

23-5-2011

OA. 96/2007¹⁹⁹⁷

Mr. R.C. Joshi, Ad. counsel for applicant.

Mr. V.S. Bhatkar with Mr. Shabina. Ad. counsel for the respondents.

Argument heard. The OA stands disposed of by a separate order.

Anil Kumar
(Anil Kumar)
Member(A),

K. S. Rathore
(Justice K.S. Rathore)
Member(J),

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 23rd day of May, 2011

ORIGINAL APPLICATION NO. 96/1997

CORAM

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

Vijay Kumar Sidh son of Shri Mool Chand aged about 40 years, resident of Guda Road, Shiv Colony, Bandikui, District Dausa, at present posted as Artisan Khallasi in the Western Railway at Phulera, Jaipur Division.

.....Applicant

(By Advocate: Mr. R.C. Joshi)

VERSUS

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager (Establishment), Western Railway, Jaipur Division, Jaipur.
3. Senior Divisional Mechanical Engineer (Establishment), Western Railway, Jaipur.

.....Respondents

(By Advocate: Mr. V.S. Gurjar with Ms. Shabina

ORDER (ORAL)

Brief facts of the case are that the applicant was initially appointed on 03.03.1979 as Casual Labourer and thereafter granted temporary status on 12.08.1979. Thereafter the services of the applicant have been regularized on the post of Artisan Khallasi w.e.f. 15.05.1989 vide order dated 15.05.1989 in which the name of the applicant find place at sr. no. 13 with merit no. 23 whereas similarly situated persons, John Frank, Shri Govind Saran and Satya Prakash, their name find place at sr. no. 17, 30 and 16 respectively and merit no. 29, 19 and 27 respectively.



2. In the year 1994 due to dieselization in Western Railway, Jaipur, Loco shed has been closed. Consequent thereupon staff of Loco shed has become surplus. The respondents have called options for absorption in alternative posts vide letter dated 12.1.1994 (Annexure A/5) and response to that applicant has given his option for absorption on the post of Diesel Assistant in running side.

3. On account of non availability of vacancy, the applicant could not be absorbed on the post of Diesel Assistant but the respondents are duty bound to consider the case of the applicant in future as per Note 5 below Annexure A/4 for absorption in running side.

4. The grievance of the applicant is that inspite of option given by him for running side to be absorbed on the post of Diesel Assistant; the respondents forcibly sent the applicant to Signal Department for which applicant never opted. The applicant tried to make out the case of discrimination because one Shri Nawal Kishore shown at sr. no.4 in Annexure A/6 was sent to Signal Department with the applicant but the respondents have included his name in eligibility list (Annexure A/1) at sr. no. 75. Earlier the name of Shri Nawal Kishore was not in the eligibility list circulated on 01.10.1996 but the same has now interpolated and the applicant has not been considered for the same. The applicant has been presently working in Signal Department under the control of chief Signal Inspector at Phulera and his co-workers have been allowed for the test of Diesel Assistant vide Annexure A/7.

5. Since the name of the applicant was not included in the eligibility list circulated on 01.10.1996 for which the applicant agitated the

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matter before this Hon'ble Tribunal by filing OA No. 573/96 and the same has been disposed of as infructuous vide order dated 03.02.1997 (Annexure A/2) as the respondents have themselves cancelled the eligibility list. The name of some employees like Shri Nawal Kishore has now been included in the eligibility list (Annexure A/1) those names were not in the eligibility list dated 01.10.1996.

6. Learned counsel for the applicant referred to Note No. 5 of order dated 20.03.1989 (Annexure A/4). As per note 5, whosoever may be given appointment on the post of Artisan Khallasi in future, they will be eligible to be absorbed in running side in accordance with provisions of law in case any vacancy will be considered for posting. As per Note 5, so far as the applicant is concerned, he has not been absorbed in running side but he has been absorbed in Signal Branch. Therefore the case of the applicant is distinguishable from the judgment rendered by this Tribunal in the case of **Ravindra Kumar Sharma & Others vs. Union of India & Others** [OA No. 589/96 decided on 17.04.2002].

This Tribunal in Para No. 7 has observed as under:-

"7. Be that as it may, the facts of the case clearly indicate that in June 1994 the applicants had given their preference for alternate deployment and they were sent to Signal & Telecommunication department for being trained as ESMS. Those of the surplus staff who were successful in the training of ESMS have actually been absorbed vide order dated 08.11.1996. We are not able to appreciate as to why the post of Ticket Collector is being preferred by the applicants as compared to the post of ESM. The learned counsel on their behalf was not able to give any satisfactory answer as to why there is insistence on the part of the applicants to be absorbed only as Ticket Collectors. They have not suffered in their pay and emoluments and as we have observed earlier, it is for the concerned authorities of the department only to decide as to where and in what position the staff rendered surplus in one department can be redeployed keeping in view the interest of administration. There can never be a case of surplus staff for choosing their



category of absorption. Absorption of some as Ticket Collector and non-absorption of the applicants in that category can in no way be considered as an act of discrimination. Discrimination arises only if one category suffers in status or emoluments. This is no the case in the present situation. There is no merit in this OA."

7. The applicant also preferred OA No. 96/1997, which has been decided vide order dated 01.05.2002 and the same has been challenged by the applicant by way of filing DB Civil Writ Petition No. 4355/2002 before the Hon'ble High Court, which was decided on 18.03.2010, alleging that the Tribunal decided OA No. 96/1997 on the basis that similar controversy has been decided by the Tribunal in OA No. 599/1996, Ravindra Kumar Sharma & Others vs. Union of India & Others on 17.04.2002. It was contended on behalf of the applicant that the controversy involved in Ravindra Kumar's case is not similar to the case of the applicant, Vijay Kumar, therefore the case of the applicant was not properly considered by this Tribunal. The Division Bench of the Hon'ble High Court had disposed of the Writ Petition and quashed and set aside the order dated 01.05.2002 and remit the matter back to this Tribunal to adjudicate the matter afresh and pass appropriate order.

8. In the light of the directions issued by the Division Bench of the Hon'ble High Court, we have carefully gone through the order passed by this Tribunal in OA No. 599/1996 [Ravindra Kumar Sharma & 6 Others vs. Union of India & Others]. All the 7 applicants of this OA belong to the Loco Steam Department of the Railways. In anticipation of the closure of Loco Sheds in Jaipur Division, they were rendered surplus in their present department. All the surplus staff were asked to

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opt for alternate deployment indicating their preferences for the categories in which they would like to be absorbed. On 02.02.1996, a notification was issued by the Department for conducting selections from amongst the surplus staff for absorption in the category of Ticket Collectors. The applicants also applied for the same and were called for the selection. They passed the written test and appeared in the interview. However, their final result was not declared and vide letter dated 19.10.1996, their names were deleted from the list of eligible candidates dated 27.06.1996 to be considered on the basis of which they had participated in the process of selection for the category of Ticket Collectors. The question which comes for consideration in the aforesaid OA was whether the employees rendered surplus from one department on account of curtailment/closure of the activities of that department, can claim as a matter of right to be absorbed in a particular department or any particular category and the Tribunal observed that surplus employee cannot choose the category or department in which they must be redeployed. After appointment in a particular service or department, the legally enforceable right accrues only in that cadre to which a person is appointed. If he rendered surplus, the option available with the employer are either to dispense with his services or to find alternate deployment. Government of India, as a conscious decision, has decided to use the later option of continuing such employees rendered surplus, in employment training or retiring them to make them suitable for alternate deployment. It is for the employer to decide his needs and suitability of the persons to main posts in alternate category.

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9. It is not disputed that vide Annexure R/1 the applicant had given his option for Traffic Department, Second Carriage & Wagon Department and third Signal & Telecommunication. Admittedly, the applicant had been absorbed in the Signal & Telecommunication Department in the cadre of Signal & Telecommunication Department in the pay scale of Rs.750-940/-. As held by this Tribunal in the judgment/order dated 17.04.2002 In the case of Ravindra Kumar sharma & Others vs. Union of India & Others, the applicant cannot claim as a matter of right to be absorbed in a particular department or in a particular category. Since the applicant has already been absorbed in Signal & Telecommunication Department, now consideration of the case of the applicant in view of Note 5 of letter dated 20.03.1989 (Annexure A/4) is meaningless. Note No. 5 can be considered prior to absorption of the applicant to Signal & Telecommunication Department. Consequently, we find no merit in the OA and the same deserves to be dismissed. Consequently, the OA being bereft of merit stands dismissed with no order as to costs.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

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

AHQ