

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 545/2003

Jaipur, the 18th day of April 2005

CORAM:

HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER
HON'BLE MR. A.K. BHANDARI, ADMINISTRATIVE MEMBER

Rajendra Singh Son of Shri Raghbir Singh, aged about 43 years, resident of House No. 18, Gali No. 4, Shastri Colony, Railway Cutting Yard Road, Kota Junction. Presently working as Helper Khallasi under Senior Divisional Engineer Electrical (General), West Central Railway Kota Junction, Kota.

....
Applicant

By Advocate: Mr. C.B. Sharma

VERSUS

1. The Union of India through General Manager, West Central Railway, Jabalpur..
2. Divisional Railway Manager, West Central Railway, Kota Division, Kota.
3. Senior Divisional Electrical Engineer (General) West Central Railway, Kota Division, Kota.
4. Senior Divisional Electrical Engineer (Establishment), West Central Railway, Kota Division, Kota.

....Respondents.

By Advocate : Mr. S.P. Sharma

ORDER

Per MR. J.K. KAUSHIK, JUDICIAL MEMBER

Shri Rajendra Singh, has filed this Original Application under section 19 of the Administrative Tribunal Act for seeking following reliefs:-

(I) That respondents may be directed to give promotion to the

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applicant on the post of ACCI scale Rs. 4000-6000/ACCA scale Rs. 2750-4400 as the case may be taking into consideration seniority list dated 04.03.2001 (Annexure A/3) by quashing letter dated 6-3-2002 (Annexure A/4) with the seniority list dated 27-3-2003 (Annexure A/10) with all sequential benefits.

(ii)That the respondents be further directed to allow promotion on the posts belonging to RAC cadre from the RAC staff and be restrained to allow promotion to the officials of Train Lighting.

2. We have heard the learned counsel for both the parties on two occasions at great length. We have also carefully perused the pleadings and the records of this case in addition to the additional records which has been made available by the learned counsel for the respondents on the date of last hearing.

3. The factual core of this case as has been succinctly pleaded, depicts that applicant was initially appointed as Khallasi and presently working as helper khallasi in the Refrigeration/Air Condition Department under the respondent No. 3. He has due for his further promotion in the higher scale as per his seniority and the cadre strength of respective department as per the channel of promotion at Annexure A/2. A seniority lists came to be issued in respect of RAC Staff (Electrical Department) vide letter dated 04.03.2001 where applicant name has been placed at serial No. 4 on the post of helper khallasi. The respondent moved a proposal for taking a decision for merger of cadres of Refrigeration/Air Condition Staff and train lighting staff and to this effect a notification came to be issued on 06.02.2001

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notifying objections against the proposed action. The objections were submitted against the same and the representation of the applicant has been forwarded by their controlling authority to the respondent No.3. Despite this specific objections the respondents have conducted the examination to fill up post of ACCI in the scale of Rs. 4000-6000 from the Staff of both the department vide letter dated 02.12.2002 against which the applicants along with these co-workers protested and submitted that the vacant posts belonging to the RAC Staff should be filled in by the RAC staff alone. Despite the protests and another eligibility lists has been issued on dated 17.12.2002 and the staff of Train lighting has been included. Further a combined list of Staff belonging to train lighting and refrigeration Air Condition has been issued on dated 27.03.2003. The applicant and his co-workers are entitled for the further promotion if the promotion are restricted to RAC only. The respondents are further going to fill up post of ACCI from the staff belonging to trainlighting cadre. It has also been averred that rules regulations did not permit for such cadre and various divisions like Electrical Division the two cadres are treated separately for further promotion and the seniority. The O.A. Has been filed on diverse grounds mentioned in Para 5 and its sub paras.

4. The respondents have contested the case and has filed a detailed and exhaustive reply to the O.A. It has been submitted that the Railway employees are duly ~~represented through~~ ^{reverted to} ~~reverted to~~ recognized organizations on the basis of consensus of both the

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recognized unions the Head Office vide order dated 18.03.2002 issued a letter that the cadre of train lighting group and ~~TAC~~ Group were merged. The aforesaid merger was with a condition that the vacancies which are existing on the date were to be filled in by promoting the reply of respective group and thereafter seniority of the group was also to be merged. The seniority of both the groups were merged and it is incorrect on the part of the applicant to state that objections of the applicant and co-workers are pending. The merger of two cadres has taken place on a joint consensus arrived at between two recognized organizations of the Railway Employees. Reference has been made regarding to certain correspondence, one is Railway Board and the General Manager regarding the merger of the Air Condition Group and train lighting Group into one Group and the grounds raised in the O.A has been generally refuted.

5. A short rejoinder has been filed almost reiterating the facts raised in the O.A. And refuting the defence of the respondents as said out in the reply. A judgement of the Co-ordinate Bench of the Tribunal at Principal Bench in O.A. No. 184/2004 in case of Hardev Singh and others has been made and it has been submitted that the Hon'ble Tribunal was pleased to direct calling the options from the individuals for opting for such mergers. Before driving them into a unified cadre of electrical technicians.

6. The learned counsel for the applicant while reiterating

the facts and grounds raised in the pleadings of the applicant, has endeavored to persuade us that so far no order of merger has been passed by the competent authority and no decision has been taken on the objections raised by the applicant in particular and others similar lily situated persons in general. He has also submitted that the selection/posts are ~~re~~-conducted without their being any order of merger. He has also submitted that the case of the applicant is fully covered by the ratio of the decision which came to be passed by the Principal Bench in case of Shri Hardev Singh (Supra) wherein it has been held in unequivocal terms that before joining any such unified cadre, one should be given option and having not been done so the action of the respondents cannot be endorsed. He has also contended that the applicants are very much entitled to enjoy their promotion against RAC posts cadre to which they belong and inducting the persons from another cadre of train lighting without any authority of law is without a jurisdiction.

7. On the other hand, the learned counsel for the respondents says vociferously contended that decision has already been taken by the competent authority whereby cadre of the train lighting and AC Group has been merged and in this respect, he has furnished two letters dated 17/18.4.2002 and the minutes of the meeting -- by DO letter dated 27.11.2001. He was in fact given time on an earlier occasions to produce circular or order which has been passed regarding the merger of the cadre in question. He has submitted that he could lay hand

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asked him

only on these letters. We ~~asked~~ to procure the letter dated 18.03.2002 also and the same was also made available by the ~~respondents~~ learned counsel for the ~~applicant~~. All these letters shall form the part of the Original Application. He has submitted that whole action has been taken in pursuance with these orders and action of the respondents cannot be termed as arbitrary in any manner.

8. We have considered the rival submissions put forth on behalf of the both the parties. As far as factual aspects of the matter is concerned, there seems to be no quarrel on the same except in regard to the order relating to merger. Keeping in view the facts and circumstances of this case, vital question which is required to be necessary by us is as to whether the competent authority has taken such decision or else any rule has been framed in this respect by the rule making authority relating merger of the cadre of train lighting and the AC's Groups into one unified group. The ancillary question would arise as regards role of the trade union in framing the policies and the rules relating to the services conditions of the employees in the Railways.

9. Before answering the first question, we may notice that the applicant belongs to Group 'D' and similar is the position of the employees who were employed in AC Group or TL Group. As per the rules in force the rule making power has been delegated either to the Railway Board or to the General Manager in case of

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framing of the rules regulating the services conditions of Group "D" and 'C' Staff. The full power has been given to the Railway Board and the General Manager has been given power to frame such rules to the extent that same shall not be in consistent with the rules framed by the Railway Board or the President of India. The contents of Rule 123 and 124 of IREC Volume 1 are extracted as under:-

123. The Railway Board have full powers to make rules of general application to Group C and Group D railway servants under their control.

124. The General Managers of Indian Railways have full powers to make rules with regard to Railway Servants in Group C and D under their control provided they are not inconsistent with any made by the President or the Ministry of Railways.

10. Now adverting to the facts of this case, admittedly no specific rules has been framed by any of the aforesaid rule making authorities. What we find from the records is that a decision was taken in the meeting with the office bearer of Trade unions which came to be sent to DRM Kota by CSTE through a DO letter, narrating therein that as per desire of Railway board the cadre of AC and TL should be merged. The proposal in respect of two division was annexed and in respect of other division the proposal was yet to come. Subsequently another DO letter was issued by Chief Electrical Engineer Hdqrs on dated 18.2.2002 wherein it has been stated that that the subject of merger of the cadre of TL & AC was discussed with both the recognised union and an agreement has been reached. As per

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agreement the Group C and D cadre TL & AC wing will be merged without any cut off date. On the basis of this DO letter the divisional authorities have issued orders for merger of the said wings and this all how the merger rule came to be framed. We are not able to persuade ourselves as how such DO letter and that too by a subordinate authority who has no power to frame any rules under IREC Vol-I as noticed above, could be construed to be a rule. We have not even been shown any of the Railway Board letter least to say regarding the letter indicating the desire of R/Bd. The particulars of such letter have also not been forthcoming from any side. Recognition of trade union also does not mean representation of the employees and the mere recognition does not mean that they represent the workers. We may point out that, so far not even once any general election of the members of so-called trade union has been held. Incidentally, we may also point out that the Trade union as such do not have any power to frame any rules relating to any of the employees. In these sordid state of affairs, we have no difficulty to discern that no such rule has so far been framed by the competent authority, and therefore so-called exercise of merger can be said to be aptly termed as void ab initio and non-est in the eye of law.

11. Having answered the main questions in negative, we hold that no rule for the merger of the cadre of TL and AC Group has been framed so far. Therefore, the complete action of the respondents in proceeding on the premises that merger has

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taken place shall have to be nullified. As regards the decision at Annexure A/15, on which reliance has been placed by the learned counsel for the applicant, we need not delve on the same since that stage has not yet come and which shall only apply after the competent authority takes a positive decision for merger of the cadres in question. In this view of the matter, we have no difficulty in reaching the conclusion that the action of the respondents is most arbitrary as well inoperative and cannot be sustained in the eye of law.

12. In view of what has been said and discussed above, we find ample force in this Original Application and the same must succeed and stands allowed accordingly. The impugned order dated 6.3.2002 (A/4), order dated 27.3.2003 (A/10) and all subsequent proceedings thereof are hereby quashed and set aside. The applicant shall be entitled to all consequential benefits including consideration of his promotion as per seniority list dated 4.3.2001 (A/3). This order shall be complied within a period of three months from the date of its communication. Costs made easy.


(A.K. BHANDARI)
ADMN MEMBER


(J.K. KAUSHIK)
JUDICIAL MEMBER

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