

(5)

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 28TH DAY OF AUGUST, 2000

Original Application No.458 of 2000

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MR.S.BISWAS, MEMBER(A)

Manish kumar Singh, a/a 28 years
S/o Shri A.K.Singh, R/o D 60/61
Plot No.5A, Krishna Puri, Sigra, Varanasi.
At present posted as Senior Clerk,
Staff No.11162, in the office of
COS,D.L.W.,Varanasi.

.... Applicant

(By Adv: Shri Satish Mandhyan)

Versus

1. Union of India, through General Manager,
D.L.W., Varanasi.
2. General Manager(P)
D.L.W., Varanasi.

.... Respondents

(By Adv: Shri Amit Sthalekar)

O R D E R(Oral)

(By Hon.Mr.Justice R.R.K.Trivedi,V.C.)

The facts giving rise to this application are that the applicant Manish Kumar Singh joined Railways as Senior Clerk on 24.8.1994 in the office of Chief Commercial Manager, Central Railway, Mumbai. On compassionate ground on his own request the applicant was transferred to Diesel Locomotive Shed(in short DLW),Varanasi as Senior Clerk w.e.f. 1.12.1995. D.L.W vide notification dated 17.4.2000 invited applications for appointment as Law Assistant from among the employees serving in DLW who possess law degree and have five years experience as on 2.5.2000 in any department of the DLW. As the applicant had joined on 1.12.1995 he does not satisfy the five years condition of service in DLW,aggrieved by which he has filed this application challenging the notification dated 17.4.2000.

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A Counter affidavit has been filed by the respondents. We have heard Shri Satish Mandhyan learned counsel for the applicant and Shri Amit Sthalekar learned counsel appearing for the respondents. Alongwith Counter affidavit a notification dated 17.4.1997 has been filed. As this letter is very relevant for deciding this controversy it is being reproduced hereunder:-

R.B.E No.55/97

GOVERNMENT OF INDIA/BHARAT SARKAR
MINISTRY OF RAILWAYS/RAIL MANTRALAYA
(RAILWAY BOARD)

No.E(NG)1-96/PM4/14

New Delhi dated 17.4.1977

The General Managers(P)
All Indian Railways and
Production Units.
(As per standard list)

Sub: Counting of Service rendered in the
Cid Unit on own request transfer'

The question whether a Railway Servant who joins another seniority unit on transfer on request on bottom seniority loses only his seniority or also service rendered in the previous unit for the purpose of eligibility for consideration for promotion in the new seniority unit, where ever a minimum service condition is specified, has been considered by the Board in the light of a clarification sought for in this regard by one of the Railway Administrations.

2. It has been decided that since transfer of a Railway servant on request on bottom seniority take place against direct recruitment quota, he should be treated as a direct recruit in the new seniority Unit /cadre for the purpose of seniority and therefore the service rendered in the absorbing unit also will count for eligibility wherever a minimum length of service is specified as a condition for consideration for promotion to general selection posts.

3. Best cases decided otherwise need not to be re-opened.

Please acknowledge receipt.

(J.S.Gusain)
Joint Director Estt(N)
Railway Board

From perusal of the aforesaid letter it is clear that transfer of a Railway servant on request not only puts him at the bottom of the seniority but also deprives him of the service rendered in previous unit for purposes of promotion in the absorbing unit. In view of the order dated 17.4.1997 it cannot be said that the impugned notification suffers from any illegality.

Shri Satish Mandhyan, however, challenged the vires of the notification dated 17.4.1997 on the ground that it is in contravention of the Railway Establishment Manual which prescribes qualification for Law Assistants and in Paragraph 131(2)(i) provides for five years service in any branch of the Railway Administration. Paragraph 131(2)(i) of the Railway Establishment Manual Vol-I is being reproduced below:-

(i) "Educational- A University Degree in Law with 3 years standing as a pleader of Bar.

Serving Employees who are Law Graduates may also be allowed to apply for these posts provided they have served for atleast 5 years in any Branch of the Railway Administration.

Vacancies earmarked for direct recruitment should also be available to the Railway Magistrates who are desirous of applying for such posts and who also fulfil the prescribed qualifications for the direct recruits.

(ii) Age upto 35 years."

Learned counsel has also placed reliance on judgements of Hon'ble Supreme Court and Full bench of this Tribunal which are being mentioned below:-

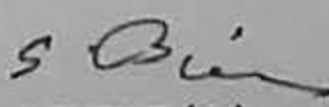
- (1) 1987(4) ATC 805(FB) K.A.Balasubramanian Vs. Union of India and Others.
- (2) A.I.R 1996 S.C-764 Union of India and Others Vs C.N.Ponnappan


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- (3) (1998) 2 UPLBEC 1276 Scientific Advisor to raksha Mantri & Another Vs. V.M.Joseph.
4. J.T. 1993 (6) 527 Smt.Ranu mullick Vs. Union of India and Another.

We have thoroughly considered the submissions of the learned counsel for the applicant and have also perused the judgements cited in support of the submissions. However, we are not inclined to accept the submissions of the learned counsel for the applicant for the reason that the judgements relied on by the learned counsel are in respect of the service dispute arising from other departments where there was no rule/order of the ^{& nature contained in} notification dated 17.4.1997 mentioned above. We also do not find that the order dated 17.4.1997 in any way contravenes the provisions contained in Paragraph 131(2) (i) of the Indian Railway Establishment Manual ^{which} prescribes qualification for Law Assistant when the post is opened ^{for} for all the Railway servants, whereas the order dated 17.4.1997 deals with the Railway Servants who have sought transfer on their own request from one Railway to another Railway. The purpose of the order dated 17.4.1997 appears to discourage ^{such} the transfers. It is open for the Railways to have a different rule for its employees. Considered in other way if the service rendered is allowed to be taken benefit of likewise in the present situaion, putting the applicant at the bottom of the seniority list could be of no consequence as the benefit denied by one hand is given by another hand. In our opinion the order dated 17.4.1997 does not suffer from any ⁱⁿconsistency with the paragraph 131 of Indian Railway Establishment Manual and otherwise also it does not appear to be discriminatory and does not suffer from the Constitutional Infirmary.

For the reasons stated above this application has no merit and is accordingly rejected.


MEMBER(A)


VICE CHAIRMAN

Dated; 28.8.2000

Uv/