

(15)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 22.02.2000

OA No.529/94

1. G.K.Gandhi S/o Shri Chand Gandhi, aged 28 years, ad-hoc TTE, Palanpur.
2. Gyan Singh S/o Shri Jaswant Singh, aged 33 years, ad-hoc TTE, Palanpur.
3. Birbal Meena S/o Shri Bhagwan Meena, aged 32 years, T.C., Ajmer.
4. Manoj Bissa S/o Shri Bhanwar Lal, aged 24 years, ad-hoc TTE, Palanpur.
5. Brij Mohan Verma S/o Shri R.S.Verma, aged 25 years, ad-hoc Sr. T.C., Mavli Jn.
6. K.K.Maurya S/o Shri Ram Singh, aged 25 years, ad-hoc Sr. T.C., Abu Road.
7. Suraj Mal S/o Shri Chand Ram, aged 28 years, ad-hoc Sr. T.C., Ajmer.
8. Sanjay K.Mathur S/o Shri V.R.Mathur, aged 28 years, Sr. T.C., Marwar Jn.
9. Vishnu Kant Sharma S/o Shri Shiv Dutt Sharma, aged 29 years, ad-hoc Sr. T.C., Gandhidham.
10. Rajesh K.Gupta S/o Shri Radhey Shyam, 24 years, aged 24 years, ad-hoc Sr. T.C., Palanpur.
11. Mohd. Yasin S/o Shri Mohd. Daraj Khan, aged 30 years, Leave Reserve T.C., Ajmer.
12. Anil Kumar Joshi S/o Shri Nand Kishore Joshi, aged 31 years, Leave Reserve T.C., Ajmer.
13. Matadeen Meena S/o Shri Heera Lal Meena, aged 31 years, Leave Reserve T.C., Ajmer.
14. Badri Lal Bhil S/o Shri R.Bhill, aged 32 years, Leave Reserve T.C., Mavli Jn.

15. Jitendra Kumar S/o Shri Neemi Chand, aged 25 years, Leave Reserve T.C., Mavli Jn.
16. Ranveer Singh S/o Shri Madan Singh, aged 38 years, Leave Reserve T.C., Ajmer.
17. Hari Ram Chaudhary S/o Shri Udai Ramji, aged 28 years, Leave Reserve T.C. Abu Road.
18. Umesh Mathur S/o Shri P.N.Mathur, aged 20 years, T.C., Abu Road.
19. O.P.Soni S/o Shri M.L.Soni, aged 45 years, Leave Reserve T.C., Abu Road.
20. Hira Ram Choudhary S/o Shri N.Choudhary, 23 years, Leave Reserve T.C., Ajmer.
21. Sandeep Sharma, aged 27 years, Leave Reserve T.C., Abu Road.
22. Ajay Singh Chouhan, aged 22 years, Leave Reserve T.C., Ajmer.
23. Khadag Singh S/o Shri M.Singh, aged 24 years, Leave Reserve T.C.Gandhidham.
24. Narendra Vyas, aged 30 years, Leave Reserve T.C., Abu Road.
25. Shri Rajesh Soni, aged 40 years, Leave Reserve T.C. Marwar Jn. C/o Divisional Commercial Manager, Western Railway, Ajmer.

.. Applicants

OA No.496/1994

Ravindra Singh S/o Shri Sheoraj Singh, aged 29 years, officiating Sr. Ticket Collector, Western Railway, Palanpur.

.. Applicant

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. The Divisional Railway Manager, Western Railway, Ajmer.
3. Divisional Commercial Manager, Western Railway, Ajmer.
4. Shri Prem Keshwani at present working as TTE, Abu Road, through DRM (E), Ajmer.

5. Shri Ramesh Asudani at present working as TIE, Abu road through DRM (E), Ajmer.
6. Shri S.C.Gupta at present working as TIE, Abu Road through DRM (E), Ajmer.
7. Shri R.C.Pathak at present working as TIE, Mavli Jn. through DRM (E), Ajmer.
8. Shri Shyam Babu at present working as TIE, Palanpur through DRM (E), Ajmer.
10. Shri P.P.Goyal at present workin as TIE, Abu Road, through DRM (E), Ajmer.
10. Shri M.Y.Khan at present working as TIE, Abu Road through DRM (E), Ajmer.
11. Shri Chetan Kumar at present working as TIE, Abu Road through DRM (E), Ajmer.
12. Shri Ratan Lal R. at present working as TIE, Abu Road through DRM (E), Ajmer.
13. Shri Tara Chand L. at present working as TIE, Palanpur through DRM(E), Ajmer.
14. Shri Hazari Lal Meena at present working as TIE, Abu Road through DRM (E), Ajmer.
15. Shri Rakesh Bhatnagar at present working as TIE, Abu Road through DRM (E), Ajmer.
16. Shri Ladoo Ram at present working as TIE, Palanpur through DRM (E), Ajmer.
17. Shri Manphool Meena at present working as TIE/Palanpur through DRM (E), Ajmer.
18. Shri R.K.Pande at present working as TIE, Gandhidham through DRM (E), Ajmer.
19. Shri Deepak Chaturvedi at present working as TIE, Abu Road through DRM (E), Ajmer.
20. Shri Bhagwan Dass at present working as TIE, Mavli Jn. through

DRM (E), Ajmer.

21. Shri Ram Singh at present working as TTE, Abu Road through DRM (E), Ajmer.
22. Shri Jeevan Bhatnagar at present working as TTE, Palanpur through DRM (E), Ajmer.

.. Respondents

OA No.458/1995

1. Raj Kumar Gupta S/o Shri R.N.Gupta, aged 29 years, TTE O/o the DCTI, Western Railway, Ajmer.
2. Ravi Kant Sharma S/o Late Shri H.S.Sharma, aged 30 years, TTE O/o the DCTI, Western Railway, Ajmer.

.. Applicants

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. The Divisional Railway Manager, Western Railway, Ajmer.
3. Shri Suresh Chand Gupta, Head TC, Western Railway, Udaipur city.
4. Shri Ramesh Asudani at present working as Head TTE, Abu road through DRM (E), Ajmer.
5. Shri R.C.Pathak at present working as Head TTE, Mavli Jn. through DRM (E), Ajmer.
6. Shri Shyam Babu at present working as Head TTE, Palanpur through DRM (E), Ajmer.
7. Shri P.P.Goyal at present working as Head TTE, Abu Road, through DRM (E), Ajmer.
8. Shri Prem Keshwani at present working as Head TTE, Abu Road, through DRM (E), Ajmer.
9. Shri Ramesh Chand Sain, TTE, Western Railway, Palanpur.

.. Respondents

Mr.P.V.Calla, counsel for the applicants

Mr. Manish Bhandari, Council for official respondents

Mr. P.D.Khanna and Mr. Shiv Kumar, counsel for respondents Nos. 4 to 22.

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

The facts, legal issues involved and the relief sought in the above mentioned three OAs being similar and the learned counsel for the parties having agreed, these OAs are being heard and disposed of by this common order. For the sake of convenience, the case file relating to OA No.529/1994, G.K.Gandhi and Ors. v. Union of India and Ors., is being utilised as the reference file.

2. Applicants in this Original Application filed under Section 19 of the Administrative Tribunals Act, 1985 have prayed for the following reliefs :

- " i) Quash and set aside the impugned order No. EC/839/12/Vol.17 dated 26.11.93 (Annexure A/3) as illegal and void,
- ii) Direct the Divisional Railway Manager, Western Railway, Ajmer, Respondent No.2 to first draw up a Seniority List of the cadre of Ticket Collector/T.T.E. etc. etc. of Ajmer Division as on 1.3.93 and notify the same for information of the staff, inviting objections, if any.
- iii) Direct that the seniority of all the 19 surplus staff of Telegraph Branch shall reckon with effect from 3.7.93 in the Cadre of Ticket Collector and not in the cadre of T.T.E., (Subsequently promoted illegally to the post of T.T.E.),
- iv) Declare that the employee, selected by Railway Recruitment

Board, who join the Training Course for the post of Ticket Collector, after passing the said course, stand senior in comparison to those who are imparted the training course at a subsequent date for re-deployment purposes, as per provisions laid down in the Indian Railway Establishment Manual Volume I, and followed all over Indian Railways, leave apart the Ajmer Division of Western Railway, which exceptionally is prone to irregularities, culminated with to vested and malafide interest of Unions.

- v) Declare that the respondent No.2 had issued the re-deployment orders of these surplus staff, assigning them the deemed seniority over and above the existing staff of Ticket Collectors Cadre are contrary to the Rules, itself framed by the Railway Board.
- vi) Direct the respondent No.2 to treat these 19 surplus staff as having been first deployed in the initial post of Ticket Collector below all the existing employees already on the rolls and being appointed earlier than 3.7.93.
- vii) Direct the respondent No.2 to grant proforma fixation of pay through an office order, to all the applicants on the post of T.T.E., scale Rs. 1200-2040 (RS) against which and from the date by which these 19 surplus staff have been adjusted/promoted.
- viii) Declare that the Rule laid down in Para 311 of Indian Railway Establishment Manual- Volume I has been incorrectly applied in the present case, as the relevant rules only deals with assignment of seniority of staff transferred on account of Administration, which is not the case in the present dispute.
- ix) Declare that the post of T.T.E., scale Rs. 1200-2040 (RS) cannot be filled by a direct recruitment method as it is a promotional post falling in the avenue of promotion by 100%

filled from the feeding post of Ticket Collector, as per provisions of Indian Railway Establishment Manual volume I.

x) Declare that all those employees who were regularly appointed in the Cadre of Ticket Collector as before 3.7.93 stand senior as compared to these 19 surplus staff and are eligible within the rule of eligibility for promotion to the post of T.T.E. scale Rs. 1200-2040 (RS) against substantive vacancies prior to 3.7.93. "

2. The facts, as stated by the applicants, are that they were appointed on the initial post of Ticket Collector (for short, TC) scale Rs. 950-1500 after being recommended by the Railway Recruitment Board (RRB), Ajmer and passing the medical fitness test and training course; that all the applicants were allotted merit order which assigned them their inter-se seniority in the Ticket Checking Staff (TC) for future promotion to higher posts; that no seniority list has been prepared and notified for the Ticket Checking Cadre (for short, TCC) till date and the last seniority list relates to the year 1984 or so; that in the absence of the seniority list the applicants are not aware about their actual seniority position in the TCC; that the post of TC is a Group-C post and can be filled up by any of the methods mentioned in para 4.5 of the OA; that during January, 1993 the Railway Board issued instructions restructuring the cadres of Group-C and Group-D posts and in respect of TCC various percentages were adopted as given in para 4.6 of the OA; that as a result of such structuring the vacancies were required to be filled up by those staff who were already on the rolls but 19 of these vacancies were given to surplus staff against all canons of equity and natural justice; that respondent No. 2 issued a circular letter dated 7.4.1993 (Ann.A1) initiating preliminary action to absorb the 19 surplus employees belonging to Telegraph Branch directly in the Commercial Department after obtaining their options with the aim to filling up the post lying vacant prior to 1.3.1993 and vacancies arising between 1.3.1993 and 3.7.1993 and in the process ignoring the claims of the

applicants who were eligible for promotion; that all the 19 surplus staff were sent for training of TCs and after attending the training course all of them were declared passed vide order dated 21.6.1993 (Ann.A4) with merit order identifying their seniority; that thereafter vide letter dated 3.7.1993 (Ann.A2) orders of posting of these 19 surplus employees were issued in the manner that 7 of these who were earlier working as Senior Telegraphist were directly promoted as Travelling Ticket Examiner (for short, TTE), the promotional post in the scale Rs. 1200-2040 against vacancies prior to 1.3.1993 and rest who were working as Telegraphists in the scale Rs. 975-1540 were posted as TCs in the pay scale Rs. 950-1500; that respondent No.2 failed to take notice of the fact that all the applicants borne and working in the TCC has acquired the right to be considered for promotion as TTEs; that later on these 12 surplus staff initially re-deployed as TCs were promoted within a period of 4 months to the higher promotional post of TTEs vide order dated 26.11.1993 (Ann.A3); that being aggrieved the applicants represented to respondent No.2 (Ann.A5) but the same has not evoked any reply till date.

3. Notices of the OA were given to the respondents. Separate replies have been filed by official respondents Nos. 1 to 3 and private respondents Nos. 4 to 22. No rejoinder has been filed on behalf of the applicants.

4. The official respondents in their reply have strongly opposed the averments made by the applicants. It has been stated on their behalf that the seniority list of the TCC has been published from time to time. They have also controverted the details of percentage etc. given in para 4.6 of the OA with regard to restructuring of the TCC and have clarified that as against 5 category of posts mentioned, only 2 pay scale posts have been upgraded i.e. in the pay scale of Rs. 1600-2660 and Rs.2000-3200 wherein no surplus staff have been absorbed and, therefore, it is erroneous

29

to say that vacancies which were created due to upgradation and restructuring were given to surplus staff. As regards the process of absorption of surplus staff, it has been stated that it was, in fact, due to the reason that the work of Telegraph Branch has substantially reduced due to the modernisation and in such circumstances options were asked from such surplus staff for their absorption in various posts. Out of many, few surplus staff gave their option for ticket checking branch and accordingly and in pursuance of the circular of the Railway Board dated 21.4.1989 (Ann.R1) absorption was made. It has also been clarified that whenever employees are transferred or absorbed for administrative reasons, they are given seniority on the absorbed post from the date they were given promotion or appointed on the post/scale while working in the earlier department. As regards the averments of the applicants that they were due for promotion to the higher post of TIE, it is stated that there is no question of promotion of the applicants on the said post/ because the administration is having the surplus staff to be absorbed on various posts and such absorption has to be done on account of the existing circulars of the Railway Board and if, as a consequence of this, any of the absorbed staff were promoted on the recommendation of the Committee having found them suitable, the applicants cannot have any grievance. It has also been stated that representation of Shri Ravindra Singh has already been dealt with by the respondents and a copy of the reply is placed at Ann.R2 in which it has been mentioned that Telegraph Signallers who were rendered surplus and re-deployed as TC/TTE in the interest of administration have been assigned correct seniority in terms of para 311 of the IREM on the basis of length of service in the equivalent grade.

5. In their reply the private respondents Nos. 4 to 22 have contended that the present OA is barred by limitation because the applicant have challenged the absorption and promotion of respondents Nos. 4 to 22, already serving employees of the Telegraph Branch, to the Ticket Checking

Brnach and the report of the concerned Screening Committee was issued on 7.4.1993 whereas the application has been filed on 6.10.1994 i.e. after a lapse of more than one year. As regards the averments made by the applicants in para 4.2 of the OA, it has been stated that seniority of the applicants, being direct recruits will be governed according to Rule 303 and seniority of respondents Nos. 4 to 22 will be governed by Rule 311 of the IREM, Vol.I. It has been asserted on behalf of the private respondents that according to the rules and procedure, those staff who were declared surplus have to be absorbed in any category equivalent to that grade where the surplus staff was working and after calling for their options they are screened by a Screening Committee and then only are absorbed which fact can be ascertained from Ann.RI. In reply to the averments made by the applicants challenging the subsequent promotion of 12 surplus staff to the post of TTE who were initially re-deployed as TCs, it has been stated that applicants S/Shri G.K.Gandhi, Manoj Bissa, Gyan Singh. Brijmohan Sharma, Suraj Mal and Sanjay Kumar Mathur were also promoted alongwith respondents Nos. 4 to 22 vide order dated 16.11.1993 (Ann.A3). Remaining applicants were also given the stat posting as LRTC vide the same office order dated 26.11.1993.

6. We have heard the learned counsel for the parties and have carefully examined the material on record.

7. The case of the applicant is essentially based on the argument that employees transferred to a different cadre on being declared surplus have to be given seniority from the date they join the new cadre and cannot be placed over the employees who are already in position in the new cadre. It was, therefore, wrong on the part of the respondents to have transferred and absorbed 7 of the Sr. Telegraphists declared surplus from the Signalling Department of the Railways to the cadre of TCC as TTEs and rest of the 12 having been absorbed as TCs. It has been contended that the

(B)

respondents should have followed para 127 of the IREM Vol.I which provides rules and procedure for recruitment and training of TCs and laying down the channel of promotion to the higher grades and posts. It has also been stated that the respondents have not published the seniority list for the TCC after around 1984 and in any case the seniority should be determined in terms of para 303 A of the IREM Vol.I. It has also been contended that it was wrong on the part of the respondents to have posted 7 surplus employees directly in the promotional post of TTE in the grade Rs. 1200-2040 and to have within a period of 4 months promoted the remaining 12 surplus staff to the post of TTE. It has also been stated that these 19 employees were not absorbed in the interest of administration but deployed as per their own request (option) and, therefore, their seniority could not be determined as per para 311 of the IREM Vol.I. It has further been contended that paras 310, 311 and 312 of the IREM Vol.I exclusively deal with the assignment of seniority of the staff who are already working and are on the rolls of the railway administration in a particular Department/Branch/Cadre and, therefore, para 311 is applicable only when an employee's place of duty is to be shifted on transfer on the same post on which he holds lien but does not change the character of the post he occupies and thus re-deployment of Telegraph staff on the post of TC/TTE (Commercial Department) has to be strictly as per rules laid down in Rule 127(1)(3), Rule 213, 214 (C) and 216 and para 311 of the IREM has no application. It has also been asserted that assigning the 19 surplus staff of Telegraph Branch seniority over and above the employees already working, without notifying the seniority list and lowering their seniority is against the principles of natural justice. It has finally been contended that all the 19 surplus employees should have been posted as TCs from 3.7.1993 and should have thereafter been promoted to the post of TTE subject to availability of future vacancies and the applicants should have been promoted as TTEs against vacancies given to the surplus staff.

8. The respondents opposed the contention made on behalf of the applicants and contended that para 127 and 303 have no application, whatsoever, in the present matter since the candidates who have been absorbed in the matching pay scales were already working in the said pay scale for the last so many years and on such absorption on account of having become surplus, they have been given appropriate seniority position in tune with the extant instructions wherein it has, inter alia, been provided that whenever a person is transferred due to administrative reasons, he will not lose his seniority. In fact, those employees who have been absorbed in the pay scale of Rs. 950-1500 were earlier working in the higher pay scale of Rs. 975-1540 but have to be taken in the lower pay scale after considering it to be matching pay scale. The 7 employees who were absorbed as TTE scale Rs. 1200-2040 were already working in that pay scale in the Telegraph Department and were accordingly given matching pay scale of TTE. It is, therefore, erroneous to say that there has been any contravention of the provisions. Absorption of the surplus staff cannot be treated as direct recruitment. It has also been denied that the applicants have been transferred/absorbed on their own request. On the other hand, the administration has sought options from the employees and this cannot be treated as a request and whenever employees are declared surplus and are absorbed, such absorption is not due to the fault of the surplus staff but due to the administrative reasons. It has, further, been contended on behalf of the respondents that a plain reading of para 311 of the IREM will make it clear that whenever an employee is transferred from one cadre to another cadre in the interest of administration, his seniority is regulated from the date of promotion/date of appointment to the grade as the case may be and the interpretation of the applicants of para 311 is absolutely contrary to the main provisions. It was also contended that in an organisation like railways technology upgradation is a continuous process and there is nothing unusual in certain categories/posts getting surplus and their absorption on available posts available elsewhere and even on

earlier occasions, such surplus staff always carried their seniority with them as per provisions of the rules/instructions. It was also stated by the learned counsel for the respondents that it was only in OA No. 370/96, decided by the Ahemadabad Bench of this Tribunal on 14.5.1998 that a contrary view was taken by any Court/Tribunal but it will be observed that the specific statutory provisions viz. para 311 of the IREM, which is the relevant applicable provision was perhaps not brought to the notice of the Tribunal in that case and the order contains no mention/discussion of the said Rule. It appears from that order that on behalf of the applicants, Central Civil Services and Posts (Supplementary) Rules, 1989 were referred when these Rules are not at all applicable on the railway servants and the applicants therein had also cited the order of P.K.Das v. Union of India, ATR 1993 (1) CAT 41 which related to Central Civil Services (Redeployment of Surplus Staff) Rules, 1990, which have no application to the railway servants who are covered by railways own statutory rules/instructions. In fact, it appears that para 311 of IREM and Circulars/orders of Railway Board dated 21.4.1989 and RBE No.106/89 were also not brought to the notice of the Apex Court in the case of V.K.Dubey v. Union of India, (1997) 5 SCC 81 on which the Ahemadabad Bench of the Tribunal had relied. It was further argued by the learned counsel for the private respondents that the judgment of the Apex Court in V.K.Dubey's case (supra) has been overlaid by the latest judgment in the case of Anand Chandra Dash v. State of Orissa and ors, AIR 1998 SC 113, in which the Apex Court has upheld the doctrine of carrying the seniority to the new Department when an employee is transferred and absorbed to another Department in the interest of administration. It was argued that judgments were delivered by two Judges Bench of the Hon'ble Supreme Court in both V.K.Dubey's and Anand Chandra Dash's cases and the judgment in the case of Anand Chandra Dash being the latest, it should prevail. Further, it was also stated by the learned counsel for the official respondents that they have filed an appeal against the said order of the Tribunal before the Hon'ble Supreme Court and the Apex Court has stayed the operation of the said order dated 14.5.1998 of the Ahemadabad Bench of the Tribunal and, therefore, that order has not acquired finality.

As regards promotion given to 12 surplus employees to the post of TTE, it has been contended that the applicants have quoted the general procedure for promotion and promotions in this case will not be governed by Para 214(c)(1) of the IREM since the promotion of 12 surplus employees is of entirely different character, they being surplus employees and their seniority having been protected and their promotions having been given on the basis of their seniority in the new cadre. It has finally been contended that the applicants have made out a case of assumptions and presumptions without supporting their case with any legal foundation and the OA deserves to be rejected.

9. We have given our careful consideration to the contentions raised by the rival parties and it transpires that the only controversy in this case relates to the question whether the surplus employees of Telegraph Branch will carry their seniority to the Commercial Department when they are transferred/absorbed therein. In order to come to a conclusion in this regard, we feel that following two issues need to be framed and answered:

- i) Whether the transfer/absorption of surplus employees holding the posts of Telegraphists/Sr. Telegraphists of the Telegraph Branch to the Commercial Department as TCs and TTEs respectively was in the interest of the railway administration or it was, as alleged by the applicants, on the option (request) of these employees.
- ii) Whether Para 311 of the IREM is being incorrectly interpreted by the respondents, as asserted by the applicants, and it is not applicable in the case of respondents nos. 4 to 22.

10. As regards the first issue, the official respondents have

emphatically asserted that the surplus Telegraphists and Sr. Telegraphists were transferred/absorbed in the Commercial Department very much in the interest of the railway administration. It has been explained by them that the work of Telegraph Branch has substantially reduced due to modernisation and in such circumstances, certain employees of the Telegraph Branch had to be transferred/absorbed in various posts available within railway including the posts of TCs and Sr. TCs available in the Commercial Department. It was strongly contended by the learned counsel for the official respondents that such transfers/absorptions can be seen in no other manner than being in the overall interest of the railway administration. On the other hand, the learned counsel for the applicants argued that since options were asked, these transfers/ absorptions should be considered as on request and such employees should, therefore, get bottom seniority. It has, however, been explained on behalf of the respondents that since absorption of surplus has to be completed in posts available in various Branches/Departments within railways, options are asked from such surplus staff for their absorption on various posts and in this case, out of many, few staff gave their option for ticket checking branch and accordingly and in pursuance to the circular of Railway Board dated 21.4.1989 absorption was made. We have given our anxious consideration to this issue. There is no dispute that the respondents Nos. 4 to 22 were surplus employees, so rendered surplus due to the reduction of work in Telegraph Branch on account of modernisation. This was the real reason for the transfer/absorption of the respondent Nos. 4 to 22 and they have never applied for a transfer of cadre or even a new place of posting. They were not even sent out on deputation. In no way can it, therefore, be argued that they were not transferred/absorbed in Commercial Department in any manner other than in the interest of railway administration. Asking options (and not request as averred by the applicants), was just to enable them to make a choice out of various avenues available for their absorption. We are, therefore, of the opinion that in the facts and circumstances of the case, it has to be held that in

the instant case, when railway administration has transferred/absorbed employees from the Telegraph Branch to Commercial Department due to reduction of work, it is transfer/absorption in the interest of the railway administration and is not because of the request of the surplus employees. This issue is according decided.

11. We can now proceed to examine the second issue. Before we do that, it will be useful to extract Paras 301 and 311 of the IREM, which are incorporated in Chapter III of the IREM (Vol.I)

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"                   CHAPTER III

RULES REGULATING SENIORITY OF NON-GAZETTED RAILWAY SERVANTS

301. **General.**— The rules contained in this Chapter lay down the General principles that may be followed for determining the seniority of non-gazetted railway servants on railway administration, except that for the purpose of determining the seniority and promotion of non-gazetted employees of the Diesel Locomotive Works the rules contained in paragraphs 324 to 328 of this Chapter shall be followed.

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311. **TRANSFER IN THE INTEREST OF ADMINISTRATION.**— Seniority of railway servants on transfer from one cadre to another in the interest of the administration is regulated by the date of promotion/date of appointment to the grade as the case may be."

A plain reading of the above rule will clearly establish that if a railway servant (except non-gazetted employees of Diesel Locomotive Works on whom Paras 324 to 328 apply) is transferred from one cadre to another in the interest of administration, his seniority is regulated by the date of promotion/ date of appointment to the grade as the case may be. The applicants have neither challenged the vires of this rule nor have they

contended that the said rule has been struck down by any judgment of any Tribunal or Court. The Para 311, therefore, stands as a specific provision to regulate the seniority of railway servants transferred in the interest of administration. There is nothing to support the contention of the applicants that Paras 310,311 and 312 exclusively deal with the question of assignment of seniority of staff who are already working and are on the rolls of the administration in a particular Department/Branch/Cadre and Para 311 is only applicable when a person's place of duty has to be shifted on transfer on the same post on which he holds lien but does not change the character of the post he occupies. Each of the aforementioned three rules deal with a specific situation. Para 310 regulates seniority when railway servants are transferred on mutual exchange from one cadre of a Division to corresponding cadre in another Division. As already stated earlier, Para 311 regulates seniority in the event of transfer of railway servant in the interest of administration. Para 312 deals with transfer on request. There appears no doubt at all about the specificity of Para 311 when a railway servant is transferred in the interest of administration. In fact, Paras 310 and Para 312 bring into sharp focus the differentiation between regulation of seniority in case of mutual exchange or own request transfer and when a transfer is made in the interest of administration under Para 311. Having already held, vis-a-vis the first issue, that the transfer of the respondents from the posts of Telegraphists and Sr. Telegraphists to the post of TCs and TTEs was in the interest of the railway administration, we have no hesitation in concluding that Para 311 of IREM is fully applicable in this case and official respondents having correctly applied a specific rule that provides for regulation of seniority of railway servants in case they are transferred to from one cadre to another in the interest of administration.

12. We get further support in coming to a conclusion that Para 311 is applicable in respect of private respondents in the facts and

circumstances of this case by reading R.B.E. No. 106/89 dated 21.4.1989 (Ann.R1) regarding absorption/utilisation of surplus staff in conjunction with Railway Board's order No. E(NG)II/RE-1/21 dated 7.7.95 at Sl.No. (33) of the compilation of Railway Board's order, 1995 brought to our notice by the learned counsel for the official respondents. This order dated 7.7.1995 refers to the para 3 (i) of the aforementioned Board's letter of 21.4.1989 and clarifies that "In case surplus staff are to be re-deployed in small numbers, the extant instructions contained in para 3(i) Board's letter ibid, providing that they may be absorbed with full seniority in appropriate grades, in the absorbing cadre as is given to staff transferred in administrative grounds in para 311 of IREM will continue to apply." (emphasis supplied). Since this order refers to sub-para (i) of para 3 of the instructions dated 21.4.1989 (Ann.R1) which speaks of only a small number of staff are being rendered surplus and they can be suitably adjusted in those units with their full seniority and merging their seniority in the respective units, we think it prudent to also read sub-paras (ii) & (iii) of the same para which deal with situations when large number of staff are being rendered surplus to see if these provide for "washing off" of past services and consequently bottom seniority in the new cadre, which might require us to go into the question of what can be considered "small number" or "large number". We find no such provision washing off past service in these three sub-paras. Instead, we find that these only provide for situations when large number of staff are being deployed to (a) new units wherein there should be no difficulty in giving them their full seniority or (b) when such staff is transferred to existing units whereupon views of Unions could be obtained whether the seniority of staff being shifted should be kept separate against "supernumerary posts". Thus there is no loss of past services of surplus staff even when large number of staff are being rendered surplus and their being placed at the bottom of existing staff. In any case, there was no plea on behalf of the applicants that the number of 19, as is the number of staff rendered

surplus in this case, is a "large number" and, therefore, sub-para (i) of para 3 of the Railways Board's instructions dated 21.4.1989 is not applicable. In view of above discussions, we have no hesitation in deciding the second issue and holding that the rule incorporated in Para 311 of the IREM is fully applicable in this case and the respondents have correctly applied this specific rule and read with instructions/orders dated 21.4.1989 (Ann.R1) and Railway Board's order No. E(NG)II/RE-1/21 dated 7.7.1995 have correctly regulated the seniority of 19 Telegraphists/ Sr. Telegraphists, when they were transferred and absorbed in the post of TCs and TTEs in the Commercial Branch. If 12 of the private respondents initially absorbed as TCs got promoted to the post of TTEs on the basis of such seniority, the action of official respondents cannot also be faulted.

13. The learned counsel for the applicant has cited certain cases in support of his contention that respondents Nos. 4 to 22 could not have carried their past seniority on being transferred/ absorbed and placed over the applicants. In ATR 1993 (1) CAT 41, P.K.Das v. Union of India and Ors, the Tribunal was dealing with a case falling within the purview of Central Civil Services (Redeployment of Surplus Staff) Rules, 1990, wherein it was held that seniority in the new organisation/new post has to be reckoned from the date of joining of new post and not from the date of his original entry into the government service. Another case cited by the learned counsel for the respondents, Union of India v. M.K.Savitri reported in 1998 (2) ATJ 565 again relates to CCS (Redeployment of Surplus Staff) Rules, 1990. These cases are distinguishable since the applicants in these cases were governed by Civil Services (Redeployment of Surplus Staff) Rules 1990, whereas in the case in hand, the railway administration's own specific rules/ instructions are applicable. The third case law cited is the order dated 14.5.1998 in OA No. 370/96 Rajesh Amritlal Parikh and anr. v. Union of India and Ors, decided by the Ahmedabad Bench of this Tribunal. It was dealing with the redeployment of Sr. Clerks of Telegraph Branch as Senior

Clerks themselves. Relying on the judgment of the Apex Court in the case of V.K.Dubey v. Union of India, (1997) SCC 81, the Tribunal had held that the seniority of redeployed "signallers" being the grade to which they were transferred shall be determined from the date of joining to the new cadre and not with reference to their original seniority as signallers. It has been argued in detail by the learned counsel for official as well as non-  
<sup>not</sup> official respondents that the specific applicable Para 311 of the IREM was brought to the notice of the Tribunal as also Hon'ble the Supreme Court of India. Their detailed arguments may be referred to in para No.8 of this order.

14. The learned counsel for the respondents have also cited various judgments to support their contentions that when specific statutory Rule 311 of IREM and instructions/orders of Railway Board exist, the same have to be applied, as have been done in this case. In Mallikarjuna Rao and ors. v. State of Andhra Pradesh and ors., 1990 (13) ATC 724, Hon'ble the Supreme Court has held that in the realm of administrative law and judicial review, Courts/Tribunals cannot direct Government to frame statutory rules or amend existing statutory rules in a specific manner so as to alter the conditions of service of civil servants. In Bishwanath Prasad AgraHari v. Union of India and ors., (1990) 14 ATC (CAT) 346, dealing with a case of railway servants, it was held that where the employees are transferred from ~~one~~ department to another on administrative grounds, pre-transfer service rendered in the comparable or higher grade would count for seniority. In the case of S.Mookiah and ors. v. Union of India and ors., (1992) 19 ATC (CAT) 552, it was held that decision to assign bottom seniority for new cadre on account of transfer due to surplusage was arbitrary and unjust and violative of Article 14 and Railway Establishment Code. Finally, in a recent judgment of Hon'ble Supreme Court of India in Anand Chandra Dash v. State of Orissa and ors., reported in AIR 1998 SC 713, it was held that past services rendered by the appellant in parent Department/Revenue

33

Department have to be taken into account for determining his seniority in the new Department/Labour Department.

15. The judgment dated 13.1.1998 by the Two Judges Bench of the Apex Court in the case of Anand Chandra Dash (supra) is the latest judgment with regard to the controversy in hand and we are bound to take note of it while coming to a conclusion in the case in hand. It is well settled principle that when there are two judgments of the Apex Court holding different views, either the judgment of the Larger Bench or the later judgment has to be followed. The case of N.S.Giri v. Corporation of City of Mangalore reported in JT 1999 (6) SC 538 can be referred to in this regard. However, we would like to also go back to the arguments of the learned counsel for the respondents as recorded in para 8 of this order and venture to say that not only the judgment of Two Judges Bench of the Apex Court in the case of V.K.Dubey (supra) on which the Ahmedabad Bench of this Tribunal had relied is of an older vintage but it is also distinguishable from the controversy in hand. In that case, the railway servants involved were initially drafted on the diesel side of the locomotive operations and on introduction of electrical engines, they were given training and were absorbed on the electrical locomotive side. The Apex Court was of the view that instead of retrenching them from service (emphasis supplied), they were sought to be absorbed by giving necessary training in the trains operating on electrical energy and under these circumstances they could not have a lien on the posts on electrical side nor can they be entitled to seniority over the staff regularly working in the electrical locomotive department. It is observed that the relevant statutory rules were not brought to the notice of Hon'ble Supreme Court. As can be seen from the Para 301 and 311 of I&EM, extracted in para 11, the rule incorporated in para 301 of I&EM makes an exception and provides that the seniority of all non-gazetted railway employees of the Diesel Locomotive Works was to be determined under rules contained in paragraphs 324 to 328 of the said

Chapter of IREM. The railway servants involved in this case were not of above excepted category and, therefore, their seniority has to be regulated under the relevant rule incorporated in para 311 of the Chapter III of IREM. In the instant case, when Telegraphists and Sr. Telegraphists were transferred/absorbed in the Commercial Department as TCs and TTEs respectively on account of reduction of work in the Telegraph Branch, in the interest of administration, the relevant rule was the one incorporated in para 311 of IREM read with connected instructions/orders of the Railway Board as discussed in greater details in paras 11 and 12 of this order. Further, it has also been stated at Bar by the learned counsel for the respondents that the respondents have gone in appeal before the Apex Court against the decision dated 14.5.1998 of the Ahmedabad Bench of this Tribunal and the Apex Court has stayed the operation of the said order.

16. In view of the foregoing discussions, wherein we have come to the conclusion that the transfer/absorption of respondent No.4 to 22 was in the interest of (railway) administration and the relevant rule incorporated in para 311 of the IREM read with Railway Board's R.B.E. No. 106/89 dated 21.4.1989 (Ann.R1) and order No. E(NG) II/94/RE-I/21 dated 7.7.1995 have been correctly applied and in view of the legal position as it emerges, we are of the considered view that the OA does not succeed and is accordingly dismissed with no order as to costs.

Sd/-  
(N.P.NAWANI)

Adm. Member

Sd/-  
(S.K.AGARWAL)

Judl. Member

All copy served to  
Respondent & all relief  
Petitioner in all aspects  
Petitioner file no. 143/98  
Judgement given on 27/3/98

TRUE COPY ATTESTED

8/3/2000  
Section Officer (Judicial)  
Central Administrative Tribunal  
Jaipur Bench, JAIPUR