

Central Administrative Tribunal, Principal Bench

Original Application No. 1587 of 2000

New Delhi, this the 30th day of March, 2001

Hon'ble Mr.V.K.Majotra, Member (Admnv)
Hon'ble Mr.Shanker Raju, Member(J)

Shri Mahinder Kumar, son of Shri Radha
Krishan, r/o E-64-A, Gali No.3, Vijay Chowk,
Laxmi Nagar, Delhi. - Applicant

(By Advocate Shri A.K.Kaushik)

Versus

1. Union of India, Ministry of Railways
through its General Manager, Northern
Railways, Baroda House, New Delhi.

2. Shri R.P.Duggal, Chief Goods Supervisor,
Railway Mall Godown, Northern Railway,
Ghaziabad. - Respondents

(Respondent 1 by Advocate Shri D.S.Jagotra
Respondent 2 by Advocate Shri S.K.Sawhney)

O R D E R

By V.K.Majotra, Member(Admnv) -

The applicant has filed this application
against action of respondent 1 General Manager, Northern
Railways in according higher seniority to respondent 2
Shri R.P.Duggal vis-a-vis applicant.

2. According to applicant, he was appointed in
the Railways as a Goods Clerk on 10.4.1964 at Delhi
Division. He is currently posted at Ghaziabad since
9.1.1998 as Chief Goods Supervisor (for short 'CGS').
Respondent 2 Shri R.P.Duggal, according to applicant,
was appointed in the Railways on 20.6.1963 at Ferozpur
Division. In 1972 respondent 2 exchanged his place with
one Shri Dewan Singh to Delhi Division. Shri Dewan
Singh according to him was appointed in 1967. According
to applicant as per Railway Board's Circular dated
21.1.1986 on the subject of 'Seniority on Mutual
Exchange (Transfer)' (Annexure-P-1) seniority of Shri
Duggal should be counted from the year 1967 instead of
from 20.6.1963 when he was appointed in Ferozpur
Division. According to applicant he made

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representations Annexures P-2 to P-8 between 17.7.1999 to 25.1.2000 challenging seniority of Shri Duggal but to no avail. Applicant filed a writ petition before Hon'ble Delhi High Court which according to him was returned to him for raising the matter before this Tribunal. The applicant has sought direction to respondents to decide about his seniority as per relevant rules, and a declaration that he is senior to respondent 2 Shri R.P.Duggal.

3. According to official respondent, respondent 2 was appointed on 20.4.1963 and was transferred to Ferozpur Division on 14.10.1967 in exchange with one Shri Mohinder Singh, who was senior to him. Respondent 2 again returned to Delhi Division after mutual exchange with Shri Dewan Singh on 13.1.1972. As Shri Dewan Singh was appointed on 28.7.1960 vis-a-vis respondent 2's appointment on 20.4.1963, respondent 2 was entitled to his seniority with effect from 20.4.1963 under the relevant instructions. This respondent has raised objection relating to territorial jurisdiction of this Bench. According to this respondent when a Railway servant is transferred on mutual exchange from one cadre of a Division to another Division of his Railway, he shall get his seniority on the basis of date of promotion to the grade or take the seniority of the Railway servant with whom he has exchanged, whichever of the two is lower, in other words the senior will get seniority over him ^{with whom he} he has exchanged and junior will retain his own original seniority.

4. Respondent 2 in his counter has stated that whereas applicant was appointed on 11.4.1964, he was appointed on 20.4.1963. His mutual exchange on transfer was with persons senior to him. Thus, he was entitled

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to retain his own seniority as per his own date of appointment. According to this respondent he was promoted to the scale of Rs.4000-6000 on 1.1.1984, while the applicant was promoted on 9.9.1982. Further the applicant was promoted to the scale of Rs.5000-8000 on 15.8.1992 while respondent 2 was promoted on 11.7.1991. Even in the next scale of Rs.5500-9900 the applicant was promoted on 1.1.1996 and respondent 2 on 27.12.1995. According to this respondent 2 this OA is time barred. This respondent was transferred to Delhi Division from Ferozpur Division on 13.1.1972 on mutual exchange with one Shri Dewan Singh, the date of appointment of Shri Dewan Singh was 29.7.1960 and not 1967 as alleged.

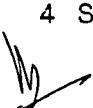
5. We have heard learned counsel of parties and perused material on record.

6. The first issue before us is whether this Tribunal has jurisdiction to entertain present OA. Whereas applicant is at present working as CGS at Ghaziabad since 9.1.1998, respondents have objected to territorial jurisdiction of this Bench over this OA. Respondent 2 has filed Annexure-R-1 which is seniority list of CGS of Delhi Division which has been issued on 22.1.1999 by the DRM, Northern Railway, New Delhi assigning higher seniority to respondent 2 vis-a-vis applicant. Basically, applicant has challenged action of the respondents in giving higher seniority to respondent 2 against his claim. When the seniority list of CGS which is the post held by applicant and respondent 2 is issued by the Divisional Office, New Delhi, even if applicant is currently posted at Ghaziabad since 9.1.1998, the cause of action for which applicant has been aggrieved is deemed to have arisen at Delhi i.e. the seat of the Principal Bench of CAT and under the provisions of Rule 6 of Central Administrative

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Tribunal (Procedure) Rules, 1987, this Bench certainly has jurisdiction over the matter. The objection relating to territorial jurisdiction of this Bench over this OA raised by the respondents is accordingly rejected.

7. The respondents have next raised the issue of limitation stating that whereas respondent 2 exchanged places with Shri Dewan Singh on 13.1.1972 to Delhi Division, thereafter he was promoted in the scale of Rs.4000-6000 on 9.9.1982, in the scale of Rs.5000-8000 on 11.7.1991 and in the scale of Rs.5500-9000 on 27.12.1995. On the other hand, applicant was promoted in afore-stated scales on 1.1.1984, 15.8.1992 and 1.1.1996 respectively. Respondent 2 was also initially appointed on 22.4.1963. Not only that respondent 2 Shri R.P.Duggal has been senior to applicant in the matter of initial date of appointment, his promotions stated above have been prior to those of the applicant. The applicant has never raised objection to the earlier promotions of respondent 2. The representations referred to by the applicant were made only after 17.7.1999 which means that he raised issue of his seniority vis-a-vis respondent 2 after an inordinate delay of several years. The applicant's claim is certainly hit by delay and laches. He chose to sleep over his rights and remedies for an inordinately long time. Such a delay and neglect of rights does not cure laches. We are fortified in our view by the ratio laid down by the Hon'ble Supreme Court in the cases of Ex.Capt. Harish Uppal Vs. Union of India and others, JT 1994 (3) SC 126 and K.R.Mudgal Vs. R.P.Singh, (1996) 4 SCC 531.



8. The learned counsel of applicant referred to one decision of the respondents dated 26/27.7.2000 stating that incorrect seniority assigned to Shri R.P.Duggal, after his mutual transfer to Delhi Division from Ferozpur Division was admitted by the authorities. The learned counsel of respondents stated that applicant cannot be allowed to refer to any such documents which has not been filed properly till now. Even otherwise we have seen that this document appears to be a copy of an item of agenda of JCM in which the decision was to explore the possibility of posting of Shri Mohinder Singh to Ghaziabad or adjoining station. In our view this has no relevance to the facts of the present case. Para 310 of IREM Vol.1 is relevant to the facts of the present case, which is reproduced below:-

"310. Mutual Exchange.- Railway servants transferred on mutual exchange from one cadre of a division, office or railway to the corresponding cadre in another division, office or railway shall their seniority on the basis of the date of promotion to the grade or take the seniority of the railway servants with whom they have exchanged, whichever of the two may be lower."

We are in agreement with learned counsel of respondents that correct interpretation of this provision is that when a Railway servant is transferred on mutual exchange from one cadre of a division, office or Railway to the corresponding cadre in another division office or Railway shall get his seniority on the basis of the date of promotion to the Grade or take the seniority of Rly.servant with whom he has exchanged whichever of the two may be lower. In other words the senior will get the seniority with whom he has exchanged and junior will retain his own original seniority.

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9. Not only that the present application is barred by limitation, it has also no merit and as such respondent 2 had been accorded correct seniority in terms of para 310 ibid.

10. In the result, the O.A. is dismissed, however, without any order as to costs.

S. Raju
(Shanker Raju)
Member (J)

V.K. Majotra
(V.K. Majotra)
Member (Admnv)

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