

V

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA NO. 1723/2004

This the 4th day of January, 2007

**HON'BLE MR. SHANKER RAJU, MEMBER (J)
HON'BLE MRS. CHITRA CHOPRA, MEMBER (A)**

Sh. G.S.Gupta,
S/o Sh. J.S.Gupta,
Aged about 46 years,
R/o 5/58B, NIT, Faridabad, Haryana,
And working as S.SE (Works) under
Northern Railway (Delhi Division)
Presently posted at Tuglakabad,
Delhi.

(By Advocate: Sh. S.S.Tiwari)

Versus

1. Union of India through
General Manager, Northern Railway,
Baroda House, New Delhi.
2. Joint Director (Estt) (N.G.)
Rail Bhawan,
New Delhi.
3. Divisional Railway Manager (N.R.)
DRM Office,
New Delhi Railway Station,
New Delhi.
4. Assistant Personal Officer (Engineering)
N.R., Delhi Division,
DRM Office, New Delhi Railway Station,
New Delhi.

(By Advocate: Ms. S.Chatterjee with Sh. A.K.Shukla)

ORDER (ORAL)

Hon'ble Sh. Shunker Raju, Member (J)

Heard the learned counsel.

2. In the matter of service grievance and redressal thereof by the Government sometimes prejudices a Government employee when not acted upon in its true perspective. Public functionary using discrimination is obligated upon to act judiciously.

3. In the above aspect of the matter applicant who has been working in the scale of Rs.7450-11500 has requested in the wake of options called on divisionalisation of Railways in 1996 for transfer to Delhi Division. This has been extended till 1.4.2003. It has been reiterated that his transfer under the scheme would not entail any loss of seniority and others who join after 1.4.2003 on the basis of the transfer their seniority would have to be placed at the bottom. As applicant has applied for the aforesaid under the scheme, the respondents vide their communication dated 20.10.2003 giving reference to DRMs letter dated 20.10.2003 extended option to the applicant to be transferred in a lower pay scale of Rs.6500-10500.

4. It appears that after this letter was issued by DRM vide communication dated 21.10.2003 taking cognizance of the request of the applicant to be transferred in a lower pay scale had also recommended at the request of the applicant for consideration of not only protection of pay scale but also protection of the seniority. The aforesaid has been submitted by the office for the decision by the competent authority accordingly a letter written by the applicant on 21.10.2003 accepted his transfer to the lower scale as per the application made on 10.10.2003. Learned counsel for the applicant, at this stage, stated that as the scheme of divisionalisation has been extended vide Railway Board letter dated 19.7.2002 applicant who had been transferred on 29.10.2003, the rule of being accorded bottom seniority would not apply to him. Counsel also stated the option of the applicant was wrong as merger of Jhansi in Delhi Division pertained to only Tuglakabad and Palwal. It is also stated that once the transfer has been done on a wrong premise and on a mistake committed by the respondents, applicant should not be allowed to suffer in so far as orders of this Tribunal whereas in other divisions the seniority in the equivalent grade and pay scale has been protected applicant has been prejudiced not only in the matter of lower scale but also seniority in the erstwhile grade. Learned counsel would also state that though he had opted for the lower pay scale but has not forgone his request

of protection of seniority and protection of pay scale and such a request made immediately after a letter written on 10.10.2003 having not been considered in its true perspective. The action of the respondents is not in consonance with the law.

5. On the other hand, learned counsel for respondents opposed the contention but on our pointing out whether any consideration made thereof on the representation made by the applicant as of protection of seniority and the pay scale as well, no satisfactory reply has come forth and nothing has been brought on record for perusal as an order which would have indicated that finality has been arrived at. Though it is not fair that after the admission of the matter and when the matter has been finally heard to remand the case back to the respondents for deciding the representation that would be shirking away from the responsibility of a judicial finding yet in the circumstances we are of the view that balance has to be struck in so far as mistake, if any, committed by the respondents which would not deprive the applicant of his legitimate right of pay scale and seniority. On the other hand applicant's own volition to accept the pay scale, the interregnum when he had worked on the lower pay scale would have no entitlement to the higher pay scale on the representation.

6. If it is decided by the respondents to do away with the transfer of the applicant and to restore the original position other benefits would accrue.

7. In the light of above, OA stands disposed of with a direction to the respondents to consider the pending representation of the applicant and to treat the present OA as a supplementary representation made by the applicant for consideration of higher pay scale and protection of seniority by a detailed order to be passed within three months from the date of receipt of a copy of this order.

No costs.

Chitra Chopra

(CHITRA CHOPRA)
Member (A)

S. Raju

(SHANKER RAJU)
Member (J)