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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.157/95

Date of order: 4.1.1996

Bishan Lal : Applicant

Vs.

Union of India & Ors. : Respondents

Mr.P.V.Calla : Counsel for applicant

Mr.Manish Bhandari : Counsel for respondent Nos.1 to 3

Mr.S.Kumar : Counsel for respondent No.4

Mr.R.P.Malik : Counsel for respondent No.5

CORAM:

Hon'ble Mr.Gopal Krishna, Vice Chairman

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

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

In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri Bishan Lal has prayed that orders dated 21.3.95 (Annx.A1) and 22.11.94 (Annx.A2) in so far as these relate to the applicant's reversion from the post of Compositor Gr.III scale Rs.950-1500 to the post of Helper scale Rs.800-1150 and to allowing respondents Nos.4 and 5 to appear in the trade test and providing them seniority in the Composition Section may be declared null and void.

2. The applicant was working as Compositor Gr.III in the Ticket Printing Press (TPP), Western Railway, Ajmer, before the orders of reversion as referred to above was passed. S/Shri Fazluddin and Babu Lal, also working as Compositor Gr.III in the same Press, are respondents Nos.4 & 5 in this application. On 20.4.95, an interim direction was issued by the Tribunal to the effect that the applicant shall not be reverted to the lower post of Khalassi till the next date. The said interim direction continues till date. At the request of the counsel for the parties, the application is being disposed of at the stage of admission.

3. The facts of the case as stated by the applicant are that while he was working in grade Rs.800-1150 in the TPP, he

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passed the trade test for the post of Compositor Gr.III scale Rs.950-1500 and was promoted to the said post/scale vide order dated 22.6.91 (Annex.A5). Respondent No.4 was working in the trade of Proof Reader in the same Press, he failed in the trade test but instead of his being reverted to the lower post scale Rs.800-1150, the official respondents surrendered one post of Compositor Gr.III and transferred one post of Proof Reader in the same scale namely Rs.950-1500 from the Railway Printing Press (RPP) to accommodate respondent No.4. This was done in order to favour him. Respondent No.5, while working as Helper in TPP was initially subjected to trade test for the trade of Ticket Counter scale Rs.950-1500, he failed in the test and was tested for the trade of Ticket Printer and he failed therein also. He was again allowed to appear in the trade test for the trade of Compositor Gr.III twice in 1980-81 but he again failed therein. On account of closure of the night shift in TPP several employees were reverted as Khalassi but respondent No.5 who was also working in the night shift as Compositor, and was reverted, opted for RPP. He thereafter became an employee of the RPP and his seniority is being maintained in the said Press. He is entitled to promotion only in the said Press. No employee is entitled to transfer from TPP to RPP.

4. Further, according to the applicant, the Western Railway Headquarters decided by letters dated 22.10.81 and 1.1.82 that those candidates who had appeared in the trade test on 5.3.81 in respect of Compositor trade may be retested. However, neither respondent No.4 nor respondent No.5 had appeared for the trade test on 5.3.81 and therefore they were not entitled to the benefit envisaged in the aforesaid two communications. In any case, respondent No.5 having opted for the RPP cannot be allowed to appear for retest for any trade in TPP nor can he be transferred from RPP to TPP at this stage. The import of the communication from the Headquarters of the

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Western Railway is that respondents Nos.4 and 5 would appear in the trade test for the post of Compositor Gr.III and thereafter their seniority would be fixed as if they have been working as such w.e.f. 1980-81. This action of the official respondents would unsettle all the promotions made from 1981 till date and seniority of all the employees working as Compositor Gr.I, Gr.II and Gr.III would also be affected.

5. The applicant has further stated that he received notice dated 17.2.95 (Annex.A6) by which he was informed that respondents Nos. 4 & 5 had submitted an appeal and a decision thereon had been taken to the effect that as per the provisions of Rule 228 of the Indian Railway Establishment Manual, that they would be brought back to their original post of Compositor scale Rs.260-400 occupied by them on 1.8.1978 and on their passing the trade test they would be given seniority with reference to the position of their junior Shri Pooran Singh. If this is done there would be one employee excess in the grade of Compositor Gr.III where the applicant is the juniormost. Since the applicant was stated to be the juniormost person as Compositor Gr.III it was proposed to revert him. He was given 15 days time to represent against this proposal. The applicant submitted representation dated 22.2.95 whereby he asked respondent No.3, Dy.C.O.S, General Store, Western Railway, Ajmer to provide a copy of the appeal submitted by respondents Nos.4 and 5 and a copy of the decision taken by the Headquarters in respect of the appeal. The required documents were not provided to the applicant and yet order dated 21.3.95 (Annex.A1) has been passed reverting the applicant from the post of Compositor Gr.III scale Rs.950-1500 to that of Helper scale Rs.800-1500. By the same order respondents Nos.4 & 5 have been posted as Compositor Gr.III in TPP. The applicant has challenged his reversion on the grounds amongst others, that

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allowing respondents Nos.4 & 5 to appear in the trade test for the trade of Compositor is contrary to the Rules. The applicant was promoted from the post of Helper to that of Compositor Gr.III as per rules and after his appearing in the trade test. He has already worked on the post of Compositor Gr.III for more than 3 years. He has therefore acquired a right to continue on the said post. The reversion of the applicant has been ordered only to bestow favour on respondents Nos.4 & 5. There is no provision for transfer of an employee from one seniority unit to another seniority unit and Press to another and therefore, respondents Nos.4 who did not belong to the seniority unit of Compositor Gr.III in the TPP and respondent No.5 who was taken up as Compositor Gr.III in RPP are not entitled to be inducted to the said trade in TPP.

6. In their reply respondents Nos.1 to 3 (official respondents) have taken the ground that the applicant has not exhausted the alternative remedy available under the Rules before challenging order Annex.A1, reverting him to the lower post. Therefore, the application is not maintainable. They have added that the two printing press - TPP and RPP - have different channels of promotion and seniority units but this bifurcation of seniority and promotion is only on skilled grades. Both respondents 4 and 5 were senior to the applicant in the feeder grade (Helper Khalsi) and they were also regularised in service on dates earlier than the date on which the applicant was regularised. They have accepted that once an employee is given promotion in a particular Printing Press then he cannot be transferred to the other Printing Press. They have however denied that if an employee has availed himself of a chance of getting promotion in a particular trade he is not entitled to compete for other trade or scale. However, once he is declared successful and has been promoted on a particular

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post then he cannot be transferred to the other Printing Press or post. It was on the directions of the General Manager on representations made by respondents Nos.4 & 5 that they were allowed to trade tested afresh after they had failed earlier in the trade test for Compositor Gr.III. Later on the posts on which these private respondents were working were abolished and they were reverted to their lower post. On such reversion, they again made representation. Ultimately a fresh opportunity was given to them to appear in the trade test. However since they had by then appeared for test in other trades and had passed, they were not called for this test. In 1983, an order was passed by the Railways by which the scales Rs.210-290 and Rs.260-400 were merged and a new scale of Rs.260-400 was created and said upgradation was made with effect from 1.1.1984. Respondents Nos. 4 & 5 became entitled to the said merged scale as well as to the post in pursuance of the decision taken in 1983. However, opportunity to appear in the trade test for Compositor Gr.III, which was effectively not given to them earlier has been given now. A proper opportunity to show cause was given to the applicant before he was reverted and it was because of the nonavailability of the post (of Compositor Gr.III) that the applicant was to be reverted to make room for candidates who were eligible and senior to him. The allegations of respondents Nos.4 and 5 being shown undue favours have been denied by the official respondents.

7. Respondent No.5 in his reply has also raised certain preliminary objection to the maintainability of the O.A. One objection is that the applicant has approached the Tribunal without exhausting the alternative remedy to appeal available to him against the order of reversion. The second is that the order dated 21.3.95 (Annex. Al) was issued by respondent No.3 in pursuance of the decision taken by the General Manager as

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referred to in letter dated 22.11.94 (Annex.A2) and if the applicant was aggrieved by the decision, he should have represented to the authority concerned before approaching the Tribunal. Also the applicant had been afforded a reasonable opportunity of being heard in accordance with the principles of natural justice before the impugned order was passed.

8. On merits, respondent No.5 has stated that he had failed in the trade test held on 16.5.81 for the post of Compositor Gr.III. But since the trade test was not conducted in accordance with the prescribed syllabus, he submitted an appeal. He was trade tested and thereafter promoted as Ticket Printer vide order dated 7.9.81. However, meanwhile a decision on his appeal was taken and he was given another opportunity to appear in the trade test for the post of Compositor. However, this decision was not complied with on the ground that he had already passed the trade test in another skilled category namely Ticket Printer. Failure to grant him an opportunity to appear in the trade test for the post of Compositor as per the decision taken on his appeal led to impairing the right of respondent No.5 to be considered for promotion, giving rise to the present controversy. Had he been given an opportunity to appear in the trade test for the post of Compositor, he would have got his promotion from June 1981 or from the date his junior got promoted. Subsequently there was a reclassification of post in some skilled categories and accordingly respondent No.5 was given the benefit of scale Rs.260-400(R)/950-1500 (R.P) w.e.f. 3.2.1979. The official respondents should have given an opportunity to him to come back as Compositor Gr.III in TPP or to continue him as Ticket Printer. But this option was not given to him as a result of which he had to suffer reversion to the post of Khalassi Helper from April 1984 to July 1988. Subsequently, his contention that he was entitled to the post

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of Compositor Gr.III from 3.2.1979 was upheld by the General Manager and it is in pursuance of and in compliance with the decision of the General Manager that respondent No.5 is being given the benefit now as Compositor Gr.III in TPP. Respondent No.5 had continued to represent against the injustice caused to him and it was as a result of the redressal of his grievance that he had been brought back to TPP as Compositor Gr.III.

9. Respondent No.4 in his reply has also raised the same preliminary objections which has been raised by respondent No.5. Most of the other facts relating to respondent No.4 are common with those relating to respondent No.5 except that respondent No.5 was taken up in the RPP from where he came back to TPP by the impugned order whereas respondent No.4 continued to work in TPP throughout. Another differentiating fact is that respondent No.4 was functioning on the post of Proof Reader scale Rs.950-1500 in TPP before the impugned order was passed whereas respondent No.5 had gone away to RPP where he was working on the post of Compositor Gr.III and then on promotion as Compositor Gr.II. Other objections taken by him to the maintainability of the O.A are more or less the same as taken by respondent No.5.

10. During the arguments, the learned counsel for the applicant stated apart from other reasons for which the impugned orders are not maintainable, there is no provision in the rules for transfer of an employee from one Printing Press to another or from one seniority unit to another. Once respondent No.5 had gone away to RPP, it was not proper on the part of the official respondents to have brought him back to TPP to be posted as Compositor Gr.III. Respondent No.4 now belonged to a different seniority unit though in the same Printing Press and therefore, he was also not entitled to be refixed in the cadre of Compositor Gr.III in TPP. As far as the

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applicant is concerned, according to him, he was promoted as Compositor Gr.III after passing the trade test and has worked on the said post for more than 3 years. Therefore, there is no ground for reversion of the applicant to the lower post.

11. The learned counsel for respondents Nos.1 to 3 justified the decision taken to bring back respondent No.5 to TPP on the ground that it was in order to undo an injustice which had been done to him earlier inasmuch as he had not been granted the post of Compositor Gr.III initially from 1979 on the basis of reclassification and merger of scales. He however admitted that transfer from one Printing Press to another is not permissible and a person from one seniority unit cannot be transferred to another seniority unit.

12. The learned counsel for respondent No.5. stated that grave injustice had been done to the respondent when he had been denied his right to be appointed as Compositor Gr.III on the basis of reclassification of posts w.e.f. 1979 in the TPP. Had respondent No.5 been absorbed against the said post at the relevant time he would not have been declared surplus in TPP and he would not have been required to be sent to FPP. According to the learned counsel for respondent No.5, what has been done is merely a corrective action and not in violation of any rules.

13. The learned counsel for respondent No.4 relied upon what has been stated in the reply filed on behalf of this respondent.

14. We have heard the learned counsel for the parties and have gone through the records.

15. At the out set we may deal with the preliminary objections raised by the respondents. It is true that the applicant did not make any formal appeal against the order of reversion but in response to an opportunity given to him to

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show cause he had submitted a representation seeking certain documents in order to give a proper reply. However, it appears that such documents were not supplied to him and order of reversion was passed. In the circumstances of the present case, we are of the view that no useful purpose would have been served by the applicant in filing an appeal against the order of reversion. Ordinarily an applicant is required to file an appeal against an order of reversion even though such reversion may not be as a measure of penalty in view of the provisions of Sec.20 of the Administrative Tribunals Act but it is not that an applicant must always necessarily exhaust the alternative remedy before approaching the Tribunal. In view of the exceptional circumstances of the present case, we reject this preliminary objection. As regards the other preliminary objections raised by the respondents, we do not find any merit in these either. These are, therefore, rejected and the application is taken up for disposal on merits.

16. Unfortunately, neither the applicant nor any of the respondents have presented a complete, chronological picture of the facts of the case. Facts which are essential for disposing of this OA have been gleaned from the pleadings and oral statements of facts during the arguments about which there is no dispute. We have summarised below the essential but rather limited and undisputed facts on the basis of which this OA can be disposed of.

17. The factual position that emerges in this case is that initially the applicant and both the private respondents were appointed in TPP. The applicant and the respondent No.4 have continued to function in TPP all throughout. However, on being declared surplus in TPP for certain reasons and being reverted from the post of Compositor to the lower post, respondent No.5

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was sent to RPP, where, on passing the trade test, he was promoted as Compositor Gr.III w.e.f. 7.7.88. The case of respondent No.5 is that if he had been given his correct post and scale on the basis of reclassification of posts from 1979 then there would have been no question of his being declared surplus and being reverted and therefore, he would not have been required to go to RPP. Maybe some injustice was done to respondent No.5 in the manner stated by him. However, the position now is that he was takenup in RPP as Compositor Gr.III in July 1988 and thereafter he even earned promotion as Compositor Gr.II w.e.f. 30.6.93 in scale Rs.1200- 1800 in RPP. Of course, respondent No.5 was not satisfied with his continuance in RPP and continued to make representations for being brought back to TPP as Compositor Gr.III, on the post on which he originally held there before being sent to RPP. However, fact also remains that he now belongs to the seniority unit of RPP where he had even earned promotion to a post higher than the one for which he was initially appointed there. If he was wrongly declared surplus and thereafter sent to PPP, he should have challenged this action before a legal forum at the relevant time. Now at this stage his absorption in PPP is an undisputed fact. It has not been denied by any of the respondents that transfer from one printing press to another is not permissible under the Rules. If any injustice was done to respondent No.5 earlier in 1979 or thereabout he should have sought a legal remedy against that at that point of time. Injustice may have been done to respondent No.5 earlier but in our view injustice has also been done to the applicant now by passing order Anxx.Al. We have to see on whose side law is at the present time when order Anxx.Al has been passed. As far as the applicant is concerned, he has been reverted to a lower post on the ground that two other persons now sought to be

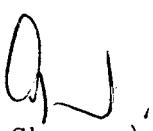
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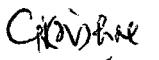
absorbed on the post of Compositor Gr.III would be senior to him. Respondent No.5 cannot be brought back from RPP to TPP under the Rules and therefore his fitment in the post of Compositor Gr.III in the TPP and applicant's reversion on that ground would not be according to law and therefore not valid.

18. As regards respondent No.4, he was also holding the post of Compositor earlier in TPP but was reverted and declared surplus but was absorbed on the post of Proof Reader in the same press (TPP) on his passing trade test for Proof Reader. He has since continued on the said post which carries the same scale of pay which is available to Compositor Grade-III. He also did not challenge his being declared surplus etc. at the relevant time. There is no provision for change from one seniority unit to another, even in the same press. Since he was in a different seniority unit though in TPP, his being brought back to the seniority unit of Compositor Gr.III, is not in accordance with the rules. Therefore, the applicant's reversion from the post of Compositor Grade-III in order to absorb respondent No.4 in the said post is not valid. However, it was stated before us during the arguments that two posts of Compositor Gr.III are available now in TPP and besides the applicant respondent No.4 can also be accommodated against one of these posts. Since respondent No.4 remained throughout in TPP, we are of the view that if additional post of Compositor Gr.III is available in TPP, respondent No.4 may be fitted against that post without causing any prejudice to any of the rights of the applicant accruing to him by virtue of his holding the post of Compositor Grade-III in TPP.

19. In the result, orders Anxx.A1 and Anxx.A2 are quashed with consequential benefits, to the extent indicated above.

20. The O.A. is disposed of accordingly with no order as to costs.

  
(O.P.Sharma)  
Member (Adm.)

  
(Gopal Krishna)  
Vice Chairman