

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

THIS THE 21. DAY OF July, 2011

**HON'BLE MR. JUSTICE S. C. SHARMA, MEMBER (J)
HON'BLE MR. D. C. LAKHA, MEMBER (A)**

Original Application No. 1614 OF 2005
(U/S 19, Administrative Tribunal Act, 1985)

Dinesh Kumar Datley, aged about 51 years,
Son of Late Dr. Rameshwar Datley, Resident of 116,
Mohalla Vidraj, Jhansi.

.....Applicant

VERSUS

1. Union of India, through General Manager, North Central Railway, Allahabad.
2. Divisional Railway Manager, North Central Railway, Jhansi Division, Jhansi.
3. Senior Divisional Personnel Officer, North Central Railway, Jhansi Division, Jhansi.

.....Respondents

Present for the Applicant: Sri A. K. Srivastava

Present for the Respondents: Sri B. Tiwari

ORDER

Delivered By HON'BLE MR. JUSTICE S. C. SHARMA, MEMBER (J)

Instant O.A. has been instituted for giving a direction to the respondents to fix the seniority position of the applicant below all these confirmed and officiating staff who were working in Jhansi Division in Grade



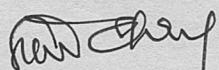
Rs.1400-2300, now Rs.5000-8000, and not below the temporary staff with effect from the date applicant reported on duty on transfer from Bombay Division. Further prayer has also been made for giving a direction to the respondents to grant the applicant grade Rs.1400-2300 now Rs.5000-8000 with effect from the date applicant reported on duty on transfer from Bombay Division, such as the applicant was on grade Rs.1400-2300, now Rs.5000-8000 permanently w.e.f. 1989 at Bombay Division. Further prayer has also been made for giving a direction to pay the differences of salary as per chart given as Annexure-6 & 6-A to this Original Application alongwith interest rate of Rs.18% per annum.

2. The facts of the case may be summarized as follows:-

That the applicant was recruited as Commercial Clerk by the Railway Service Commission and was posted at Bombay in the Bombay division of the Central Railway on 01st February, 1998. Due to the fact that his parents had been living at Jhansi, the applicant requested for his transfer to Jhansi and got his name registered on 08th March, 1978. That at the time of initial appointment at



Bombay the applicant was placed in grade Rs.260-430/- which was revised to Rs.975-1540/-, thereafter, now it is Rs.4,000-6,000/-. That the applicant was transferred to Jhansi after a long time although, there were vacancies at Jhansi and number of persons were transferred. That the persons junior to the applicant in service and were registered for transfer and they were transferred to Jhansi or Nagpur division earlier to that of the applicant out of turn on the bottom seniority of the same grade on which they were at Bombay division. The applicant was transferred from Bombay to Jhansi vide order dated 03rd April, 1992 and at the time of transfer from Bombay to Jhansi the applicant was working as head Booking Clerk in grade Rs.1,400-2,300/- which is now 5,000-8,000/-. Whereas, the applicant was transferred to Jhansi from Bombay in lowest grade Rs.975-1,540 now Rs.4,000-6,000/- i.e the initial grade of the applicant at the time of appointment. No order was passed for protection of the pay of the applicant. That the transfer of the applicant has been made after 14 years from the date of request for transfer, and it is arbitrary and illegal act of the respondents. Incase a staff is transferred on his own request from one division to another division then he



should be placed below all existing confirmed and officiating staff in the relevant grade in the promotion group in the new establishment and the applicant ought to have been transferred according to that rule. The applicant applied for his transfer to Jhansi when the rule was in force. That the applicant will be entitled for protection of his pay and the Hon'ble Apex Court held in its judgment as well as in Rule 312 of the IREM provides the same. That the applicant had drawn his last basic Rs.1,480/- in the grade of Rs.1,400-2,300/- but he had been paid basic salary only Rs.1,360/- and there is a difference of Rs.120/- per month of basic salary, and it was due to the fault of the respondents the applicant suffered a monetary loss for not granting any pay protection. The applicant had completed more than 25 years of service, but his case has not been considered for A.C.P. whereas, the applicant is entitled for two more higher grade. After putting 14 years in service the applicant gained achieved promotion, but he has been placed in the initial grade of pay. For the last 14 years applicant had been enjoying and availing all higher grade, but now he has made to suffer financially also. He has also been deprived from the A.C.P. benefit.



3. Respondents contested the case and filed the Counter Reply. It has further been alleged that the O.A. is highly time barred and not maintainable. That the applicant joined in the Jhansi division in the year 1992. That the inter division transfer cannot be claimed as a matter of right. The applicant placed at the bottom seniority as per rules. It has wrongly been alleged that the transfer was made by the respondents as per their whims, but the transfer has been made at the request of the applicant and the request of transfer was never withdrawn by the applicant. No such protest was made by the applicant at the time of his transfer, hence the transfer is neither illegal nor arbitrary, but it was at the request of the applicant. The circular of the Railway Board dated 26th August, 1999 is not applicable to the facts of the case of the applicant, because the applicant had already been transferred in the year 1992. The applicant had accepted the bottom seniority and the period of 12 years and 24 years service will be counted from the date of joining at Jhansi. The applicant has been given bottom seniority as per existing rules. It has also been alleged by the respondents that the O.A. is

A handwritten signature in black ink, appearing to read "W. Chary".

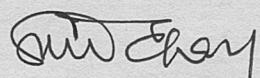
barred by the principle of *res-judicata* as earlier an O.A. No.127 of 1996 was filed for the same relief and that O.A. was decided on 19th February, 2002. At Jhansi applicant was promoted. The willingness was given by the applicant in order to transfer him at Jhansi, but further request has been made for detaining him at Bombay till April, 1993, annexure-3 is the copy of the application of the applicant. The request of the applicant for fixation of his salary in the grade of Rs.1,400-2,300/- had already been rejected. That the O.A. lacks merits and liable to be dismissed.

4. We have heard Mr. A. K. Srivastava, Advocate for the applicant and Mr. B. Tiwari, Advocate for the respondents and perused the entire facts of the case. Undisputedly, the applicant was selected and posted as Commercial Clerk at Bombay on 01st February, 1978. As there was some family problem to the applicant while working at Bomaby hence he made a request for his transfer at Jhansi Division and this request was made on 08th March, 1978. In pursuance of the request of the applicant he was transferred to Jhansi division on 03rd April, 1992. It has been alleged by the applicant that

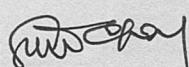


since his joining at Bombay as Commercial Clerk in the grade of Rs.260-430/- which was revised to Rs.975-1540/-, thereafter, now it is Rs.4,000-6,000/- and he was promoted in the higher grade of Rs.1,200-2,040 now Rs.4,500-7,000/- w.e.f. 01st January, 1984 and, thereafter, in the grade of Rs.5,000-8,000/- w.e.f. 1989. In pursuance of the Transfer order the applicant joined at Jhansi division and accepting the bottom seniority in the grade of Rs.1,400-2,300/- now Rs.5,000-8,000/- and he was placed in the initially grade of Commercial Clerk of Rs.975 to 1540/- now Rs.4,000-6,000/-. That the applicant was transferred on his own request after a delay of 13 years and the applicant is not at all responsible for this delay, rather the respondents are responsible for this delay financial as well as promotional loss has been caused to the applicant. That as per rules the applicant ought to have been given the bottom seniority in the scale of Head Clerk in Rs.1,400-2,300/- now Rs.5,000-8,000/-.

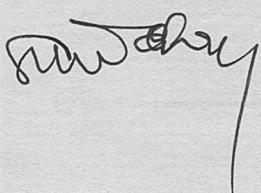
5. It has been alleged by the respondents that inter-division transfer is not a matter of right, but in view of para 312 of IREM if an employee has been transferred



from one division to another division then he is to be placed at the bottom seniority. It has been provided in para 312 of IREM "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 officiating or temporary service of the transferred railway servants." The main contention of the learned counsel for the respondents is that applicant made a request for his inter divisional transfer from Bombay division to Jhansi division in the year 1978 and at that time the applicant was in the scale of Rs.975-1540 now Rs.4,000-6,000/-, the request for transfer of the applicant was materialized in the year 1992 earlier to that no request was made by the applicant for revoking his request for transfer, because he had been promoted in higher grade even in the year 1992. After receipt of the transfer order the applicant had not declined to avail the order of transfer, and hence the bottom seniority was rightly given to the applicant in his initial scale of Rs.975-1540- now Rs.4,000-6,000/-.



6. Applicant is also placing reliance on para 312 of the IREM regarding request transfer. But dispute in the present O.A. is that a request has been made in the year 1978 and the request was materialized in the year 1992, then whether such an employee is to be given the bottom seniority in the grade in which he prayed at the time of making request for transfer or in the grade which he was drawing at the time of his actual transfer, the rule is silent in this connection, and no other rule has been cited by the learned counsel for the applicant whereas, the respondents placed reliance on this rule and argued that as the applicant made a request of his transfer when he was in the grade of Rs.975-1540/- now 4,000-6,000/-. It is a fact the that the request for transfer was materialized in the year 1992, but the learned counsel for the respondents argued that no efforts was made by the applicant to submit an application in order to not press the application for request transfer from Bombay to Jhansi hence he was transferred with bottom seniority in the scale in which he was, at the time of making request. Option was available to the applicant when his application for transfer was not materialized after a considerable

A handwritten signature in black ink, appearing to read "R. J. Chary".

delay of 13 years to move application for not pressing his application for request transfer, even he could not decline to avail the request transfer in the year 1992, but instead of declining the request transfer he moved an application to the respondents to permit him to detain at Bombay division till April, 1993 due to some personal problem. The applicant was aware that the bottom seniority will be given to him and the bottom seniority will be in the grade in which he prayed at the time when he made request for transfer. In the year 1992 the option was available to the applicant to decline to avail the transfer request.

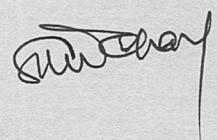
7. Learned counsel for the respondents argued that the O.A. is barred by limitation as well as barred by principle of *res-judicata*. Learned counsel argued that earlier for the identical relief applicant filed O.A. No. 127 of 1996 and this O.A. was decided vide order dated 19th February, 2002, annexure-A-1 is the copy of the judgment of O.A. No. 127 of 1996 and we have perused the judgments of this O.A., the O.A. was filed with a prayer that the applicant was working as Clerks in the Central Railway, Bombay division, Bombay in the pay scale of ₹260-430/- which was later revised to ₹975-1,540/-. And that they



have been promoted in the grade of ₹1,400-2,300/- were working as Head Booking Clerk in Bombay. An application was submitted for transfer to Jhansi division due to some personal reasons. But their request for transfer was considered much later after several years from the date they submitted the application for transfer, and even after effecting the transfer order, they were not relieved in time and hence their junior become senior by the manner in which the seniority was granted and prayer was also made for placing him in the grade of ₹1,400-2,300/- and the O.A. was not allowed in favour of the applicant except for giving direction to the respondents regarding payment of arrears, meaning thereby the request of the applicant alongwith Pradeep Jutsi was turned down for granting them the scale of ₹1,400-2,300/- i.e. of the Head Clerk. When the matter was decided finally on merits hence in our opinion the principle of *res-judicata* is applicable and second O.A. is not maintainable for the identical relief and it will not be proper to adjudicate such matter which had already been decided. As we have stated above that the earlier O.A. No. 127 of 1996 was allowed regarding payment of arrears and when compliance was not made of this part



of the judgment hence Contempt Petition No. 133 of 2003 was filed before the C.A.T., Allahabad Bench and it has been held in the Contempt petition that the order of this Tribunal has been complied with and no case of contempt is made out, but it was provided further that *"However, if the applicants may not be satisfied with the orders dated 10.05.2002 passed in their favour, if that be so, they may challenge the same on original side"*, and under this garb this O.A. has been filed. But this O.A. can be maintainable regarding the matter which was not complied with by the respondents' inspite of the order of this Tribunal in O.A No.127 of 1996. The matter which were relevant in the earlier O.A. were finally adjudicated and cannot be re-adjudicated in the present O.A.. The opportunity was given to the applicants in the contempt petition that if the applicants are not satisfied by the order dated 10th May, 2002 then they are at liberty to challenge the same in original side, the intention of order dated 10th May, 2002 is that the applicants could have challenge, but instead of challenging the order dated 10th May, 2002 the applicant filed fresh O.A. in order to fix the seniority of the applicant in the grade of ₹1,400-2,300/- now ₹5,000-8,000/-. When a matter was adjudicated in



earlier O.A. by the Tribunal then it will not available to the applicant to re-agitate the same matter again before the same forum. The order must have been challenged before the higher Court, and the O.A. can not be filed in view of the order passed in Contempt Petition No. 133 of 2003 in order to challenge the order dated 10th May, 2002. The present O.A. is not maintainable as it is barred by principle of *res-judicata*.

8. For the reasons mentioned above we are of the opinion that the O.A. lacks and liable to be dismissed as the same is barred by the principle of *res-judicata*.

9. O.A. is dismissed. No order as to costs.

W. Chauhan
21.7.11.