

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 510/2001

Date of Decision 19/7

P.K. Pandey & ors.

Applicant(s)

Sri S. Agarwal

Counsel for the
Applicant(s)

V E R S U S

Union of India & ors.

Respondents(s)

Sri I.R. Singh

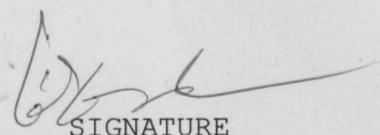
Counsel for the
Respondents(s)

CORAM :

Hon'ble Mr. D.R. Tiwari Member (A)

Hon'ble Mr. HBS Rayan Member (J)

1. Whether Reporters of local News Papers may be allowed to seen the Judgment?
2. To be referred to the Reporters or not?
3. Whether their Lordship wish to see the fair copy of the judgment.
4. Whether to be circulated to all the Benches.


SIGNATURE

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Allahabad this the 12th day of September, 2005.

Original Application No. 510 of 2001.

Hon'ble Mr. D.R. Tiwari, Member-A
Hon'ble Mr. K.B.S. Rajan, Member-J

1. Parveen Kumar Pandey S/o Sri Y.N Pandey posted as Junior Engineer (Works) Grade-II, in the office of Dy. Chief Engineer Construction N.R. Allahabad.
2. Manish Kumar Srivastava, Son of Sri R.N.L. Srivastava, posted as Junior Engineer (Works)/Grade-II, In the office of Deputy Chief Engineer Constructions, N.R Allahabad.
3. Ashok Kumar Shukla son of Sri Nankoo Ram Shukla presently Posted as Junior Engineer (Works)/Grade-II, in the office of Section Engineer/Works/Line, Allahabad.

.....Petitioners.

(By Advocate : Sri S. Agarwal)

Versus.

1. Union of India through the General Manager, N.R Baroda House, New Delhi.
2. The General Manager, Northern Railway, Baroda House, New Delhi.
3. The Divisional Railway Manager Northern Railway, New Delhi.
4. The Divisional Personnel Officer, Northern Railway, Allahabad.
5. The Deputy Chief Engineer (Construction) Northern Railway, Allahabad.
6. Sri Vinay Kumar Singh, Junior Engineer (Construction) Gr. 'II' in the office of Dy. Chief Engineer Construction N.R. Allahabad.

.....Respondents

(By Advocate: Sri R.C. Joshi/Sri I.R. Singh)

O R D E R

By Hon'ble Mr. K.B.S. Rajan, Member-J

The question involved is whether para 310 of the I.R.E.M. applies in this case or not.

2. Before plunging into the facts of the case, a look at the above provision would be useful. The same is as under:-



"310 Mutual Exchange: The Railway servants transferred on Mutual exchange from one cadre to a division Office or Railway to the corresponding Cadre in another Division, Office or Railway shall have their seniority on the basis of the date of promotion to the Grade or take seniority of the Railway servant with whom they have been exchanged, whichever may be lower."

Now the facts.

3. One Shri A.K. Saddi, admittedly senior to the applicants in the grade of Junior Engineer sought for a mutual exchange with one Shri Vinai Kumar Singh (Resp. 6) and the same has been allowed. The seniority position of the applicants and the said Saddi as spelt out in seniority list of 16-01-1995 is given in the following table:-

Name	Date of order sending for training	Position in merit after completion of 10 years	Date of joining	Position in working post	Position in seniority list dated 16.1.1995	Position in seniority list dated 28.6.1999 read with the impugned orders.
Applicant No.1	15.3.1991 (w.e.f. 11.3.1991) (Annx.4)	9	29.6.92	25		7
Applicant NO.2	3.4.1991 (Annx.5)	16	29.6.92	30		11
Applicant No.3	27.3.1991 (Annx.5)	24	29.6.92	34		16
Respondent No.6	17.5.1991	21	2.7.92	N.A.		6A
A.K. Saddi	23.5.1991	8	---	24		N.A

4. The date of joining of the respondents is as given by the applicants themselves is 02-07-1992 while the applicants and the said Saddi joined their duties as on 29-06-1992.

[Signature]

5. The respondents, while revising the seniority list of Junior Engineers had placed the applicants below Respondent No. 6, who had in fact substituted the name of the said Saddi who had got the mutual exchange with him as stated above.

6. The applicants are aggrieved by the above seniority position of Shri Saddi and hence this OA.

7. The contention of the applicants is summarized as under:-

"Legal Submissions

- (i) Under para 303 of IREM Vol.1, the candidates recruited through Railway Recruitment Board, their inter-se seniority is to be determined in the order of merit obtained in the examination held at the end of the training period. Accordingly, the applicants and Sri A.K. Saddi's seniority was determined under para 302 read with para 303 of the Manual at Allahabad and the respondent NO.6 must have been assigned the seniority in the similar manner in Ambala Division.
- (ii) Para 310 says where there is a mutual exchange, the person who has come under transfer will have seniority on the basis of date of promotion to the grade or shall take seniority of Railway servant with whom it has been exchanged whichever of the two is lower. If para 310 is applied since the respondent NO.6 joined the working post on 2nd July 1992 while the applicants joined working post on 29th June, 1992 which is the date for seniority under para 302 also and the said date being lower, the respondent NO.6 is liable to be placed in seniority below the applicants. However, the applicants respectfully submits that para 310 is not applicable. In the present case since the respondent NO.6 was not transferred after promotion but has been transferred while working in the initial grade itself although para 310 is applicable where one of the reckoning point of seniority is the date of promotion which is not applicable. In the circumstances, the seniority of the applicants qua respondent NO.6 could have been determined with reference to para 302 and 303 read with para 312 of IREM (I).
- (iii) The Chief Administrative Officer in his letter dated 10th August 2000 also admitted this position that on the basis of merit position or the length of service, the applicants are seniority to Shri Vinay Kumar Singh, respondent NO.6. In the circumstances, there



was no occasion for placing the respondent No.6 over and above the applicants.

(iv) The respondents in para 19 & 21 have stated that in the present case the seniority is to be governed as per Para 303 of the IREM which clearly provides seniority on the basis of merit position that is so admittedly the respondent NO.6 could not have been placed above the applicants No.1 and 2. Since their merit position is 9 and 14 while the respondent No.6 as the merit position is 21 and if the best the respondent NO.6 could have been placed in the seniority over the applicant NO.3. However, since the seniority is division based and the respondent NO.6 has come on mutual transfer and the impugned order shows that the seniority of the respondent NO.6 was to be determined under para 310, thus on the basis of the date of appointment only the seniority could have been determined and the respondent NO.6 could not have been placed over and above from any of the applicants at all. The respondent NO.6 cannot make out a new case in the counter affidavit which is contrary to the impugned orders. Since para 310 clearly provides that out of two contingencies whichever is lower will govern the seniority, the respondent NO.6 is clearly junior to the applicants and has wrongly been assigned seniority over the applicants, hence the impugned orders are liable to be set aside.

(v) The respondent NO.6 has also filed his counter affidavit and he has also not disputed the various factual averments regarding the date of joining, merit position etc. but in para 23 he also claims that the seniority of the respondent NO.6 qua the applicants is liable to be determined under para 303. This itself shows that the placement of respondent NO.6 over the applicants No.1 and 2 on the admitted position by the respondent NO.6 is incorrect and, therefore, the impugned orders are liable to be set aside."

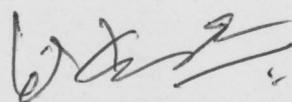
8. The question is whether the case is covered under para 303 or 310 IREM.

9. Para 303 deals with inter se seniority which is related with only a particular Division or Zone and cannot be extended to another Division or Zone. Whereas the selection of applicant and the said Saddi was on the basis of the examination conducted by RRB Allahabad, that of Shri Vinai Kumar Singh, respondent No. 6 had been through the RRB,

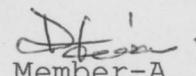
Chandigarh. Hence, it is inconceivable that there could be any inter se seniority between the applicants on the one hand and respondent No. 6 on the other hand. Hence, Para 303 of IREM does not apply to this case at all.

10. Now, telescoping the provisions of Para 310, it would be seen that both Shri A.K. Saddi and Respondent No. 6 had been permitted specifically under this para for mutual exchange. This is the admitted position. Hence, the agreement between the parties concerned is that the individuals mutually exchange their position. In case respondent No. 6 was in a lower position in seniority in his division or Railway, and Shri A.K. Saddi in a higher position, the said Saddi waived his seniority position and accepted the lower position which was occupied by Respondent No. 6. In so far as the applicants are concerned, they had one individual Shri Saddi above them and now that Shri Saddi had been replaced by Respondent No. 6. Nothing less; nothing else. And this mutual exchange being admissible under Para 310, there can be no illegality in such exchange of position.

11. Thus, the applicants having failed to make out a case, the OA is dismissed; but with no cost.



Member-J



Member-A

Manish/-