

(2015) 07 RAJ CK 0123

In the Rajasthan High Court

Case No : DB Civil Writ Petition No. 1966 of 2008

Union of India and Others

APPELLANT

Vs

The Central Administrative TR

RESPONDENT

Date of Decision : 21-07-2015

Acts Referred:

Citation : (2015) 07 RAJ CK 0123

Hon'ble Judges : Ajay Rastogi, J;J.K. Ranka, J

Bench : Division Bench

Advocate : Intejar Ali, for the Appellant; P.P. Mathur, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. Instant petition is directed against order of the Id. Tribunal dt. 25.7.2007.
2. The present respondents who are the original applicants before the Tribunal were appointed as Trains Clerk (TNC) on different dates in the Establishment of Railways but at later stage as a result of closure of Achnera/Phulera/Bandikui Yard, about 30 TNCs became surplus in the Jaipur Division and in this regard order dt. 8.8.1994 was passed directing to the Station Superintendent/Station Masters of Jaipur for seeking consent of the surplus TNC staff for being adjusted as ticket collectors in Jaipur Division by protecting their pay and seniority. The order also contained a proforma for seeking consent of the surplus TNCs.
3. Main contention of the respondents employees before the Tribunal was that once they have been declared surplus and absorbed by railway establishment they will be entitled to carry the benefit of past service rendered for the purpose of assignment of seniority and the Id. Tribunal taking into consideration earlier order in the case of G.K. Gandhi & Ors. v. Union of India & Ors. in OA-529/1994 on 22.2.2000 and taking note of para 311 of Indian Railway Establishment Manual (IREM), finally granted them benefit of past service for the purpose of assignment of seniority on the post they were absorbed and set aside the order

of the establishment dt. 30.10.1998 and further directed that the seniority list dt. 3.10.1998 be rectified to the extent by inserting the name of the respondent employees at the appropriate place after giving them benefit of past service.

4. The order passed by the Tribunal in the case of G.K. Gandhi referred to supra came to be challenged before this Court by the persons who are affected obviously the employees whose seniority was affected and the Coordinate Bench of this Court vide order dt. 2.2.2007 in DBCWP-3236/2000 examined the matter in detail and finally dismissed the writ petition and upheld the view of the Tribunal and extended benefit of past service to such of the employees who were declared surplus and absorbed in another unit of the railway establishment vide judgment dt. 2.2.2007.

5. Counsel for respondents submits that in the light of judgment of the Division Bench referred to supra, the present writ petition does not hold merit and deserved to be dismissed.

6. Counsel for petitioners has tried to distinguish the judgment of the Division Bench in the case of G.K. Gandhi and submits that once the employees accepted the bottom seniority they cannot resile later on and such clause was not there in the case of G.K. Gandhi and further submits that those employees who were declared surplus the railway establishment in the ordinary course would have terminated their service but taking liberal view absorbed such employees by retaining them in service with the stipulation that they will get bottom seniority so that the employees in their respective establishment should not be deprived for their right of consideration for promotion and this aspect of the matter has not been looked into by this Court in the case of G.K. Gandhi reference of which has been made supra.

7. We find from the records that in the case of G.K. Gandhi the only question raised was that what would be the fate of such employees who are declared surplus and absorbed in another unit of the railway establishment and are they entitled to carry their past service rendered on absorption for assignment of seniority, the Id. Tribunal observed that such of the employees who were absorbed shall carry their past service for the purpose of determination of seniority and the Division Bench of this Court vide judgment dt. 2.2.2007 in DBCWP-3236/2000 also find substance that the employees who are substantively holding the post in railway establishment but because of change of pattern or under the policy decision if the posts are abolished and substantive employees become surplus they have a right to be considered for absorption on the equivalent/equated post in another unit of the establishment and when the employees are not at fault certainly are entitled to carry past service for the purpose of assignment of seniority and for all other practical purposes we do not find any error being committed by the Tribunal in upholding the view which has been considered at one point of time by the Coordinate Bench of this Court in the judgment referred to supra.

8. The submission of counsel for the petitioners is that such of the persons who are going to be affected and recruited by open selection are not party to the original application and their rights are going to be jeopardized in case the respondents are assigned their seniority taking note of past service rendered.

9. In our considered view the submission is of without substance for the reason that few of the class of persons were impleaded in representative capacity and necessary party to the lis is the Railways who was impleaded & represented by their counsel and as opined by the Division Bench of this court in the case of G.K. Gandhi the present respondents being similarly situated and not under obligation to implead the class of persons alleged to be affected as respondents.

10. After going through the order of the tribunal, we do not find any error being committed in the order impugned which may call for our interference.

11. Consequently, the writ petition being devoid of merit and accordingly dismissed.