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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 270 OF 1987.
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DATE OF DECISION 14-8-1991.

Narendra Kumar Mali, Petitioner

Mr. K.K. Shah, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents.

Mr. N.S. Shevde, Advocate for the Respondent(s)

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The Hon'ble Mr. M.M. Singh, Administrative Member.

The Hon'ble Mr. R.C. Bhatt, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *yes*

Narendra Kumar Mali, son of
Shri G.H.Mali, Permanent Way
Inspector Gr.III, Western Railway,
Jhagariya, Division Vadodara. Applicant.

(Advocate: Mr. K.K. Shah)

Versus.

1. Union of India, notice to be served through General Manager, Western Railway, Churchgate, Bombay.
2. Chief Personnel Officer, Western Railway, Churchgate, Bombay.
3. Chief Engineer, Western Railway, Churchgate, Bombay.
4. Senior Divisional Engineer(I), Western Railway, DRM's Office, Pratapnagar, Vadodara. Respondents.

(Advocate: Mr. N.S. Shevde)

J U D G M E N T

O.A.NO.270 OF 1987

Date: 14-8-1991.

Per: Hon'ble Mr.M.M.Singh, Administrative Member.

The applicant Permanent Way Inspector Grade-III was, after his training, posted with effect from 7.6.1980 in Rajkot division of Western Railway. At that time there was only one cadre of Permanent Way Inspectors for the whole of the Western Railway with only one seniority list of all the Permanent Way Inspectors Gr.III. One such seniority list dated 26.11.1983 is produced by the applicant at Annexure 'D' in which the applicant's name figures at Sr.No.389 A above one Mahesh Kumar of Ajmer Division and below K.K. Garg of Ratlam Division. With effect from 31.3.1985 the cadre was decentralised divisionwise and seniority list of Permanent Way Inspector Gr. III therefore required to be maintained divisionwise.

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It is the contention of the applicant that in the seniority list maintained railway divisionwise thus his original seniority in the Western Railwaywise seniority is required to be maintained in preparing the divisionwise seniority list for those allocated to the division to which he came to be allocated. The applicant figured in Vadodara division for his allocation and, therefore, he claims right to position of seniority in Vadodara division on this basis. However, this seniority was not maintained by the respondents and his Western Railwaywise seniority position was changed adversely in giving him position in the divisionwise seniority list. The applicant has challenged the same in this original application filed under section 19 of the Administrative Tribunals Act, 1985 alleging that some of those who figured below him in the Western Railwaywise seniority list came to be placed above him in the Vadodara Division seniority list.

2. The material facts above are not disputed by the respondents in their reply. The reply infact admits that the PWI Gr.III cadre was Western Railwaywise till 31.3.1985 when it was decentralised by an order dated 18.3.1985 and made divisionwise with effect from 1.4.1985. However, respondents have stated that the applicant had in 1980 requested for transfer from one division to another, namely from Rajkot division to Vadodara division which affected his seniority as he was given bottom seniority in PWI Gr.III seniority list of Vadodara division.

3. The learned counsel Mr.N.S.Shevde for the respondents relied on provisions of para 312 of IREM on fixation of seniority in case of request transfers.

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This para refers to seniority of railway servants transferred at their own request from one Railway to another when the request-transferred person is required to be placed below 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 request-transferred railway servant. Note-I below this para says that this instruction also applies to cases of transfer on request from one cadre/division to another cadre/division on the same Railway.

4. An obvious other side of the coin of the above rule will mean that when an employee is request transferred within the area covered by his own cadre, his seniority position in the cadre will not be affected by the provisions of para 312 of the Manual for the reason that such a transfer is not a transfer from the cadre of one Railway to the cadre of another. The same should be the case of request transfer from one place to another within the same division when the cadre is divisionwise. When it is admitted by the respondents that the applicant had requested for transfer in 1980 when there was only one cadre for the whole of Western Railway which cadre continued upto 31.3.1985, the transfer of the applicant from one place to another involved a transfer within the same cadre on request. Such a transfer can have no adverse consequence on the applicant's seniority in the cadre, namely the cadre of PWI Gr.III of Western Railway. Had the request transfer been after 31.3.1985 when divisionwise seniority had come into existence, only would the transfer be from one

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division to another involving transfer from one cadre to another and the provisions of para 312 could affect the seniority. As this was not the case and the transfer was in 1980, the seniority of the applicant Railway has to be held as in the cadre of Western / unjustifiably and wrongly disturbed in drawing up the seniority list of Vadodara division as on 1.4.1985, the date from which the decentralised cadre came into existence.

5. The respondents have averred in para 12 of their reply that the seniority list of PWI's Gr.III of Western Railway issued on 10.4.1984 mentioned the applicant's name at Sr.No. 389 A below K.K. Garg and above Mahesh Kumar. The respondents' have also averred that the decentralised Vadodara Division seniority list was circulated by DRM's reference of 2.3.1985 and representations invited within a month. In this seniority list applicant's name figures at Sr.No. 83 which number has been arrived at on the basis of the date of the applicant's joining in Vadodara Division on request transfer in 1980. While so saying the respondents deny that the transfer of the applicant from Rajkot Division to Vadodara Division on his own request did not have any impact on his seniority. This denial has, for reasons stated above, no basis in the provisions of para 312 of the Manual and has therefore to be rejected. The respondents admit that the applicant had made representation dated 22.3.1985 against the seniority list of Vadodara Division. The respondents also admit that the applicant's original seniority in the Western Railway cadre at Sr.No. 389 A was refixed at Sr.No. 473 B because of the applicant's request transfer from Rajkot Division to Vadodara Division in 1980 and his representation against seniority was disposed of accordingly vide decision dated 12.4.1987

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of the Headquarter which was communicated to the applicant by the Division by reference dated 14.7.87. For reasons we earlier gave, this decision suffers from erroneous application of the provisions of para 312 of the Manual.

6. The application thus having merits is allowed with our following direction to respondent No.3, Chief Engineer, Western Railway, Bombay and respondent No.4, Sr. Divisional Engineer (I) Western Railway, DRM's Office, Vadodara :-

The respondents are directed to refix the seniority of the applicant on the basis that the same was not liable to be revised by the order of transfer of the applicant from Rajkot Division to Vadodara Division in 1980 within three months of the date of receipt of a copy of this order. The respondents are also directed to consider the applicant's case for consequential benefits on this basis from due dates within the same period of three months.

7. There are no orders as to costs.

R.C.Bhatt
(R.C.Bhatt)
Judicial Member

M.M. Singh
14/8/87
(M.M. Singh)
Admn. Member