

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD

(THIS THE 4th DAY OF Nov, 2010)

Hon'ble Dr.K.B.S. Rajan, Member (J)
Hon'ble Mr. S. N. Shukla, Member (A)

Original Application No.712 of 2005
(U/S 19, Administrative Tribunal Act, 1985)

1. Om Prakash Shukla, S/o Sri Raj Mani Shukla Presently working as Section Engineer (Under Chief Mechanical Engineer), General Manager Office North Central Railways, Head Quarter, Allahabad.
2. Mohd. Asad Ali, S/o Sri Moh. Nazhir Ali, Presently working as J.E. I/C&W, N.C.R. Head quarter, Allahabad.
3. R.K. Khare, S/o Sri Gopi Nath Khare, Presently working as J. E. I/C&W, N.C.R. Allahabad.
4. Lachhaman Prasad, S/o Ghure, Presently working as J.E.- I/C&W, N.C.R., Allahabad.

..... Applicants

Present for Applicants : Shri S. Ram, Advocate.

Versus

1. Union of India, through General Manager, North Central Railway, Nawab Yusuf Road, Near Geep Flashlight Factory, Allahabad.
2. The Chief Personnel Officer, North Central Railway, Sangam, Place, 8th Floor, Civil Lines, Allahabad.
3. The Assistant Personnel Officer for General Manager (P), North Central Railway, Allahabad.
4. Shri Rajendra Kumar Jaiswal, S/o Shri Mahesh Ram, Presently working as Sr. Section Engineer, General Manager Office, North Central Railways Head Quarters, Allahabad.

..... Respondents

Present for Respondents : Shri A. K. Sinha, Advocate.

O R D E R

(Delivered by Hon. Dr. K.B.S. Rajan, Member-J)

The facts of the case are as under:-

1. Respondent No.4 was working in D.R.M. (P) Allahabad and after the creation of new zone namely North Central Railway the option was called by the employees working in the other zone and by the circular dated 30.10.2003, it has been very clearly stated that the employee concern must join his duties physically in new zone namely North Central Railway upto 30.4.2004 vide Annexure -I.
2. In the circular dated 30.10.2003 of column no .iii it has been very clearly stated that since the G.M. of the New Zonal Railway expressed inability to accommodate the staff if they are spared in one go by 31.10.2003 the Paper Lien of staff as on 31.10.2003 was effected may be transferred for the time being and the GMS of the respective new Zonal Railways and the old (parent) Railways should mutually come to an understanding to this effect and fix a target fixed (NOT LATER THAN 30.4.2004) for physical transfer of these staff as per seniority.
3. After 31.10.2003 any transfer to the New Zones will be treated as transfer on request on the bottom seniority in recruitment grades subject to usual conditions governing such transfers being fulfilled, Annexure No.II.
4. Respondent No.4 Rajendra Kumar Jaiswal was working in D.R.M.(P) Allahabad and transferred from the said Zone and to join his duties in newly zone North Central Railway, Head quarter Allahabad on 9.5.2005.
5. Due to joining of the respondent no.4 the petitioner no.1 is much aggrieved because there are only two posts of Senior Section Engineer and due to joining of respondent no.4 the petitioner no.1 is derived of the seniority.
6. Respondent No.4 had joined the duties on the basis of Paper Lien. In similar circumstances an OA bearing No.1346 of 2004 was filed before this Hon'ble court and this Hon'ble court after considering the facts and circumstances directed vide order dated 16.12.2004 to decide the representation and further directed to the

respondents that the promotion under the restructuring scheme would be made strictly in accordance with law.

7. *In pursuance of the judgment and order dated 16.12.2004 the Railway Board sent a letter dated 16.12.2004 to the General manager (P) North Central Railway Allahabad and in that letter very clearly specified that it was never the intention of the Board to postpone the physical transfer of staff selected for Head quarters Offices of New Zones beyond 30.4.2004 and further directed to the authorities concerned to release the employees from their department working on the basis of Paper Lien within a week and thereafter the candidature of the employees on the basis of Paper Lien should automatically cancelled/come to an end.*

2. Counsel for the applicant argued that once a deadline has been prescribed by the Railway Board for physical movement of the incumbent, whose paper lien has been transferred, if the deadline is not followed, then the incumbent has to be kept away from the paper lien and his induction at a later stage would entail bottom seniority as if he has applied for inter zonal transfer. In the instant case, respondent No. 4, having not joined the post physically before 31st January, 2005 but joined only in May 2005, he cannot be granted any benefit of seniority. As his induction with the illegal seniority benefit has affected the career prospects of the applicant, the OA deserves to be allowed.

3. Per contra, the counsel for the respondents submitted that notwithstanding the deadline prescribed by the Railway Board, there is a difference between an incumbent from a different Railway and the one who is in a construction wing within the geographical jurisdiction of North Central Railway. It was under

such a distinct position that respondent No. 4 has been permitted to join later due to service exigencies.

4. Vide para iii of Railway Board letter dated 30-10-2003, the precise reason of different dates – one for transfer of lien and the other for physical movement has been clearly given. The said para reads as under:-

(iii) "Since the GMS of the new Zonal Railways expressed inability to accommodate the staff if they are spared in one go by 31.10.2003, the paper lien of staff as on 31.10.2003 may be transferred for the time being and the GMS of the respective new Zonal Railways and the old (Parent) Railways should mutually come to an understanding to this effect and fix a target date (NOT later than 30.4.2004) for physical transfer of these staff as per seniority. The staff whose paper lien is so transferred will be considered for selection/promotion etc. in the Hq. Offices of new Zonal Railways though they will not be physically available there. Such staff should NOT be considered for selections/promotions including for cadre restructuring in the old (parent) Railways. The two GMs should sign a Memorandum of Understanding (MOU) relating to transfer of paper lien latest by 5.11.2003."

5. The date of physical move had been later on altered to 31-01-2004. Thus this date of physical move is not inflexible and it is to meet a contingency of accommodating the new entrants by the new Zonal Railways. Exigencies of service in the parent Railways is also a factor to reckon with. Thus, on mutual understanding the two General Managers of the two Railways could work out a feasible chart for which the Board has permitted. Prescription of



the deadline is only a guideline. It is to avoid a mischief of some one being inducted at a much later date by which time any of the already transferred individual would have crystallized certain rights in respect of seniority etc., that the rules provided that in case of subsequent transfer, bottom seniority would be the ultimate result. Mischief aimed at by this rule does not exist in the case of Respondent No. 4. whose paper lien has already been transferred to NCR. Thus, none of the applicant's vested right has been hampered by not strictly following the deadline prescribed by the Railway Board, vide Annexure A-2 as amended. The case of Respondent No. 4 is certainly distinguishable, he being within the territorial jurisdiction of NCR and could be transferred at any time to the NCR. It is trite law that in administration, there must be some play at the joints to dispense even-handed justice. (See Ganga Sugar Corp. Ltd. v. State of U.P., (1980) 1 SCC 223).

6. In view of the above, there is no merit in the case. The OA is dismissed. No costs.



(S.N.Shukla)

MEMBER (A)



(Dr. K.B.S.Rajan)

MEMBER (J)

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