

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.193/94

Dt. of order: 8.12.95

Khushi Ram : Applicant

Vs.

Union of India & Ors. : Respondents

Mr.Rajvir Sharma : Counsel for applicant

Mr.M.Rafiq : Counsel for respondents

CORAM:

Hon'ble Mr.O.P.Sharma, Administrative Member

Hon'ble Mr.Ratan Prakash, Judicial Member

PER HON'BLE MR.O.P.SHARMA, MEMBER(ADM.).

In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri Khushi Ram has prayed that the order dated 21.4.93 (Annx.A1) in so far as it relates to the applicant's transfer from Kota Division to Ratlam Division by declaring him as surplus and retaining his juniors in Kota Division be declared illegal and quashed. He has further prayed that Annx.A12 by which the respondent No.2 has passed order in pursuance of the order of the Tribunal (Annx.A8) dated 21.10.93 in respect of an earlier O.A filed by him may be quashed and the applicant may be allowed to perform his duties in Kota Division with all consequential benefits. Still his further prayer is that he should be regularised.

2. The applicant's case is that he was initially appointed on a post of Khalasi in Kota Division on 23.2.85 and he attained temporary status on 22.3.86. The seniority of Project Labourers to which category the applicant belongs is to be maintained on Divisional basis. The seniority list in this regard dated 16.11.92 is at Annx.A2. The applicants name has been shown at Sl.No.982(A) in terms of order Annx.A3. The applicant has been ordered to be transferred out of Kota Division to Ratlam Division vide order dated 21.4.93 (Annx.A1) on the ground that he is surplus in Kota Division. The

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applicant's case is that as per the seniority list presented by him, Annx.A2, there are several persons junior to him who have been retained in Kota Division, whereas the applicant had been declared as surplus and ordered to be transferred to Ratlam Division were according to the respondents, work is still available. Earlier, the applicant had approached the Tribunal by filing O.A.No.596/93 and the Tribunal had decided vide order Annx.A8 dated 21.10.93 that respondent No.2 in the said O.A should take appropriate action on letter dated 5.7.93 addressed by the Executive Engineer (Construction) Kota to the Divisional Railway Manager, Kota Division, wherein he had requested the Divisional Railway Manager to ascertain whether any persons junior to the applicant are still working in the Kota Division. The respondents have now passed order Annx.A12 dated 2.2.94, wherein it has been stated that in accordance with the judgment of the Hon'ble Supreme Court in the case of Inderpal Yadav & Ors. Vs. Union of India & Ors, it has been held that combined seniority list of Project Open Line Casual Labourers working in the territorial jurisdiction of the Division would be the basis for the purpose of regularisation and retrenchment only. It has been further stated in Annx.A12 that in spite of the work having been completed in Kota Division, the Railways have not chosen to retrench casual labours and in order to continue them in gainful employment they have been transferred to Ratlam Division where work is available. In effect, therefore, the Divisional Railway Manager, Kota, has stated in Annx.A12 that the applicant had been rightly declared surplus and transferred to Ratlam Division. The applicant's case is that since a large number of persons junior to him, as per Annx.A2, are still working in Kota Division whereas he has been declared as surplus and transferred to Ratlam Division, the action of the respondents

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in this regard is illegal. His plea is that if no work is available in Kota Division; the junior most person should be declared surplus. Since on joining Ratlam Division, he will be the junior-most person there, the order passed by the respondents will result in break in service. Also since he has already worked for the last about 9 years, he is eligible for regularisation in Kota Division.

3. The respondents have not filed any reply in spite of the fact that after the right to file the reply was forfeited on account of their repeated failure to do so, they were given yet another opportunity on 29.6.95 to file their reply on payment of costs. The costs were paid but reply was not filed.

4. During the arguments, the learned counsel for the applicant has stated that the seniority list Annx.A2 is the list regulating seniority of the Project Labour in Engineering Department as is evident from the title of the list. If there is some other list on the basis of which the applicant can be considered to be junior to those who have been retained in Kota Division, no such list had been presented by the respondents. In the circumstances, according to him, there is no justification for declaring the applicant as surplus and transferring him to Ratlam Division, when several of his juniors as per seniority list, Annx.A2, have been retained in Kota Division.

5. During his argument the learned counsel for the respondents stated that Annx.A2 is not the combined seniority list of Project labour and Open Line labour and it is one the basis of such a combined list that persons are to be declared surplus and transferred out of the Division if work is not available in the Division. He referred to Annx.A12 to suggest that the seniority list Annx.A2 is for the limited purpose of regularisation and retrenchment and therefore, this seniority

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list cannot be the basis for advancing the argument that persons junior to the applicant have been retained in Kota Division whereas the applicant has been declared surplus and transferred out. He also stated that the applicant had been employed in the Survey and Construction Project and the applicant has not come up with a case that persons junior to him in Survey and Construction Project have been retained in Kota Division. He has, therefore, argued that the applicant has no case whatsoever for being retained in Kota Division and that his order of transfer to Patlam Division has been passed in the applicant's own interest. He has also defended order Annx.A12 passed by respondent No.2 in pursuance of the directions of the Tribunal issued vide order Annx.A8 as being a correct enunciation of the policy of the Railways.

6. We have heard the learned counsel for the parties and have gone through the records. Whereas the applicant has presented seniority list Annx.A2, the respondents have not filed their reply and have not presented any seniority list. If it is their argument that the seniority list Annx.A2 is only for the purpose of regularisation and retrenchment and there is another seniority list for the purpose of transfers, they should have presented that seniority list. It is significant to note that the respondents in Annx.A12 themselves have stated that the seniority list presented by the applicant is for the purpose of regularisation and retrenchment. In Annx.A12, it has been stated that in spite of the work being completed in Kota Division the Railways have chosen not to retrench casual Labour but in order to provide them with gainful employment they have transferred to another Division. This is in our view, therefore, a clear case of retrenchment. We are, therefore, of the view that this seniority list Annx.A2 has to be the basis for declaring a

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person surplus in a particular Division on the ground that work is not available. The applicant's averment that persons junior to him in the said seniority list have been retained in Kota Division whereas the applicant has been declared surplus and transferred has gone unrebutted.


7. In the circumstances, we allow this application and quash orders Annx.A1 dated 21.4.93 and Annx.A12 dated 2.2.94 in so far as these relate to the applicant. The applicant shall be taken back on duty in Kota Division as soon as he reports to respondent No.3, the Executive Engineer (Survey and Construction) Kota Division, with a copy of this order.

8. As regards back wages, the Tribunal had directed vide order Annx.A8 dated 21.10.93 that the applicant shall not be relieved till the respondent No.2 takes a decision on the letter dated 5.7.95 issued by the Executive Engineer (Construction) Kota Division, if he had not ^{been} already been relieved. The fact however is that even after order Annx.A12 was passed in pursuance of the directions of the Tribunal on 2.2.94, the applicant did not join duty in Kota Division. The respondents shall verify whether the applicant had not been relieved before 21.10.93, the date on which the Tribunal passed order Annx.A8 and if he had actually not relieved before that date they shall pay him back wages upto 2.2.1994, the date on which order Annx.A12 was passed. We do not consider it necessary to grant any other relief to the applicant. The O.A. is disposed of accordingly with no order as to costs.



(Patan Prakash)

Member(J)



(O.P. Sharma)

Member(A).