

(45)

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH
LUCKNOW

O.A. No. 303/1990

1. Om Prakash Mishra	...	Applicant
Vs.		
Union of India & others	...	Respondents

O.A. No. 340/1989

2. Lal Mani Shukla	...	Applicant
Vs.		
Union of India & others	...	Respondents

O.A. No. 317/1990

3. Girdhari Prasad	...	Applicant
Vs.		
Union of India & others	...	Respondents

Hon. Mr. Justice U.C. Srivastava, V.C.

Hon. Mr. K. Obayya, A.M.

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

As all the three cases pertain to the same department and involve interpretation of the departmental Circular dated 13.10.78 and complaints in these cases are that the order detriment to the applicants have been passed without giving them any opportunity of hearing. The same are being disposed of together after hearing the Counsel for the parties.

In O.A. No. 303 of 1990, Shri O.P. Mishra, although the relief which has been sought by the applicant is that his representations are not being disposed of. The applicant in the said case entered as Khalasi Class IV

W

AO

staff under Chief Works Manager, Northern Railway and after getting promotion to the post of semi-skilled post as Hexa Machine Man, the applicant was appointed as Progressman after inclusion of his name in the panel which was duly approved. The post of Progressman and Material Collector was upgraded and designated as Jr. Progressman from 1.7.1959 equivalent to H.S. Grade-II vide s.o. dated 25.9.63. Having been found as fit, he was appointed as Production Mistry and was allowed to officiate several times between 1968 to 1972 and since 21.3.73 he was promoted to Production Mistry on a clear permanent post. In the year 1978, local policy was formulated and it was decided to allot trade of Mistris of Production Control Organisation who are without trade and that is why the applicant was allowed Fitter trade and a seniority list was prepared.

The applicant/preferred that his application against the illegal transfer which was dismissed vide order dated 28.2.86, the applicant was reduced from Rs.1850/- to Rs. 1820/- even without issuing any show-cause notice which according to him is a major penalty and adversely affects his rights. This was done in violation of the orders of natural justice as well as article 311(2) to the Constitution of India. The seniority was thus jeopardised which is against the Railway Board's Circular which says that those who are already promoted to the post of Production Mistris, before the issue of the Circular dated 13.10.78 were not to be reverted. Vide letter dated 13.10.78, issued by Dy.C.M.E.(W)/Lucknow, that the seniority of staff working in Production Control Organisation at present should be maintained in the

i/

(12)

shops from where they have come on transfer to P.C.O. Their juniors on the shop floor have already been tested and promoted to higher grades and they should also be given a chance to appear in the trade test for that particular post. If they qualify in the first attempt, they should be given proforma fixation from the date their juniors were promoted on the shop floor. It was made clear that no separate seniority list for P.C.O. is maintained and staff working in P.C.O. shall have their seniority in the shops from where they have come on transfer to P.C.O. It was also decided that so far as Production Ministries are concerned, only highly skilled Grade-II staff of a particular trade shall be considered according to seniority. Those who were already promoted against Production Mistry before issue of these orders shall not be reverted but all vacancies of Production Mistris occurring in future would be filled up on the basis of principles given in the said letter. Even then the applicant was reverted and his pay was also reduced without giving him any opportunity of hearing.

In case of Girdhari Lal, his representation was disposed of vide order dated 4.3.1989 but another representation which was made by him was not disposed of. He joined initially as Trade Apprentice in the year 1959 and promoted as Boiler Maker in the Boiler Shop and then transferred to Production Control Organisation on 6.6.1962 where he worked upto 28.10.65. He was promoted to the post of Planning Recorder Grade-II in P.C.O. and then from 1.5.70, he was promoted to Grade-I in the said organisation. On 1.7.70, he was promoted to Jr. Progressman. On 19.10.73, he was

U

promoted as Mistry Boiler Maker in P.C.O. . He was also promoted as Chargeman Grade-B, there he worked upto 13.8.83, but was reverted to the post of Mistry Boiler Maker and was transferred to Boiler Shop while working in P.C.O. He had given his option for promotion on 20.3.70 that he wanted to stay in P.C.O. Thereafter, he was promoted as Planning Recorder Grade-I. But while working in the shop floor, without assigning any reason or issuing any show-cause notice, his pay was reduced from Rs. 1720/- to Rs. 1640/-.

The applicants in Writ Petition No. 340 of Shri Lal Mani Shukla and another, entered as Basic Tradesman in semi-skilled grade i.e. Class IV, and Trade Apprentice and were posted in Mill Wright shop in Locomotive Workshop, Northern Railway, Charbagh, Lucknow. After passing requisite test, they were appointed as Khalesis in the year 1957. They were promoted on the post of Mistry in Grade Rs. 330-560 in which they were confirmed in P.C.O. but were posted in the Loco Shop on promotion as Chargeman in Grade Rs. 425-700 w.e.f. 1.11.82. After 12 months, they were reverted on the post of Mistry in Grade Rs. 330-560 and they had to opt new scales with effect from 1.1.86, and their substantive pay was fixed at Rs. 1850/- in new scale of the Mistry. Although they worked in P.C.O. from 24.1.57 to 31.10.82, vide order No. 170 dt. 3.3.89, their substantive pay was reduced from Rs. 1850/- to Rs. 1680/- without giving them any opportunity of hearing. Both these applicants retired from service on 30.9.89 and 31.7.89 respectively. Before retirement they filed an appeal which was rejected whereafter they have approached this Tribunal.

*Concise
11/11/94*

The applicant in O.A. No. 303, Shri O.P. Mishra who was working as Progressman on ex-cadre post from

2.1.59 was transferred to ex-cadre post vide Railway Board's directive dated 22.4.63 vide which all the posts in P.C.O. are tenure posts of 2 to 5 years and no one is to be retained in P.C.O. This Tribunal has already dismissed his application challenging this transfer vide order dated 30.8.88. The applicant who was engaged in various branches and was transferred, his pay had to be fixed in terms of instructions contained in P.S. No. 7478 and is not debarred from higher scale selection post due in the cadre shop. A reference has already been made to similar order of the Tribunal dated 30.8.88 in which it appeared that there was no violation of provisions of the Constitution of India, that is to transfer from ex-cadre post to cadre shop. Thus according to this, the applicant was not reverted to the post of Production Mistry and was transferred to cadre shop and his seniority was fixed in Loco Shop and he had been given a privilege of Spl. pay w.e.f. 1.7.78.

In regard to Spl. pay in P.C.O., which was to be sanctioned to the extent of 10% w.e.f. 1.6.78 and the same was enhanced to that 15% w.e.f. 1.8.84. The applicant who thus accepted the cadre much before the issue of the local policy of 13.10.78, his seniority was correctly fixed taking into ~~account~~ his original position in shop floor. Inter-se-seniority of Junior Progressman to H.S. Grade-II was circulated simply for selection of Production Mistry in terms of local policy circulated in 1972 which was not cadre seniority.

In O.A. No. 317 of 1990, also the Railway Administration has taken plea that he was promoted as Mistry w.e.f. 19.10.73 against an ex-cadre post in P.C.O., but he was maintaining substantive ~~as~~ lien in cadre shop.

In O.A. No. 340, similar plea has been taken in which it has been stated that the applicant No.1 was promoted as Chargeman in Grade Rs. 425-700 on ad-hoc basis due to his wrong inter-se-seniority by giving him undue benefit of the ex-cadre seniority of his promotion as Mistry in Production Control Organisation w.e.f. 13.5.69, which was an administrative error. On assigning correct seniority, the applicant was reverted to his substantive post of Mistry grade Rs. 330-560 and was posted in his cadre shop. As he was getting 10% and 15% special pay in terms of Railway Board's letter dated 9.6.1978 and 13.9.1978 which were based on same conditions.

*Chmra
18/11/91 ✓*

An employee who opted for Production Control Organisation or absorbed permanently in P.C.O. was not entitled to get this 10% or 15% special pay in terms of Railway Board's letters. The applicant was reverted on assigning the correct seniority and applicant No. 2 was never promoted as Chargeman-'B'. It is also not correct that their pay was fixed on Rs. 1850/- w.e.f. 1.1.1986 in the new scale of pay grade Rs1400-2300. His pay was never fixed in the new revised pay scale of ex-cadre post. The action has been taken as per rules and no violation of principles of natural justice has been committed. Article 311(2) of the Constitution of India also have no say in the matter.

It is to be noted that before this Tribunal an application against transfer from Production Control

Organisation to Shop Floor (Mathura Prasad and others Vs. Union of India, O.A. No. 149 of 1987 decided on 30th August, 1988) was submitted vide which transfers were held valid and covered by the policy laid down by the Railway Board and do not result in reversion. The said judgment has attained finality. The Calcutta Bench of Central Administrative Tribunal in case No. 530 held that the net effect of the Railway Boards Circular of 1963 and that the P.C.O. will have only cadre posts to be filled up by drafting employees from Shop Floor. The latest circular of Railway Board dated 13.9.1984, however, departs from the earlier orders in one respect, viz. having scope for promotion for those who opt to continue in the P.C.O. and as such would face permanent stagnation in P.C.O. which is not fair. Some avenue should be left for those who opt to continue in the Production Control Organisation which avenue was provided for in the Circular dated 22.4.1963. The Bench observed that the applicants, before it should be given an opportunity to exercise their option and be provided with the avenue for promotion within Production Control Organisation. The view taken by the Calcutta Bench got affirmation from the Supreme Court in the case of S.K. Chakraverty Vs. Union of India, A.I.R. 1988, S.C. Page 1647. In that view of the matter, in our opinion, it can not be contended that rights can not be affected. Reorganisation is permissible and as a result of the same rights may be affected, but the vested rights could not be taken away. Further, the Railway Board is fully competent to bring about necessary changes in

Concurred
18/11/19

- 8 -

the staff pattern of the various units under its control for the purpose of streamlining the organisation and improving the efficiency of the administration. Hence there was a good ground for this differentiation which has ~~a~~ rational nexus with the objection of streamlining the organisation.

In short the case of all applicants together is that pay was raised as a result of cadre promotion and not because of wrong fixation and there being implied contract pay can not be reduced. Under no rules merger of seniority from one cadre to another will consequently reduce the pay and seniority & of any employee and his pay and seniority is to remain protected. The Railway Board's D.O. letter No.E(NG)I-79 HML/343 dated 5.10.80 under serial No. 7478 according to the applicant has been misread and misapplied. According to applicants though vide letter dated 22.4.63 production cadre posts were declared ex-cadre and upto rank of Production Mistry get promotion through promotional channel of Production cadre vide letter dated 25.9.67. Trades were allotted thereafter and seniority was merged with the group on Shop Floor and transfer to shops was made without giving opportunity or taking option for which provision was made in Boards letter dated 22.4.63 and 13.9.84 which also provides that in absence of option, they would be considered for promotion along with the others to higher grade posts in the P.C.O. and staff would continue in the scale of pay in P.C.O. The giving of bottom seniority instead of protecting the status as it was before the issuance of Railway Board's instructions relied on and implemented in their own manner by Respondents substantive post was reduced which was not permissible.

w

*Contra
V.M.
18/11/84*

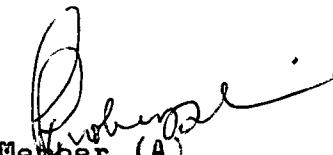
According to the Railway Administration, the post of Progressman and Material Collector was in existence ~~fr~~ from before 1.7.1959 and panels were also formed accordingly. After re-designation, which was not upgradation of the post of Progressman and Material Collector, a Grade (Rs. 130-212) was allotted to them. The Railway Board vide letter dated 5.1.1980 and Circulated vide G.M.(P)/NOLS Northern Railway, P.S. No.7478, depicted that it is not possible to fix pay on cadre post on the basis of pay drawn in ex-cadre post therefore, issue of show-cause notice was not necessary. The instructions of Railway Board in respect of re-fixation of pay on transfer from ex-cadre to cadre shop were to be followed and were so followed. Privilege to those who were working on ex-cadre post was given till they were working there against the post getting accelerated promotion higher pay and other benefits, but when they were transferred to cadre post, their pay had to be fixed in terms of instructions of P.S. 7478. This did not debar all such persons from higher grade selection and promotion if due in cadre shop. There was no written contract with any one. After reversion to parent group from ex-cadre post, the employee is to get the same pay and privileges after coming to parent department and will be entitled to cadre position in the department. If such pay is re-fixed in cadre, it will not be the case of any reduction in pay or punishment.

The subject of Railway Boards letter dated 24.12.79 and 5.1.80, issued by P.S. 7478 which is the main document acted upon leading to present litigation is - undue benefits in appointments against ex-cadre post.

The cause of issuance of letter dated 5.1.80 was complaints regarding selection on ex-cadre post on a pick and choose basis. Reference was also made to the Railway Boards letter dated 16.5.73 stipulating that it is not permissible to fix pay on a cadre post on the basis of pay drawn on ex-cadre post. The letter dated 29.12.1979 conveys the decision that extension of time upto 31.12.78 may be deemed to be applicable in the case of those who having been in service on 1.1.73 retired quitted/since died in service during the period from 1.1.73 to 31.12.78. The option exercised in the above case upto 31.12.78, may therefore, be treated to be valid and the cases regulated accordingly in terms of the provisions made in para 2 of the Ministry's letter dated 23.7.79.

These facts make it clear that transfer to shops could have been made and was made and those who were working on ex-cadre posts could have been repatriated back to parent department or cadre post which may have involved loss of emoluments. This was only a legal consequence. But in parent department, they would be entitled to posts and emoluments which they would have got, had they stayed there from the very beginning. But all things still remained that no opportunity and option was given regarding transfer from Production Control Organisation, they are to be considered for promotion along with others to higher grade posts in the Production Control Organisation, as was observed by Hon. Supreme Court in S.K. Chakravarty's case (Supra.)

Accordingly, respondents are directed to re-consider this position in the light of directions given by Hon. Supreme Court and the representations which have been rejected will be deemed to be pending and the orders rejecting them would be deemed to have been quashed in O.A. No. 340 of 1989 and 317 of 1990. Let a decision be given in this behalf within 3 months of the date of communication of this order and benefit would be given to the applicants with retrospective effect, viz. the date of entitlement notwithstanding the fact that some of them may have retired from service. No order as to costs.


Member (A)


Vice Chairman

Lucknow
dated 24.6.92

/smc/