

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 922/93

Date of Decision: 10/9/99

M.B.Sirsat & Ors.

.. Applicant

Shri S.R.Atre

.. Advocate for  
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Shri S.C.Dhawan

.. Advocate for  
Respondent(s)

CORAM:

The Hon'ble Shri D.S.Bawej, Member (A)

The Hon'ble Shri S.L.Jain, Member (J)

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

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

*(D.S.BAWEJA)*  
(D.S.BAWEJA)  
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

OA.NO. 922.93

Dated this the 10th day of September 1999.

CORAM : Hon'ble Shri D.S.Bawaja, Member (A)  
Hon'ble Shri S.L.Jain, Member (J)

1. Mahadev Bhimrao Sirsat
2. Datto Gulabrao Savale
3. Tukaram Walke

All are working as Diesel  
Cleaner at Pune.

... Applicants

By Advocate Shri S.R.Atre

V/S.

1. Union of India through  
the General Manager,  
Central Railway,  
Bombay V.T.

2. The Divisional Railway Manager,  
Central Railway, Sholapur.

3. The Divisional Mechanical  
Engineer (Personnel),  
Central Railway, Sholapur.

... Respondents

By Advocate Shri S.C.Dhawan

O R D E R

(Per: Shri D.S.Bawaja, Member (A))

This application has been filed jointly  
by 3 applicants. The applicants were initially  
appointed as Yard Khalasies in the Steam Loco Shed  
in Solapur Division of Central Railway. As a result  
of dieselisation of railways, the applicants and other  
employees of the Steam Loco Shed had been rendered surplus.

The applicants were absorbed as Diesel Cleaners in the Diesel Shed at Pune. The applicants submit that as per order dated 2.1.1990, the Divisional Railway Manager, Solapur had called for applications from the employees for promotion as Diesel Assistants and Applicant No. 1 submitted an application on 2.1.1990 for the same. However, his application was not considered. Thereafter, the Railway Board, i.e. Respondent No. 1 issued a Circular dated 15.3.1990 directing that steam staff who had been rendered surplus can be given diesel conversion training without insisting minimum qualification and without any age restriction. The applicants' case is that as steam surplus staff, they were entitled for diesel conversion training but they were not being considered inspite of the fact that their juniors <sup>who</sup> were retained in steam shed were sent <sup>also</sup> for training. The applicants represented the matter through one of the recognised unions. The applicants also bring out that as per Circular dated 4.10.1991 Divisional Railway Manager called for the volunteers for the post of second fireman as well as Diesel Assistant. This was followed by another Circular dated 25.11.1991 to fill up the vacancies of Diesel Assistants. The applicants collectively made a representation dated 25.11.1991 for being considered for promotion as Diesel Assistants against the above referred Notification. Thereafter, they made further

representation dated 16.3.1992. However, as per letter dated 27.8.1992 from the Headquarters office, ~~it was advised that Yard Khalasies~~ who had been absorbed as Diesel Cleaners and are ~~as such~~ working ~~are not~~ entitled for selection to the post of Diesel Assistants. The applicants further bring out that inspite of their further representation, the respondents issued promotion orders to the post of Diesel Assistants on 9.10.1992 which covered number of juniors to the applicants. Feeling aggrieved by their non-promotion as Diesel Assistant, the present application has been filed on 7.9.1993 seeking the following reliefs :- (a) to direct the respondents to send the applicants for diesel conversion training and for ultimate absorption as Diesel Assistants in the Sholapur Division prior to their juniors and in case their juniors have been already promoted as diesel assistants, on the ultimate absorption of the applicants as diesel assistants, the applicants may be granted deemed date of seniority over their ~~erstwhile~~ juniors. (b) to direct the respondents to give all consequential benefits including seniority and arrears of pay on absorption as Diesel Assistants.

2. The main grounds advanced by the applicants in support of their reliefs are (a) the applicants were not the junior most to be declared surplus in steam shed as number of juniors were retained in steam shed and therefore the action of the respondents in

(i)

absorbing the applicants as Diesel Cleaners is bad in law. (b) The applicants being senior in the ~~steam~~ <sup>shed</sup> cadre have been over-looked while the juniors who had been retained in steam shed had been sent for training and absorbed as Diesel Assistants. The applicants have stated that similar question has been already examined by the Ernakulam Bench of this Tribunal in its order dated 16.3.1992 V.Balasubramanian & Ors. vs. Union of India & Ors., (1993) 24 ATC 27 and order in the review application in the same OA., (1993) 23 ATC 45, and the applicants are entitled to the same benefit.

3. The respondents have filed the written statement opposing the application. The respondents submit that the applicants were rendered surplus in the steam shed and being the junior most in particular shed, they were re-deployed in the Diesel Shed at Pune during 1989. After absorption in the Diesel Shed, the names of the applicants have been struck off from the cadre of steam shed and their seniority is being shown in the cadre of Diesel Shed. The applicants therefore have to seek further promotion in the Diesel Cadre as per the avenue of promotion laid down and therefore cannot claim for any promotional avenue in the steam cadre. The respondents deny that any applications had been called as per letter dated 2.1.1990 against which Applicant No. 1 alleged to have made an application for promotion to the post of Diesel Assistant. The respondents further contend that the Railway Board Circular dated

15.3.1990 as referred to by the applicants does not apply to their case. The respondents submit that the applicants have been already replied as per order dated 21.2.1992 which had been issued after considering the Railway Board letter on the subject. In view of these facts, the respondents contend that the plea of the applicants that their juniors had been sent for conversion training and promoted as Diesel Assistant is misconceived and the present application is not maintainable and deserves to be dismissed. The respondents have also submitted that the orders of the Ernakulam Bench relied upon by the applicants do not apply to the case of the applicants as the facts and circumstances in those cases are distinct from the present OA.

4. The applicants have filed rejoinder reply controverting the submissions of the respondents and repeating and reiterating whatever stated in the original application. The applicants refute the claim of the respondents that the applicants have been re-deployed in Diesel Shed stating that the applicants are still continued to be shown as separate staff in a separate seniority list and applicants have not been granted full benefit of seniority based on their past service. The applicants maintained that the respondents have not acted in terms of the Railway Board Circular by denying the benefit of conversion training for diesel traction and promotion as diesel Assistant.

5. We have heard Shri S.R.Atre, learned counsel for the applicants and Shri S.C.Dhawan, learned counsel for the respondents.

6. It is noted from the order-sheet that as per order dated 13.12.1993, the respondents were directed to consider the case of the applicants for being sent for diesel conversion course if they ~~meet with~~ <sup>standards</sup> the medical ~~l~~ as required in terms of the order of Ernakulam Bench in V.Ravindra Babu & Ors. vs. Union of India, 1993 (23) ATC 45. It is noted that the applicants were subsequently sent for diesel conversion training and on their successful completion of training, they ~~have~~ <sup>been</sup> promoted and posted as Diesel Assistants. In view of this admitted position, the learned counsel for the applicant during the hearing brought out that the only relief <sup>now</sup> ~~survive~~ is with regard to grant of seniority to the applicants with reference to their erstwhile juniors who had been promoted as <sup>earlier</sup> Diesel Assistants. The learned counsel for the applicants further submitted that ~~they do~~ not press for payment of any arrears on being promoted <sup>retrospectively</sup> as Diesel Assistants.

7. For the relief of grant of seniority to the applicants from the date ~~of~~ their erstwhile juniors ~~had~~ been promoted as Diesel Assistants, the applicants have filed Misc. Application No. 421/99 wherein the applicants have brought on record the copies of two letters which have been issued by respondents for

nomination of staff for conversion training for Diesel Assistant in which the policy to be adopted on grant of seniority on Diesel Assistant to the post of erstwhile surplus staff has been laid down. Two such orders brought on record are 21.6.1995 and 28.6.1995. The counsel for the applicant strongly argued that the applicants are entitled for the seniority from the date their erstwhile juniors have been promoted as Diesel Assistants in accordance with the policy laid down by the respondents as per the letters dated 21.6.1995 and 28.6.1995. We note that the respondents have not filed any reply to this Misc. Application. However, on going through the orders dated 21.6.1995 and 28.6.1995, we find that the respondents have laid down the policy for grant of seniority to the erstwhile Group 'D' staff who had been trained in different batches in diesel conversion course as under :-

" The Dsl. Asstt. Conv. training course to erstwhile Group 'D' non R&M surplus staff is programmed in batches. Their seniority while promoting to the post of Dsl. Asstt. will be maintained based on their erstwhile seniority in Loco Non R&M Group 'D' category. The junior if trained in earlier batch will have no claim over his senior who will be trained in subsequent batches."