment of the Apex Court in the case of P.C. Nandi Vs. Controller of State, NE Rly, 1971 SLR, Page 68 (SC) and V.S.Murty & Others Vs. Deputy General Accounts Officer, 1983 (1) SLR, Page 655 (SC) wherein a view has been taken that on closure of department or abolition of post if employees are adjusted and absorbed in other department, they are entitled to the seniority from the date of their initial appointment in the parent office. It is further submitted that there is nothing wrong in the correspondence which took place between the competent authorities of the Department in order to reach at a decision for abolition of the post and rendering of respondent no.5 as Laboratory Assistant. As regards promotion of the applicant to the post of TTE in the scale of Rs.4000-6000 is concerned, it is submitted that the applicant has not been promoted on regular basis rather the applicant has been promoted purely on adhoc basis. Thus, it is prayed that applicant has no case and same is liable to be dismissed.

Rejoinder to this reply has been filed by the applicant reiterating the pleas taken in the O.A.

We have heard the learned counsel for the parties an gone through the record.

After going through the pleadings we find that the short

question which arises for determination in this O.A. is whether the absorption of the respondent no.5 as Senior Ticket Collector is legally justified or not and consequently if it is justified then how the seniority of respondent no.5 is to be determined.



As regards absorption of the respondent no.5 is concerned, the learned counsel for the applicant had referred to the recruitment rule and submitted that as per Para No.102 pertaining to the rules of recruitment and training of Group C and D employees and Workshop Staff, the recruitment on Railways should be made to the lowest rung of the category concerned and direct recruitment to the intermediate category will be made where specifically provided for and in other cases as and when considered necessary by the Railway Administration with the approval of the Railway Board. The qualifications for recruitment to grades higher than the lowest will be those as approved by the Railway Board. The contention for the learned counsel for the applicant that according to Para 102 of the IREM, no recruitment could be made in the intermediate grades. However, a close examination of the rule 102 as a whole would go to show that though it provides that recruitment is to be made in the lowest grade but at the same time it permits railway authorities with the approval of the Railway Board to make recruitment even to the intermediate grade. So, the contention of the learned counsel for the applicant that according to rule 102 of the Rules, no recruitment can be made in the intermediate grade and the recruitment can be made only to the lowest grade is not tenable.

The stand of the respondents is that in this case no recruitment has been done but respondent no.5 has been re-deployed only as per the policy of re-deployment, which has been submitted by the applicant himself along with rejoinder at annexure A-9. The applicant had also argued that this policy of redeployment of surplus staff does not apply to the case of the respondent no.5 as the definition of the

surplus staff given in Annexure A-9 shows that if there is 1. Total or partial closure of activities (2) Total or partial re-engineering of work processes/work methods, (3) Introduction of Modern Technology & (4) Outsourcing of some activity totally or partially, then if one becomes surplus, he can be termed to be a surplus staff. In view of this, respondent no.5 is not covered under the surplus scheme.

Counsel for the applicant further referred to the procedure for dealing

with vacant surplus posts and submitted that in grades having an element of direct recruitment, vacant surplus posts falling within the direct recruitment quota should be surrendered and their money

value credited to the vacancy Bank. Meaning thereby, as per the procedure, only the lowest grade posts are to be surrendered and in this case the posts have been surrendered of higher grades. This

policy also provides in para 7 that re-deployment of the surplus staff working in the grade having element of direct recruitment other than grade of Rs.2550-3,200, should be posted against the vacant direct recruitment quota posts in the same in accepting department After

re-training as necessary. Para 8 of the Scheme provides that re-deployment of surplus staff working in intermediate grade should be transferred/redeployed in accepting department along with the post, After training as necessary, on establishment/acceptance of the need

for additional manpower and while issuing orders as above, an equal number of vacant posts of the accepting department in the immediate lower direct recruitment grade should be frozen temporarily, to be restored on vacation of the higher grade posts by the re-deployed staff due to any reason. On such vacation these posts may be surrendered and money value credited to the vacancy bank. In case

vacant post in immediate lower direct recruitment grade are not available in the accepting department, even next to next direct recruitment grade vacant posts may be located and frozen. If no

vacant posts are available in any of the lower direct recruitment

grades, the transferred/re-deployed posts shall be surrendered as and when they are vacated by the re-deployed staff due to any reason in due course, and money value credited to the vacancy bank. So, the learned counsel for the applicant submitted that the re-deployment even at intermediate level is also permissible.



Learned counsel for the respondents then ~~further~~ submitted that "since the re-deployment of the applicant has taken place after exchange of the various correspondence and after a decision taken by the Headquarters and due to surrender of two posts of Laboratory Assistants, in the pay scale of Rs.4000-6000, as long back as on 20th March, 2002 and thereafter a committee of the three senior scale officers had examined the case and only thereafter a decision was taken to absorb the respondent no.5 in the Ticket Checking staff and the applicant has not alleged any malafide or illegality having been committed by the department in absorption of the respondent no.5 in the said department. Moreover, the applicant himself admits that if it is inescapable to re-deploy the respondent no.5, then he should have been redeployed only in the lower pay scale. Thus, it is submitted that there is no challenge to the surrender of the post and rendering the respondent no.5 as surplus. The only prayer made by the applicant is that the respondent no.5 should have been redeployed in the lowest rung. So, other issues are not open as the same have not been challenged by the applicant. As regard the rendering of respondent no.5 being surplus from the post of Laboratory Assistant is concerned, a decision was taken to surrender two posts of Laboratory Assistant in the pay scale of Rs.4000-6000 as early as on 20th March, 2002 and it was not known whether respondent no5. Would be rendered surplus and would make an option for being redeployed in the Commercial Department of Ticket Checking Staff and subsequent correspondence exchanged between the various departments of the respondents also go to show that as to how and under what circumstances the

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department had taken a decision to surrender these two posts.

Moreover, it is a policy decision of the department itself as to when the post is to be surrendered and how many posts in a particular department are required. The applicant cannot seek any interference from this Tribunal in the policy decision taken by the respondents regarding surrender of posts. The letters exchanged between various departments of the respondents do suggest that posts have been surrendered because of the reduced strength of the students. So, even on merits also we do not find that any fault can be found with the surrendering of the posts and thus we hold that the surrender of the post is justified and resultantly the applicant has been rightly rendered surplus.

Now the question arises for our consideration as to whether the absorption of the respondent no.5 in the pay scale of Rs.400-6000 as STC./TTE is justified or not or whether he should have been absorbed only in the lowest rung of the Ticket checking Staff. For this purpose we will have to revert back to the policy with regard to the re-deployment of the surplus staff. Even the policy annexed by the applicant as Annexure A-9 to the rejoinder goes to show that staff rendered surplus can be re-deployed in intermediate grades, of course on fulfillment of certain procedure i.e. By freezing temporarily posts in the lowest direct recruitment grade. It was not disclosed whether any posts have been frozen in the lower grade or whether appropriate steps have been taken by the respondents to absorb respondent no.5 in the intermediate scale. We find that the respondent no.5 has been rightly absorbed in the intermediate scale of Ticket Checking Staff as Senior Ticket Collector/TTE in the pay scale of Rs.4000-6000.

Now the question arises regarding the determination of seniority of the respondent no.5. The applicant has referred to the various judgments such as Prem Kumar Verma Vs. Union of India &

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Others, reported as 1988(2)ATJ, Page 621 (Apex Court) which deals with the para 303 (a) of the Railway Establishment Manual. In that case candidates who were appointed against the posts of Deputy Store Keep Grade III and were required to be sent for training and were sent for training in four different batches and after completing their training started discharging their duties as Deputy Store Keeper, it was held that the merit obtained by them in the examination would be the determining factor for inter-se seniority. The counsel for the applicant then relied upon another decision reported as 1997(5) SCC, Page 84, South Eastern Railway Vs. Ramanarain Singh etc. wherein



the employees working as Steam Engine Driver were posted on the Diesel Side as Diesel Engine Driver after completion of requisite training and question was as to how their seniority was to be determined. Relying upon the earlier judgement of the Apex Court in the case of Rama Kant Chaturvedi Vs. Divisional Supdt. N. Rly., the Court held that the seniority of the drivers as they were holding on the Steam Side was irrelevant and they were to be assigned seniority afresh on the diesel side depending upon the length of service. In the same line, counsel for the applicant has relied upon another judgement titled Joyachan M. Sebastian Vs. The Director General & Others, 1996(2) ATJ, Page 678, the Head Note of which provide that abolition of post-seniority-the post on which the appellant was initially appointed, abolished on account of administrative exigencies-Instead of retrenching him, Government have accommodated him in the available vacancy. Held it must be deemed to be afresh appointment for the purpose of seniority. Similarly he has cited a Full Bench decision of C.A.T. New Delhi, in the case of Shri P.K.Das Vs. Union of India & Others, delivered on 21st August, 1991, wherein it was held that under Government Scheme past service rendered prior to redeployment was to be counted for seniority in the new post. Redeployed employees to be treated as fresh entrants in the matter

of seniority, promotion etc. Provision not arbitrary or unconstitutional.

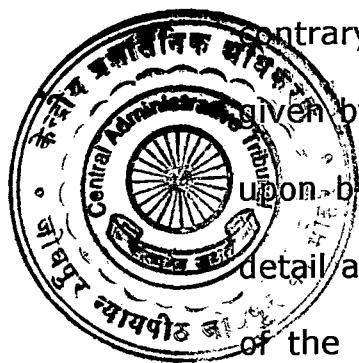
It was held that redeployed employees form a separate category.

Such a classification is reasonable and has nexus to the object underlying the scheme of redeployment of surplus staff. In view of these authorities, learned counsel for the applicant submitted that the past service of the respondent no.5 should not be counted and he should not be given seniority by counting his past service. On the

contrary, learned counsel for the respondents relied upon a judgment given by Jaipur Bench of this Tribunal in which the judgments relied upon by learned counsel for the applicant have been considered in detail and the Bench has come to the conclusion that the absorption of the concerned employee in that case was in the interest of the

Railway Administration and the relevant rule which govern for determination of the seniority is para 311 of the IREM and the respondents were held to have correctly counted his past service After re-deployment. In this case also various persons were rendered surplus from other department and were redeployed in the Ticket Checking Staff had challenged their absorption and the seniority being given to them. Based on that judgement, learned counsel for the respondent no.5 submitted that the case of the respondent no.5 is fully covered by the decision of the Jaipur Bench titled G.K.Gandhi & Others Vs. Union of India etc. O.A.No.529/94 decided on 22.2.2000 (Annexure R-8). After considering the facts we find that the said judgement applies to the facts of the present case and the respondent Railways has rightly given the benefit of the past service to the respondent no.5.

Learned counsel for the applicant had also referred to Annexure A-10 which is a letter issued by the Government of India, Ministry of Railways (Railway Board), addressed to the General Managers and deals with the subject of assignment of seniority to re-deployed surplus staff. This has a reference to the earlier Letter dated 21st May,



1989 wherein the procedure was prescribed that when small number of staff is rendered surplus and they have to be absorbed in the various units of the staff against the vacancy, they could be suitably adjusted in those units with their full seniority and their seniority merged in the respective units. However, this letter further refers to a decision given by the Jodhpur Bench of C.A.T in O.A.No.165/98 (Surinder Prakash & Others Vs. Union of India & Others) decided on 5.6.2000 etc. Those O.As. Filed by the Railway employees against the procedure of allowing full seniority to surplus staff on their absorption to another cadre were allowed. Those judgments were based on the judgement of the Apex Court in the case of South Eastern Railway & Others Vs. Ram Narain Singh & Others (1997) 5 SCC Page 84. Copy of the Apex Court decision was circulated to the Railways and it was found that in the civil side matter also, the Hon'ble Supreme Court had given the directions that surplus staff absorbed in other cadres/departments will not count the service rendered by them in the parent cadre/department for the purpose of seniority and promotion. An ~~advice~~ letter dated 25th May, 2005, a decision was taken that the service rendered by the surplus staff prior to redeployment will not count for seniority and promotion in the absorbing unit. So, para 1 of the Instructions of 1989 was modified and advance correction slip was also issued. So, learned counsel for the applicant submitted that in view of this letter, the respondent no.5 should not be allowed to count his past service for the purpose of seniority and directions should be issued to determine seniority in accordance with these instructions.

We have given anxious thought to the rival contentions raised on behalf of the contesting parties but as far as the seniority of the applicant is concerned, it has been pointed out that the applicant has not yet been given promotion as Senior Ticket Collector / TTE on regular basis and he has been given such promotion only on adhoc

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basis due to some departmental inquiry pending against him. So, his claim for determination of seniority is pre-mature. Besides that, the letter dated 25th May, 2004, Annexure A-10, though states that the past service should not be taken into consideration for determining the seniority but in para 3.2 it has been clearly mentioned that the past cases decided will not be re-opened. In this case the respondent no.5 had been absorbed on 20th May, 2004 which is much prior to the issue of the Annexure A-10 and the applicant has not challenged the para 3.2 of the letter dated 25th May, 2004. Since the applicant in this O.A. has only contended that respondent no.5 cannot be absorbed in the pay scale of Rs.4000-6000 and subsequently he cannot be granted seniority of his parent cadre from where he has been rendered surplus and until and unless the applicant seeks quashing of the Annexure A-10 itself, he cannot seek direction to the respondents to determine the seniority of respondent no.5 ignoring the service rendered by him in his parent office. It is thus held that the absorption of the respondent no.5 is in accordance with the policy of the absorption and applicant cannot seek a direction for determination of seniority of the respondent no.5 without considering his past service rendered in his previous department because of exception clause contained in para no.3.2 of the letter, Annexure A-10.

In view of above facts and discussion, the present O.A. turns out to be devoid of any merits and is dismissed leaving the parties to bear their own costs.

G.R.PATWARDHAN
MEMBER(A)

KULDIP SINGH
VICE CHAIRMAN

May 5, 2005.

HC*

Part II and III destroyed
in my presence on 17/1/2014
under the supervision of
section officer (1) as per
order dated 18/1/2013

Section officer (Report)

H.C. 16/5
Copy sent
(Date 16/5/2013)

Copy of notice sent

to you by Special Post

Report AD violence 162

Off. 16/5

Recd
16/5/2013

which copy sent

to you send back

with message &

Handwritten Part 1

16/5/2013