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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 18. 11. 1999

OA No.348/93

Lalit Kumar Maurya Son of Shri Birdhi Chand at present posted as J.S.S., C&W, Western Railway, Ajmer.

... Applicant

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Bombay.
2. The Deputy Chief Mechanical Engineer (Carriage & Wagon), Western Railway, Ajmer.
3. Shri R.P.Bhatnagar S/o Shri T.P. Bhatnagar, presently posted as Junior Shop Supdt., Office of Inspect Office, Dy. Chief Mechanical Engineer (Carriage, W.R., Ajmer).
4. Shri G.S.Mehra S/o Shri M.S.Mehra presently posted as Junior Shop Supdt. in the office of Inspection Progress Section Office of Dy. Chief Mechanical Engineer (Carriage) W.R. Ajmer.

... Respondents

Mr. P.P.Mathur, Proxy of Mr. R.N.Mathur, counsel for the applicant

Mr. M.Rafiq, counsel for the respondents

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr. N.P.Nawani, Administrative Member

ORDER

Per Hon'ble Mr. N.P.Nawani, Administrative Member

Applicant, in this Original Application seeks the following reliefs:

- "i) That the order dated 14.5.93 (Annexure-A/1) may kindly be setaside and quashed in so far as it give promotion to respondent Nos. 3 and 4 on the post of S.S.
- ii) That directions may be issued and a declaration may be made that respondent No. 3 and 4 are not entitled to get promotion on the post of Shop Superintendent in trade which is different from the trade to which belong.
- iii) That a declaration may be made that respondent No. 3 and 4 can not be promoted on the post of S.S. in trade of Smith Trade and in

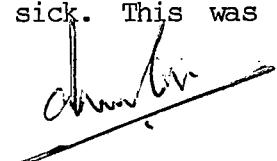
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Smith Shop of the Carriage Shop office, W.R. Ajmer.

iv) That the directions may be issued to respondent that applicant is entitled to get benefit of upgradation on the post of S.S. and in alternative on the post of J.S.S."

2. The facts of the case as stated by the applicant are that he was appointed in the Western Railway on 5.4.92 and in due course of time was promoted to the post of Jr. Shop Superintendent (for short, JSS) w.e.f. 21.10.1991; that he was directed to appear in the selection test for appointment on the post of JSS in 1992 but since the applicant had already been declared successful, he submitted a representation against being asked to appear in the selection test again; that the Railway Board issued directions for grant of benefit of upgradation/restructuring to its employees w.e.f. 1.3.1993 and respondent No.2 issued the impugned order dated 14.5.93 (Ann.A1) by which respondent No. 3 and 4 have been promoted on the post of Sr. S.S. and the applicant has been given the benefit of upgradation on the post of JSS and one Shri Megh Raj has been placed above the applicant after being given the benefit of cooling period; that respondents Nos. 3 and 4 were initially recruited in foundry trade which was abolished in 1992 and were declared surplus; that in accordance with the rules with regard to absorption of surplus employees, respondents Nos. 3 and 4 were given chance for being absorbed in other trades by letter dated 15.10.1992 (Ann.A2) and respondents Nos. 3 and 4 were absorbed in while metal and saw mill trade respectively (Anns. A3 and A4); that a decision was taken in consultation with the Union that employees shall be absorbed in different trades in such a manner that promotion chances of persons already working shall not be affected; that after having directly absorbed in respective trades, respondents Nos. 3 and 4 were given chance to exercise one more option for choosing trade which is evident from Anns. A4 and A5; that the applicant felt aggrieved by the exercise of second option and by giving promotion to respondents Nos. 3 and 4 in the trade of Smith Shop in which the applicant is working on substantive basis.

3. Notices of the Original Application were given to the respondents who have filed their reply. It has been contended on behalf of the respondents that although the applicant's name figured at Sl.No. 3 of the panel prepared for promotion to the post of JSS in the year 1988, for lack of third vacancy during the life of the panel, the applicant could not be promoted. With the lapse of the panel the applicant ceases to have any right to claim promotion. He was, therefore, again called to appear before the fresh selection which was held on 16.10.92 and 21.12.92. The applicant, however, showed his reluctance to appear in the said selection and reported sick. This was treated as his unwillingness to appear in the selection.

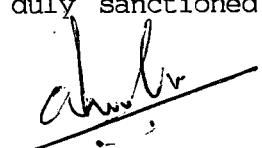


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Notwithstanding this, the applicant was promoted to the post of JSS on ad hoc basis w.e.f. 24.10.92. On closure of the foundry Department, surplus staff had to be adjusted in the cadre of other Departments and accordingly respondents Nos. 3 and 4 were adjusted in the Department of the Deputy Chief Mechanical Engineer (Carriage and Wagon), Western Railway, Ajmer. As regards absorption of respondents Nos. 3 and 4 on their being declared surplus, it has been contended on behalf of respondents that they being seniormost have been promoted and posted as Sr. Shop Superintendent in the vacancies which occurred due to restructuring of cadre. It was in view of this that Shri Megh Raj was also promoted as JSS in the deficiency of SC candidate and against the post mentioned in that category. The applicant was, therefore, not entitled to the benefit of upgradation. It has also been clarified by the learned counsel for the respondents that respondents Nos. 3 and 4 of the erstwhile foundry staff, have been adjusted in other departments as per the collective decision taken in consultation with two recognised trade Unions and, therefore, there was no question of any infringement of the rules and guidelines in that behalf. Further, the mere exercise of option at the first instance does not by itself have the effect of absorption of the given employee in the Department of his choice and absorption ultimately depends upon the availability of vacancy and respondents Nos. 3 and 4 were adjusted in the Department of Deputy Chief Mechanical Engineer as per available vacancies and in any case they were far more senior than the applicant and the applicant can, therefore, have no cause of grievance against their absorption and consequent promotion in that Department. The notion of the applicant that employees from other trade have been given promotion in his trade is erroneous and baseless and the guidelines issued vide Railway Boards letter dated 21.4.1989 provided full justification for passing the impugned order.

5. We have heard the learned counsel for the parties and have carefully perused the records.

6. It appears from Ann.A2 (which perhaps is dated 15.1.92) that the foundry shop, Ajmer was declared closed w.e.f. 31.1.90 and, therefore, Group-'C' Supervisory employees were asked to give their options for other Departments of the Carriage Shop. The Railway Boards circular dated 23.5.1989 (Ann.A6) gives the guidelines regarding absorption of surplus manpower on full or partial closure of various assets. A photocopy of the said circular has annexed by the applicant is readable only with great difficulty but the basic idea appears to be to quickly redeploy such manpower after retraining etc. wherever necessary. It inter alia provides at its third page that "if only a small number of staff are being rendered surplus and having to be transferred to various units of other departments against vacancies of duly sanctioned posts, they can be suitably adjusted in those units with



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their full seniority". It does, therefore, appear that the surplus staff normally carry their own seniority and this appear logical also since they were being absorbed in some other departments neither on their own request nor for any fault of theirs. Therefore, we find no force in the contention of the applicant that respondents Nos. 3 and 4 should not have been adjusted in the Department in which the applicant was working substantively. As regards the applicant's contention that having been already put through a promotion examination, he should not be called upon to appear in the fresh promotion examination, we again find no force in such a contention. The applicant was at the bottom of the previous panel but in view of the non availability of the vacancy he could not be given a posting. The panel thereafter lapsed. The applicant's right to be considered for promotion also simultaneously lapsed. The applicant should not have, therefore, shied away from appearing in the next promotion examination. Nobody can help the applicant under these circumstances.

7. We, therefore, find no merit in the applicant and it is accordingly dismissed with no order as to costs.


(N.P. NAWANI)

Adm. Member


(S.K. AGARWAL)

Judl. Member