

(13)

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI**

**O.A. No. 337/97**

**T.A.No.**

**199**

**DATE OF DECISION: 19-5-2000**

**Rajinder Prasad**

**....Petitioner:**

**Sh.S.K.Mehra**

**....Advocate for the  
Petitioner(s)**

**VERSUS**

**UOI through GM(NR) & Ors**

**....Respondent:**

**Sh.O.P.Kshatriya for R 1-2  
Sh.S.K.Sawhney for R-3**

**....Advocate for the  
Respondents.**

**CORAM**

**The Hon'ble Smt.Lakshmi Swaminathan, Member (J)  
The Hon'ble Shri V.K.Majotra, Member (A)**

1. To be referred to the reporter or not YES
2. Whether it needs to be circulated to other benches of the Tribunal? No.

*Lakshmi Swaminathan*  
(Smt.Lakshmi Swaminathan;  
Member (J)

*h*

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI.

OA 337/1997

New Delhi this the 19th day of May, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member (J)  
Hon'ble Shri V.K. Majotra, Member (A)

Rajinder Prasad,  
S/O Shri Babu Ram,  
Machinist,  
Diesel Shed/N.Rly.,  
Tughalakabad, New Delhi.

Residential address

Rajinder Prasad,  
964, Chhota Chipoiwara,  
Chawri Bazar, Delhi-6

.. Applicant

(By Advocate Shri S.K. Mehra )

Versus

1. Union of India through the  
General Manager, Northern Railway,  
Baroda House, New Delhi.

2. Divisional Rly. Manager,  
Northern Railway,  
State Entry Road, New Delhi.

3. Shri Jai Ram, Turner,  
N.Rly. Diesel Shed, Tughalakabad,  
New Delhi.

.. Respondents

(By Advocate Shri O.P. Kshatriya for R 1-2)  
(By Advocate Sh. S.K. Sawhney, for R-3 )

O R D E R (ORAL)

(Hon'ble Smt. Lakshmi Swaminathan, Member (J))

The applicant is aggrieved by the order dated 8.1.1997 (Ann.A.1) passed by Respondent 2 promoting three persons, including Respondent 3, Shri Jai Ram, from Turner Grade-III to Turner Grade-II with immediate effect.

2. The brief relevant facts of the case are that the applicant was originally appointed in Moradabad Division of the Northern Railway. That Division had issued the Office Order dated 16.6.84 provisionally confirming him as Turner Grade-III. The applicant had requested the official respondents to transfer him to Delhi Division because of certain personal problems, which was accepted ~~to~~ by them. He was relieved from Moradabad Division on 30.11.89 (Ann.A.4) to report to Delhi Division. He has, however, ~~fairly~~ submitted that since he was transferred to Delhi Division at his own request, he was posted in Tughalakabad Diesel Shed and he has

to be appointed at bottom seniority in accordance with the relevant rules. He has relied upon Rule 312 of the Indian Railway Establishment Manual (IREM) which provides that in case of transfer of an employee <sup>his</sup> own request from one Railway to another, or from one cadre/division to another cadre/division on the same Railway, the seniority in such cases of the transferred employee will be at the bottom i.e. below that of existing, confirmed, temporary and officiating Railway servants in the new Establishment, irrespective of the date of confirmation or length of officiation of temporary service of the transferred Railway servant. Accordingly, the applicant's name was placed at bottom seniority in the cadre of Turner Grade-III which he had accepted. As per the revised seniority list (Annexure A-5), the applicant's name was placed at Serial No. 21 i.e. at the bottom of the Turner Grade-III. The applicant joined Delhi Division on 1.12.1989. According to the applicant, at that time Respondent 3 did not figure in the seniority list as he was not <sup>a</sup> member of that cadre on 1.12.1989.

3. Shri S.K. Mehra, learned counsel for the applicant has drawn our attention to the letter issued by respondents on 3.9.97 (Annexure AR 2). In this letter, it has been, inter alia, stated that while applicant joined Delhi Division w.e.f. 1.12.1989, Respondent 3 was officiating as Turner Grade-III purely on local ad hoc basis and he was later regularised only on 4.12.1991. As such, the regular service as Turner Grade-III in respect of respondent 3 was to be reckoned with effect from 4.12.1991, whereas the applicant joined in that Division on bottom seniority w.e.f. 1.12.1989. He has submitted that Respondents 1-2 had realised their mistake after the OA was filed on 10.2.1997 as they have passed the order dated 3.9.1997 thereafter (Ann. AR 2), annexed to the rejoinder to reply filed by respondent 3. It is also relevant to note that by order Ann. R. 1 dated 11.7.1997 of the reply filed by the respondents 1-2 on 4.9.97, they have corrected the seniority list in <sup>a</sup> the manner giving seniority

16

to the applicant over respondent 3. They have stated in their reply that in consequence of the examination, the name of the applicant has been kept at Serial No.20 of the seniority list and Sh.Jai Ram, respondent 3, has been put below the applicant at Sl.No.21. Today at the time of hearing, learned counsel for the official respondents has submitted a copy of notice issued by the office of DRM, New Delhi dated 23.4.99, which is placed on record, in which it has been stated that the applicant Turner Grade-III/TKD was promoted by their letter dated 17.11.97 and Sh.Jai Ram, respondent 3 was promoted by their letter dated 8.1.1997 and he took charge of Turner Grade-II w.e.f. 13.1.1997. As such the applicant has also been granted proforma fixation w.e.f. 13.1.1997 from the date his junior, Sh.Jai Ram, was promoted in Grade-II. This letter also gives further calculation of pay of the applicant in terms of PS 2709.

4. Shri O.P.Kshatriya, learned counsel for the respondents has submitted that in view of the further actions taken by the respondents, subsequent to the filing of the OA by the applicant, as seen from the orders dated 11.7.97 and 23.4.99, the applicant has no further grievance. He has, therefore, prayed that the OA may be dismissed as having become infructuous.

5. Shri S.K.Sawhney, learned counsel for Respondent 3 on the other hand has submitted that the actions of the official respondents cannot be held as valid as they are contrary to the provisions of Rule 312 of the IREM. According to him, respondent 3 had been promoted to officiate as Turner Grade-III when he was appointed on ad hoc basis in Delhi Division w.e.f. 6.9.88 which was later confirmed by their letter dated 1.1.1989. He has, therefore, contended that the expression 'officiation' in the Turner Grade-III of Respondent 3 has to be taken prior to the applicant's seniority which was admittedly at the bottom seniority list which was given to him w.e.f. 1.12.1989. He has, therefore, claimed that as Respondent 3 was officiating in the Delhi Division as Turner Grade-III, even though it might be on ad hoc basis, the same should be taken within the provisions of

8/

17

the IREM and he should, therefore, be given seniority over the applicant. He has, therefore, assailed the subsequent actions taken by Respondents 1-2 in giving seniority to the applicant over respondent 3 in the order dated 11.7.97 followed by the order dated 23.4.1999.

6. Shri S.K.Mehra, learned counsel for the applicant, on the other hand, has submitted that in view of the aforesaid orders passed by the official respondents themselves giving applicant's seniority over Respondent 3 in the feeder cadre of Diesel Turner Grade III to Grade II, he should, therefore, be entitled for promotion with all consequential benefits. With regard to the relief prayed for in para 8(iii) of the OA, learned counsel has drawn our attention to the rejoinder filed by him on 19.11.1997 in which it has been stated that there has been a typographical mistake in the word 'with' which has been wrongly typed as 'without' in the 5th line of para 8(iii) at page 13. He has, therefore, submitted that the OA may be allowed with all consequential benefits to the applicant.

7. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

8. It is seen that after the OA was filed on 10.2.1997, Respondents 1-2 have taken remedial action and passed the subsequent order dated 11.7.97 followed by the order dated 23.4.99 giving seniority to the applicant over respondent 3 as Turner Grade-III in the Delhi Division followed by promotion to Turner Grade-II. The contention of Sh.Sawhney, learned counsel for respondent 3, that R-3 should be considered as 'officiating' when he was appointed on ad hoc basis as Turner Grade-III w.e.f. 6.9.88 which was later confirmed on 1.1.1989 cannot be accepted in terms of the Rule 312 of the IREM. The relevant portion of Rule 312 provide as follows:-

" The seniority of Railway servants transferred at their own request from one railway to another should be allotted below that of the existing, confirmed, temporary and officiating railway servants in the relevant grade in the promotion group in the new establishment irrespective of the date of confirmation or length of officiation or temporary service of the transferred railway servants."

Admittedly, respondent 3 had been promoted to officiate

13

on ad hoc and local basis as Turner Grade-III in the Delhi Division w.e.f. 6.9.88 and was later confirmed on the same post on 1.1.89. As the rule does not provide that person transferred to another Division at his own request has to be placed below that of ad hoc appointee in that grade, we are unable to agree with the contention of Sh.Sawhney, learned counsel, that respondent 3 will rank senior to the applicant. Having regard to the rule position and the orders in this case, we further find that the action of Respondents 1-2 in passing the order dated 11.7.97, restoring the seniority of applicant at Sl.No.20 and placing Sh.Jai Ram, respondent 3, at Sl.No.21 in the revised seniority list of Diesel Turner Grade-III is in order.

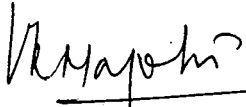
9. One of the reliefs prayed for by the applicant is for a direction to the respondents to promote him as Diesel Turner Grade 1200-1800 (RPS 4000-6000) on his passing trade test, admittedly, from the date of promotion of Sh.Jai Ram, respondent 3, with consequential benefits, as explained in Paragraph 6 above. In the circumstances of the case, we accept the contention of the learned counsel for the applicant that the word 'without' appearing in the relief clause is a typographical mistake and logically it has to be read as 'with' consequential benefits. In this context, the order of Respondents 1-2 dated 23.4.99 giving applicant's proforma fixation in the grade of Turner-II w.e.f. 13.1.97 i.e. from the date his junior Respondent 3 was promoted in that grade cannot be accepted. The reason for the late issuance of proforma <sup>13</sup> fixation of the applicant to Turner Grade-II by notice dated 23.4.99, as a consequence of the earlier wrong action of Respondents 1-2 cannot be attributed to the applicant. The judgement and observations of the Hon'ble Supreme Court in UOI and Ors. Vs. K.V. Jankiraman (1991(4)SC 109 of para 24) is also fully applicable to the facts of this case.


10. In the circumstances <sup>of the case</sup>, we find merit in the contentions of Sh.Mehra, learned counsel, that the applicant is entitled

for promotion to the post of Turner Grade-II w.e.f. 13.1.97, that is, the date when his junior, Sh.Jai Ram, respondent 3 was promoted in that grade and he should also be entitled to all consequential benefits, including pay and allowances from that date till 17.11.97. He has taken over that post ~~post~~ on 17.11.97. In other words, the applicant shall be entitled to the difference of pay in the higher post of Turner Grade-II from 13.1.97 till 17.11.97. In the facts and circumstances of the case, the claim for interest for this period is liable to be rejected.

11. In the result for the reasons given above, the OA succeeds and is allowed <sup>to</sup> the following directions:-

- (i) The order passed by respondent 2 dated 23.4.99 is modified to the extent that the applicant shall be entitled to the difference in pay and allowance in the higher post of Turner Grade-II w.e.f. 13.1.97 to 17.11.97 in accordance with the rules;
- (ii) The above necessary action shall be taken within two months from the date of receipt of a copy of this order;
- (iii) The claim for interest is rejected;
- (iv) Parties to bear their own costs.

  
(V.K.Majotra )  
Member (A)

  
(Smt.Lakshmi Swaminathan )  
Member (J)

sk