

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 121 of 1997.

Dated this Friday, the 3rd day of August, 2001.

P. W. Pakhide, Applicant.

Shri T. D. Ghaisas, Advocate for the
Applicant.

VERSUS

Union of India & Others, Respondents.

Shri Suresh Kumar, Advocate for
Respondents.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

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

- (i) To be referred to the Reporter or not ? Yes
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? No
- (iii) Library. No Yes BBB

(B. N. BAHADUR)
MEMBER (A).

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P. W. Pakhide,
Railway Service
Residing at Koparkhairna,
Room No. 705, Sector 6,
Thane Belapur Road.

Applicant.

(By Advocate Shri T.D. Ghaisas)

VERSUS

1. Union of India through
the General Manager,
Central Railway,
Mumbai C.S.T.,
Pin Code - 400 001.

2. Chief Personnel Officer,
Central Railway,
Mumbai C.S.T.

3. Chief Engineer (Construction),
Central Railway, Mumbai C.S.T.

4. Financial Adviser & Chief
Accounts Officer,
Central Railway,
Mumbai C.S.T.

5. Executive Engineer (C) H.Q.,
Central Railway,
Mumbai C.S.T.

Respondents.

(By Advocate Shri Suresh Kumar)

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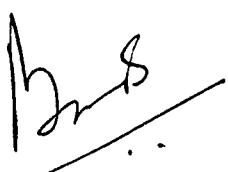
O R D E R (ORAL)

PER : Shri B. N. Bahadur, Member (A).

This is an application made by Shri D.W. Pakhide, seeking the relief from this Tribunal for the setting aside of the impugned order dated 01.01.1997 (Exhibit-I) and also seeking a declaration that applicant is entitled to continue in the Engineering Department, as pleaded at para 8 (b) of the O.A. Consequential/ancillary reliefs are also sought.

2. We have heard Learned Counsel on both sides, Shri T.D. Ghaisas for the Applicant, and Shri Suresh Kumar for the Respondents, and have perused all the papers in the case.

3. The facts as they come out, in brief, are that the applicant is resisting the order repatriating him to Accounts Department, drawing support *inter alia* from the fact that relief has been provided to a similarly placed person vide order in O.A. No. 91/91 made by this Tribunal on 11.01.1995. The Applicant was appointed as Works Maistry w.e.f. 18.03.1965 in Engineering (Construction) Department. He was rendered surplus in 1967, owing to shrinkage of work, and hence retrenched from service. After a break of some two to three months, he was re-employed in the Accounts Department and after 12 to 13 years of service in the Accounts Department, was taken to Engineering Department in January 1980 on the basis of willingness, etc. He claims that he

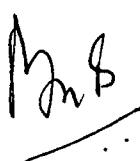


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represented for absorption in the Engineering (Construction) Department after about three years and comes up with the grievance that it is not proper for Respondents to now send him to the Accounts Department, as has been done vide impugned order.

4. The Respondents in the case, have filed a Written Statement of reply, in which the claims of the Applicant are resisted, and the facts described. It is stated that the lien of the Applicant was maintained in the Accounts Department, in which he was a permanent employee. All benefits and entitlements can be available to him only in Accounts Department and the Applicant, it is averred, being a deputationist in the Engineering Department, has no claim for indefinite continuation there. The letter of the Railway Board dated 08.04.1971 annexed at R-1 by Respondents is depended upon for the stand taken. It is also averred that there is no post of Sub Overseer Mistrisies (S.O.Ms. in short) existing in the Construction Department to accomodate the Applicant and hence it was decided to repatriate him. Parawise replies are further provided in the written statement.

5. Learned Counsel for the Applicant, after giving the details of the case, argued that the Applicant had gone to the Engineering Department in January, 1988 on the basis of willingness and it was arbitrary on the part of Respondents to

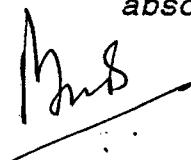

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have put him back to Accounts Department after all these long years of service. Learned Counsel strongly dwelt on the order of this Tribunal made in the case of A. B. Surdas V/s/ Union of India & Another in O.A. No. 91/91 decided on 11.01.1995 (A copy of this judgement is annexed at page 14 of the Paper Book). Shri Ghaisas took us over the entire order in the Court making the point that in view of this order, the present case of the Applicant becomes a covered case and, hence, the Applicant is entitled to similar benefits.

6. Learned Counsel for the Respondents, Shri Suresh Kumar, made a point that a deputationist, as indeed the Applicant is, has no right to seek perpetual continuation, and that his lien is in the Accounts Department, where all rights are available. It was argued that the claim for absorption was made only in 1995.

7. Learned Counsel for Respondents argued that the judgement in the case of A.B. Surdas could be distinguished and sought support from the following cases cited by him :-

(i) Kunal Nanda V/s. Union of India & Another [2000 SCC (L&S) 705] to make the point that a deputationist cannot assert a claim for permanent absorption.



(ii) Full Bench Judgement in the matter of Ram Lubhaya & Others V/s. Union of India & Others Reported at 2000 (1) ATJ 40, where the issue under agitation is fully dealt with and covered, according to the Learned Counsel for Respondents.

(iii) State of Punjab & Others V/s/ Inder Singh & Others [1997 (8) SCC 372] to make the point that a deputationist is liable to be repatriated and that deputation for a long time cannot be a ground for continuation of deputation.

8. We have considered all the arguments made by Learned Counsel on both sides, and have perused the papers in the case and have also carefully seen the case law cited on both sides. In the first place, it is to be noted that the Applicant has been discontinued in 1967, on being rendered surplus, and his real appointment is in the Accounts Department of the Respondents. Thereafter, he has been deputed to the Construction side of the Engineering Department where he has indeed continued for long and in fact, continues at present in view of interim relief provided by this Tribunal, in the present case. It is no doubt a fact that the Applicant has not been able to prove that he has a right to continue in a Department where he is on deputation. In fact, the case law cited as decided by the Hon'ble Apex Court in the


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matter of State of Punjab & Others v/s. Inder Singh & Others and Kunal Nanda v/s. Union of India & Another (supra) clearly establish this point. Not only has it been decided that no rights of continued deputation accrue to a deputationist, but it has also been clearly decided that the length of the period of deputation also does not create any additional right. Under these circumstances, the Applicant's case is clearly weak.

9. The main say of the Applicant's contention and stand taken was that his is a covered matter and that, relief has to be provided in terms of the decision as given in the case of the aforesaid A.B. Surdas v/s. Union of India & Another. We have carefully gone through the judgement in that case.

10. In the first place, we do find that a decision has been rendered in the facts and circumstances of this case. One of the ground taken and considered was that of discrimination. Be that at it may, there is no doubt, the view taken by the Tribunal in Surdas's case that the applicant therein has been on deputation for a very long period. Now, in view of a clear decision of the Hon'ble Supreme Court on this specific point, as discussed above, we will necessarily have to be guided by the view of the Supreme Court and hence no claim or right can accrue on this point on the strength of the decision in the case of A.B. Surdas.



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11. In this connection, the decision made in the matter of *Ram Lubhaya & Others V/s. Union of India & Others* by the Full Bench of this Tribunal, reported in 2000 (1) ATJ page 40 is also directly relevant. The Headnote of the Full Bench Judgement reads as under :

"Indian Railway Establishment Manual, Paras 189, 181 and 159 - Ad hoc Promotion-Regularisation- Applicants were holding lien against Group 'D' post as Khalasi/Gangmen in Civil Engineering Department or the respective Division in the Railways - Deputed to work in Construction Division of the Railways on ad hoc basis - Promoted to Group 'C' posts in Construction Division and continued as such on ad hoc basis for a long time i.e. 15 years - Claim regularisation in the Construction Division against the post of MCCs etc. i.e. the post to which they have been promoted on ad hoc basis and are continuing as such - Construction Division has no cadre of its own - Promotion on ad hoc basis was given against workcharged posts - These posts do not form part of any cadre and are created for a specific job of short duration and expenditure on which is booked to a particular work estimate-Cannot claim regularisation in the Construction Organisation-Nor they can claim regularisation on such posts in their parent/Division Office because such regularisation are to be made in their turn and strictly in accordance with statutory Rules and instructions on the subject."

The issue, therefore, has been clearly decided by the Full Bench and this is one more reason why we will not be bound by the decision of the Division Bench in the matter of *A.B. Surdas*.

12. Before parting with this case, we may mention that some fear and apprehension were expressed by Shri Ghaisas, about applicant's fate in the Accounts Department in view of his impending transfer. Though this is not a issue in the case and

no directions are necessary, we do however hope that, as indeed made clear during arguments by the Learned Counsel for Respondents, the Respondents will take care of all the rights which are accruable to the applicant when he is repatriated to the Accounts Department. Also that he will be provided clear orders for proper posting, as is due to him under the rules and will not be asked to go from pillar to post.

13. In view of the above discussions, we do not find any case for interference in the matter. The interim Orders made are hereby vacated. The O.A. is dismissed with no order as to costs.

P.U.Jain
(S.L. JAIN)
MEMBER (J)

B.Sahadur
(B. N. BAHADUR)
MEMBER (A).

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