

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH

O.ANO.: 468 OF 2006

[Patna, this *Wednesday*, the 30th Day of April, 2014]

C O R A M

HON'BLE MR. AKHIL KUMAR JAIN, MEMBER [ADMN.]
HON'BLE MS. URMITA DATTA (SEN), MEMBER [JUDL.]

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1. Kameshwar Prasad, S/o late Nanhak Ram, village – Katari Hill, PS-Chaundauti, District-Gaya.
 2. Dinesh Kumar Rai, S/o Late Yogendra Shukla, vill-Govindpur Jhakaraha, PS-Rajapakar, District-Vaishali.
 3. Braj Kishore Chaubey, S/o late Gajanand Chaubey, C/o Sri Nawal Kishore Singh, Mohalla-LoCo Colony, Qtr. No. 133 EF, PS-Khagaul, District-Patna [now retired.]
 4. Mahesh Kumar, S/o Shri Teta Rajak, mohalla-Officer Colony, Qtr. No.39, PS- Khagaul, District-Patna.
 5. Amla Singh Yadav, S/o Late Mahesh Singh Yadav, residing at Train Lighting Office, E.C.Railway, PS-Khagaul, District-Patna.
 6. Rajendra Kumar Sharma, S/o Late P.N.Sharma, Mohalla-LoCo Colony, Qtr. Np. 118, PS-Khagaul, District-Patna.
 7. Ram Lagan Visharma, S/o Dukhi Mistry, Mohalla-Officer Colony, qtr. No.413 AB,PS- Khagaul, District-Patna.APPLICANTS.
- By Advocate :- Shri J.K.Karn.

vs.

1. The Union of India through the General Manager, E.C.Railway, Hajipur.
 2. The Chief Personnel Officer, E.C.Railway, Hajipur.
 3. The Divisional Railway Manager, E.C.Railway, Danapur.
 4. The Sr. Divisional Personnel Officer, E.C.Railway, Danapur.RESPONDENTS.
- By Advocate :- Shri A.K.K.Sahay, ASC.

O R D E R

Akhil Kumar Jain, Member [Admn.] :- This OA has been jointly filed by seven applicants seeking following relief :-

[A] To quash and set aside letters dated 06.03.2006 and 10.05.2006 as contained in Annexures-A/5 & A/6, whereby respondent no.4 has turned down and rejected claims of the applicants for their promotion viz-a-viz their juniors.

[B] To direct the respondent authorities to consider their claims for grant of promotion w.e.f. their eligibility viz-a-viz their juniors, in accordance with Rules of the department and settled principles of law.


[C] To direct respondent authorities to release and pay the monetary benefits and arrears to the applicants along with admissible interest thereon.



[D] The cost of litigation may be awarded upon the respondents.

[E] Any other relief/reliefs as the applicants are entitled and deemed fit and proper in the ends of justice.


2. The case of the applicants is that they were initially appointed on the post of Khalasi in Train Lighting of Electrical Department of Danapur Division. They worked against the post of Khalasi and Semi Skilled technician for periods ranging from 10 to 18 years or even more. Thereafter, options were invited from the applicants and they were promoted and posted on the posts of Painter, Carpenter, Welder, Blacksmith, Taindel etc.. Despite promotion, the applicants were allowed to do the work of Technicians. Photocopy of order of promotion of one of the applicants from Helper Khalsi to Carpenter Grade III dated 01.06.1991 is annexed at Annexure-A/1. Subsequently without their willingness, vide office order dated 02.04.2004, the applicants were adjusted against vacant posts of MCM, Technician-I, II & III in Train Lighting and were posted at Danapur and Patna Jn. [Annexure-A/2]. The applicants did not object to that as it was for smooth functioning of the Department. Thereafter, vide order dated 05.07.2004 juniors to the applicants were promoted to the scales of Rs.5000-8000 and Rs.4500-7000 whereas the applicants despite being senior, were denied the same [Annexure-A/3]. The applicants submitted representation on 14.07.2004 followed by reminder dated 10.08.2004 [Annexure-A/4 series]. Finally applicant no.1 was communicated letter dated 06.03.2005 informing that the applicants and some others were adjusted after some posts were surrendered. There was no reply on the denial of promotion. It was also communicated that one SC employee was promoted under restructuring as per roster point [Annexure-A/5]. The applicants have stated that they came across the plea of surrender for the first time. The respondents failed to appreciate that in case of surrender of posts, seniors are not disturbed on the principle of 'First come, last go'.



Their representations were, therefore, rejected on illegal ground of surrender of posts. The applicants have alleged that firstly the applicants, the senior employees, were adjusted in the name of smooth functioning of the Department. Thereafter, their juniors were promoted, denying promotion to the applicants and now their representation has been rejected on the plea of surrender of posts. Annexure-A/4 was just issued to mislead the applicants, to deny them their promotion on unjustified and untenable grounds. Being aggrieved, applicants submitted representation to the administration that if justice was not done to them, they would do Group Self Immolation. Thereafter, letter dated 10.05.2006 was communicated to the applicants taking another stand for rejecting their case. It was mentioned that the case of surplus employees, whose absorption/adjustments is done in another cadre, their seniority in parent cadre is not considered for the purpose of promotion. It was also contended that seniority of the applicant was fixed in Train Lighting Department. The applicant was also advised not to self immolation.

3. The applicants have submitted that both the letters were contradictory and their case has been rejected in wrong application of rules and in violation of principles of law. Hence, the instant OA.

4. In the written statement, the respondents have stated that Technical category of Miscellaneous Cadre were rendered surplus on account of implementation of restructuring in the Electrical cadre. The surplus staff were deployed against existing vacancies in Train Lighting [TL] seniority group as well as Power House [PH] seniority group and were sent for training for six months. After completion of training, seniority of surplus staff were assigned as per GM[P]/HJP Sl.No. 83/2004 wherein it was clearly mentioned that service of surplus staff prior to redeployment shall not be counted for seniority and promotion in the absorbing unit. The



promotions have been made as per rules. In restructuring of 2003, one post of Technician-II was upgraded and as per roster it went to SC candidate. Accordingly, one candidate of Misc. Cadre was promoted from Tech-II to Tech-I. The respondents have denied any contradiction in the letters.

5. Heard the learned counsels for rival parties. Learned counsel for the respondents also submitted written arguments annexing therewith seniority lists of different Cadres/Scales in Electrical Department in Danapur Division circulated vide letter dated 01.03.2004 and letter dated 12.05.2006, statement showing gradewise existing staff strength as on 01.11.2003 and proposed staff strength after restructuring, copy of surrender memorandum of 25 posts of Electrical [G] department sent to GM[P], E.C.Railway, Hajipur by ^{Mr} DRM, E.C.Railway, Danapur vide letter dated 31.03.2004, copy of order dated 02.06.2004 regarding adjustment of affected employees, copies of promotion orders dated 30.08.2004 promoting some Tech-III and Tech-II under restructuring, promotion order dated 04.01.2005 promoting some Tech-II to Tech-I under restructuring, promotion order dated 06.01.2005 promoting staff in Tech-II to Tech-I against chain vacancies arising due to restructuring, promotion order dated 24.09.2008 promoting some Tech.III to Tech-II. The learned counsel for the applicants also submitted copies of extracts of rules and instructions regarding fixation of seniority of surplus staff including letter dated 25.05.2004 [RBE 105/04] issued by the Railway Board and the seniority list of different grades in the Electrical [TL] Department circulated on 12.05.2006.

6. We have perused the records including documents annexed with written arguments and considered submission made on behalf of rival parties.

7. On perusal of office order No.437 of 2004 dated 02.06.2004 issued



by Assistant Personnel [Officer], Danapur Division, we note that the order clearly states that on surrender of all posts in Miscellaneous [Ancillary] Cadres in Electrical Train Lighting Department and Electrical [G] Power House Department, the staff working on those posts were re-adjusted/re-deployed against vacant posts of Electrical [Train Lighting]/Electrical [G] respectively in same scales/grade. The staff in Electrical [TL] Department were posted against vacant safety category posts. Their place of posting was also mentioned. As per the said order applicant no.1 & 2, Shri Kameshwar Prasad and Shri Dinesh Kumar Rai, were re-deployed as Tech-III[TL] [Rs. 3050-4590], applicant no.4 &6, Mahesh Kumar and R.K. Sharma as Tech.-II [TL][Rs.4000-6000], applicant no. 3 & 7 as Tech-I [TL] [Rs.4500-7000] and applicant no.5, Amla Singh Yadav as MCM [TL]. This order is not under challenge.

8. On perusal of Railway Board's Circular RBE 105/2004 dated 25.05.2004, which was issued prior to issuing the absorption order of the applicants as mentioned earlier, and incorporated as para 3134 in IREM, Vol. I [Revised Edition 1989] through Advance Correction Slip No.159, we note that CAT, Jodhpur Bench in its judgments dated 24.12.1999 in OA No. 165/98 and another dated 05.01.2000 in OA No. 489 of 1994, allowed application filed by the Railway employees against procedure of allowing full seniority to surplus staff on their absorption to another cadre. These judgments were based on the judgment dated 29.07.1988 of Hon'ble Supreme Court in Civil Appeal No. 2530/81 and 1730/87 in the case of South Eastern Railway & Ors. vs. Ram Narain Singh & Ors and also judgment dated 18.11.1980 in the case of Ramakant Chaturvedi & Ors. vs. Division Supdt., Northern Railway, Moradabad & others : 1980 [Supp] [SCC] 621. In view of these judgments it was decided that services rendered by surplus staff prior to redeployment will not count for seniority



and promotions in the absorbing unit. IREM Vol. I, 1989 was accordingly amended through ACP 159. ~~Since~~ The applicants were clearly redeployed after declaration of the posts on which they were working as surplus ~~staff~~ in the other cadres/grades without giving them benefit of past service in the earlier post. This seems to be in accordance with rules. The said rule/instruction is also not under challenge.

9. On perusal of the seniority lists annexed by the respondents/applicant with written arguments, we note that in the seniority lists of 2006 of Tech-I, II, III and MCM [TL], the applicants were placed strictly as per aforementioned instructions. On perusal of promotion orders annexed by the learned counsel for the applicants with written arguments, we note that promotions have been made as per seniority list. Some reserved category candidates seem to have got promotion as per roster point for the said category vacancies. Hence, contention of the applicants that their juniors have been promoted is not correct. Incidentally the seniority lists were circulated vide letters dated 01.03.2004 and 12.05.2006 and objections were invited within one month from the date of publication of the said lists. These seniority lists were initially not brought on record by the applicants in their OA. These have been annexed in written arguments submitted after reserving the order. There is also nothing to show that the applicants submitted their objections against the seniority lists within the prescribed time limit. Therefore, it is not open to them now to claim themselves senior to those who were in Tech-I [TL], Tech-II [TL], Tech-III [TL] and MCM [T] Cadres prior to their redeployment on being declared as surplus.

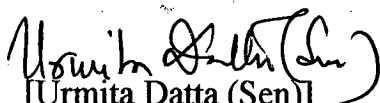
10. Having observed as above, we note that the main point which is raised by the applicants is that initially they were appointed on the posts of Khalasi and on semi-skilled posts in the Electrical [TL] and worked on

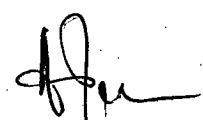


those posts for 10 to 18 years or even more. Then for smooth functioning of the Department and on their option, they were promoted and posted on different posts under Misc./Ancillary Cadres in the same Department. Again on declaration of all the posts in the said cadre as surplus, they were re-deployed in the same cadre of TL from where they were promoted and appointed to posts in Miscellaneous/Ancillary Cadres, of course, on their own option. Thus, on their return to the same cadre, should they be placed below their erstwhile juniors, is a question which merits consideration. One line of arguments may be that since they went to different cadres on their own option, they can not claim benefit of past service for fixation of seniority in the cadre in which they are re-deployed after being declared as surplus as per existing instructions. The other line of argument may be that the services rendered prior to re-deployment in the different cadre may not be taken note of but the service rendered earlier in the same cadre in which they are redeployed should be taken note of. Both the lines of arguments have equal force. This aspect certainly needs consideration by the competent authority i.e., Railway Board.

11. Since the instructions contained in RBE No.105/2004 incorporated as Paragraph 313A in IREM Vol. I through ACS No.159 are not under challenge, and as the actions of the respondents are in accordance with their instructions, we are not inclined to interfere with the actions of the respondents. ^{at this stage. After} However, the points raised in the observations made in the preceding paragraph should be considered by the concerned authorities.

12. The OA is, therefore, disposed of with observations in the preceding paragraph.


[Urmita Datta (Sen)]
Member [Judl.]


[Akhil Kumar Jain]
Member [Admn.]