

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

(10)

O.A. No. 176/93.

Date of Order 23.5.1995.

Girish Kumar

.....Applicant.

Vs.

Union of India & others

.....Respondents.

COFAM: HON'BLE MR. GOPAL KRISHNA, VICE CHAIRMAN.
HON'BLE MR. O.P. SHARMA, ADMINISTRATIVE MEMBER.

For the applicant - Mr. S.K. Jain, advocate.

For the respondents - Mr. S.S. Hassan, advocate for
Respondents No. 1 and 2.
Mr. P.D. Khanna, adv. for Res. 3.

O R D E R (ORAL):

(Hon'ble Mr. Gopal Krishna, Vice Chairman)

...

Applicant, Girish Kumar, in this Application under Section 19 of the Administrative Tribunals Act, 1985, has challenged the impugned order Annexure A/1, dated 16.3.93 transferring Respondent No. 3 to the Steam Line and assigning seniority to him above the applicant.

2. We have heard the learned counsel for the parties and have carefully gone through the records of the case.

3. The contentions of the applicant are that he was initially appointed as Khallasi scale Rs. 750-940 and thereafter learned promotions as T & C Smith Grade-III, T & C Smith Grade-II and T & C Smith Grade-I. He served in an ex-cadre post of Material Collector and thereafter he was promoted as Chargeman 'E' scale Rs. 1400-2300 and Chargeman 'A' scale Rs. 1600-2660. When there was dieselisation

Girish Kumar

in the Railway in 1973, options were sought from incumbents for crossing over to the diesel side vide Annexure A/3, dated 12.2.1988.

4. The main burden of the arguments of the applicant is that Respondent No. 3 under certain circumstances had to opt for the Diesel side and thereafter he cleared the aptitude test and the Diesel conversion course vide Annexure A/4, dated 2.4.1988 and Annexure A/5, dated 19.4.89 respectively, but he had not at all raised a finger against his posting in the Diesel side. On the contrary, the respondents' case is that since the applicant and the Respondent No. 3 originally belong to the Steam side and due to the contraction in the cadre in the Steam side, some posts had to be abolished therein and as such some incumbents were declared surplus. It is contended by the official respondents that Respondent No. 3 being senior to the applicant, was erroneously declared surplus and, therefore, he had to opt for the Diesel side. The option in the Diesel side was subsequently withdrawn by Respondent No. 3 and the error in regard to declaring Respondent No. 3 as surplus though he was senior to the applicant was rectified vide Annexure P/3/22, dated 12/15-2-93 which reads as follows:-

"1. Since the dispute about relative seniority between Girish Kumar and Jwala Prasad was under examination, it was not proper to promote Shri Girish Kumar to Gr. Ps. 1600-2660 in the face of this dispute. The promotion order should therefore be cancelled and the post should be downgraded. Simultaneously, Shri Jwala Prasad should be sent back to his parent Loco Cadre.

2. Please conduct a Selection for Sh. Jwala Prasad and subject to his passing in the

17

first attempt, he should be given a regular promotion as Chargeman 'B' and assigned proforma position over his junior Shri Girish Kumar. Shri Girish Kumar may be continued on the Steam side."

The impugned order Annexure A/1, dated 16.3.93 was unquestionably passed as a consequence of the action taken in the case of Jwala Prasad by the Administration vide Annexure R/3/22, dated 12/15-2-93. So far as the seniority of Respondent No. 3 over the Applicant is concerned, it is admitted by the Applicant himself that Respondent No. 3 was senior to him in the Steam side before he crossed over to the Diesel side. Since the Respondent No. 3 was senior to the Applicant in the Steam side, he was erroneously declared surplus and asked to give an option to switch over to the Diesel side. Rectification of this error by the Administration vide communication dated 12/15-2-93, Annexure R/3/22 is quite justified. Since the Applicant has been working as Chargeman 'A' vide order at Annexure A/11, dated 8.1.93, he is entitled to continue to hold the said post and he shall not be reverted from the said post by the respondents. However, so far as Respondent No. 3 is concerned, he shall rank senior to the Applicant.

5. With the observations made above, the O.A. is disposed of with no order as to costs.

(O.P. SHARMA)
ADMINISTRATIVE MEMBER

(Gopal Kishore)
VICE CHAIRMAN

'MS'