

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 21-03-03

1. OA 78/99

Abdul Gani, Assistant Driver (AC), Electrical Department, W/Rly, Kota.

... Applicant

Versus

1. Union of India through General Manager, W/Rly, Churchgate, Mumbai.
2. Divisional Rly Manager, W/Rly, Kota.

... Respondents

2. OA 149/99

Abdul Gani, Assistant Driver (AC), Electrical Department, W/Rly, Kota.

... Applicant

Versus

1. Union of India through General Manager, W/Rly, Churchgate, Mumbai.
2. Divisional Rly Manager, W/Rly, Kota Division, Kota.

... Respondents

3. OA 193/99

Ram Singh-H, Assistant Driver, Gangapurcity, W/Rly, Kota Dn., Kota.

... Applicant

Versus

1. Union of India through General Manager, W/Rly, Churchgate, Mumbai.
2. Divisional Railway Manager (E), W/Rly, Kota Division, Kota.
3. Divisional Engineer, W/Rly, Kota Division, Kota.
4. Sr.Section Engineer (TRO), W/Rly, Gangapurcity.

... Respondents

4. CP 22/99 (OA 149/99)

Abdul Gani s/o Shri Abdul Hameed r/o 221-C, Railway Workshop Colony, Kota.

... Applicant

Versus

1. Shri L.R.Thapar, Divisional Rly Manager, W/Rly, Kota Division, Kota.
2. Shri V.K.Sharma, CTCC, TRO, W/Rly, Kota.

... Respondents

5. CP 23/99 (OA 78/99)

Abdul Gani, Assistant Driver (AC), Electrical Department, W/Rly, Kota.

... Applicant

Versus

Shri L.R.Thapar, Divisional Railway Manager, W/Rly, Kota Division, Kota.

... Respondent

CORAM:

HON'BLE MR.H.O.GUPTA, ADM.MEMBER

HON'BLE MR.M.L.CHAUHAN, JUDL.MEMBER

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For the Applicants
For the Respondents

... Mr.S.K.Jain
... Mr.T.P.Sharma

O R D E R

PER HON'BLE MR.M.L.CHAUHAN, JUDL.MEMBER

By this common order, we propose to dispose of OAs 78,149,193/99 and CPs 22 & 23/99. OA 78/99 has been filed by applicant Abdul Gani against the order dated 9.2.99 (Ann.A/1), cancelling his lien and seniority, issued by respondent No.2. i.e. Divisional Railway Manager (E), W/Rly, Kota. OA 149/99 has also been filed by the applicant Abdul Gani against the order dated 15.3.99 (Ann.A/1), whereby he was reverted from the post of Assistant Driver (AC) to the post of Second Fireman. OA 193/99 has been filed by applicant Ram Singh-H against the order dated 1.4.99 (Ann.A/1), issued by respondent No.4 i.e. Senior Section Engineer (TRO), W/Rly, Gangapurcity, reverting him from the post of Assistant Driver (AC) to the post of Second Fireman. CP 22/99 and CP 23/99 have been filed by the applicant Abdul Gani against the alleged violation of order dated 1.4.99, passed by this Tribunal in OA 149/99, and the order dated 18.2.99, passed in OA 78/99 respectively.

2. The core question involved in these OAs is whether passing of selection test is necessary for surplus Steam staff for their redeployment in alternative posts of Assistant Driver (AC) or such staff can be absorbed only on completion of 'Conversion Training' in terms of Railway Board's letter dated 15.3.90.

3. The facts which may be necessary for determination of the aforesaid controversy may now be stated. Applicants S/Shri Abdul Gani and Ram Singh-H were initially appointed as Cleaner in the Railway Department and thereafter they were promoted on the post of Second Fireman. Further channel of promotion from the post of Second Fireman was to the post of First Fireman and then to the post of Shunter and other posts. The aforesaid promotional avenues ^{were} available towards the Steam Line and the steam engines were in existence at that time. In the year 1982, the scheme of dieselisation was introduced by the Railway with the view to completely switch over from Steam side to the Diesel & Electrical sides. Ultimately, the Steam side, to which the applicants belong, was completely abolished and the persons from the Steam side were declared surplus and were ultimately absorbed in the Diesel/Electrical sides. According to the applicants, orders were issued by the Railway Board to absorb the Steam personnel in the Diesel/Electrical sides. Further case of the applicants is that in Diesel side the lowest post in the running

side was that of Diesel Assistant and in the Electrical side, the post of Electric Assistant was the lowest. The pay scale of the above posts was Rs.950-1500. The pay scale of the post of Second Fireman, to which the applicants belong, was only Rs.825-1200. It is further case of the applicants that the Railway Board vide its circular No.E(NG)1/88/PNM dated 15.3.90 issued order that the Steam staff should be given conversion training for their redeployment, without insisting on their educational qualifications and age restrictions. Copy of this circular has been placed on record as Ann.A/2 in OA 149/99. It is case of the applicants that in pursuance of the said circular, applicants were given necessary conversion training by the respondents, which they successfully completed. Copies of such letters have been placed on record as Ann.A/3 in OAs 149 & 193/99. Perusal of these letters reveals that the applicant Abdul Gani has passed the conversion training meant for the post of Assistant Driver (AC) vide letter dated 6.10.92 and his name figures at S.No.20, whereas applicant Ram Singh-H has passed the said conversion training on 5.3.93 and his name appears at S.No.8. It is further averred by the applicant that pursuant to passing of such training the applicants were posted as Assistant Driver (AC). Applicant, Abdul Gani, has also placed on record the letter dated 18.10.96 (Ann.A/4 in OA 149/99) and the letter dated 28.11.96 (Ann.A/7 of the rejoinder in OA 78/99) to contend that he and others were also given training in the Special Course for WAP.1 Loco, which he has passed and that he has also qualified a selection test for the post of Goods Driver vidde Ann.A/7 and his name figures at S.No.18, which post also carries the equivalent scale as that of Assistant Driver (AC). Thus, according to the applicants, by virtue of undergoing conversion course in terms of Railway Board's circular dated 15.3.90 (Ann.A/2 in OA 149/99), they have become entitled to the post of Assistant Driver in the pay scale of Rs.950-1500 (revised to Rs.3050-4590) as the post of Fireman had been abolished by the respondents and all the persons similarly situated were redeployed to the post of Assistant Driver. It is further alleged that inspite of orders issued by the competent authority absorbing the applicants against the post of Assistant Driver (AC), the respondents under mistaken notion asked the applicants to appear in the test/selection for the post of Assistant Driver and pressed the applicants and others to appear in the test and spared them inspite of their protest to appear in the selection and then declared them failed in it and consequently issued the impugned orders of reversion without any basis. Since the applicants had been working in the Steam Line and the Steam posts do not exist anymore in the division, the respondents could not have asked the applicants to appear in the selection for the post of Assistant Driver contrary to the Railway Board's order dated 15.3.90, in pursuance of which the applicants had

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attended the conversion training and passed the same. Further case of the applicants is that vide letter dated 27.1.93 the Railway Board issued order regarding restructuring and pursuant to this order the applicants were entitled to promotion on the post of Assistant Driver, as was done in the case of other junior persons. Thus, according to the applicants, they were also entitled to be promoted on the post of Assistant Driver even under the scheme of restructuring. Thus, according to the applicants, the order of reversion is also not justified on this ground also. It is on these facts that the applicants have filed the aforesaid three OAs for setting aside the impugned orders of reversion from the post of Assistant Driver to the post of Second Fireman and against cancellation of their lien and seniority.

4. The respondents have contested the case by filing reply-affidavit. By way of preliminary objections, it has been stated that the applications are not maintainable as the applicants have not exhausted the alternative remedy. On merit, the respondents have not disputed that the cadre of Steam Loco Shed was to be abolished and the surplus staff was required to be absorbed against the equivalent posts on running side or against higher grades on non-running side by taking into account their basic pay and running allowance. It is also not disputed that the applicants were also given promotion to the post of Assistant Driver (AC) though, according to the respondents, they were given ad hoc promotion in the year 1994 subject to their passing the selection test to the post of Assistant Driver. The respondents have not disputed that the applicants have passed the conversion training. According to the respondents, this training was imparted for safety purpose and this was not related with selection which required intensive training. According to the respondents, applicant Abdul Gani was called for selection test vide letter dated 11.10.93 but he could not qualify the selection for the post of Assistant Driver. Having failed in the selection test, by giving repeated opportunities, he was rightly reverted to his substantive post of Second Fireman vide the impugned order (Ann.A/1). Similary, in the case of applicant Ram Singh-H, it has been stated that the applicant was called for selection time to time but he did not qualify the same. Finally, he was called for selection vide letter dated 9.10.98 and was also allowed relaxation in the qualifying marks but even then he could not qualify. As such, he was also reverted to his substantive post of Second Fireman by the impugned order (Ann.A/1). It is further submitted that the lien of the applicants has been terminated from the running category and till their absorption in the alternative category they will continue in their substantive post of Second Fireman.

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5. Regarding second submission of the applicant that they could not have been reverted from the post of Assistant Driver even pursuant to the restructuring scheme dated 27.1.93, it has been submitted by the respondents that since the Steam Loco Shed was closed prior to 1.3.93, the said scheme had not been made available to the Steam staff.

6. The applicants have also filed rejoinder reiterating the submissions already made in the OAs.

7. We have heard the learned counsel for the parties and gone through the material on record.

8. First of all we propose to deal with the preliminary objection raised by the respondents regarding non-maintainability of the present applications on the ground that the applicants have not exhausted the alternative remedy. The learned counsel for the applicants has argued that the attitude of the respondents was biased and as such no useful purpose would have been served by filing representation/appeal against the orders of reversion of the applicants vide Ann.A/1. In support of this contention, the learned counsel for the applicants drew our attention to the order dated 18.2.99, passed in OA 78/99, whereby this Tribunal has stayed the operation of the impugned order dated 9.2.99 (Ann.A/1), whereby the lien/seniority of the applicants in loco running staff was being terminated. It was argued by the learned counsel for the applicants that despite the order of stay passed by this Tribunal, the respondents passed another order dated 15.3.99 reverting the applicants from the post of Assistant Driver (AC) to that of non-existing post of Second Fireman and the applicant Abdul Gani had to file Contempt Petitions for violation of the order dated 18.2.99. We have considered the submissions made by the parties. We are of the view that at this stage it will not be appropriate to dispose of these applications only on the ground that the applicants have not exhausted the alternative remedy and as such the objection raised by the respondents is hereby rejected.

Even on merit, the respondents have not demolished the case as made out by the applicants. It cannot be disputed that on account of introduction of Dieselisation Scheme by the Railway, the Steam side was required to be completely abolished and persons from Steam side were to be declared surplus and absorbed in the Diesel/Electrical side. For this purpose, the Railway Board issued a circular dated 15.3.90 (Ann.A/2 in 149/99), which stipulates that surplus Steam staff may be absorbed in Diesel/Electrical Traction after giving relaxation of minimum educational qualification and age on terms and conditions mentioned

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therein. It will be relevant to extract the relevant portion of this circular, which will have bearing on the matter in controversy. The relevant portion of it is extracted hereinbelow :

"Having regard to these aspects, Board have decided that the surplus steam staff may be given conversion training in Diesel/Electric Traction without insisting on any educational qualification and age restriction, but subject to the following conditions :

- (i) the surplus steam staff selected for the conversion training should be screened properly to ensure that they have basic intelligence and literacy to absorb the conversion training;
- (ii) Illiterate or semi-literate staff should first be given a special course (say for 3 months or so) to bring them to a minimum acceptable level of literacy. This opportunity need be given only once;
- (iii) the staff should give an undertaking before being nominated for conversion training that they may be transferred to other stations within the division.
- (iv) the concerned staff should not be given more than three chances to pass the conversion training."

A reading of this circular makes it clear that surplus Steam staff should be given conversion training in Diesel/Electrical Traction without insisting on any educational qualification and age restriction, subject to the four conditions mentioned hereinabove. It is not the case of the respondents that the applicants do not fulfil the aforesaid four conditions. Admittedly, the applicants have qualified the conversion training for the post of Assistant Driver, which they undergone at the instance of the respondents and they were declared as passed vide letter dated 6.10.92/5.3.93 (Ann.A/3 in OA 149/99 and OA 193/99). The name of applicant Abdul Gani find mention at S.No.20 in the letter dated 6.10.92, whereas the name of applicant Ram Singh-H find mention at S.No.8 of the letter dated 5.3.93. Immediately thereafter, the applicants were appointed against the post of Assistant Driver (AC) in the years 1992/1993 whereas, according to the respondents, the applicants were appointed as Assistant Driver (AC) on ad hoc basis vide letter dated 13.9.94 in the case of Abdul Gani and 30.8.93 in the case of Ram Singh-H. Though the respondents in their reply have stated that the applicants were required to pass selection test for the post of Assistant Driver but they have not placed any material on record to show that selection test was necessary for the post of Assistant Drivers, who have been absorbed being declared as surplus pursuant to the closure of Steam Loco Shed. On the other hand, it has been vehemently argued by the learned counsel for

the applicants that now promotion to the post of Assistant Driver is bypassing selection but this provision do not apply to those persons who had become surplus due to abolition of Steam Shed and were, therefore, absorbed enmasse in Diesel or Electrical sides. It is further argued that when the post of Second Fireman has been abolished and the applicants were appointed against the post of Assistant Driver (AC) then the applicants could not have been reverted to the post Second Fireman, which is not in existence, and thus the action of the respondents is not legally sustainable.

9. We have considered the submissions made by the learned counsel for the applicants. We are of the view that the applicants have made out a case in their favour. The respondents have not placed on record any material to show that for the post of Assistant Driver, which has now been declared as a selection post, passing of selection test was necessary in the case of persons who have been declared as surplus. On the other hand, the applicants have placed on record the circular of the Railway Board dated 15.3.90, relevant portion of which has been reproduced above, which indicates that the surplus Steam staff may be given conversion training in Diesel/Electrical Traction without insisting on any educational qualification and age restriction and subject to the conditions mentioned therein. Pursuant to the said circular, the applicants were given training in Assistant Driver Conversion Course, which they qualified as per Ann.A/3 on different dates, as mentioned above. Thereafter, according to the applicants, they were posted as Assistant Driver (AC) by the respondents from the year 1992 but according to the respondents from 1993/1994 and they were allowed to continue till their reversion by the impugned orders w.e.f. 15.3.99 and 1.4.99. It is not understood as to how the applicants, who have admittedly worked for more than five years as Assistant Driver (AC) and have gained sufficient experience, could be reverted to the non-existence post of Second Fireman, which stood already abolished. The version of the respondents that the applicants were given repeated opportunities to pass the selection test but they failed to do so and as such reverted them to the post of Second Fireman, cannot be accepted. As per own showing of the respondents, applicant Abdul Gani, who was called for selection to the post of Assistant Driver vide letter dated 11.10.93, could not qualify the selection. If it is so, why the applicants were subsequently promoted on ad hoc basis to the post of Assistant Driver vide order dated 13.9.94 in case they have failed in the selection test for the post of Assistant Driver and that they were allowed to continue practically for five years if the post of Assistant Driver was to be manned by a person who had undergone selection test and intensive training. Thus, we are of

the view that on the basis of material placed on record the applicants have made out a case for their continuance against the post of Assistant Driver (AC) in terms of Railway Board's circular dated 15.3.90. Accordingly, for the reasons given hereinabove, the present applications are allowed and the impugned orders dated 9.2.99 (Ann.A/1 in OA 78/99) 15.3.99 (Ann.A/1 in OA 149/99) and 1.4.99 (Ann.A/1 in OA 193/99) are hereby quashed and set aside. The respondents are directed to consider the applicants having appointed as Assistant Driver (AC) on regular basis against the posts meant for direct recruits from the date they had started working against such posts.

Applicant Abdul Gani has also filed CP 22/99 against the alleged violation of othe order dated 1.4.99, passed in OA 149/99, and CP 23/99 against the alleged violation of the order dated 18.2.99, passed in OA 78/99. The respondents have filed reply in which they have stated that the lien and seniority of the applicant Abdul Gani is still being maintained in running category and interim direction of this Tribunal has been obeyed. In view of the stand taken by the respondents in their reply and that the impugned orders have been quashed and set aside by this Tribunal, we do not consider it appropriate to go into the question of alleged violation of the aforesaid orders. Accordingly, CPs 22/99 and 23/99 are hereby dismissed and the notices are discharged.

No order as to costs.

M.L. CHAUHAN
(M.L.CHAUHAN)
MEMBER (J)

H.O. GUPTA
(H.O.GUPTA)
MEMBER (A)