

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 07th day of April, 2011

ORIGINAL APPLICATION NO. 11/2007

CORAM

HON'BLE MR. JUSTICE K.S. RATHORE, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Mahesh Datt Sharma son of Shri Som Datt Sharma, aged about 46 years, resident of 16-A, Adarsh Colony, Mala Road. Presently posted as S.E. under Chief Workshop Manager, Kota.

.....Applicant

(By Advocate: Mr. Shailendra Shrivastava)

VERSUS

1. Union of India through General Manager, West Central Railway, Indra Market, Jabalpur, M.P.
2. Chief Workshop Manager, Kota Workshop, West Central Railway, Kota.
3. Chief Mechanical Engineer, Head Office, West Central Railway, Jabalpur, M.P.

.....Respondents

(By Advocates:Mr. B.K. Pareek proxy to Mr. T.P. Sharma)

ORDER (ORAL)

Brief facts of the case are that the applicant entered into railway service as Apprentice Mechanic at Kota Workshop and after completion of training, he was posted as Charge Man Grade (B) with effect from 30.03.1987 and further promotion on the post of Charge Man Grade (A) in the month of September, 1989 and ultimately selected as Section Engineer in March, 1993 in the pay scale of Rs.2000-3200/-, which was further revised to Rs.6500-10500/-.

2. The applicant right from inception from service was working in Workshops consists of various units like Machine, Smith, Mill right,



Foundry, Production Control Organization and a person working in the units are supposed to be interchanged subject to the ratio to be fixed for desired objectives/outcome of the particular workshop. Amongst them, some units have combined seniority but the seniority of few units like Foundry, Mill right and Smithy is maintained separately. The applicant was provided seniority in the Foundry unit. As per the decision taken by the administration to surrender the posts of Supervisors working in the unit known as Foundry and hence, the applicant alongwith other supervisors was tagged as surplus and consequently he was redeployed in the grade known as WRF in a equal grade alongwith seniority on the basis of services rendered in the said grade in parental department vide order dated 11.07.2005 (Annexure A/3).

3. Subsequently by virtue of seniority, the applicant was promoted to the post of SSE in the pay scale of Rs.7450-11500 vide order dated 26.05.2006 (Annexure A/4) but the same was cancelled vide order dated 25.07.2006 (Annexure A/1). Thereafter, the applicant was served with a show cause notice 26.07.2006 (Annexure A/5) by the respondents to submit his explanation as to why his seniority as Section Engineer in the pay scale of Rs.6500-10500 from serial no. 2 in the seniority list dated 26.09.2005 should not be relegated to serial no. 30 in pursuance of Railway Board's letter dated 25.05.2004 and in pursuance of Amended Slip no. 159 according to which the services rendered by the surplus staff prior to re-deployment will not be counted for seniority and promotion in the absorbing unit.



4. Aggrieved and dis-satisfied with the impugned order, the applicant preferred this OA and submitted that he has already been shifted from Foundry to Production Control Organization in February, 2000 and ever since thereafter he has been working there but the respondents have treated him re-deployed vide order dated 11.07.2005 and applied Railway Board's Circular dated 25.05.2004 retrospectively to put adverse affects on his career. Apart from that, it is noteworthy that decision with regard to the reployment of the artisans of the Foundry in other units was taken way back with the consent of recognized union on 07.05.2003 according to which their absorption in other units was considered as transfer in the interest of administration and they were also provided full fledged benefits of their services in equivalent grade rendered by them in their parental units and still enjoying the same benefits of earlier services for the purpose of seniority but in the case of the applicant, the respondents have not enlarged the same benefit to him.

5. The question arose whether surplus staff should be provided the benefit of past service rendered by them in the absorbing department or not. The Tribunal has rendered judgment in favour and against. In the latest judgment dated 17.11.2005 rendered by this Tribunal in OA No. 221/2002, D.D. Sharma & Others vs. Union of India & Others, in which it was held in the light of the Amended Para 313 A of the IREM that "surplus employees are not entitled for benefit of the past services rendered in the previous unit/department for the purpose of seniority in the new unit" has been challenged by the Railway Administration before the Hon'ble High Court of judicature for



Rajasthan in DB Writ Petition No. 3346/2006 and the same has been stayed vide order dated 27.11.2006 by the Hon'ble High Court.

6. Per contra, learned counsel appearing on behalf of the respondents strongly controverted the submission made in the OA and submitted that the applicant had been promoted to the post of Senior Section Engineer in the pay scale of Rs.7450-11500 vide order dated 26.05.2006. In the seniority list of SSE/WRF, the scale of Rs.6500-10500/- to this cadre of the staff had been assigned as per the order of the Hon'ble Supreme Court where the surplus staff who had been re-deployed and their seniority has been assigned as per the direction of the Railway Board's letter dated 25.05.2004 and accordingly an amendment has been made in the seniority in pursuance of the Railway Board letter and resulted the promotion order of the applicant to the post of SSE/WRF in the pay scale of Rs.7450-11500 has been rejected and hence no provision of law has been violated by the respondents.

7. It is also not disputed that applicant entered in the Railway service Apprentice Mechanical and after completion of training, he was posted as Charge Man 'B' with effect from 30.03.1987 and was allotted Foundry Trade. Further, it is also not disputed that the applicant was promoted to the post of Charge Man 'A' in the month of September, 1989 and thereafter selected as Section Engineer in March, 1993 but the applicant originally belonging to Foundry Trade in Charge Man 'B'.

8. It is submitted that in pursuance of Headquarter, Jabalpur letter dated 30.07.2003 whereby the foundry shop unit has been closed by

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the order of CME/Jabalpur and accordingly the staff working in the Foundry unit, like the applicant were declared to be surplus and consequently, the applicant was re-deployed in the trade known as WRF in equal grade as Section Engineer in the pay scale of Rs.6500-10500/- alongwith seniority on the basis of the service rendered in the said grade in the parental department. It is also not disputed that in the workshop, there are different units and the seniority are maintained separately and their filling of the promotional posts are maintained separately unit wise and thus Foundry shop is a separate unit for which the separate seniority is maintained to the existing Railway Staff and the staff cannot be shifted and absorbed in the other units but the Railway administration considering the interest of the Railway can shift in other trade as happened with the applicant, who had been shifted to the production control units in the Foundry Shop and since when the Foundry shops were closed and the staff working in the Foundry trade have been declared surplus and re-deployed in the other trade so their service can be continued.

9. As the Hon'ble Supreme Court as well as Railway Board amended the Slip No. 159 and amended the Para No. 313 'A' in place of Para 313, the services rendered by the surplus staff prior to redeployment will not be counted for seniority and promotion in the trade observing units. In pursuance of the amended rules, the applicant, who was given the promotion against his seniority, has been revoked in order to maintain the direction of the Hon'ble Supreme Court and in pursuance of the Amended Slip No. 159.

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10. We have heard the rival submissions made by the respective parties and have carefully perused the material available on record. The only controversy in this OA is whether the services rendered by the surplus employees prior to their redeployment will be counted for purpose of seniority and promotion in the trade absorbing units. It is not disputed that the applicant was initially working in the Foundry unit and was transferred to PCO (WRF) and promotion was given to him, considering his seniority rendered by him in the Foundry unit i.e. in the Parental unit. In view of the Hon'ble Supreme Court direction and Amended Slip No. 159, issued by the Department, according to which, the service rendered by the surplus staff prior to redeployment will not be counted for seniority and promotion in the trade absorbing units. Therefore, to the effect, a show cause notice dated 26.07.2006 (Annexure A/5) was issued to call upon the applicant's explanation. Even in the case of **Rama Kant Chaturvedi & Others vs. Divisional Superintendent, Northern Railway, Moradabad & others**, reported in 1981 SCC (L&S) 423, wherein Hon'ble Supreme Court has held that officiating appointments of incumbents of one unit to a post in a newly formed unit have different promotional avenues. It was further held that those inducted to the new unit earlier satisfying higher qualification criterion then obtaining would by virtue of their continuous officiation in the new post, remain senior over those drawn later from the old to the new unit due to subsequent relaxation in qualification, irrespective of inter se seniority of the incumbents in the old unit. Hence seniority in the new unit and nor in the old unit would be the determining criterion for the purpose of reversion of surplus staff from new to the old unit. The same view has been taken by the Central Administrative Tribunal in the case of **Ram Prabesh Mondal**



& Others vs. Union of India & Others, ATJ 2005 (2) 229. The CAT while considering Para 311 of IREM discussed about seniority of surplus staff after absorption and declaring surplus on their absorption to other units will count seniority from the date of absorption, impugned seniority list assigning seniority to surplus staff on the basis of their length of service in the earlier panel quashed. CAT considered the judgment rendered by the Hon'ble Supreme Court in the case of **V.K. Dubey and others vs. Union of India & Others**, 1997 SCC (L&S) 1123, and **M.A. Murthy vs. State of Karnataka & Others**, 2003 Scc (L&S) 1076.

11. Thus in view of the radio laid down by the Supreme Court and by the judgment of the CAT, we are of the view that the applicant is not entitled to any relief claimed by him as the respondents have admitted this fact that the promotion which has been passed in favour of the applicant was due to bonafide mistake, which was subsequently revoked pursuant to the Railway Board's direction. We find no illegality in the impugned order dated 25.07.2006 (Annexure A/1) by which applicant's promotion to the post of Sr. Section Engineer had been cancelled and order dated 16.09.2006 (Annexure A/2) in which applicant has been relegated from his original seniority position at sr. no 2 to 30 in the seniority list of Section Engineer in the pay scale of Rs.6500-10500/-.. Accordingly, the OA is dismissed being devoid of merit.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

K.S. Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)