

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: //10.2001

OA No.463/1995

Rajeev S Chandorikar s/o S.N.Chandorikar r/c 313, Keswa Nagar, Vaishali Nagar, Ajmer, presently posted as Sr. Lecturer, System Technical School, Western Railway, Ajmer.

..Applicant

Versus

1. Union of India through the General Manager, Western Railway, Churchagate, Mumbai.
2. Chief Works Manager, Loco Workshop, Western Railway, Ajmer.
3. Shri Sheojinath s/o Shri Gheesanath, presently posted as Chargeman-A, Diesel POH Shop Loco, Ajmer r/o Ladpura via Gagwana, District, Ajmer (Raj.).

.. Respondents

OA No.358/96

Yogesh Kumar Mandawat s/o late Shri R.S.Mandawat r/o 109/II, Shivpuri, Ajmer, presently posted as Sr. Instructor, B.T.C. Loco Workshop, Western Railway, Ajmer.

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1. The Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. Chief Works Manager, Loco Workshop, Western Railway, Ajmer.
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would be entitled to count seniority of promoted post prior to 1.3.1986 consequent upon his switching over to the diesel side. During the arguments, the learned counsel for the applicants reiterated the fact that the applicants were senior to Sheojinath even as Chargeman 'B' and, therefore, they cannot be made junior to Sheojinath as Chargeman 'A'. It is brought out here that the applicants and private respondents before switching over to the diesel wing belonged to two different seniority groups and they earned their promotions in their respective seniority groups as per prospects available there. The applicants cannot claim that since they were senior as Chargeman 'B', they should continue to be senior as Chargeman 'A', notwithstanding, the fact that respondent No.3 and 4 were promoted as Chargeman 'A' earlier in their own seniority units. Seniority of respondent No. 3 and 4 has rightly been assigned by the respondents in accordance with the terms and conditions of notification dated 1.12.1987. The learned counsel for the applicants has cited some judgments in support of his contention and these are being discussed in subsequent paragraphs.

5. (1998) 4 SCC 358, Union of India and ors. v. K.Savitri and others. In this case the question for consideration was whether surplus employees having been rendered surplus in the parent department, on being redeployed under the provisions of CCS (Redeployment of Surplus Staff) Rules, 1990 can claim benefit of counting of past services rendered by them for the purpose of seniority or experience in the redeployed organisation. It was held that benefit of service rendered in previous

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: 2 :

Loco, Ajmer r/o Ladpura via Gagwana, Distt.  
Ajmer.

4. Shri Om Prakash, presently posted as Junior  
Shop Superintendent, Diesel POH Loco Workshop,  
Ajmer.

.. Respondents

Mr. P.P.Mathur, counsel for the applicants

Mr. R.G.Gupta, counsel for respondents No. 1 & 2

Mr. J.K.Kaushik, counsel for respondent No.3

CORAM:

Hon'ble Mr. Justice B.S.Raikote, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member

ORDER

Per Hon'ble Mr. Gopal Singh, Administrative Member

The controversy involved in both these cases is same and, therefore, both the applications are being disposed of by this common order.

2. Undisputed facts of the case leading to this controversy are as follows. In OA No.463/95 applicant, Rajeev S Chandorikar, has challenged the impugned order at Ann.A1 wherein one Sheojinath has been given seniority over the applicant, whereas in the seniority list published in the year 1990, the applicant was senior to Sheojinath (respondent No.3). Accordingly, he has prayed for quashing the impugned order dated 19.5.1995 (Ann.A1) and for a direction to the respondents that respondent No.3 be placed below the applicant in the seniority list of Chargeman 'A' (Diesel). In application No. 358/96 applicant, Yogesh Kumar Mandawat, has also prayed for seniority over Sheojinath (respondent No.3 in that OA) and

Om Prakash (respondent No.4 in that OA). The applicant in OA No.463/95 has not furnished his service details except saying that he was promoted as Chargeman 'A' on diesel side on 15.5.1989. Applicant in OA No.358/96; Yogesh Kumar Mandawat, was promoted as Chargeman 'B' on 7.12.1981 and as Chargeman 'A' on 28.5.1988 on diesel side. Sheojinath (respondent No.3 in both the applications) was promoted as Chargeman 'B' on 2.9.1984 and as Chargeman 'A' on 28.2.1985 on steam side. Om Prakash (respondent No.4 in OA No.358/96) was promoted as Chargeman 'B' on 2.9.1984 and as Chargeman 'A' on 28.2.1985. Om Prakash had switched over to diesel side w.e.f. 1.3.1985 and continued to hold the post of Chargeman 'A' from that date on diesel side. The contention of the applicants is that Sheojinath (respondent No.3 in both the applications) had joined the diesel wing w.e.f. 25.7.1989 and he was accordingly given seniority from this date on diesel side and, therefore, applicants were senior to Sheojinath in the seniority list published in the year 1990. Sheojinath had approached this Tribunal on the issue of assigning him seniority w.e.f. the date he switched over to the diesel side and demanded seniority from the date he was promoted as Chargeman 'A' on steam side, in the diesel wing as Chargeman 'A' in OA No.205/90 decided on 21.9.1994. The Tribunal in its order dated 21.9.1994 passed in OA No.205/90 came to the conclusion that the action of the respondents in not granting the same seniority as granted to him on the steam side with reference to his date of appointment as Chargeman 'A' on the steam side and further stating that he was Chargeman 'B' at the time of switching over to the diesel side, are incorrect and further held that he was

entitled to retain his seniority on the steam side at the time of switching over to diesel side. The OA was, however, not allowed by the Tribunal on the ground that the affected persons were not impleaded as party respondents in that OA and accordingly <sup>the applicant</sup> ~~was~~ given liberty to make a representation to the respondents setting out his case and in that event the respondents were directed to dispose of the said representation on merits after giving hearing to the applicant as also to others who are likely to be affected. Accordingly, the respondent Department issued show-cause notices to both the applicants. Instead of presenting their case before the respondents, the applicants demanded copies of various documents so as to be able to submit a reply and in the process, the time for submitting reply to the respondents was over. The respondents issued the impugned order dated 19.9.1995 (Ann.A1) by ~~which~~ according seniority to Sheo Jinath (respondent No.3) as per the observations of the Tribunal vide order dated 21.9.1994 passed in OA No.205/90. Feeling aggrieved, the applicants have filed these OAs.

3. We have heard the learned counsel for the parties and perused records of the case carefully.

4. It has already been pointed out that Om Prakash (respondent No.4 in OA No.358/96) had switched over to diesel side immediately after his promotion as Chargeman 'A' on steam side, as such he was given seniority on steam side from the date he was promoted as Chargeman 'A' i.e. 28.2.1985 on steam side and he joined the diesel side on

1.3.1985. Therefore, he has not affected adversely any of the persons who were holding the post of Chargeman 'A' on the diesel side. Sheojinath (respondent No.3) had switched over to diesel side on 25.7.1989 in pursuance of the notification dated 1.12.1987 (at Ann.A9 in OA No.463/95). In this notification dated 1.12.1987 it was specifically provided that employees who opt for switching over to diesel POH will not be granted seniority with reference to promotion granted to them after 1.3.1986. It implies that persons switching over to diesel side would be entitled to count their seniority for promotion earned by them prior to 1.3.1986 in steam side. As has been mentioned earlier, Sheojinath was promoted as Chargeman 'A' on steam side w.e.f. 28.2.1985, though he had switched over to diesel side on 25.7.1989, he was entitled to count for the purpose of seniority as Chargeman 'A' the period he spent on steam side consequent upon his promotion w.e.f. 28.2.1985 and it was also held by this Tribunal, as has been discussed above, that he was entitled to be given his seniority as Chargeman 'A' w.e.f. 28.2.1985. Contention of the applicants is that they were promoted as Chargeman 'A' on diesel side and they were holding the post of Chargeman 'A' from a date earlier to the date Sheojinath switched over to diesel side and, therefore, they should be treated as senior to Sheojinath. It is not a case where respondent No.3 was rendered surplus on steam side and he was absorbed on diesel side. In fact, he had given option to come over to diesel side in terms of notification dated 1.12.1987 and this notification was issued very much in the public interest, since the work on diesel side was on the increase and it was one of the conditions that persons

would be entitled to count seniority of promoted post prior to 1.3.1986 consequent upon his switching over to the diesel side. During the arguments, the learned counsel for the applicants reiterated the fact that the applicants were senior to Sheojinath even as Chargeman 'B' and, therefore, they cannot be made junior to Sheojinath as Chargeman 'A'. It is brought out here that the applicants and private respondents before switching over to the diesel wing belonged to two different seniority groups and they earned their promotions in their respective seniority groups as per prospects available there. The applicants cannot claim that since they were senior as Chargeman 'B', they should continue to be senior as Chargeman 'A', notwithstanding, the fact that respondent No.3 and 4 were promoted as Chargeman 'A' earlier in their own seniority units. Seniority of respondent No. 3 and 4 has rightly been assigned by the respondents in accordance with the terms and conditions of notification dated 1.12.1987. The learned counsel for the applicants has cited some judgments in support of his contention and these are being discussed in subsequent paragraphs.

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organisation is not permissible under these provisions for fixation of seniority in the organisation where the surplus staff is redeployed. The case in hand is not the case of surplus staff being given the seniority for the service rendered in the previous organisation. Respondent No.3 ~~xxxxx~~ had come over to diesel side consequent upon respondents' notification dated 1.12.1987 and it specifically provided that the period of promoted post prior to 1.3.1986 would count for seniority in the equivalent grade on the diesel side. Thus, this judgment does not help the applicants.

7. (1989) 11 ATC 676, P.Dasarathan v. Sub Divisional Inspector (Postal) Karikal and ors. This was a case of departmental inquiry under P&T Extra Departmental Agents (Conduct and Service) Rules, 1964 and it was held therein that non-supply of such documents amounted to denial of reasonable opportunity. The case in hand is not a departmental inquiry case and as such we are of the view that non-supply of demanded documents did not amount to denial of reasonable opportunity in defence. In our view, this judgment also does not come to the rescue of the applicants.

8. 1988 (2) SLJ (CAT) 254, Govind Lal Chopra v. Union of India. This is also a disciplinary inquiry case where some of the documents demanded by the applicant were not supplied to him. As has been mentioned above, the case in hand is a case of fixation of seniority and demand of a long list of documents, we consider, was unreasonable on the part of the applicants and we are of the view that

no prejudice was caused by not furnishing the demanded documents to the applicants.

9. As a matter of fact, the seniority of Sheojinath was fixed vide impugned order dated 19.9.1995 in terms of the observations of this Tribunal dated 21.9.1994 passed in OA No. 205/90 and we do not find any irregularity in this case so as to call for our interference. Fact also remains that Sheojinath and Om Prakash (respondent No.3 and 4) were promoted as Chargeman 'A' in their own wing earlier to the applicants and, therefore, they had a right to demand seniority over the applicants.

10. In the light of above discussions, we are firmly of the view that these applications are devoid of any merit and are liable to be dismissed. Accordingly, we pass the order as under:-

Both the applications, No.463/95 and No.358/96, are hereby dismissed, but in the circumstances, without any costs.

(GOPAL SINGH)

Adm. Member

(B.S. RAIKOTE)

Vice Chairman