



CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 184/2003

This the 4th day of May, 2004

HON'BLE SH. KULDIP SINGH, MEMBER (J)
HON'BLE SH. S.K. NAIK, MEMBER (A)

1. Shri Hardev Singh
S/o Shri Mansa Ram
ACCI Under S.E/AC/DEE
Northern Railway, New Delhi.
2. Gopal Kishan
S/o Shri Tulsi Ram
ACFI, under SSE/TL/DEE
Northern Railway, New Delhi.
3. Shri Diwan Singh
S/o Shri Lal Singh
ACF-II Under S.S.E/(TL)
DEE, Northern Railway, New Delhi.
4. Prem Chand Verma
S/o Shri Bharat Verma
ACF-II Under S.S.E/TL
DEE Northern Railway, New Delhi.
5. Shyam Lal Sharma
S/o Shri M.Sharma
ACCI Under S.E/AC/DEE
Northern Railway, New Delhi.
6. Man Mohan
S/o Shri Moti Ram
ACF-II Under S.S.E/TL
DEE Northern Railway, New Delhi.
7. Daya Nand
S/o Shri Phool Singh
ACCA-II Under S.S.E/TL
DEE Northern Railway, New Delhi.
8. Kishan Lal
S/o Shri Ganga Dhar
ACC-I Under S.E/AC/DEE
Northern Railway, New Delhi.
9. Gyan Chand
S/o Shri Tota Ram
ACF-II Under S.E/AC/
DEE Northern Railway, New Delhi.
10. Manbir Singh
S/o Shri Vijay Singh
ACF-II Under S.E/AC/
DEE Northern Railway, New Delhi.
11. Sanjay
S/o Shri Ram Prakash
ACF-II Under S.E/AC/
DEE Northern Railway, New Delhi.

kn

12. Faiz Mohammed
S/o Shri Sher Mohammed
ACF-II Under S.E/AC/
DEE Northern Railway, New Delhi.
13. Dharamender Kumar
S/o Shri Vishnu Dutt Sharma
AC Khallasi under S.E/AC/
DEE Northern Railway, New Delhi.
14. Shri Amar Singh
S/o Shri Ram Kumar
AC Khallasi Under S.E/AC/
DEE Northern Railway, New Delhi.
15. Mahipal
S/o Shri Arjun
ACCF Under S.E/AC/
DEE Northern Railway, New Delhi.
16. Satish Kumar
S/o Shri Gian Chand
ACF-II Under S.E/AC/
DEE Northern Railway, New Delhi.
17. Surrender
S/o Shri Sriram
Khallasi under S.S.E/TL/DEE
Northern Railway, New Delhi.
18. Arun Kumar
S/o Shri Shyam Lal
AC Khallasi Under S.S.E/TL/
DEE Northern Railway, New Delhi.
19. Jitender Singh
S/o Shri Bhoop Singh
ACA Under S.E/AC/
DEE Northern Railway, New Delhi.
20. Shri Jaipal Singh
S/o Shri Sunaheram
ACCA Under S.E/AC/
DEE Northern Railway, New Delhi.
21. Dharamvir
S/o Shri Vir
ACCF Under S.E/AC/
DEE Northern Railway, New Delhi.
22. Bansi Lal
S/o Shri Lal
ACCF Under S.E/AC/
DEE Northern Railway, New Delhi.
23. Rampal
S/o Shri Puran Chand
ACF-I Under S.E/P/
DEE Northern Railway, New Delhi.

ku

(M)

[3]

24. Bhudev
S/o Shri Chiranji Lal
Helper Khallasi Under S.E/PO/
DEE Northern Railway, New Delhi.

25. Lallan Prasad Verma
S/o V. Prasad Verma
Helper Khallasi Under S.E/PO/
DEE Northern Railway, New Delhi.

-Applicants

(By Advocate: Sh. B.S. Mainee)

Versus

Union of India: Through

1. The General Manager
Northern Railway
Baroda House, New Delhi.

2. The Divisional Railway Manager
Northern Railway
Bikaner (Rajasthan)

-Respondents

(By Advocate: Sh. R.L. Dhawan)

O R D E R

By Sh. Kuldip Singh, Member (J)

Applicants have filed this OA under Section 19 of the AT Act as they are aggrieved by an order passed by the Railway authorities dated 25.9.2002 vide which the respondents have merged the cadre of Training Lighting and Air Conditioning of Electrical Department. It is stated that this merger has been done in an arbitrary manner which is discriminatory and damaging to the career of the applicants who belong to Air Conditioning staff. It is also stated that while considering the merger of these two cadres respondents have failed to consider the the principle of functional similarity and co-equal responsibility and have violated the law as laid down in Hon'ble Supreme Court in case of Hydro Electric Employees Union vs. Surinder Kumar Sharma and others.

2. It is further stated that total staff for air conditioning cadre is about 109. So far the seniority of the air conditioning staff and the train lighting staff have been

km

22

[4]

separately maintained in all over the eight divisions of the Northern Railway but suddenly respondents have issued the impugned order merging the two cadres of Train Lighting and Air Conditioning staff vide Annexure A-1. It is being done only at Bikaner Division and not in the other divisions. It is further submitted that as per performance of the job is concerned the train lighting staff does not have expertise and experience in the air conditioning work and similarly air conditioning staff does not have knowledge of train lighting work so there is no functional similarity.

3. It is further stated that the Hon'ble Supreme Court in case of Hydro Electric Employees Union vs. Surinder Kumar Sharma and others has held that while merging the cadres principle of functional similarity and co-equal responsibility must be considered which has not been done in this case. It is further stated that earlier also the respondents had merged the cadres of parcel clerks with booking clerks but on their protest and filing an OA respondents decided to give effect to the merger from prospective effect and not to the staff who are working in different cadres prior to the date of merger. Similarly in case of Pump Engine Drivers who were sought to be merged with technicians the Pump Engine Drivers, there also the respondents decided to give prospective effect to the merger whereas in this case it is being done with retrospective effect. Thus, it is prayed that either the impugned order be quashed or in alternate respondents be directed not to give effect the impugned order from retrospective effect and option may be asked to the existing staff whether they want to get merged in the new cadre or not.

Km

23

[5]

4. Respondents were contesting the OA. They have taken a preliminary objection that the applicants have not made any appeal against the order without exhausting the remedy has filed this petition, so OA is not maintainable. It is further stated that both the recognised unions of Bikaner Divisions have agreed for the merger of cadres of Train Lighting and Air Conditioning staff and have given their written consent before the receipt of orders of Headquarters Office as per the scheme.

5. It is further stated that this decision has been implemented on Bikaner Division with a view to have benefit of multi skilling and optimum utilisation of manpower as well as in the interest of staff for better avenues of promotion.

6. We have heard the learned counsel for the parties and gone through the record.

7. As regards the exhausting of remedy is concerned, counsel for applicant submitted that in the OA itself applicant had alleged that the representation was made but on the denial by the respondents the applicant has alongwith the rejoinder annexed the acknowledgment receipts vide which representations were made. Though the respondents had tried to deny and had intended to file an additional reply also to deny the factum of having received such type of representations, but we find in the presence of acknowledgment receipts placed on record, this objection has no merits as representations have already been made which have not been answered by the respondents.

/s/

22

[6]

8. As regards the merger of these two cadres are concerned, counsel for applicant has referred to Railway Board's Orders on Establishment compiled by Bahri Bros. and particularly the Railway Board Establishment Order No.119/93 which pertains to merger of certain non-gazetted cadres in Commercial Department. Under this order the question of merging of different cadres of commercial staff in single cadre was considered. By that order three cadres were intended to be merged in one cadre. But in the said order an option for existing employees was kept open. The said option mentioned in the order is reproduced below:

"Option for existing employees: All the employees appointed on regular basis to any of the three existing cadres upto 31st October, 1993 will continue therein, and progress in their respective cadres as is the position at present. However, employees working in the lowest grade in any of the three existing cadres will be given an option to come over to the new unified cadre. This option should be exercised within two months from the date of issue of corresponding instructions by your railway. Option exercised within this period of two months will be deemed to be effective from 1.11.1993. Option once exercised shall be treated as final and no change will be permitted at a later date, and they will see their promotion in the unified cadre in accordance with para 7 and 7.1 below."

9. Learned counsel for applicant submitted that on the same lines the respondents could have given an option to the existing staff and should not have merged them by one stroke into a combined cadre of electro technicians.

Km



10. Counsel for applicant further submitted that as a consequence of this merger the seniority and promotion prospectus of the applicants would be jeopardised and they will not be getting the appropriate promotion in their own cadre. Counsel for applicant then further submitted that every employee has a vested right to remain in his own cadre and the opinion of the employees should be taken. In support of his contention he has referred to a judgment of Hon'ble Delhi High Court in SLP No.166/2003 in case of B.D.Sharma vs. Union of India.

11. On the contrary, learned counsel for respondents submitted that merger of a cadre is a policy decision of the authorities and the policy decisions cannot be challenged before this Court. Respondents further submitted that as per latest circular of the Railway Board No. RBE No.177/2003 dated 9.10.2003, the Railway Board had taken a decision that the concept of multi skilling has to be introduced by merging different cadres and the categories indicated can be merged by integrating the seniority of the employees working in respective grades with reference to length of non-fortuitous service in the relevant grade getting keeping in view the inter-se seniority in the respective group.

12. Thus, respondents submitted that the seniority can be combined with the other merging cadre on the basis of length of non-fortuitous service so no prejudice would be caused to the respondents even if the cadres are merged.

13. Counsel for respondents further submitted that this concept is introduced to utilise to the maximum the manpower working in the railways otherwise the Air Conditioning staff

Kun

does not attend the complaints of the Electrical Department and vice versa and if the cadres are merged designation would be changed and these people would be known as Electrical Technicians. So their services can be utilised to the maximum by the respondents.

14. We have considered the rival contentions and given our thoughtful consideration.

15. As regards the merger of these two categories are concerned, there is no serious challenge to this. Moreover, it is a policy decision probably applicant is unable to challenge the same before this Court. But still in case the scheme of merger was framed caused any prejudice or takes away any rights of any of the employees then such employee certainly have a right to challenge the same. In this case, the applicants have an apprehension that their seniority would be depressed and they may not be able to get progress in their carrier which they were getting before merger. They have simply asked that this merger should be given a prospective effect and not retrospective effect.

16. To our mind also, this merger should not be given a retrospective effect because it affects the carrier progress of the applicants and since in past also particularly as per order RBE No.119/03 when three cadres of Commercial Department were being merged into one cadre, an option was given to the existing employees as quoted above, so we think that similar option could be given in the present was also to the applicants. Even in the order RBE No.117/03 dated 9.10.2003 which has been relied upon by the learned counsel for the respondents if we look into para 10.2 where the Personal,

fu

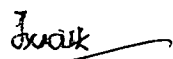
(2)


[9]

Welfare and HOER Inspectors are sought to be merged into unified cadre of Personnel Inspectors. It also says that 50% of the posts in the entry grade in the combined cadre should be filled from amongst the optee Senior Clerks of Personnel Department working in a particular grade with 3 years of service in the grade and remaining 50% should be filled as per instructions contained in Board's letter.

17. Here also only those Senior Clerks should be driven into the unified cadre of the Personnel Inspectors who opted for the same that is why this para 10.2 mentions that optee Senior Clerks be provided into the unified cadre. So when such like option is given for introducing a unified cadre of Personnel Inspectors, we do not find any reason why this option not be given to the applicants in the cadre of Air Conditioning staff. Thus, we find that the OA deserves to be allowed.

18. Accordingly, we allow the OA partly with the directions to the respondents that the merged cadre of Air Conditioning staff and the electrical staff be introduced as ordered in the impugned order but ~~it be given either prospectively or retrospectively~~ ^{for} the option of the existing staff may be obtained before driving them into the unified cadre of Electrical Technicians. OA is disposed of accordingly. No order as to costs.


(S.K. NAIK)
Member (A)


(KULDIP SINGH)
Member (J)

'sd'