

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 23rd day of March, 2011

O.A. No. 344/2007

CORAM:

**HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)**

Vijay Prakash Rathore
s/o Shri Achchhe Lal,
r/o C-40, Singh Bhumi, Krishna Marg,
Khatipura, Jaipur, presently posted as
S.S.E. in C&W Department
under Sr. D.M.E., Jaipur Division,
NWR, Jaipur

.. Applicant

(By Advocate: Shri Shailendra Shrivastava)

Versus

1. Union of India through
General Manager,
North Western Railway
In front of Railway Hospital,
Jaipur
2. Chief Personal Officer,
North Western Railway,
HQ at Jaipur,
In front of Railway Hospital,
Jaipur
3. Divisional Railway Manager,
Jaipur Division,
North Western Railway,
Jaipur

4. Pradeep Kumar
 s/o Bharat Chandra
 working as S.E. in C&W Department,
 of Jaipur Division
 under Sr. D.M.E., Jaipur

5. Sr. Divisional Personal Officer,
 Jaipur Division,
 North Western Railway,
 Jaipur

.. Respondents

(By Advocate: Shri Anupam Agarwal for resp. No. 1 to 3 and Shri C.B.Sharma for resp. No.4)

O R D E R (ORAL)

The present OA is filed against the impugned order dated 29.5.2007 by which the official respondents have illegally and arbitrarily provided seniority to respondent No.4 over and above the applicant and resultantly the applicant will not only be relegated in the seniority list of Section Engineer (S.E.) in the pay scale of Rs. 6500-10500 below respondent No.4 but also be reverted back to the post of S.E. from the post of S.S.E. in the pay scale of Rs. 7450-11500 where the applicant has been working on ad-hoc basis. Keeping this in view, the seniority will be amended pursuant to the impugned order dated 29.5.07 and respondent No.4 will be promoted as S.S.E. in the pay scale of Rs. 7450-11500 and to accommodate him, the applicant would be reverted back to the post of S.E. in the pay scale of Rs. 6500-10500, which is totally de-hors the provisions contained in Para 313-A of the Indian Railway Establishment Manual (IREM) Vol.I.



2. The applicant originally belongs to C&W Department wherein he is holding the post of S.E. (C&W) substantially in the pay scale of Rs. 6500-10500. As per the seniority list of the concerned employee of the instant case issued vide order dated 2.9.2005, it is evident that applicant's name was inducted therein at Sl.No.5 vis-à-vis respondent No.4 whose name appeared at Sl.No.9. It is not out of place to mention here that respondent No.4 does not originally belong to C&W Department but came from Loco on transfer at his own request w.e.f. 15.9.1999.

3. The controversy arose when the Steam Loco Shed was abolished for which decision was taken by the administration way back in the year 1994 and accordingly incumbents those who were working in Loco Shed were tagged as surplus at mass level and later on in the subsequent years they were absorbed in the C&W Department of Jaipur Division in the equivalent grade in which they were working at the relevant time in their parent department. It is pertinent to mention that respondent No.4 was not amongst those who were declared surplus and later on to be absorbed in the C&W Department of Jaipur Division. Since respondent No.4 was very much inclined to get him absorbed in the C&W Department but because of the fact that name of respondent No.4 was not amongst those juniors who were declared surplus at the given point of time as per the ratio/percentage in which concerned posts were abolished and hence he could not be sent to C&W Department. Having found impossible, respondent No.4 moved an application



dated 24.8.99 (Ann.A/4) to Sr. D.M.E. (E) wherein he has given consent and prayed for his transfer to the C&W Department in Jaipur Division in equivalent grade at the bottom seniority .

4. The application made by the respondent No.4 was considered and request of his transfer to C&W Department in equivalent grade at bottom seniority was accepted provided he accepts his seniority in new cadre/unit/depot from the date of joining at bottom and not w.e.f. promotion in the grade in question because he was willing to change his unit in his own interest and not to serve the interest of the administration which was accepted by the respondents vide letter dated 8.9.99 (Ann.A/6).

5. The learned counsel appearing for the applicant alleges that at the highly belated stage after elapsing years together, the official respondents have extended undue favour in the matter of seniority to respondent No.4 by passing impugned order dated 29.5.2007 taking an excuse that at the given point of time one Shri R.K.Singh who was tagged surplus in Loco was not willing to go to C&W Department and his request was acceded and hence option should have been asked by respondent No.4 by treating him as surplus and on the basis of his option he should have been sent to C&W Department for absorption rather than at his own request.

6. Considering case of respondent No.4, show cause notice dated 20.6.2007 was issued by official respondents whereby objections if any from the affected employees were sought within a stipulated period of 15 days from the date of issuance of said show cause notice.



7. Being aggrieved and affected adversely by the said amendment in the seniority, the applicant submitted his quite comprehensive representation against the said change in the seniority to be made to extend undue advantage to the respondent No.4 and the same was disposed of contrary to the rules and law in force extending undue favour to respondent No.4 as such, now respondent No.4 would be placed over and above one Shri M.K.Singh who is at present working as S.S.E. in the pay scale of Rs. 7450-11500 and to accommodate him, the applicant would now be reverted to the post of S.S.E. illegally and arbitrarily.

8. The learned counsel appearing for the applicant placed reliance on the judgment rendered by the Central Administrative Tribunal, Jaipur Bench in OA No. 221/2002 and vide its order dated 17th November, 2005, the OA filed by the applicants Shri Dhruva Datt Sharma and others has been allowed. Having considered the submissions made by the respective parties, the Tribunal was of the view that the applicants belong to C&W Department and their date of entry in the grade of Rs. 6500-10500 is w.e.f. 31.7.1997 and private respondent No.5 and 6 belong to Loco Department. They were declared surplus and absorbed in C&W on 14.9.99 i.e. almost 2 years after the date of entry of the applicants. While dealing with the controversy involved in the aforesaid OA, the Tribunal has placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of Rama Kant Chaturvedi and Ors. vs. The Divisional Superintendent, Northern Railway, Moradabad and Ors., reported at 1981 SCC (L&S) 423 in which it has been



categorically held that the seniority in the old unit (in that case Loco Department) is of no relevance in determining seniority in new unit (in that case C&W Department) when they are appointed in new unit on different dates. The facts of the case were that the diesel unit of railway was constituted for the first time apart from the steam unit already existing. The two units were treated as separate and distinct having different avenues of promotion. Some persons belonging to Fireman category were drafted from steam unit to diesel unit, possessing a minimum qualification of matriculation to the diesel side as Drivers' Assistant after giving them requisite training. This resulted in absorption of junior persons as Drivers' Assistant on the diesel side as against senior persons who could not be drafted on the diesel side as they did not fulfill the requisite qualification. The appellants before the Apex Court were drafted on diesel side of the locomotive operation. Subsequently, on introduction of electrical engines, they were given training and were absorbed in electrical locomotive side and the controversy before the Tribunal was regarding inter-se seniority. The Tribunal held that since they were deployed to the electrical side for the first time, their seniority was required to be counted from the date of deployment in the electrical locomotive operation and the previous service cannot be counted for the purpose of determining inter-se seniority and the Hon'ble Apex Court upholding the judgment of the learned Tribunal dismissed the appeal of the appellants and in para 5 of the judgment in Rama Kant Chaturvedi (supra) has made the following observations:-



"5. Shri Vijay Bahuguna, learned senior counsel appearing for the appellants, contends that since they had been working on the diesel side for a long number of years, merely because they were sent to training for three months to be absorbed in the electrical locomotive operations, their entire previous length of service cannot be wiped out causing detriment to their length of service and promotional avenues on account of the change in the policy. Therefore, the view taken by this Court requires reconsideration. We find no force in the contention. It is seen that the diesel engine drivers and the staff working with them operates in one sector, namely, diesel locomotive sector, while electrical engine drivers and the staff operating on the electrical engines operate on a different sector. Consequent upon the gradual displacement of diesel engines, instead of retrenching them from service they were sought to be absorbed by giving necessary training in the trains operating on electrical energy. As a consequence, they were shifted to a new cadre. Under these circumstances, they cannot have a lien on the posts on electrical side nor they be entitled to seniority over the staff regularly working in the electrical locomotive detriment. Under those circumstances, this Court has held that they cannot have a seniority over them...."

The Tribunal also considered Para 313 of the IREM, which reads as under:-

"313A: Assignment of seniority to redeployed surplus staff: The surplus employees are not entitled for benefit of the past service rendered in the previous unit/department for the purpose of their seniority in the new unit/department. Such employees are to be treated as fresh entrants in the matter of seniority, promotions etc.

Note 1 : When two or more surplus employees of a particular grade in a unit/department are selected on different dates for absorption in a grade in another unit/department, their inter-se seniority in the latter unit/department will be same as in their previous unit/department provided that:

- (i) No direct recruit has been selected for appointment to that grade in between these dates and
- (ii) no promotion has been approved for appointment to that grade between these dates.



Note II: When two or more surplus employees of a particular grade in a unit/department are simultaneously selected for redeployment in another unit/department in a grade their inter-se seniority in the particular grade, on redeployment in the latter unit/department would be the same as in their previous unit/department."

The learned Tribunal further considered para-2 of letter dated 25.5.2004 by which amendment in the IREM in the aforesaid term have been carried out and reproduced as under:-

"2. CAT/Jodhpur in their recent judgment dated 24.12.1999 in OA No.165/98-Shri Surinder Prakash and others vs. Union of India and others and another dated 05.01.2000 in OA No. 489/94 – Indian Railway Ticket Checking Staff Association and another vs. Union of India and Ors. have allowed the applications filed by the Railway employees against the procedure of allowing full seniority to surplus staff on their absorption to another cadre. These judgments were based upon the judgment dated 29.7.1988 of Hon'ble Supreme Court in CA No.2530/81 and 1730/87 in the case of South Eastern Railway and Ors. vs. Ram Narain Singh and Ors. and also the judgment dated 18.11.1980 in the case of Ramakant Chaturvedi and ors. vs. Divisional Supdt. Northern Railway, Moradabad and Ors., 1980 (Supp) (SCC 621. A copy of Apex Court's judgment dated 18.11.1980 was circulated to the Railways vide this Ministry letter No. E(NG)I-80/PMI/292 dated 16.03.1981 for information and guidance. In the civil side matters also, Hon'ble Supreme Court have given directions that surplus staff absorbed in other cadres/departments will not count the service rendered by them in the parent cadre/department for the purpose of seniority and promotion."

9. Since the Supreme Court has given direction that surplus staff absorbed in other cadres/departments will not count their service rendered by them in the parent cadre/department for the purpose of seniority and promotion, thus, having considered the matter on the basis of law laid down by the Apex Court in the year 1980 and



followed subsequently and also that now the railway authorities have also inserted specific provision i.e. Para 313-A in the IREM, there was no escapable conclusion that respondent No.5 to 7 who belong to Loco Department constitute one cadre and applicants who belong to C&W Department constitute different cadre. Consequent upon their displacement from the Loco cadre, instead of retrenching them from service, they were sought to be absorbed by giving necessary training so that they can be adjusted in C&W Department. As a consequence, they were shifted to new cadre. Under these circumstance, they were not entitled to seniority over the staff already working in the C&W Department. Having considered the judgment as well as the relevant law the Tribunal vide its order dated 17th November, 2005 allowed the OA and held that respondent No. 5 to 7 cannot have seniority over the applicants in the grade of Section Engineer and service of respondent No. 5 to 7 will be counted for seniority and promotion when they were absorbed in the C&W Department. Accordingly, the seniority list dated 7.6.2001 and 28.1.2002 were quashed. Further, the promotion of respondent No. 5 to 7 on the post of Senior Section Engineer in the grade of Rs. 7450-11500 based upon impugned seniority list vide order dated 15.5.2001 so far related to them was also quashed and the respondents were directed to make promotion in future on the basis of fresh seniority list, which will be prepared within a period of two months from the date of judgment whereby the service rendered by respondent No. 5 to 7 in



the grade of Rs. 6500-10500 in the Loco Department will not be counted.

9. Now it is relevant to mention here that on the basis of seniority of one Shri M.K.Singh who is presently working as S.S.E. in the pay scale of Rs. 7450-11500, the respondent No.4 cannot be placed above Shri M.K. Singh as promotion and seniority of Shri M.K.Singh in OA No. 221/2002 has been quashed and set aside following the principle that respondent No.4 has been accommodated as per his willingness at bottom seniority in recruitment grade to other department.

10. On behalf of official as well as private respondent Shri Pradeep Kumar, preliminary objections regarding maintainability of the OA was raised but utterly failed to substantiate the submissions so made as to how the present OA is not maintainable. Further, the learned counsel appearing for the official respondents has not properly considered Rule 313-A which speaks about assignment of seniority to redeployed surplus staff. Further, the learned counsel appearing for respondent No.4 stated that provisions of Para 313-A of IREM is not applicable in the case of respondent No.4. The respondent No.4 as per his option/willingness has rightly been placed below the applicant and that matter has not been challenged by respondent No.4 for a pretty long time and bare perusal of willingness letter written by respondent No.4 dated 24.8.1999 replied in response to letter dated 19.8.99 (Ann.A/5) through which option was asked, the respondent No.4 has categorically shown his willingness to be fixed in bottom of the



seniority. To this effect, the learned counsel failed to give satisfactory explanation.

11. Following the ratio decided by the Hon'ble Supreme Court, we have given thoughtful consideration to the submissions made before us by the respective parties and also carefully examined the judgment rendered by the Hon'ble Supreme Court in the case of Rama Kant Chaturvedi (supra) as well as the order passed by the learned Tribunal dated 17th November, 1995 and also considered Para 313-A of the IREM. In our considered view, the ratio decided by the Supreme Court and followed by this Tribunal in the earlier judgment passed in OA No.221/2002, squarely covers the present controversy and the applicant was wrongly placed below the name of respondent No.4 Shri Pradeep Kumar.

12. Accordingly, the present OA is allowed and it is held that respondent No.4 cannot have seniority over the applicant in the grade of S.E. (C&W Department) and service of respondent No.4 will be counted for seniority and promotion when he was absorbed in C&W Department. Accordingly, the impugned order dated 29.5.2007 (Ann.A/1) is quashed and respondents are directed to draw the seniority list afresh in view of the observation made hereinabove by not counting services rendered by respondent No.4 in the grade of Rs. 6500-10500 in Loco Department.

13. With these observations, the OA is allowed with no order as to costs.

A handwritten signature in black ink, appearing to read 'B4'.

14. In view of the order passed in the OA, no order is required to be passed in MA No.332/2008, which shall stand disposed of accordingly.

Anil Kumar
(ANIL KUMAR)
Admv. Member

K.S.Rathore
(JUSTICE K.S.RATHORE)
Judl. Member

R/