

(2)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 91 of 1991

Transfer Application No:

DATE OF DECISION: 11.1.1995

A.B.Surdas Petitioner

Mr. G.D. Samant Advocate for the Petitioners

Versus

U.O.I. & Ors. Respondent

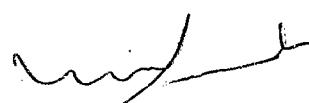
Mr. Subodh Joshi Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri **Justice M.S.Deshpande, Vice Chairman**

The Hon'ble Shri **P.P. Srivastava, Member (A)**

1. To be referred to the Reporter or not ? 2
2. Whether it needs to be circulated to other Benches of the Tribunal ? NO


V.C.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH, 'GULESTAN' BUILDING NO.6

PRESCOT ROAD, BOMBAY 1

O.A. NO. 91/1991

A.B. Surdas

..Applicant

v/s

Union of India through

General Manager, Central Railway

and Another

..Respondents

Coram: Hon. Shri Justice M.S. Deshpande, Vice Chairman

Hon. Shri P.P. Srivastava, Member(A)

Appearance:

Mr. G.D. Samant

Counsel for the applicant

Mr. Subodh Joshi

Counsel for the respondent

ORAL JUDGMENT:

DATED: 11.1.1995

(Per: M.S. Deshpande, Vice Chairman)

By this application the applicant seeks a direction to the respondents to fix his seniority in the cadre of works maistry in the engineering department of the Central Railway, Solapur Division, with effect from 24.9.1963 which was the date from which he entered the service as works maistry, with all consequential benefits including promotion.

2. The applicant was appointed as works maistry in the engineering cadre of the Central Railway on 24th September 1963 and due to shrinkage in the civil engineering construction posts of inspector of works. The works maistries were rendered surplus and the applicant was absorbed in the alternate recruitment categories as per letter dated 11.9.74 and was posted as Assistant Station Master in Solapur Division with effect from 8.10.1974. The applicant applied for repatriation in November 1979 and was posted in the civil construction wing on 25.9.1979 (Annexure A-4). The applicant made a representation on 11th September 1978 for being granted all the benefits of seniority

w.e.f. 24th September 1963 but there was no response from the respondents until a letter was sent on 30th October 1986 informing him that his absorption as SOM was purely on temporary basis and he was liable to be repatriated to his parent department after completion of project work and the question of interpolating his name in the seniority list of SOM did not arise as he had already accepted the terms and conditions mentioned in the letter dated 12.4.1979. The applicant has, therefore, moved the Tribunal for the aforesaid reliefs.

3. The respondents while denying the claim of the applicant contended that since the applicant had accepted the terms and conditions stipulated in the letter dated 12.4.1979 he was not entitled to get seniority in the Civil Engineering Construction Department where he had been temporarily transferred by keeping the lien in the ASM cadre of operating department. With regard to the applicant's contention that three other employees who were similarly situated had been differently treated, it was urged that only one N.A.Kothandaraman had joined the Civil Engineering

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Department and he was given his original seniority by the South-Central Railway which had a different set of rules from those of the Central Railway and since the rules framed by the Central Railway had been properly complied with the applicant was not entitled to make a grievance by saying that he had been discriminated against.

4. It is apparent from the terms of the circular dated 11th September 1994 that the employees who were surplus in survey department including the engineering construction organisation were absorbed in alternate recruitment category under certain terms and conditions. Clause (ii) of para 2 says that seniority amongst the ASMs would be interpolated with reference to the dates of their appointments/promotions of the persons who were absorbed as works maistry, draughtsman in those grades without disturbing the inter-se seniority and the interpolated seniority amongst the ASMs will not confirm upon them prescriptive right to claim promotion to higher grades in preference to their junior ASMs presently working in higher scales. They were to

be considered for promotion to higher scales in vacancies which may occur after they had rendered three years satisfactory service as ASMs in the cadre subject to their suitability for such promotion. Clause (iv) which is material states that once absorbed as ASMs, their lien will be cut off in their permanent cadres. It is clear that under these terms and conditions the applicant could not have claimed that he had his lien left in the category of works maistry in the engineering department where he had been found surplus and from where he had been brought to the alternate recruitment category.

5. The applicant had sought for repatriation in 1979 and by the order dated 25th September 1979 he was posted as ADM under the XEN.C.South/PA. The opening para of this letter reads that consequent upon the employees mentioned therein who have accepted the terms and conditions stipulated in letter dated 12.4.79 in respect of their appointment as S0Ms purely on temporary basis, the transfers and postings were ordered with immediate effect.

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6. It is apparent that in spite of these opening remarks the applicant was continued all along until he filed the present application and he is still being continued in the engineering cadre. Continuance over such a long period cannot be regarded as something purely temporary basis and we are not impressed by the contention of the respondents that the applicant had retained his lien in the ASM cadre in which he had been absorbed though upon his request he came to be posted in a different i.e., engineering department. The representations made by the applicant from 11.9.78 were not answered until, as we have already observed, the letter dated 30.4.86 was addressed to the Deputy Chief Engineer, Construction, Pune by the Chief Personnel Officer of the Central Railway on 30th October 1986. It was for the first time after 1979 that the persons representing were informed that their continuance after absorption as SOM was purely on temporary basis and that they would be liable to be returned back to the parent department after completion of the project work. The contention of the Ld. counsel for the applicant

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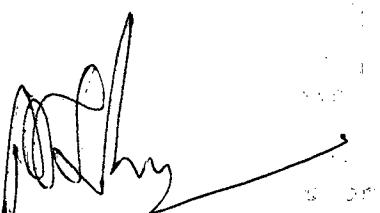
is that the applicant has not been given any promotion which the others got in the cadre of ASM and that his position after his repatriation to the engineering department in 1979 is also not being considered. We do not think that this is a very happy state of affairs. Since the applicant has been working from 25th September 1979 continuously after he made the request for being placed in the department, it is difficult to see how the long period spent thereafter can be regarded as temporary since it deprived him of the benefit of service in the engineering construction department. Nothing seems to have been done by the respondents with regard to the position of the applicant.

7. The applicant has also urged that four employees viz., Khaja Mohinuddin, S. Balaraj, S. Bhaskara Rao, N.A. Kothandaraman who were appointed as works maistries were absorbed in the alternative post of ASM and came to be repatriated to the original post of works mainstries by restoring their original seniority and they subsequently got promotions in the higher grades in the South Central Railway. It is also urged that J.M. Jadhav, R.S. Naik and G.A. Salaskar who were

originally recruited as works maistries in the engineering department were rendered surplus and they were absorbed in the alternate posts in commercial department and came to be repatriated to the parent post of works maistry in the months of October to December 1977 while the applicant was denied the repatriation. This according to the applicant was discriminatory, arbitrary and worked to the prejudice of the applicant. The respondents have denied this position in their written statement and have pointed out that Khaja Mohinuddin, S. Balraj, S. Bhaskar Rao were employed on the South Central Railway which has rules different from those in the Central Railway. Only N.K. Kothandaraman was given his original seniority by the Central Railway.

8. The ld. counsel for the applicant was not in a position to point out to us that the rules which govern the question of repatriation and continuation under both the Railways were identical leaving no room for differential treatment. We are, therefore, not impressed by the submission that the applicant was discriminated and is entitled to be treated in the same manner as Kothandaraman.

9. In the result we direct the respondents to treat the applicant as having been absorbed in the engineering department of the Central Railway with effect from 25th September 1979. The applicant would be entitled to seniority and all other consequential benefits flowing there from on the basis of this date of entry in the cadre. All the entitlements should be worked out and given to him within six months from the date of communication of this order. No order as to costs.



(P.P.Srivastava)

Member(A)



(M.S.Deshpande)

Vice Chairman