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CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

Lucknow this the 17th day of 1995

(1) O.A.No. 136/91

(2) O.A. No. 181/91

HON. MR. JUSTICE B.C. SAKSENA, V.C.

HON. MR. V.K. SETH, MEMBER(A)

Afaq Ahmad, aged about 54 years, son of late Khalil Ahmad, resident of 482, Purana Qila, Lucknow.

Applicant.

By Advocate Shri L.P. Shukla

versus

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.

2. Divisional Railway Manager, Northern Railway, hazratganj, Lucknow.

3. Sri S.N. Tewari, aged about 54 years son of Sri Ram Sunder Tewari, Fitter grade II through Fitter Incharge (Way Bridge & Pumps) Northern Railway, Charbagh, Lucknow.

4. Sri Jaideo Singh, aged about 52 years, son of Sri Darbari Lal, Fitter grade II through Fitter-Incharge (Way Bridge & Pumps), Northern Railway, Charbagh Lucknow.

Respondents.

By Advocate Shri A.K. Chaturvedi,
and Shri Anil Srivastava.

O R D E R

HON. MR. V.K. SETH, MEMBER(A)

As the above two O.As arise from the same facts and circumstances and between the same

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parties, they are being disposed of by this common order.

2. In O.A. No. 181/91, the applicant has prayed for quashing of the impugned orders dated 18.4.91 re-fixing his seniority for Fitter grade II and order dated 29.5.91 reverting him from H.S.F. grade I in the scale of Rs 1320-2040 to H.S.F. grade II in the scale of Rs 1200-1800 with immediate effect.

3. In O.A. No. 136/91 the applicant has sought quashing of the orders dated 16.4.91 (page 38) which restores the original seniority of respondent No.3, Shri S.N. Tewari.

4. The relevant facts as gleaned from the averments made in two OAs are as follows:

In 1957, a panel for the post of Cleaner was formed wherein the applicant was placed above the respondents S/Shri S.N. Tewari and Jaideo Singh. The applicant as also the above mentioned respondents failed in the medical examination of cleaner, passed the same for the post of Khalasi. The two respondents and the applicant started working under F.I.O. Pump, Northern Railway, Charbagh, Lucknow with effect from 11.1.58 16.1.58 and 23.1.58 respectively. In July, 1958, the applicant was transferred under F.I.O. Way Bridge and he was confirmed as Khalasi with effect from 1.1.61 vide orders of 26.5.1961 issued by the Assistant Personnel Officer, Northern Railway, Lucknow. Thereafter, the applicant was promoted as B.T. Fitter and with effect from 1.4.79 as Skilled Fitter and further as Highly Skilled Fitter II and lastly as Fitter Highly

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Skilled grade I in the scale of Rs 1320-2040 with effect from 26.6.90.

5. During the above period, vide orders of Divisional Superintendent dated 2.7.59 respondent S.N. Tewari was transferred from Pratapgarh to F.I.O. (P) Lucknow against a new sanctioned post (Annexure A-2 page 18 of O.A. 136 of 1991) and Jaideo Singh from under Loco Foreman Lucknow, he was transferred back to F.I.O. (P), Lucknow.

6. On 2.11.1968 (Annexure A-4 of O.A. 139/91) a provisional seniority list of Fitter Khalasi of F.I.O.W.B.&P was issued by the Divisional Superintendent office. In this list the names of Jaideo Singh and S.N. Tewari appears at serial No. 23 and 26 respectively, whereas the applicant is shown at serial No. 21. On 14.5.90 while deciding the representation of the respondent S.N. Tewari, in the Divisional office, Lucknow letter addressed to A.P.S. to Railway Minister with copy endorsed to Shri Tewari it ^{has been} indicated that Shri Tewari was assigned the correct seniority as Fitter Khalasi with effect from 20.4.1961. It is also indicated in the said letter that Shri Tewari joined under F.I.O.P.B&W, Lucknow on transfer at his own request. Subsequently, on 4th September, 1990, Annexure A-9, the seniority list issue was re-examined by the Divisional office and the applicant was assigned seniority position at serial No. 7 while respondents were placed at serial Nos. 4 and 5, against which decision, the applicant submitted a representation dated 25.10.1990 and the matter was disposed of by a letter dated 1.2.91, addressed by the Divisional Office to F.I.O.W.B.&P with copy endorsed to the applicant whereby, the applicant's case was

rejected. The restoration of seniority of respondent S.N. Tewari was reiterated and confirmed vide orders dated 16.4.91 impugned by the applicant in his O.A. No. 136/91.

7. The main ground taken by the applicant for his claims in the two OAs is that as per rules, the staff who came on transfer to a different unit on own request should have been assigned ~~the~~ lower seniority. In O.A. 181/91 it has also been alleged by the applicant that Shri S.N. Tewari the respondent No. 3 has not passed the trade test required for promotion to the H.S.F. I and further that the reversion of the applicant was arbitrary and in violation of principles of natural justice.

8. Counter and Rejoinder Affidavits have been exchanged between the parties in O.A. 136/91 as also in O.A. 181/91. We have carefully perused the records^{of} the two OAs. We have also given anxious thought to¹the submissions made by the learned counsel for the parties, during the course of hearing.

9. The relevant facts, briefly stated earlier, clearly show that the contention of the applicant regarding the transfer of respondent S.N. Tewari being treated as on own request has been carefully examined by the respondents. In their orders of 4.10.90 and in further^{orders} of 16.4.91, it has been clarified that the respondent S.N. Tewari had been transferred to Akbarpur being surplus staff and therefore, he was entitled to his original seniority, as per rules as also on the analogy of other similar cases of S/Shri Gurdayal Singh and Rahmat Ali. In view of categorical assertion of the respondents to the effect that Shri S.N.

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Tewari was transferred as being surplus, it is immaterial whether he had also made a request. Since Shri Tewari was transferred as surplus staff his seniority is governed by rule 311 of the I.R.E.M. i.e. its basis will be date of promotion/ date of appointment to the grade. It is also clear from the above that in view of the restored seniority of the respondent ^{S.N. Tewari}, he had a prior claim to promotion in comparison to the applicant.

10. We also notice from the orders dated 28.4.93 enclosed by the applicant with his MP. 555/93 in O.A. 181/91 that Shri S.N. Tewari has also subsequently cleared the trade test for Fitter grade I.

10. As regards the contention of the applicant regarding non-observance of principles of natural justice, we notice that his representation against re-fixation of his seniority vis-a-vis the respondents has been duly considered by the competent authority and adequately disposed of. It is also noteworthy that the reversion of the applicant was apparently an administrative consequence of re-fixation and lowering of his seniority. Nevertheless, the same was temporarily stayed by virtue of Interim orders of this Tribunal in O.A. 181/91 and was implemented only by means of orders of respondents dated 28.4.1993.

11. In view of the foregoing discussions, we hold that the two OAs lack merit. Accordingly, we dismiss the same. The parties are directed to bear their own costs.

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MEMBER(A)

P. S. Lakshmi

VICE CHAIRMAN

Lucknow: Dated: 27-2-95

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