

V.K. DUBEY AND ORS.
v.
UNION OF INDIA AND ORS.

APRIL 7, 1997

[K. RAMASWAMY AND D.P. WADHWA, JJ.]

Service Law—Seniority—Determination of—Railways—Appellants working on the diesel side of the locomotive operation—Subsequently absorbed on the electrical locomotive side—Determination of inter se seniority between employees already working on the electrical locomotive side and those shifted from the diesel locomotive side to electric locomotive side—Tribunal holding since appellant's 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—Tribunal also protecting accrued rights of appellants'—Held there was no flaw in the Order passed by the Tribunal.

Rama Kant Chaturvedi v. Divisional Supdt., Northern Railway, [1980] Supp. SCC 621 and South Eastern Railway through Chief Personnel Officer & Ors. v. Ramanarain Singh & Ors. Etc., C.A. No. 2530/81 and batch dated July 29, 1988 decided by Supreme Court referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2883 of 1997.

From the Judgment and Order dated 18.12.96 of the Central Administrative Tribunal, Allahabad in O.A. No. 1024 of 1995.

Vijay Bahuguna, D.K. Garg and Satpal Singh for the Appellants.

Yogeshwar Prasad, Mrs. Rachna Gupta, P.K. Bajaj and Prashan Kumar for the Respondents.

The following Order of the Court was delivered :

Leave granted. We have heard learned counsel on both sides.

This appeal, by special leave, arises from the order dated 18.12.1996

- A by the Central Administrative Tribunal, Allahabad Bench in O.A. No. 1024/95.

B The appellants were initially drafted 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 had arisen. The Tribunal has held that since they 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. This controversy was considered by this Court in *Rama Kant Chaturvedi v. Divisional Supdt., Northern Railway*, [1980] Supp. SCC 621 wherein this Court had held as under :

D "The Diesel Unit of the Railways 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. As considerable time might elapse before Diesel Cleaners could be promoted as Shunters and Drivers' Assistant in the diesel unit it was decided to draft Firemen on the steam side, possessing the minimum educational qualification of matriculation, to the diesel side as Drivers' Assistants after giving them the requisite training. That was done. All the initial appointments were on officiating basis. As a result of the appointments, some Firemen Grade 'C' (the appellants), who were of lower category than Firemen Grade 'B' and Firemen Grade 'A' but who happened to possess the minimum educational qualification which many of the Firemen Grades 'A' and 'B' did not possess, were drawn into the diesel unit earlier than some of the Firemen Grades 'A' and 'B' who came in later as a result of the relaxation of the rule prescribing minimum educational qualification. The Railway Administration issued instructions that the juniormost Firemen Grade 'C' officiating as Diesel Driver Assistant should be reverted in order to accommodate the senior staff. Pursuant to these instructions the appellants, all of whom were drawn from the category of Firemen Grade 'C' and who had been appointed as officiating Drivers'

Assistants, were reverted to the steam side as Firemen Grade 'C' in order to make way for Firemen Grades 'A' and 'B' who were appointed as Drivers' Assistants on the diesel side long after the appointment of the appellants as Drivers' Assistants on the diesel side. Questions for determination were whether the earlier appointees could claim seniority over the later appointees and whether the Railway Administration was justified in reverting the appellants to the old unit. Allowing the appeals the Supreme Court. A B

Held :

Those who were drafted into the diesel unit earlier would not lose the benefit of their continuous service on the diesel unit merely because the appointments were on an officiating basis and because others who were senior to them on the steam side came in or chose to come in at a later stage. If seniors on the steam side did not come in earlier it was because they were barred from coming in by the requirement of a minimum educational qualification. The subsequent relaxation of the rule cannot enable them to take a 'frog leap' over the heads of those who had come into the diesel side earlier. The seniority on the steam side is of no relevance in determining seniority on the diesel side when they are appointed on the diesel side on different days." C D E

The ratio therein was followed by another Bench of this Court in *South Eastern Railway through Chief Personnel Officer & Ors. v. Ramanarain Singh & Ors. Etc.* (C.A. No. 2530/81), and batch, dated July 29, 1988.

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 F G H

A 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 locomotives detriment. Under those circumstances, this Court has held that they cannot have a seniority over them. However, the Tribunal in the impugned order has well protected the rights which they had already accrued as under :

C "We have been informed by the departmental representative that on such a re-determination of the seniority a large number of convertes who have already advances several steps in the electrical side would face reversion resulting in not only hardship to such individual but also functional problem in running the Locomotives. We, therefore, provide that on such re-determination of seniority, the persons who have already been promoted to higher grades in Electrical side, shall not be reverted but their subsequent advancement to still higher grades shall be dependent on such re-determined seniority. However, no further promotions shall be made by the respondents, in the electrical side in contravention of the aforesaid principle of seniority."

E In view of the above direction, the accrued rights are protected and being enjoyed by the appellants. The Tribunal's order, therefore, directed to safeguard the rights already had by the appellants. However, future promotions depend upon the *inter se* seniority that may be determined by the authorities as directed by the Tribunal. Thus we find no flaw in the order passed by the Tribunal warranting interference.

F The appeal is accordingly dismissed. No costs.

T.N.A.

Appeal dismissed.