

Central Administrative Tribunal, Jabalpur Bench, Jabalpur

Original Application No.857 / 2003

Jabalpur, this the 17th day of December, 2004

**Hon'ble Shri M.P.Singh, Vice Chairman
Hon'ble Shri Madan Mohan , Juidicial Member**

- 1. Harishanker S/o Shri Motilal Chandel,
And 34 others - Applicants**

(By Advocate – Shri S.Paul)

Versus

- 1. Union of India,
through its Secretary,
Ministry of Railway,
Railway Boar, New Delhi & 3 others - Respondents**

(By Advocate – Shri M.N.Banerji)

- 1. Satya Prakash Dwivedi & 22 ors - Intervenors**

Intervenors by Shri M.K.Verma

ORDER

By M.P.Singh, Vice Chairman –

By filing this OA the applicant has sought the following main reliefs :-


- (ii) Set aside the order dated 11.9.2003 Annexure A/1, 10.10.2003 Annexure A-2 and order dated 30.5.2003 Annexure A/9 and if necessary, also set aside the order dated 30.7.2002 Annexure A/8.
- (iii) Consequently command the respondents to continue the applicants as if the aforesaid impugned orders are never passed.
- (iv) The applicants be provided all consequential benefits to the applicants as if the aforesaid impugned orders never passed.”-

- 2. The brief facts of the case are that the applicants, 35 in number, were working as Khalasi (Rs.750-940)/ Helper Khalasi (Rs.810-1150)**



in the Steam Loco Shed. The Railway administration decided to close down the Steam Loco Shed and consequently it was decided to absorb the employees of Steam Loco Shed in Electric Loco Shed. As per the conditions applicable, the applicants were absorbed in the Electric Loco Shed in the same capacity in which they were working in the Steam Loco Shed. The next promotional post for Khalasi/ Helper Khalsi is Skilled Grade-III. For selection/appointment to the post of Skilled Gr.III the eligible candidates are required to undergo a trade test. The applicants were eligible to be considered in the trade test for the post of Fitter Grade-III. Accordingly, all the applicants were trade tested for the aforesaid posts and vide order dated 27.4.1998 (Annexure-A-4) and dated 3.4.1998 (Annexure-A-5) they were promoted as Fitter Grade-III in the pay scale of Rs.3050-4590 (pre-revised as Rs.950-1500). Thereafter, the applicants worked on the said post. They were again trade tested for the next promotional post of Technician/ Fitter Grade-II in the pay scale of Rs.4000-6000 (pre-revised as Rs.1200-1800) vide orders dated 14.8.2000 and 13.12.2000 (Annexures-A6 & A-7 respectively). According to the applicants they were promoted as Fitter Grade-II in a substantive capacity and were getting all the benefits of the said post. However, by the impugned order dated 30.5.2003 the respondents have treated the applicants as working on adhoc basis and sought to regularize them with retrospective effect as Khalasi/ Helper Khalasi in the pay scale of Rs.2650-4000 (Pre-revised Rs.810-1150). Hence this OA.

3. The respondents in their reply have stated that the TRS cadre in Jabalpur Division has been introduced in the year 1993 and to fill up the posts under this cadre, volunteers were called for from the other departments/ divisions and those who applied have been absorbed in the same grade and capacity in which they were working in their parent cadre. In the meantime Steam Loco Shed has been closed and the Steam surplus staff were also absorbed in the Electric Loco Shed (TRS). Since this cadre was open the employees came on



transfer earlier staff absorbed in TRS cadre got promotion in higher grades whereas some seniors came to this cadre afterward. Whenever a new cadre is introduced, the staff is taken on volunteer basis from various departments/divisions and they are considered for absorption against the posts created for the new cadre. When the needs of cadre is fulfilled, the inter se seniority is determined depending upon the length of substantive post held by them in their parent cadre. The cadre has been closed on 20.8.2002 and therefore the seniority of the staff so absorbed has been decided as per instructions of the Headquarters office (Annexure-A-8). Accordingly, the promotions given in open cadre are to be treated as purely adhoc because some senior employees who came on transfer from other Divisions/ Units along at a later stage ~~on~~ could not get the benefit of promotion over their juniors who had happened to come earlier in open cadre. To overcome this irregularity, it was decided to treat all the staff as adhoc and the seniority of the staff was to be fixed on the basis of length of service in substantive grade on closer of the cadre i.e. 20.8.2002 and accordingly the seniority of the staff has been determined. Since the TRS cadre was open, the persons, who came earlier got promotion from time to time, according to the exigency of service. Normally, one adhoc promotion is permissible at a next time. But in the exigency of service, the staff so available at that time were given two adhoc promotions in the TRS cadre. On closer of the cadre, i.e. on 23.8.2002, the applicants have been first regularized as Helper Khalasi and on the next date they have been regularized as Technician Grade-III, as per their seniority in their parent department. The applicants were intimated this fact by the DRM as per Annexure-A-2 and there is no change in this position. The promotions made in open cadre were to be treated as adhoc on closer of the cadre and the staff were to be regularized in terms of headquarters letter dated 30.7.2002 (Annexure-A-8).

4. Heard the learned counsel for the parties.



5. The learned counsel for the applicants has stated that the applicants who were declared surplus from the Steam Loco Shed were absorbed in the Electric Loco Shed. They have been appointed in the open cadre and were given promotion to the higher grades after following the due process. In their promotion orders it was nowhere stated that they were appointed on adhoc basis. Now, the respondents have issued the impugned order dated 30.5.2003 whereby it was proposed to revert them to the lower post. According to the learned counsel for the applicants they have acquired the legal right on the higher posts after they have been appointed on regular basis after following due procedure. That right cannot be taken away. In support of his claim, he has relied on number of decisions of Hon'ble Supreme Court/High Courts. He has also submitted that earlier the applicants have filed an OA No.456/2003 and the Tribunal has disposed of the the said OA by giving direction to the respondents to dispose of the representation of the applicants and till the representation of the applicants is decided, the order dated 30.6.2003 shall not be implemented. In pursuance of the directions of the Tribunal, the respondents have passed the order dated 10.10.2003 (Annexure-A-2). The learned counsel for the apphcants has also stated that once the applicants have been appointed on higher posts on regular basis, they cannot be reverted merely on the basis of the letter dated 30.7.2002 which has been issued in pursuance of the decision taken in a joint meeting with CRMS and NRMU. He has further contended that the present applicants are not the members of those Unions and the decision taken by the respondents in consultation with the members of those Unions cannot be binding on them. No rule or policy has been shown by the respondents to support their claim that "all promotion orders issued prior to the date of closer of cadre i.e. 20.8.2002 are deemed fortuitous and purely adhoc without any prescriptive right for the staff for any such posting, promotion in the grade" as mentioned in para 1.5.1 of the aforesaid

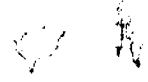
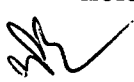


letter dated 30.7.2002. In view of this, the action taken by the respondents rejecting the claim of the applicants is not sustainable in the eye of law.

6 On the other hand, the learned counsel for the respondents has stated that the applicants who were declared surplus in the Steam Loco Shed were absorbed in the Electric Loco Shed which was an open cadre. Options were invited from persons from different divisions. The applicants happened to join the open cadre earlier and since posts were available, they were promoted. However, on closer of the cadre on 20.8.2002, seniority was to be decided in accordance with the rules, i.e. keeping in view the substantive posts held by them in their parent department and the length of service rendered by them in that post. The applicants were granted two adhoc promotions which were not permissible as it was a newly created division. The persons working there did not follow the rules properly and the present action taken by the respondents is only to rectify the irregularities committed earlier. No illegality has been committed by the respondents by absorbing the applicants in their substantive post and granting them due seniority as per rules.

7. We have given careful consideration to the arguments advanced on behalf the parties.

8. We find that the apphcants have been absorbed in Electric Loco Shed after they were declared surplus from the Steam Loco Shed. As the applicants happened to come earlier and the posts were lying vacant in the open cadre, they have been promoted to the higher grades. In fact, they have been granted two adhoc promotions. The cadre was closed on 20.8.2002 and the persons coming from different divisions/ places to the open cadre have been absorbed on regular basis in this cadre granting them seniority with reference to the posts held by them in their parent department and the length of service




rendered by them in that post. The applicants happened to come earlier and were promoted to one or two higher grades against newly created posts, cannot get the benefit of being appointed in those posts on regular basis as it is not in accordance with the rules. They cannot take advantage of the fact that the word 'ad hoc' was not mentioned while they were promoted to the next higher grade. They cannot be allowed to continue in the higher posts over their seniors who join the open cadre at a later stage but before the closer of the cadre. The seniority has to be fixed with reference to the date of closer of the cadre. The relevant provisions of the general principles for determination of seniority in the Central Services as issued by the Government of India, Ministry of Home Affairs, O.M.No.9/11/55, RPS dated the 22nd December, 1959 as reproduced in Swamy's Compilation on Establishment and Administration (Ninth Edition – 2003) are reproduced below :

“7. Absorbees.-(i) The relative seniority of persons appointed by absorption to a Central Service from the subordinate offices of the Central Government or other departments of the Central or State Government shall be determined in accordance with the order of their selection for such absorption.

(ii) Where such absorptions are effected against specific quotas prescribed in the Recruitment Rules therefore, the relative seniority of such absorbees, vis-à-vis direct recruits and promotees shall be determined according to the rotation of vacancies which shall be based on the quotas reserved for absorption, direct recruitment and promotion respectively in the recruitment Rules.

(iii) Where a person is appointed by absorption in accordance with a provision in the Recruitment Rules providing for such an absorption in the event of non-availability of a suitable candidate by direct recruitment or promotion, such absorbee shall be grouped with direct recruits or promotees, as the case may be, for the purpose of Para.6 above. He shall be ranked below all direct recruits or promotes, as the case may be, selected on the same occasion.

(iv) In the case of a person who is initially taken on deputation and absorbed later (i.e. where the relevant



Recruitment Rules provide for Deputation/Absorption'), his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has, however, been holding already (on the date of absorption) the same or equivalent grade on regular basis in his parent department, such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he will be given seniority from-

-the date he has been holding the post on deputation, or

-the date from which he has been appointed on a regular basis to the same or equivalent grade in his parent department,

[whichever is earlier.]

The fixation of seniority of an absorbee in accordance with the above principle will not, however, affect any regular promotions to the next higher grade made prior to the date of such absorption. In other words, it will be operative only in filling up of vacancies in higher grade taking place after such absorption.

In cases in which absorptions are not strictly in public interest, the absorbed officers will be placed below all officers appointed regularly to the grade on the date of absorption."

The above instructions laying down the basis principles of seniority were also applicable to Railway servants. As per the aforesaid rules issued by the Govt. of India it is amply clear that the relative seniority of persons appointed by absorption to a Central service shall be determined from the date he has been holding the post on deputation or the date from which he has been appointed on a regular basis to the same or equivalent grade in his parent department. We also find that neither the counsel for the respondents nor the counsel for the applicant has produced the relevant provisions of the Railway manual/code in this regard. In this view of the matter and taking into consideration the aforesaid rules, we are of the considered view that the applicants are not entitled to continue in the higher posts which they have got before their absorption in the open cadre as their seniority can not be decided till the date of this absorption. The



respondents have stated in clear terms that the seniority of the employees in the open cadre is decided only after the closer of the cadre. Thus, the judgments relied upon by the applicants are not applicable in the present case and we find that there is no illegality or irregularity committed by the respondents while passing the order dated 10.10.2003(Annexure-A-2).

9. In the result, for the reasons stated above, the OA is devoid of merits and is accordingly dismissed, however, without any order as to costs. The interim orders, if any, stand vacated.

10. The Registry is directed to enclose a memo of parties while issuing the certified copy of this order.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

Rkv

पूठांकन सं ओ/व्या.....जबलपुर, दि.....
प्रतिनिधि जारी किया:-

- (1) सचिव, उच्च न्यायालय, जबलपुर
- (2) आवेदक श्री/श्रीमती/शु.....के काउंसल
- (3) प्रत्यर्थी श्री/श्रीमती/शु.....के काउंसल
- (4) कक्षपाल, कोर्ट, जबलपुर न्यायाधीश
सूचना एवं आवश्यक कार्यवाही हेतु

उप रजिस्ट्रार

S. Paul DN-7028
M. L. Bannarjee
DN-7022
MK Kumar DN-7023
(with memo of parties)

Issued
On 22.12.04
BS