

(2018) 12 CAT CK 0086

In the Central Administrative Tribunal

Case No : Original Application No. 1541 Of 2014

Pradeep Kumar And Ors

APPELLANT

Vs

General Manager And Ors

RESPONDENT

Date of Decision : 11-12-2018

Acts Referred:

Citation : (2018) 12 CAT CK 0086

Hon'ble Judges : V. Ajay Kumar, J;A.K. Bishnoi, Member (A)

Bench : Division Bench

Advocate : A.K. Bhakt, Satpal Singh, Yogesh Sharma

Final Decision : Dismissed

Judgement

V. Ajay Kumar, J

1. The applicants, 3 in number, and working as Technician Grade-I (Train Lighting Fitter) in the respondent-Northern Railway, earlier filed OA No.408/2001 against some of the private respondents and the same was allowed by order dated 20.03.2003 (Annexure A-4) and the relevant paragraphs of the said OA read as under:-

"This application has been filed by four applicants who have challenged the action of the respondents in not promoting them as skilled Artisan Lighting Fitter Grade-II with all consequential benefits from the date their juniors have been promoted to that post. According to them, their juniors who are respondents 3-6 had been promoted earlier in Grade-III and again given higher promotion to Grade-II which is contrary to the seniority list and instructions issued by the Railway Board.

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8. In the result, for the reasons given above, O.A. succeeds and is allowed with the following directions:-

(i) The respondents to assign proper seniority to the applicants in Train Lighting Fitter Grade-II in accordance with law and rules.

(ii) Thereafter they shall grant promotion to the applicants from the date their juniors were promoted to the higher grades with all consequential benefits.

(iii) The above action shall be taken within three months from the date of receipt of a copy of this order.

No order as to costs".

2. Some of the private respondents in the instant OA had earlier filed OA No. 2949/2004 against the applicants in the instant OA and the said OA along with another OA No.578/2005 was allowed by this Tribunal by a common order dated 14.09.2006 (Annexure A-6), and the relevant paragraphs of the same read as under:-

"The facts and issues in these OAs being identical, they are being disposed of by this common order.

2. For convenience, facts have been taken and stated here from OA No.2949/2004. Applicants who are working as Technician-II since 29.08.1997 have challenged Annexure-I dated 13.09.2004 whereby alleged juniors S/Shri Pradeep Kumar, Laloo Prashad, Bhagwan Dass and Ram Niwas, i.e, respondents 4 to 7, have been granted promotion on pro forma basis as also seniority as TLF-III with consequential benefits from the date their juniors S/Shri Rajinder Kumar, Hargovind Pant etc., were assigned seniority as TLF-II in grade Rs. 4000-6000 above Shri Rajender Kumar. These private respondents are stated to have been accorded above benefits in terms of Tribunal's orders dated 20.03.2003 in OA No.408/2001.

3. Applicants are stated to have joined the Railways initially as casual labourers. Their services were regularized as Khalasi on 28.07.1978. Thereafter they were promoted as Helper Khalasi in 1984, and further as Technician-III on 1.1.1989. Lastly, they were promoted as Technician-II on 29.08.1997. According to applicants, promotion from the post of Technician-III onwards is based on a trade test as per rules. Those qualifying in the trade test are entitled for promotion with seniority in the higher grade on behalf of the trade test. It is claimed that applicants are senior in all respects vis-à-vis the private respondents 4 to 7 as follows:

"As far as Shri Pradip Kumar and Lallu Prasad are concerned they were Khalasi in the year 1979 and promoted as Helper Khalasi in 1986. They were further promoted as Technician-III in 1998 and Technician-II in 2003. Similarly, as far as Ram Niwas and Bhagwan Das are concerned initially they were appointed in the Loco Department and came to Electrical Department in the year 1983 with the condition that they will be placed at the bottom of the seniority in the Electrical Department. Accordingly, they should have been placed at the bottom of the seniority list of Khalasis. They were promoted as Helpers in the year 1993 and

Technicians-III in 1998.

As far as Rajinder Kumar, Hargobind Pant, Dewan Singh and Girdhari Lal are concerned, who were respondent Nos. 3 to 6 in OA No.408/2001 they are juniors to the applicants however, were shown senior on the strength of manipulation. As far as rules are concerned seniority in the promotional post can only be calculated on the basis of the trade test".

4. As per applicants, Tribunal in OA 408/2001 did not allow the respondents to promote the private respondents herein to the next higher post. The direction was only to the effect that the case of applicants of that OA be considered as per the applicable rules. In that event, necessary notice should have been issued to all affected persons, including present applicants, before declaring the present applicants junior to the persons who were junior to the present applicants. The rules of promotion state that promotion can be granted on the basis of a trade test and as the applicants had cleared the trade test prior to the private respondents who were junior to applicants in all respects, they cannot be made junior to the private.

5. The official respondents through their counter reply have stated that respondents have acted strictly in accordance with the directions of this Court in OA 408/2001. According to these respondents S/Shri Rajinder Kumar, Hargovind Pant, Dewan Singh and Girdhari Lal who were made private respondents in OA No.408/2001 are senior to applicants in the present OA, and as such, respondents have been in the right in rejecting representation of applicants by the impugned orders.

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12. In result, Annexure-I dated 13.09.2004 is quashed and set aside. Respondents are again directed to give up casual approach and seriously assign proper seniority to applicants in Train Lighting Fitter Grade-III in accordance with law laid down by the Hon'ble Supreme Court in V.K. Dubey (supra), related rules and Railway Board's circulars dated 21.04.1989 and 07.07.1995 dealing with re-deployment of a "large number" of employees. After assigning proper seniority as above, applicants shall be granted promotion from the date their juniors were promoted to the higher grades with all consequential benefits. The entire action shall be taken by respondents within three months from the date of receipt of these orders.

13. Both the OAs are allowed as above".

3. The applicants in the instant OA, who were the private respondents in OA No.2949/2004, which was allowed against them, filed W.P. (C) No.6790/2007 against the orders of this Tribunal dated 14.09.2006 in OA No.2949/2004. The said W.P. along with W.P. (C) No.8107/2008 filed by the Union of India was dismissed by the Hon'ble High Court of Delhi, vide its order dated 21.07.2010 (Annexure A-7).

4. The applicants in the instant OA also filed O.A. No. 3458/2011 against the private respondents herein and the said OA was dismissed by this Tribunal on 02.01.2014 (Annexure A-9) and the relevant paragraphs of the same read as under:-

"Applicants in this Original Application are aggrieved by the impugned letter dated 05.04.2011 issued by the Divisional Personnel Manager, Northern Railway whereby their dates of promotions and seniority as Technician ("Tech" for short)-III, Tech-II and Tech-I respectively have been reassigned retrospectively after annulling and withdrawing their seniority as Tech-III and consequential promotions made vide letter No.847-E/187/03/TLF-II/P-3 dated 13.09.2004 in purported implementation of the directions of the High Court of Delhi in its common order dated 21.07.2010 in Writ Petition (C) No.6790/2007 and connected case - Ram Niwas and Others Vs. U.O.I. & Others. They have also sought directions to the respondents to place the private respondents 3 to 9 below them by strictly complying the directions of Supreme Court in its judgment and order dated 07.04.1997 in V.K. Dubey & Others Vs. U.O.I. & Others 1007 (5) SCC 81 and not to reduce their pay but to pay them the arrears with all consequential benefits after quashing and setting aside the impugned letter dated 05.04.2011.

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9. We have heard the learned counsel for the Applicants Shri K.K. Patel and the learned counsel for the Respondents Shri V.S.R. Krishna. It is seen that the Applicants No.3 & 4 have been working as Helper-Khalasis under the Chief Electrical Foreman (Train Lighting) from the year 1986 and Applicant No.1 from the year 1988. The initial dispute was between Applicants 3 and 4 and some of their junior Helper-Khalasis who have been promoted as TLF Grade-III earlier than them. The Applicants 3 and 4 challenged the aforesaid action of the Respondents successfully in OA No.2065/1999. This Tribunal allowed said OA vide order dated 20.09.1995 and directed the Respondents to hold the trade test for all Helper- Khalasis who were senior to one Shri Hargobind Pant. Since the Applicants No.3 and 4 were senior to Shri Hargobind Pant, they were also promoted to TLF Grade-III but they were not promoted to TLF Grade-II to which their juniors have already been promoted. Meanwhile, the Applicants No.1 and 2 were also trade tested for TLF Grade-III pursuant to the direction of this Tribunal in OA 953/1996 (supra) and later on promoted to that post in 1998. However, the juniors of the Applicants as Helper Khasis who got promotion before them as TLF Grade-III were again promoted as TLF Grade-II. They were S/Shri Rajinder Kumar, Hargobind Pant, Deewan Singh and Girdhari Lai. The Applicants challenged the promotion of those 4 persons vide OA No.408/2011 (supra). The Respondents in their reply submitted that the aforesaid 4 persons were initially working in Loco Shed, Ghaziabad and declared surplus but they having been absorbed giving them full seniority. The Applicants disputed the claim of the Respondents. They have relied upon the judgment of Hon'ble Supreme Court in

V.K. Dubey and Others Vs. Union of India and Others 1997 (5) SCC 81, wherein it has been held that seniority of surplus staff who have been redeployed could not be fixed above the staff already working on the electric side. They have also submitted that the Respondents while promoting juniors to the Applicants have acted contrary to law and they cannot be deprived of promotion from the due date when their juniors were promoted with all consequential benefits. The Tribunal, vide order dated 20.03.2003 allowed the OA and directed the Respondents to assign proper seniority to the Applicants in Train Lighting Fitter Grade-II in accordance with law and rules. The Respondents were also directed to give them further promotions from the date their juniors have been promoted. Pursuant to the aforesaid order, the Respondents issued the order dated 13.09.2004 granting promotion on proforma basis and also seniority as TLF Grade-III with consequential benefits from the dates their juniors S/Shri Rajinder Kumar, Hargobind Pant etc. were assigned seniority as TLF Grade-II. Those officials who were already working as TLF Grade-II since 29.08.1997 challenged the aforesaid order dated 13.09.2004 in OA No.2949/2004 and OA No.578/2005. This Tribunal allowed those OAs vide order dated 14.09.2006 and held that a perusal of the order dated 13.09.2004 would show that the Respondents herein have not been assigned the seniority correctly. The Tribunal also held that the Applicants in those OAs were senior to the Respondents 4 to 7 (Applicants herein). The Tribunal has also held that the Applicants in those OAs were already senior to the Respondents No.4 to 7 (Applicants herein). Accordingly, the order dated 13.09.2004 has been quashed and set aside. The Respondent-Railway was also directed to give up causal approach and seriously assign proper seniority to Applicants (Private Respondents herein) in Train Lighting Fitter Grade-III. The Respondent-Railway challenged the aforesaid order of this Tribunal dated 14.09.2006 before the Hon"ble High Court of Delhi vide W.P. (C) No.810/2008. The Applicant herein also challenged it vide separate CWP No.6790/2007. However, the High Court dismissed both the said Writ Petitions by common order dated 21.07.2010. It is in pursuance to the aforesaid order of this Tribunal, as upheld by the High Court, the impugned order dated 05.04.2011 has been issued by the Department-Railway. By the said order, the Applicants have been assigned their correct seniority and promotion in the rank of Tech-III, Tech-II, Tech-II. However, the contention of the Applicants in this OA again is that the impugned order dated 05.04.2011 has been issued without following the Supreme Court's judgment in V.K. Dubey's case (supra). We do not find any merit in the aforesaid contention. Accordingly, this OA is dismissed.

10. There shall be no order as to costs".

5. The applicants filed the instant OA seeking the following reliefs:-

"(I) To quash and set aside the impugned provisional seniority list dated 07.10.2013 and select list dated 11.03.2014 and direct the respondents to consider the seniority of the applicants in the impugned seniority list above the juniors of the applicants decided in order dated 20.03.2003 in OA No.408/2001.

(II) To direct the respondents to include the applicants in select list dated 11.03.2013 for consideration of their promotion at par their juniors.

(III) Produce the entire relevant records pertaining to this case before the Hon'ble Court.

(IV) To award exemplary cost on the respondents for causing undue harassment.

(V) To pass any further relief or reliefs as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case".

6. Heard Shri A.K. Bhakt, the learned counsel for the applicants and Shri Satpal Singh, the learned counsel for respondents No.1 & 2 and Shri Yogesh Sharma, the learned counsel for respondents No.3 to 7 and perused the pleadings and record.

7. In short, the applicants are seeking to quash the impugned seniority list dated 07.10.2013 and the consequential select list dated 11.03.2014 basing on the orders of this Tribunal dated 20.03.2003 in OA No.408/2001. A perusal of the above referred orders of various courts, a fortiori, the order dated 14.09.2006 in OA No.2949/2004 clearly reveals that the persons who were not made as parties in OA No.408/2001, filed the said OA impleading the applicants in the instant OA as private respondents and this Tribunal, after elaborately considering the effect of the orders in OA No.408/2011, and after hearing the applicants as well as private respondents in the instant OA, held in favour of the private respondents and the said order was, though questioned by the applicants in the instant OA as well as of the official respondents in the instant OA, was dismissed by the Hon'ble High Court of Delhi. Again, this Tribunal in OA No.3458/2011, filed by the applicants against the private respondents categorically rejected all the identical contentions of the applicants. Though the applicants lost their claim of seniority over the private respondents, but filed the instant OA, by raising the very same grounds in order to challenge the impugned orders, which were issued, in consequential, to the above referred orders of this Tribunal.

8. In the circumstances and for the aforesaid reasons, we do not find any merit in the OA and accordingly the same is dismissed. No costs.