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CENTRAL ADMINISTRATIVE TRIBUNAL

OA No. 257 of 2009.

Jodhpur, this the 17th of October, 2013.

CORAM :

Hon'ble Mr. Justice Kailash Chandra Joshi, Member (J)

Hon'ble Ms. Meenakshi Hooja, Member (A)

Bheru Singh S/o Shri Takhat Singh by caste Rajput aged about 54 years, resident of QNo. 562/B, Dhobighat, Abu Road, at present working as Technician Gr.III (Diesel Electrical), Dieselshed, North Western Railway, Abu Road.

..Applicant

(Through Adv. Mr. Nitin Trivedi)

Versus

1. Union of India through its General Manager, North Western Railway, Jaipur.
2. Divisional Railway Manager, North Western Railway, DRM's Office, Ajmer.
3. Senior Divisional Mechanical Engineer (D), North Western Railway, Abu Road.
4. Shri Manu Kumar at present working as Technician Grade III (Diesel Electrical), Dieselshed, North Western Railway, Abu Road.

...Respondents.

(Through Adv. Mr. Salil Trivedi)

ORDER

Per K.C.Joshi, Member (J) :

The brief facts of this case, as averred by the applicant are that the applicant Bheru Singh, was initially appointed in 1979 and later while working at Dieselshed (Elect.) Abu Road, as Senior Khalasi in 1998 in the pay scale of Rs. 800-1150, he was found eligible for being promoted on the post of Armature and Winder Grade III in the pay scale of Rs. 950-1500 / 3050-4500 and was promoted thereon, after qualifying the trade test at the same place. However, for further promotion as Armature & Winder Grade II his name was not incorporated in the eligibility list being shown as junior. On 26th April, 2005 the respondent No. 2 ordered to revert the employees including the applicant and the said order was

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challenged before this Tribunal and the OA was rendered infructuous in the light of order dated 30.08.2005 holding that applicant be continued to work on supernumerary post till he is absorbed in identical pay scale of alternative post that too after taking option from the applicant. Subsequently, the applicant was absorbed as Technician Grade II in the same Branch but without taking any option particularly when he had given option for absorption on alternative post as Ticket Collector for which he filed representations firstly on 24.11.2006 and then on 31.05.2008, 28.07.2008 and then on 11.02.2009. Vide the impugned letter dated 02.03.2009 (Annex.A/1) respondents rejected his representations stating that option to absorb in other cadre is only taken if the vacancies are not available in the cadre where the employees are working before being declared surplus. The applicant filed another representation on 25.06.2009 upon which the respondents assigned him seniority (Annex.A/2) which is also not correct and his name should have been placed before Shri Manu Kumar (respondent No.4) who is at Sl.No.10. It is contended that for the grant of MACP benefits on completion of 10 years service as at Annex.A/3 is also incorrect as he is eligible for one higher scale of pay. It has been further contended that in the seniority list prepared for the Senior Khalasies (Electrical) on 04.09.2000 (Annex.A/12), he was at Sl.No. 10 just above Shri Ajai Kumar Srivastava but this is not reflected in Annex.A/2. Hence, the applicant has challenged the orders Annex.A/1 dated 02.03.2009, Annex.A/2 15.10.2009 and Annex.A/3 dated 05.11.2009 respectively mainly with the following prayer :

“(A) That by an order or direction in the appropriate nature, the order/letter dated 2.3.2009 (Annexure A-1) may kindly be quashed and set aside and accordingly, the respondents may kindly be directed to take option from the applicant for his absorption in some other cadre, which he may opt in the light of the order dated 30.8.2005.

(B) Further by an order or direction in the appropriate nature, the order / letter dated 15.10.2009 the seniority list may kindly be quashed and set aside and accordingly the respondents may kindly be directed to accord the correct seniority to the applicant just before Manu Kumar placed at S.L. No. 10 in Annex.A/2

(C) That by an order or direction in the appropriate nature, the order / letter dated 5.11.2009 (Annexure A-3) up to the extent of not providing the benefits of one higher scale of pay i.e. 2400/- to the applicant may kindly be quashed and set aside and accordingly the respondents may kindly be directed to provide the pay band of Rs. 2400/- instead of Rs. 2000/- while granting the financial upgradation under the modified ACP Scheme on completion of 10 years of service.”

2. The respondents have filed their counter and stated that the post of Armature Winder Gr.-III was abolished and consequent to this applicant was posted as Senior Electrical Khalasi which is his original post vide order dated 26.04.2005 (Annex.A/5). The applicant was again posted as Armature Winder Grade III vide order dated 30.08.2005. Applicant vide Annex.A/9 dated 28.07.2008 gave his option and requested that he may be absorbed as Ticket Collector which was rejected vide letter dated 01.10.2008 as he does not have the requisite qualification for the said post and resultantly he was absorbed as Technician Grade III vide Annex.R/3 dated 07.12.2008 which was accepted. On his representation it was made known to him that surplus staff was required to be absorbed in another cadre as there was no vacancy in the cadre to which he belonged, he was absorbed as Technician Grade-III. The respondents have categorically contended that in the list of Technician Grade-II the name of applicant was at No. 19 in the waiting list (Annex.A/2) as per seniority position of Technician Grade III. He cannot claim seniority of the post held by him before declaring him as surplus once he was declared surplus and absorbed as Technician Grade III and as per rules the applicant can be assigned

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seniority in the cadre of Technician Grade III from the date when he was absorbed in the cadre of Technician Grade - III.

3. The counsel for the applicant contended that the applicant represented to the respondent-department for absorbing him as a Ticket Collector and he was denied this opportunity without giving any opportunity and therefore, he is entitled to get absorption on the post of Ticket Collector and further he has contended that he is entitled for grant of MACP and he also contended that his seniority has been wrongly fixed because the applicant was promoted in the year 1998 and after absorption he was assigned seniority from the date of his absorption whereas, he is entitled to get seniority as per his earlier seniority that is Armature and Winder Grade III because he was promoted in the year 1998 on the post of Armature and Winder Grade III and both are equal posts, therefore his earlier service cannot be forfeited for the purpose of determination of seniority.

4. Per contra, the counsel for the respondents contended that the applicant himself was not having the required qualification for the post of Ticket Collector, therefore, he could not be absorbed, and the posts were available in the Electrical Branch for the Technicians Grade-III and further it has been contended that the MACP was granted as per the order of the Government of India, Ministry of Railways dated 10.06.2009. He further contended that the seniority of the applicant was fixed as per Para 313A of the Indian Railway Establishment Manual, Vol. I according to which the surplus employees are not entitled for benefit of the past service rendered in the previous unit/department

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for the purpose of their seniority in the new unit/department. Such employees are to be treated as fresh entrants in the matter of their seniority, promotions etc. and they have fixed their seniority as per Para 313A of the Manual and, therefore, his seniority was placed before Shri Ibrahim Khan because on the date of the absorption the juniormost Tech. III was Shri Ibrahim Khan and therefore the applicant was placed just after the seniority of Shri Ibrahim Khan.

5. We have considered the contentions putforth by the counsel for the parties.

6. So far as the relief regarding absorption on the post of Ticket Collector is concerned, the applicant is not entitled to get his absorption on this post because he was not having the requisite qualification on the date of the absorption. So far as the date of MACP and seniority is concerned the applicant has averred in his application that after absorption he was placed below Shri Ibrahim Khan without showing any rhyme or reason which is illegal, arbitrary, perverse and unconstitutional because he was working in the same Unit and Department and when the applicant is absorbed in the same unit/department the provisions of Para 313A are not applicable. The counsel for the respondents vehemently contended that seniority was assigned to him as per the aforesaid provisions of the IREM.

7. So far as the relief regarding the absorption of the applicant to the post of Ticket Collector is concerned it is rejected because the applicant did not have the requisite qualification. So far as the relief regarding assigning of the seniority is concerned, in our considered view the

applicant has never approached the respondent-department with this assertion that he was absorbed in the same Unit or Department and the department has never considered his representation in the light of provisions of Para 313A of IREM that whether he was working in the same Unit or Department before absorption and thus whether the provisions of Para 313A in the case of the applicant are applicable or not. Accordingly, we propose to dispose of this petition with certain directions. The applicant is directed to submit a detailed representation to the respondent – department within two weeks from the date of receipt of a copy of this order giving all reasons for his claims to seniority and the respondent-department shall decide the representation within three months from the date of receipt of the representation in the light of Para 313A of the IREM Volume – I. Further, the respondents are also directed to consider the case of the applicant for refixing the date of the MACP in the light of order dated 10.06.2009 of the Government of India, Ministry of Railways within two months from the date of receipt of the order. Accordingly, the O.A. is disposed of with no order as to costs.


[Meenakshi Hooja]
Administrative Member


[Justice K.C.Joshi]
Judicial Member