

1.
CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH

O.A.NO.783/2005

Dated the 23rd ¹⁵/_{th} March, 2009

CORAM:

HON'BLE MS. SADHNA SRIVASTAVA, MEMBER(J)

HON'BLE MR. AMIT KUSHARI, MEMBER(A)

1. Jata Shankar Mishra, S/o Late J.J. Mishra,
working as Khalasi Helper under the Loco Foreman/SEE(Loco),
Eastern Railway, Jamalpur(Bihar).

2. Surendra Yadav, S/o Late Chamary Yadav, working as
Khalasi Helper under the Loco Foreman, Jamalpur.

3. Sunil Kumar Mandal, S/o Late Hirdaya Mandal,
Fitter Kh. Helper under SSE(Loco), Jamalpur(Bihar).

... Applicants

By Advocate : Sri A.N. Jha

vs.

1. Union of India represented through
the General Manager, Eastern Railway, Fairlie Place,
17, Netaji Subash Road, Kolkatta-1(W.B.)

2. The Divisional Railway Manager, Eastern Railway,
Malda Division, Malda(West Bengal).

3. The Divisional Personnel Officer, Eastern Railway,
Malda Division, Malda(West Bengal).

4. The Divisional Mechanical Engineer, Eastern Railway.,
Malda Division, Malda(West Bengal).

... Respondents

By Advocate : Sri Mukund jee

ORDER

HON'BLE MS. SADHNA SRIVASTAVA, MEMBER(J):

The applicants, 3 in number, are seeking the same relief as has been granted by



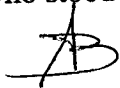
this Tribunal to similarly situated persons in O.A. No.473/96 decided on 25th July, 2000. The facts are that in the year 1993 a policy decision was taken by the Railway Ministry to close the steam shed of loco because of commissioning of diesel engines in the Mechanical Department of Malda division at Jamalpur. Consequently the staff of loco shed(steam) was declared surplus. Therefore the surplus staff was asked to exercise option, if they so desire, to be transferred to Diesel Shed Loco, Jamalpur. From amongst the optees some junior staff was spared for joining for Diesel Shed. However, others were retained at Loco Shed(Steam) for administrative reasons, probably for the reason that they were experienced for the work of accident relief train as well as fueling points work. The dispute arose as soon as those transferred to Diesel Shed were granted promotion, while those retained at Loco Shed (Steam) were ignored for such promotion. In the first instance a batch of such similarly placed employees filed O.A.No.473/96 claiming the benefit of promotion as granted to their juniors who had been transferred to Diesel Shed. A Division Bench of this Tribunal., after taking into account the facts and law on the subject, allowed the O.A.No.473/96. This judgment attained finality and the respondents by order dated 5th November, 2001 as contained in Annexure A/8 implemented the judgment by giving the same benefits to those 18 employees who had approached this Tribunal by means of O.A. No.473/96 as was granted to their juniors transferred to the Diesel Shed. The present 3 applicants before us, however, were not given the same benefits. Therefore they filed O.A.No.229/05 which was decided at the Admission Stage itself by order dated 28th March, 2005 by giving a direction to the respondents to consider their cases for promotion also keeping in view the principle adopted by the Tribunal in O.A.



No.473/96. However the Divisional Railway Manager, Malda Division of Eastern Railway by order dated 1st September, 2005 has rejected their claim of promotion. Therefore this O.A. for quashing the order dated 1.9.2005 as contained in Annexure A/12 and to grant of same relief as has been granted ^{to} the applicants in O.A.No.473/96.

2. We have heard the learned counsel for the parties and perused the records.


3. The only point which arises for adjudication is whether the 3 applicants were similarly placed as those transferred to Diesel Shed earlier and those 18 employees who were given relief by means of O.A.No.473/88 which judgment has already been implemented by the respondents, as mentioned above. The respondents do allege that the present 3 applicants were not similarly situated persons. However, they have utterly failed to give reasons for the same. The respondents do not deny that Loco Shed (Steam) , Jamalpur was closed in 1993; that the staff of Steam Loco Shed was declared surplus; that the staff including the applicants opted for transfer to Diesel Shed; the juniors to the applicants were transferred to Diesel Shed; that the applicants were retained at Steam Loco Shed under administrative exigencies; that the juniors of the applicants transferred to the Diesel Shed have been granted promotion as Diesel Mechanic Grade III; that the applicants and those granted promotion belong to the same cadre of service. If so, on what grounds and for what reasons, the respondents claim that the applicants were not similarly placed employees; this plea cannot be sustained. We are of the considered opinion that the respondents have utterly failed to bring home to us their plea that the applicants were not similarly placed employees and that they are not entitled to be given the same treatment as accorded to their juniors who stood transferred to Diesel Shed. The applicants never refused for their transfer to

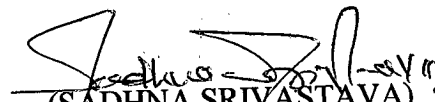


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Diesel Shed. They were retained in the Steam Loco Shed by the administration for its own reasons. Therefore it will not be correct to say that they are not entitled to promotion which has been accorded to their juniors only because there is no order for their transfer to Diesel Shed. In the above circumstances, the O.A. is liable to be allowed.

4. Resultantly the O.A. is allowed. The impugned order dated 01.09.2005 is hereby quashed. The respondents are directed to consider the promotion of the applicants at par with their juniors with all consequential benefits according to the seniority list. It shall be open for the respondents to create promotional avenues even in the Steam Shed for the applicants in the special facts and circumstances of the case. Such consideration be made at the earliest possible within four months from the date of communication of this order. There shall be no order as to costs.


(AMIT KUSHARI)
MEMBER(A)


(SADHNA SRIVASTAVA)
MEMBER(J)

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