

(2014) 08 GUJ CK 0083
In the Gujarat High Court

Case No : Special Civil Application Nos. 706 of 2000 and 3857 of 2004

N.H. Shaikh

APPELLANT

Vs

B.M. Raval

RESPONDENT

Date of Decision : 01-08-2014

Acts Referred:

Citation : (2014) LabIC 4061

Hon'ble Judges : Mohinder Pal, J; Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Shalin N. Mehta, Advocate for the Appellant; N.S. Shevade and Subhash G. Barot, Advocate for the Respondent

Judgement

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Akil Abdul Hamid Kureshi, J.—These petitions arise out of common background. They are, therefore, disposed of by this common judgment. Brief facts are as under.

1.1 The respondents herein, the applicants of Original Application No. 491 of 1993 had been working as Ticket Collectors/Senior Ticket Collectors with the Railways since many years. Some of the telegraph staff of Rajkot division upon closure of telegraph office under the said division were rendered surplus. Such staff members in the cadre of Ticket Signallers/HSG Grade-II in the pay scale of Rs. 1200-2040 at the relevant time were absorbed in the cadre of Travelling Ticket Examiner (TTE). Post of TTE also carries the same pay scale of Rs. 1200-2040/-. They were asked to undertake training for ticket checking. It was provided that on completion of the training period, they would be posted in respective cadres as per the said order.

1.2 The existing employees in the cadre of TTE thereupon approached the Central Administrative Tribunal, Ahmedabad by filing Original Application No. 491 of 1993 and challenged the very order of absorption dated 5.8.1993. At the time of hearing of the petitions, however, their counsel pressed only the question of

granting seniority to the absorbed employees giving benefit of the past services. Their grievance apparently was that, they were working in the cadre of TTE since many years. Absorbed employees from other cadres by preserving their past seniority would be unjust to the existing employees. Such original application came to be allowed by judgment dated 13.8.1999. The Tribunal relied on the decision of the Supreme Court in the case of V.K. Dubey and Others Vs. Union of India (UOI) and Others, making following observations:

"We have heard both the learned advocates and gone through the documents on record. The question of determining the seniority of the redeployed staff has now been decided by the Hon"ble Supreme Court in the case of V.K. Dubey and Others Vs. Union of India (UOI) and Others, where in the question of seniority of redeployed Diesel engine drivers and staff working was raised consequent to their transfer as Electric Engine Drivers. The Hon"ble Apex Court has mentioned that "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 can they be entitled to seniority over the staff regularly working in the electrical locomotive department. Under these circumstances, this Court has held that they cannot have a seniority, over mem. Consequently, the Hon"ble Supreme Court upheld the judgment of the Tribunal that the seniority of the redeployed staff is required to be adjudged from the date of their deployment in the electrical operations and the previous service cannot be counted for the purpose of determination of inter se seniority.

In view of the above judgment, we allow the OA and quash and set aside the impugned order dated 5.8.93 at Annexure A-5 giving original seniority to the Signallers absorbed as Ticket Collectors. The seniority of deployed signallers shall be determined in accordance with the judgment of the Hon"ble Supreme Court (supra) i.e., from the date of joining to the new cadre and not with reference to their original seniority as Signallers. No costs".

1.3 Such judgment was challenged by the Railways by filing Special Civil Application No. 706 of 2000. By an order dated 20.12.2000, the petition was summarily dismissed observing that the decision of the Tribunal does not require any interference since the Tribunal has disposed of the application on well settled principle. Against such order of the High Court, Railway administration approached the Supreme Court. Supreme Court by an order dated 8th August, 2003, quashed the order of High Court and remanded the proceedings for fresh consideration making following observations: "Heard the learned counsel appearing on either side. It was reiterated for the appellants that, as proposed the order under challenge requires to be set aside for total non application of mind, and remitted for consideration afresh on merits, objectively.

Shri Haresh A. Raichura, learned counsel appearing for the respondents seriously objected to the same contending that the matters are covered by the earlier

decisions of court and, therefore, no exception could be taken to the order of the High Court. In our view, if that be, it has to be dealt with properly and appropriately taking note of the objections, if any, of the other side with reference to the applicability or otherwise of such judgments and then dispose of the matter. It is not clear from the order under challenge as to which are the decisions or principles the court had in mind. The High Court should not have disposed of the matter so summarily. On this only ground, the order of the High Court is set aside, as proposed and the matter is remitted to the High Court. The High Court shall restore the proceedings to its original file and after hearing both sides will dispose of the matter afresh on merits. The parties are at liberty to raise all such contentions as are permissible for them in accordance with law. The appeal is accordingly finally disposed of. No costs".

1.4 Some time later, the affected employees of the Railways who were under order of absorption by virtue of order dated 5.8.1993 filed Special Civil Application No. 3857 of 2004 challenging the very same judgment of the Tribunal dated 13.8.1999.

2. Ms. Grishma Ahuja with Mr. Shalin Mehta for the petitioners raised following contentions to challenge the judgment of the Tribunal.

(i) Petitioners were persons affected by the decision of the Tribunal. They were not joined as respondents and therefore, not heard by the Tribunal.

(ii) The original applicants had approached the Tribunal on mere apprehension that the seniority of the absorbed employees would be preserved when there was no such specification in the order of absorption.

(iii) The Railway Board's circular provided for preserving the past seniority in case of absorption of surplus staff when such absorption is in such small numbers.

3. Learned counsel, Shri Barot, for the Railways also raised similar contentions and requested that the judgment of the Tribunal be quashed.

4. It is undoubtedly true that the challenge of the original applicants concerned the private petitioners before us vitally if the Tribunal were to allow the original application either in its entirety by quashing the order of absorption itself or even partially as was done in the present case by curtailing the seniority from the date of absorption without the past seniority being preserved in the new cadre and therefore, such persons had to have a voice in the final decision that could be rendered. Such persons were likely to be adversely affected and therefore, had a right to be heard before such decision was taken. Ordinarily therefore, we would have reversed the judgment of the Tribunal only on this ground. However, the facts of this case are somewhat peculiar. The order of absorption is of August, 1993. 21 years have passed since then. All the employees would undoubtedly have by now retired. Only for the purpose of hearing such affected persons and for rendering fresh decision, we would not like to remand the proceedings before

the Tribunal. Instead, we have heard the petitioners on very fundamental issue whether they had a right to carry the seniority of the original cadre in facts of the present case.

5. Our answer to the said question is in the negative. It is undisputed that the petitioners were declared surplus on account of closure of certain telegraph offices under the jurisdiction of the Rajkot division of the Railways. Ordinarily therefore, such employees would be liable to be terminated. Instead of bringing an end to their employment, the Railway as benevolent employer decided to absorb them in other cadres where vacancies were available. It was thus an act of concession of the Railway to the employees whose services were otherwise under threat of termination. May be such absorption flows from the Railway Board's Circulars. Nevertheless, such circulars would only provide the uniformity in Railway policy with respect to such cases and would not change the nature of petitioners' absorption in the new cadre. Under the circumstances, petitioners cannot disturb the seniority of the existing employees in the cadre who may be working in the cadre since many years and in some cases since decades. The absorption of the petitioner cannot by interpolating them in the seniority list of the new cadre vitally and adversely affect the existing employees of the cadre. This is precisely what the Supreme Court held in the case of V.K. Dubey (supra). It was the case in which the railway employees were engaged on the diesel side of the locomotive operations. Subsequently, on introduction of electrical engines they were given training and were absorbed on the electrical locomotive side. The question of inter se seniority of employees already working on the electrical locomotive side and those shifted from the diesel locomotive side to the electrical locomotive side arose. The Tribunal held that since the employees were deployed to the electrical side for the first time, their seniority was required to be adjudged from the date of their deployment in the electrical locomotive operations and the previous service cannot be counted for the purpose of determination of inter se seniority. The decision of the Tribunal was challenged before the Supreme Court contending that since the employees were working on diesel side for long duration, their entire previous long services cannot be wiped out causing detriment to their length of service and promotional avenues. The Supreme Court dismissed their appeals particularly, keeping in mind the observations of the Tribunal which protected against the reversion on account of such judgment. In our opinion, such ratio is squarely applied in the present case also. The petitioners' claim for seniority over existing employees of the cadre of TTE prior to their date of absorption has no legal backing. This, however, does not mean that their past services are wiped out for all purposes such as pay fixation, pension and other post retirement benefits as well as for grant of time bound promotions, if such promotions are recognized by the railways. It would only mean that for further promotion, they cannot count their past services for fixing inter se seniority in the cadre of TTE and their seniority of that cadre would be reckoned from the date of absorption.

6. In view of above observations, petitioners' grievance that the Tribunal

examined the question of seniority though Railways had not so provided in the order of absorption itself would get substantially diluted. In any case, it is not the stand of the Railway that but for the judgment of the Tribunal, the absorbed employees would have not been granted benefit of past services even for the purpose of fixing inter se seniority in the cadre of TTE. Subject to above observations, therefore, both these petitions are dismissed. Rule discharged.