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CENTRAL ADMINISTRATAIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 764 of 1986

Hari Kishore Misra Applicant.
Versus
General Manager, Central Railway,
Bombay V.T. Respondent.

Hon'ble Justice Kamleshwar Nath, V.C.
Hon'ble D.S. Misra, A.M.

(Delivered by Hon. D.S. Misra, A.M.)

In this application, filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for issuing a direction to the respondent to place the applicant in the seniority list of Stenographers in the grade of Rs.330-560 in the Mechanical Department of Central Railway with effect from the date of his initial appointment, i.e. 12.6.1964 and to promote him to the higher grade of Stenographer in the pay scales of Rs.425-700 and Rs.550-750, according to his seniority with retrospective effect. The admitted facts of the case are that the applicant was originally appointed in the Security Department on 12.6.1964; that he was transferred to the office of the Divisional Superintendent, Bhusawal in the interest of administration vide CPO, Bombay V.T. letter dated 4/6.7.1975; that he was transferred to Jhansi under the Mechanical Department by an order dated 27.7.1976 of CPO, Bombay V.T. on the basis of representation of the applicant for posting at Jhansi. The grievance of the applicant is that he is not being given seniority and promotion in the Mechanical Department according to his original seniority to be reckoned with effect from 12.6.1964.

2. In the reply filed on behalf of the respondent it is stated that the applicant's transfer on 27.7.1976 from Bhusawal to Jhansi in the Mechanical Department was at his own request;

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that the seniority of the applicant is maintained in the Security Department and he is not eligible for promotion and seniority in the Mechanical Department until he gives his consent in writing for being given bottom seniority in the cadre of Stenographer in the pay scale of Rs.330-560 with effect from the date of his taking charge in the Mechanical Department.

3. We have /the arguments of the learned counsel for the parties. The contention of the learned counsel for the applicant is that the transfer of the applicant from Bhusawal to Jhansi was not at his own request; that he is not prepared to accept bottom seniority in the Mechanical Department; and that he is entitled to count his seniority in the Mechanical Department with effect from the date of his initial appointment. The learned counsel for the respondent contended that the documents filed by the applicant fully support the case of the respondent and the denial/by the applicant has no value under the law. In support of this contention the learned counsel for the respondent invited our attention to para 2 of the order of transfer of the applicant from Bhusawal to Jhansi dated 27.7.1976 (copy Annexure '3') in which it is clearly stated as follows :

"The lien of Sri Misra, will however, be maintained in the Security Department and he will be eligible for further promotion in that unit of promotion (viz. General Administration Deptt. Security Deptt. and Cash Office)."

It is also contended that according to his seniority in the General Administration, Security Department and Cash Department the applicant was promoted as Senior Stenographer in the grade of Rs.425-700 and posted in the Headquarter's Office, Bombay vide CPO, Bombay V.T. letter dated 9.6.1978; and that the applicant did not carry out the transfer and has been continuing in the Mechanical Department on deputation basis. In support of these contentions the learned counsel for the respondent invited our attention to para 5 of the letter dated 5.10.1985 sent by Narendra Gupta,

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Dy.CME, Jhansi to K.N. Mathur, CWE, Bombay V.T. recommending the case of the applicant for permanent retention of the applicant in the Mechanical Department with his original seniority (copy Annexure '5'). The learned counsel for the respondent contended that this is an official document filed by the applicant himself and his denial of the contents of this letter cannot be relied upon. It is also contended on behalf of the respondent that the relief sought by the applicant is not permissible under Note (i) to para 312 of the Indian Railway Establishment Manual, which reads as follows :-

"312. Transfer on request. - The seniority of railway servants transferred at their own request from one railway to another should be allotted below that of the existing confirmed 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 service of the transferred railway servants.

NOTE. - (i) This applies also to cases of transfer on request from one cadre/division to another cadre/division on the same railway."

The above-mentioned instructions support the contention of the respondent. The learned counsel for the respondent also invited our attention to the fact that persons, who may be adversely affected by giving the seniority desired by the applicant in the Mechanical Department have not been impleaded. In support of his contention he cited the decision of the Hon'ble Supreme Court in Prabodh Verma & others v. State of U.P. & others (AIR 1985 S.C. 167) in which it has been held that persons adversely affected by the grant of seniority should be made party. The ^{next} ~~second~~ contention of the learned counsel for the respondent is that Union of India has not been impleaded and, therefore, this application is not maintainable. In support of this contention he cited the case of Ranjeet Mal v. General Manager, Northern Railway, New Delhi

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& another (AIR 1977 S.C. 1701) in which it has been held that the Union of India is a necessary party in case of suits, applications, seeking relief from an authority subordinate to the Union of India, which is the proper party in all such cases. It is also contended by the respondent that this application was filed in the year 1986, against the order which was passed in 1976 and, therefore, barred by limitation under Section 21 of the Administrative Tribunals Act.

4. We have considered the various contentions of the parties and we find that at the time of his transfer from Bhusawal to Jhansi the applicant did not make any representation regarding specific orders passed by the competent authority that his seniority will be maintained in the unit of promotion, viz. General Administration Department, Security Department and Cash Office. Regarding his promotion as Stenographer in the grade of Rs.425-700 at the Headquarter's Office, Central Railway, in the year 1985, the contention of the applicant that he was not relieved to join duty at Bombay does not carry any conviction with us. We are also of the opinion that the applicant has failed to substantiate his claim by any rule or law on the subject. On the other hand, the respondent has cited specific provision of para 312 of the Indian Railway Establishment Manual which provides that in the event of transfer at own request from one cadre/division to another cadre/division on the same railway, the transferred railway employee will be allotted below that of the existing confirmed and officiating railway servants in the relevant grade in the promotion group. The applicant has failed to give his consent to accept bottom seniority in the Mechanical Department and, therefore, he is being treated as working on deputation basis. We are of the opinion that the respondent is fully justified in not allotting any seniority to the applicant in the Mechanical Department. We are also of the opinion that the applicant is not entitled to promotion in the Mechanical Department.

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5. We have considered the matter and we are of the opinion that on the facts and circumstances of the case there is no merit in the petition and the same is liable to be dismissed. Accordingly the application is dismissed without any order as to costs.

MEMBER (A).

VICE-CHAIRMAN.

Dated: May 24, 1989.

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