

(14)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 446/89

Transfer Application No.

Date of Decision 30-05-96

H.P.Raut & 9 Ors.

Petitioner/s

Shri G.S.Walia

Advocate for
the Petitioners

Versus

Union of India & 9 Ors.

Respondent/s

Shri V.S.Masurkar (R-1 to 3)

Advocate for
the Respondents

CORAM :

Hon'ble Shri. B.S.Hegde, Member (J).

Hon'ble Shri. M.R.Kolhatkar, Member (A).

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to other Benches of the Tribunal ?

abp.

M.R.Kolhatkar
(M.R.KOLHATKAR)
MEMBER(A)

CENTRAL ADMINISTRATIVE TRIBUNAL

GULESTAN BLDG. NO.6, PRESCOT ROAD, 4TH FLOOR.,

MUMBAI - 400 001.

ORIGINAL APPLICATION NO. 446/89.

DATED THIS 30TH DAY OF MAY, 1996.

CORAM : Hon'ble Shri B.S.Hegde, Member (J).

Hon'ble Shri M.R.Kolhatkar, Member (A).

H.P.Raut & 9 Ors. ... Applicants.
(By Advocate Shri G.S.Walia)

v/s.

1. Union of India through
General Manager, Central Railway,
Bombay V.T.,
Bombay - 400 001.
2. Chief Workshop Engineer,
Central Railway, Bombay V.T.,
Bombay - 400 001.
3. Chief Workshop Manager,
Central Railway Workshop,
Parel, Bombay - 400 012.
4. Shri M.P.Chugani, Dy. SS.
5. Shri G.D.Khire, Chargeman 'A'
6. Shri V.C.Sonawale, Chargeman 'B'
7. Shri S.J.Kadam, Chargeman 'B'
8. Shri S.A.Nayagam, Chargeman 'B'
9. Shri A.K.Chandorkar, Chargeman 'A'
10. Shri B.B.Kori, Chargeman 'B'. ... Respondents.
(By Advocate Shri V.S.Masurkar)
Central Govt, Standing Counsel.

I O R D E R I

I Per Shri M.R.Kolhatkar, Member (A) I

1. In this OA under section 19 of the Administrative Tribunals Act, the 10 applicants, working as Senior Supervisors in Diesel side of the Parel Workshop have challenged the order dated 4/1/89, at Exhibit-A by which 19 supervisors of the steam side (Shrinkage trade) in various trades have been allotted trades shown against their names so that the Office of the Senior Personnel Officer would interpolate their

M.M.

15

seniority in their respective trades since their transfer to Diesel Cadre was in the interest of administration as per decision taken in the Joint meeting with both the recognised unions. It is the contention of the applicant that when there is a shrinkage of one cadre and the employees belonging to shrinkage cadre are transferred to another cadre, the said employees are required to be declared surplus and their absorption on the diesel side is to be done in such a manner that the persons so transferred cannot claim their seniority on account of their having worked in Steam side. In this connection, reliance is placed on the Railway Board letter dated 12/5/66 on the subject of "Absorption of staff-rendered surplus on the projects/Rlys." in which in para-4(e) it is mentioned

"No benefit for the previous service should however, be allowed for fixation of seniority irrespective of the fact whether the services are continuous or otherwise."

2. Reliance is also placed on the Home Ministry instructions on Seniority and Promotion vide O.M.No. 10/1/63-Estt.(D)- dated 30/11/63 and 9/22/68-Estt(D), dated 6/2/69. It is stated that "when an employee is declared surplus in a particular grade in an office and is redeployed in a grade in another office, he is not allowed to count his service in his previous office towards seniority in the office where he is redeployed."

3. According to the applicants, the employees who were absorbed in the diesel cadre were not the junior most employees. Moreover, the persons who were working on adhoc basis or temporary basis were relieved and were given seniority in the diesel cadre in which they were absorbed on the basis of their adhoc promotion. According to applicants, Railway Board have issued instruction No:E(NG)II/81/RE1/5 dated 15/1/82 for the purpose of identifying the surplus staff and also for their absorption/utilisation. This mentions at para-4

that

"There should be no recruitment in those categories in which posts have been declared surplus to enable re-deployment/absorption of surplus personnel without delay. Surplus staff can be deployed either in the existing vacancies in identical posts or against new posts which might be created for new activities."

4. According to the applicants, the embargo on recruitment also covers promotion because promotion is a mode of recruitment. In spite of this embargo, respondents resorted to illegal promotion of the steam supervisors and their subsequent illegal transfer to diesel cadre, and comparatively very senior employees of diesel cadre badly suffered in the matter of their promotion. The Railway Board instructions envisaged creation of ~~ary~~ ~~supernumerary~~ posts. The respondents failed to resort to ~~numerous~~ this procedure and without creating ~~super~~ posts, they transferred surplus staff to other compact cadres, which has resulted seriously in promotional avenues of the diesel cadre staff being blocked. The applicants have therefore sought the relief of holding and declaring that the persons belonging to Steam cadre who have been rendered surplus and have been absorbed in Diesel cadre are not entitled to count their seniority in the absorbed cadre on the basis of their previous services in Steam cadre.

5. The respondents have opposed the OA. It is contended that although the OA seeks to challenge the letter dated 4/1/89, what the respondents really are trying to question ^{is} the action taken in the P.N.M. meeting with the two recognised unions of the Railway employees in 1978 ~~to~~ close the diesel cadre w.e.f. 1/10/78. Thus the OA is time barred because in the guise of challenging the order of 4/1/89, the OA challenges the action taken by the respondents in 1978. The respondents contend that

the majority of the applicants really belong to steam cadre and came to the diesel cadre on varying dates between 1976 and 1978. They do not have a common cause of action.

6. At this point we have considered the decisions taken regarding the closure of the cadre especially the which states that decision taken in the meeting held on 30/9/78 (D) the seniority of the staff absorbed in the diesel cadre will be regulated according to the seniority in their parent cadre with reference to non-continuous service rendered in a grade at the time of absorption viz. 30/9/78 in accordance with rule 321 in the Indian Railway Establishment Manual.

7. According to us, the applicants have not challenged the decision to close the cadre and the fact that some of the applicants belong to steam cadre before closure of cadre on 30/9/78 is immaterial. What the applicants are challenging is really the decision taken in the meeting dated 3/1/86. In this meeting it was decided that the staff who are already transferred to diesel from steam cadre and those who are in the process of transfer will be given protection of seniority of their parent cadre. It was also decided that the Shop Superintendents who are due for retirement in the near future should be considered for posting to diesel.

8. In the written statement, the respondents have relied on the decision and justified the same. A reference is made to the exigency of service namely staff causing least disadvantage to the surplus giving them xxx alternative appointment without resorting to retrenchment under Industrial disputes act. A reference is also made to the Railway Boards letter No.E(NG)II/84/RE-1/10 dt.

21/4/89 that if the staff are being rendered surplus and they have to be transferred to various units of other department against vacancies of duly sanctioned posts, they can be suitably adjusted in these units with their full seniority in the respective units. A copy of this ^{circulated} Railway Board is however not enclosed.

9. The Counsel for applicant contends that the action taken by the respondents is clearly illegal, arbitrary and discriminatory, and that the Senior Personnel Officer is not the authority to take action in violation of mandatory instructions of the Railway Board., and that the Senior Personnel Officer who can be said to/acting in exercise of the powers of the General Manager is bound by the para 157 and 158 of the Railway Establishment Code. para 157 states that the Railway Board have full powers to make rules of general application under ~~XXXXXXXXXXXXXXXXXXXX~~ to ^{under their control} provides that non-gazetted railway servants, and para 158 ^{the} General Manager is empowered to make rules in relation to Non gazetted employees under his control which are not in-consistent with the orders of the Railway Board. In this connection, the applicant relies on Baldev Krishan and Others v/s, Union of India & Ors in 1980 SCC (L&S) 142 in which the Supreme Court held that they cannot pick out the number takes of a particular division and make separate rules regarding pay revision and seniority for them. According to applicant this is a case where separate rules regarding seniority are being applied, for a particular/ ^{workshop}

10. The applicant next refers to K.R.M.Pillai and Ors v/s. Union of India in A.T.R. 1988(2)C.A.T. 179, which is a judgement dated 29/1/88 of this bench in which ^{by} the contention that the CPRO 73/73 and 11/75 in which

there was a similar condition regarding loss of seniority on the part of surplus staff was held to be constitutional. He next relies on Rameswar Dayal Dadhich v/s. Union of India in A.T.R. 1988(1)C.A.T. 240 which is in relation to Delhi School Education Rules, it was held that an absorbed employee would rank as junior to all the person(s) of the same category/ is/ arbitrary or violative of Articles 14 & 16 of the constitution.

11. We have consider^{ed} the matter, Although the applicants by way of amendment have brought in new material in particular relating to Railway Board circular dated 15/1/82 and the injustice done ~~to~~ some of the applicants because of failure to comply with these instructions. We are of the view, that we are not required to go into the past history. The short question before us is whether in terms of the order dated 4/1/89, respondents by making a declaration that the transfer of certain number of supervisors transferred from steam side was in interest of administration as per decision taken in joint meeting with both recognised unions can interpolate their seniority irrespective of the various Railway Board instructions especially instruction dated 12/5/66 and Home Ministry instructions and ~~the~~ case law which has been cited before us. We have no doubt in our mind that what was sought to be done by respondents was not in accordance with the Railway Board instructions or other instructions of the Nodal Ministry namely ~~(Department of Personnel)~~ but it was a decision taken in a meeting with the unions. Such a decision is not valid ~~if it is not in accordance with~~ Govt~~s~~ instructions. The action therefore to interpolate the seniority of the surplus steam cadre supervisors by taking into account ~~their~~ service in the steam cadre is ~~xxxxxxxxx~~ patently illegal and liable to be interfered

with by the Tribunal. We therefore allow the OA and hold and declare that the persons belonging to steam cadre who have been rendered surplus and have been absorbed in diesel cadre are not entitled to count their seniority in the absorbed cadre on the basis of their previous services in Steam cadre. The letter dated 4/1/89 is quashed and set aside and the respondents are directed to take action not to count the previous service of such staff in the steam cadre for seniority on diesel cadre and fix the seniority afresh accordingly. There will be no orders as to costs.

M.R.Kolhatkar

(M.R.KOLHATKAR)
MEMBER(A)

B.S.Hegde
(B.S. HEGDE)
MEMBER(J)

abp

dt. 30/5/96
order/Judgement despatched
to Applicant/Respondent(s)
on 6/6/96

14/6/96