

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH

AT HYDERABAD

O.A.No.1126/97

Date of Order:26.8.99

BETWEEN:

1. M.Surendranath
2. O.L.N.Sharma
3. V.S.R.Sarma
4. Ratnam
5. K.N.Bhaskara Rao
6. T.S.Suryanarayana
7. M.Sreeram Reddy
8. N.V.V.Satyanarayana
9. M.Krishna Reddy
10. K.Lingaiah
11. M.Prakash Pal
12. Katta Rethnam
13. K.V.M.Sarma
14. Ch.Nimmorod
15. M.Kondaiah
16. K.Sarabhachary
17. B.Taraknath
18. K.Kalyanasundaram .. Applicants.

AND

1. Chairman, Railway Board,
Rail Bhavan, New Delhi.
2. General Manager, S.C.Railway,
Rail Nilayam, Secunderabad.
3. Ch.Durga Prasad
4. P.Ravindranath
5. J.R.K.Chowdary .. Respondents.

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Counsel for the Applicant .. Mr.S.Lakshma Reddy

Counsel for the Respondents .. Mr.C.V.Malla Reddy
Mr. C. V. Malla Reddy

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CORAM:

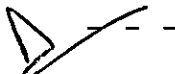
HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN.)

HON'BLE SHRI B.S. JAI PARAMESHWAR : MEMBER(JUDL.)

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O R D E R

)(As per Hon'ble Shri R.Rangarajan, Member(Admn.))



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2. Mr.S.Lakshma Reddy, learned counsel for the applicant, Mr.C.V.Malla, Reddy, learned standing counsel for the official respondents and Mr.G.V.Subba Rao, learned counsel for the private respondents.

3. There are 18 applicants in this OA. While they were working as Senior Section Engineer in the Steam Loco Shed were transferred to the Electric Loco Shed in the same capacity. They were given the bottom seniority in the category in which they were transferred. Before transferring them to electric loco shed an option was called from them by memo No.P.652/Mech./Surplus/Supervisors, dated 2.9.93 (A-7). The relevant portion of that letter under para-3 states that "only in the grade of Rs.2000-3200 (RSRP) direct recruitment is permissible. Therefore, those steam surplus staff in the grade of Rs.2000-3200 (RSRP) can be accomocated against such vacancies apportioned for Direct Recruitment quota provided they accept the assignment of bottom seniority without reference to the length of service in the same grade". The applicants herein who were working in the scale of pay of Rs.2000-3200 were absorbed in the electric loco shed, Lallaguda in the same grade with the bottom seniority as extracted above some time in 1993-94. A provisional seniority list was issued on 10.9.96 (A-1). The applicant submitted a representation to R-2 on 21.9.96 bringing notice to R-2 the

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irregularities in the provisional seniority list of staff in the category of Rs.2375-3500/2000-3200/1600-2600 in TRS cadre. The main objection in the provisional seniority list was to treat their seniority as a separate block duly protecting their promotional prospects. That was rejected Para-ii(A-2) of that letter is reproduced below:-

"The matter regarding assignment of seniority to them has been examined duly keeping in view all relevant instructions; the directives of the CAT in O.A.Nos.660/96 & 1455/95 and the policy adopted on this Railway in regard to assignment of seniority of surplus staff absorbed in the alternative posts. It has been decided by the competent authority to assign them bottom seniority in their respective grade in TRS Organisation duly maintaining inter-se-seniority".

3. It is stated that they were taken up their cases through S.C.Railway Mazdoor Union also. There ^{was} ~~is~~ no modification to the rejection letter.

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4. This OA is filed to set aside the impugned provisional seniority list issued by letter No.P.612/EL/TRS/Vol.II dated 10.9.96 and rejection of the representation by the impugned order dated 4.11.96 which are contrary to the Railway Board's circular No.106/89 dated 21.4.89 and master circular dated 10.9.91 and further instructions through letter dated 7.7.95 and for a consequential direction to the respondents to reassign the seniority of the applicants by protecting their full seniority in their respective grades in which they are absorbed in TRS wing electrical loco shed at lalaguda with all consequential benefits.

5. A reply has been filed in this OA. The learned counsel for the official respondents has also brought to our notice the acceptance of the conditions by the applicants herein as laid down in the impugned option letter 2.9.93. As per the letter of the applicants, except ^{the} applicants 3 and 10, ~~and~~ others had given their acceptance to join electric loco shed as Senior Section Engineers accepting the bottom seniority. The cases of applicants 3 and 10 are also treated as acceptance but they are not sure wheth^{er} it is full acceptance or partial acceptance. Hence they submit that the applicants having accepted to come to electric loco shed at Lalaguda as per their acceptance letter, accepting the ^{bottom} seniority they cannot go back and ask for full seniority in that cadre. In that view it

is the submission of the respondents that the OA ~~has~~

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~~is the submission of the respondents that the OA has~~
to be dismissed.

6. The learned counsel for the private respondents has also submitted reply. Their reply is more or less similar to the reply submitted by the official respondents. They further submit that in the case of Doordarshan the Apex Court has accepted the bottom seniority principle for surplus staff and those who are not willing to accept bottom seniority may have to be retrenched.

7. The main contention of the applicants are discussed as below:-

The learned counsel for the applicants submits that the Railway Board has issued 3 important circulars dated (1) 21.4.89 (A-3) (2) 10.9.91 (A-4) (3) 7.7.95 (A-5). In all these letters/circulars/master circulars the railway board has categorically said that the surplus staff should be given seniority either interpolating in the seniority unit in which they are absorbed or keeping them enblock as separate seniority unit for further promotion. No where it is stated in those circulars of the railway board that the surplus staff should be given bottom seniority. These circulars are mandatory. No violations of these circulars can be accepted. The railway in the impugned option letter



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dated 2.9.96 had wholly violated the master circular and other circulars of the railway board and asked for accepting the bottom seniority. Hence the ^{Respondents have} Railway ~~has~~ violated the circular and because of that ^{violation} ~~isolation~~ of Railway Board's instructions the applicants ^{were} ~~cannot be~~ put to a disadvantage. Hence the applicants should be given seniority in accordance with the circulars of the railway board and not bottom seniority as embodied in the option letter dated 2.9.93.

8. All the three circulars of the railway board quoted above were perused by us. All the circulars though it is stated by the respondents are mandatory, a reading of the circulars ^{does} ~~did~~ not give us a feeling that they are the statutory rules and hence mandatory.

A close scrutiny of the wordings in the circular indicates that they are only guidelines and it can be adopted as per the circumstances. They are not statutory orders. They are to be adopted depending upon the circumstances. But as far as possible the contents of the circular has to be adopted without much of variation. ^{But} It does not prevent the railways to modify the circular or granting of appropriate seniority, if the situation demands.

9. In the present case the applicants were the surplus staff from steam loco shed. Though they ^{were} ~~are~~ trained in maintenance of electric locos, it cannot be said they had acquired full experience to maintain and

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carryout repairs in the electric loco shed. The maintenance practice and locating the faults requires hand on experience. It cannot also be said that the maintenance of the steam locos are similar as that of the electric locos. Hence the railways thought that it is necessary to induct staff who ^{were} ~~are~~ working in the maintenance of electric locos elsewhere ^{be brought to} ~~in~~ the loco shed at lalaguda also as it was a newly formed electric loco shed. In that context the railway must have thought it ^{it} ~~to~~ to absorb well trained employees who had experience in the maintenance in electric loco shed to be inducted in ^{electric loco} ~~lalaguda~~ shed at Lalaguda which is a ^{in nascent} ~~nascent~~ formation state. The applicants herein ^{were} ~~are~~ firstly absorbed as surplus staff of loco shed and secondly they are only trained in the electric loco maintainance and may not possess adequate experience of maintaining electric locos. Hence an option was given to them earlier to continue in the steam loco shed and face the consequences if steam locos are to be put of service or join the electric loco shed accepting the bottom seniority under the circumstances quoted above. If the railway board's circulars are strictly followed it may be possible that some of trained staff who were absorbed as they possessed hand on experience may ask for reversion to parent department. In which case the maintenance of electric locos would have become a problem and that may effect the public utility service.. Hence considering all

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those factors only the option letter might have been issued to grant bottom seniority to the surplus staff of steam loco shed.

10. The applicants if they were not satisfied to go to electric loco shed accepting bottom seniority they could have challenged that letter then and there itself. But they did not do so.

11. The learned counsel for the applicants submits that the applicants were not aware of the various circulars/master circulars of the railway board's and hence they did not challenge the option letter dated 2.9.93.

12. This above submission cannot be accepted at the face value. The steam surplus staff had started pouring in the railway from late 1960s and early 1970s. The first circular from the railway board was issued in 1989. The above option letter was issued in 1993. Hence it cannot be said that the applicants were not aware of the railway board's circular. Secondly they themselves admit that their cases were taken up by the union with the railways to absorb them in the electric loco shed on the basis of the circulars of the railway board. If that be the case it is not possible for us to imagine that the applicants herein were not aware of the circulars of the railway board. The applicants herein were Senior Supervisors in the steam loco shed in the scale of pay of Rs. 2000-3200. A Senior Supervisor cannot plead

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ignorance of the railway board's letter. Normally all the circulars are to be circulated or put up on the notice board. A senior Supervisor must necessarily know all the circulars of the railway board. In that view pleading ignorance of the railway board ^{as it is in} ~~is~~ not a correct submission of the applicant.

13. Hence it has to be held that the applicants were aware of the circulars of the railway board and inspite of that they accepted the option letter dated 2.9.93 to get repatriated to the electric loco shed accepting the bottom seniority. In case they do not accept that condition there was a possibility that they ^{could} ~~may~~ be retrenched and to avoid that they had accepted the bottom seniority and joined the electric loco shed. Hence the applicants having accepted the conditions laid down in the option letter 2.9.93 cannot turn back now and submit that the option should be treated as null and void and that they should be given full seniority in the electric loco shed.

14. The learned counsel for the applicants cited some cases i.e. (1) 1969 SC 118 (B.S.Vadera v. Union of India and others) (2) 1978 (1) SCC 158 (The Railway Board and others v. P.R.Subramaniam and others) (3) 1989 SC 696 (Haribuns v. Railway Board. In all these cases the reversions/similar events had not taken place as of now. In those cases the Supreme Court had observed to follow rules. There is no doubt that the railway board has got full powers in regard to the





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promulgation of service condition of the Group-C staff. The zonal railway cannot overlook them. But the present case has to be seen from the peculiarity of the situation. To maintain the service some departure from the guidelines of the Railway board may be necessary, which was resorted by the zonal railway. As stated earlier all the circulars of the Railway Board in our opinion are not mandatory. They are guidelines and those guidelines should normally be followed. But some variation under the present circumstances cannot be ruled ^{out} Hence reliance on the cited cases may not be appropriate in the railway acted in the interest of the public and in the interest of the users of the railways. But at the same time the interest of the surplus staff of the steam loco shed was also not forgotten.

15. In that view the applicant cannot demand relief as prayed for in this OA. Further it is also to be added that the electric loco shed is a growing department. Even if one loses a little bit seniority initially that will be compensated because of the growth in the electric loco shed. Seniority cuts the employees one way or the other. Hence a minor disadvantage if at all any to the applicant herein can

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15. Considering all the above points we feel that the OA is not having adequate merits to allow this case. Though we sympathise with the applicant in case they lost some seniority the same cannot be a reason to grant their prayer. Hence we left with no other alternate^{ive} except to dismiss the OA. Accordingly the OA is dismissed. No costs.


(B.S. JAI PARAMESHWAR)
Member (Judl.)


(R. RANGARAJAN)
Member (Judl.)

Dated : 26th August, 1999

(Dictated in Open Court)

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1ST AND 2ND COURT

10/9/99

COPY TO :-

1. HDHND
2. HRRN M (A)
3. HBSJP M (J)
4. D.R. (A)
5. C.C. (A)
6. ADVOCATE
7. STANDING COUNCIL

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD.

THE HON'BLE MR. JUSTICE D.H. NASIR
VICE - CHAIRMAN

THE HON'BLE MR. J.S. CHANDRASEKHAR
MEMBER (ADMN.)
THE HON'BLE MR. S.S. CHANDRASEKHAR
MEMBER (JUDL)

DATE OF ORDER: 26/8/99

MA/RA/CP.NO.

IN

CA. No. 1126/97

ADMITTED AND INTERIM DIRECTIONS
ISSUED
ALLOWED

CP CLOSED

RA CLOSED

CA CLOSED

DISPOSED OF WITH DIRECTIONS
DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

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