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Central Administrative Tribunal
Principal Bench

OA No.1673/2004

New Delhi this the 12th day of August, 2005.

Hon'ble Mr. V.K. Majotra, Vice-Chairman (A)
Hon'ble Mr. Shanker Raju, Member (J)

Smt. Mamta Sharma
Head Clerk
Statistical Branch,
Western Railway Accounts Office,
Delhi Kishan Ganj,
Delhi.

...Applicant

(By Advocate: Shri B.S. Maine)

-versus-

Union of India through

1. The General Manager,
Western Railway,
Church Gate,
Mumbai (Maharashtra).
2. The FA&CAO(T),
Western Railway,
Church Gate,
Mumbai (Maharashtra).
3. The Dy. Chief Accounts Officer (TA),
Western Railway,
DRM Campus,
Mall Road,
Ajmer (Rajasthan).
4. The Asstt. Finance Officer (FTA),
Statistical Branch,
Western Railway,
Delhi Kishan Ganj,
Delhi.

(By Advocate: Shri R.L. Dhawan)

5. Smt. Pramod Jain,
w/o Late Sh. Hira Lal Jain,
Head Clerk, Western Railway,
Account Office,
Delhi Kishanganj,
Delhi.

6. Smt. Kanta Chaturvedi,
W/o Shri Dilip Chaturvedi,
Head Clerk,
Western Railway Accounts office,
Delhi Kishan Ganj,
Delhi.

7. Smt. Nirmala Guler,
w/o Shri N.S. Guler,
Head Clerk,
Western Railway Accounts office,
Delhi Kishan Ganj,
Delhi.

...Respondents

(By Advocate: Shri D.P. Sharma)

O R D E R (ORAL)

Mr. Shanker Raju, Member (J):

By virtue of this application applicant impugns seniority list of Head Clerks issued on 3.9.2003, whereby she has been placed below respondents 5-7.

2. Applicant was appointed directly as Senior Clerk and was promoted on ad hoc basis as Head Clerk on 1.1.94 and on regular basis w.e.f. 3.9.96.

3. While working as regular Head Clerk applicant applied for transfer to Delhi by mutual exchange from Ajmer with one Shri Poosa Ram, who was working as Head Clerk, which was rejected on the ground that applicant was working on ad hoc basis as such mutual exchange is not possible. However, apprising that she has been working on regular basis as Head Clerk on

acceptance of mutual exchange applicant resumed her duties on 30.9.96. Shri Poosa Ram having joined as Head Clerk at Ajmer filed OA-426/98 challenged his reversion order dated 17.11.98 from Head Clerk to Senior Clerk. The aforesaid OA was partly allowed on 28.8.2001 with a direction to transfer applicant to Delhi on his cost in the same cadre. However, the following observations have been made with regard to applicant herein Smt. Mamta Sharma in the order:

"8. Considering the facts and circumstances of the case, we are of the opinion that the applicant does not deserve to be retained at Ajmer even as a request transfers case. He deserves to be sent back to Delhi on the same post on which he was working at the time of his mutual transfer, at his own expenses. We are also of the opinion that in this mutual transfer, Smt. Mamta Sharma, is not to be blamed for any reason whatsoever. Therefore, cancellation of applicant's mutual transfer and sending him back to Delhi Kishanganj, Delhi, should in no way adversely affect Smt. Mamta Sharma, respondent No.5."

4. However, on 2.7.99 on initiation of selection for next higher post of Chief Clerk applicant was not called and the juniors had been called, which resulted in a representation. This was responded to on 9.7.99 by the respondents holding that applicant who was transferred on mutual exchange basis with Poosa Ram, who has been working on ad hoc basis, applicant would be treated as ad hoc.

5. On 29.3.2001 applicant was regularized as Head Clerk w.e.f. 22.3.2000 and by a letter dated 19.6.2003 purportedly on the instructions of headquarters applicant was repatriated as Senior Clerk and had been promoted as Head Clerk on ad hoc

basis. The impugned seniority list shows name of applicant junior to respondents 5 to 7 who had been promoted in the year 2001. Applicant represented against the seniority list, which when not responded to by the respondents led to filing of the present OA.

6. Learned counsel for applicant stated that despite mutual transfer the categorical finding of the Tribunal and the cancellation of applicant's mutual transfer would in no way adversely affect applicant cannot have an effect of treating her on ad hoc basis and in the seniority as per mutual exchange and otherwise as well applicant having regularly appointed as Head Clerk on 3.9.96 whereas respondents 5-8 had been appointed on regular basis in 2001 relegation of applicant in the seniority without opportunity is against law.

7. The official respondents represented through Shri R.L. Dhawan opposed the contentions and stated that in the wake of mutual transfer which was not allowed as Poosa Ram was working on ad hoc basis as Head Clerk the transfer was converted into request basis and as per paragraph 312 of the Indian Railway Establishment Manual Volume-I on transfer request applicant has been rightly placed below respondents 5-7, who have been working on ad hoc basis, though regularized subsequently earlier to regularisation of applicant.

8. Shri D.P. Sharma, learned counsel for private respondents re-iterated the aforesaid plea by referring to the provisions of IREM (supra).

9. We have carefully considered the rival contentions of the parties and perused the material on record.

10. It is trite law that a direction of the Tribunal, which is neither modified, reversed or annulled is binding on administrative authorities. Be that as it may, the nomenclature of the transfer though mutual which has been wrongly treated as request by the respondents without affording an opportunity to applicant and the fact that seniority has been relegated below the juniors, in the matter of regular promotion as Head Clerk not only offends the ratio of the Apex Court in **Vinod Kumar Sharma v. State of U.P.**, (2001) 4 SCC 674 and also **Pratul Kumar v. State of Orissa**, (2004) SCC (L&S) 121 but also against the true letter and spirit of the order passed by the Tribunal in OA-426/98 dated 28.8.2001 where after recording the fact that the authorities on discovery of ad hoc status of Poosa Ram should have been sent back to the parent cadre at Delhi, bottom seniority in the cadre of Senior Clerk to Poosa Ram at Ajmer would not lose his seniority and the finding that in the mutual transfer applicant is not to be blamed for any reason and a blanket protection given to her that in cancellation of mutual transfer and sending back applicant to Delhi in no way adversely affect applicant not only includes her status as Head Clerk but also seniority.

11. Moreover, the Tribunal has never asked the respondents to treat the mutual transfer as request transfer. The respondents on their own volition have done this, without affording an

opportunity to applicant. The act of the respondents not only had an effect of changing the status and regularisation of applicant as Head Clerk but also prejudiced her rights adversely, causing civil consequences, which cannot be ensued without following the due process of law.

12. In the case of mutual transfer as per paragraph 310 of IREM on mutual exchange the seniority is to be governed on the basis of date of promotion with the other in the matter of seniority of Railway servants. Respondents 5-7 who were not even regularized at the time when transfer had taken place and were regularized in 2001, applicant who was regularized in 1996 would not lose her seniority and we have no hesitation to hold that the impugned seniority list, showing respondents 5-7 as senior to applicant is not only against the rules but also against the dicta passed by the Tribunal.

13. In the result, for the foregoing reasons, OA is allowed. Impugned orders are set aside. Respondents are directed to assign correct and proper seniority to applicant in the cadre of Head Clerk, reckoning the regularisation from 1996, with all consequential benefits, within a period of two months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member(J)

'San.'

V.K. Majotra
(V.K. Majotra) 12.8.05
Vice-Chairman(A)