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O.A.No.214 of 1999

ORDER DATED 15-03-2004.

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Sri Pradeep Kumar Sahoo, presently Assistant Station Master, Amarda Road Railway Station has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 being aggrieved on his reversion from Bilaspur Division to Kharagpur Division with bottom seniority. He has, therefore, approached this Tribunal praying for direction to be issued to the Respondents either to grant him bottom seniority w.e.f. 16.2.95 i.e. the date he has first applied for inter divisional transfer or bottom seniority in the higher grade i.e. Rs.1400-2300/- in the post of ASM which he was holding at Bilaspur Division immediately before his transfer to Kharagpur Division. In this regard, we have heard learned counsel appearing for the Applicant and Mr. S.R. Patnaik, learned counsel appearing for the Respondents.

Respondents have opposed the application on the ground that the applicant having asked for transfer on his own request was bound by the rules made for this purpose at para 312 of Indian Railway Manual. Indian Railway Estt. Manual Vol. I, 1989 provides as under:-

" 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, 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."

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

(Rly.Bd.No.E(NG)I-85 SR 6/14 of 21-1-1986)

(ii) The expression "relevant grade" applies to grade where there is an element of direct recruitment. Transfers on request from Railway employees working in such grades may be accepted to such grades. No such transfers should be allowed in the intermediates grades in which all the posts are filled entirely by promotion of staff from the lower grade(s) and there is no element of direct recruitment.

(No.E(NG)I-69 SR 6/15, dated 24.6.1969)
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Referring to the above Rules, Respondents have argued that the Applicant was entitled to bottom seniority from the day he had joined at Kharagpur Division i.e. on 17.1.1991. They have also submitted that Rule prohibits any transfer to any intermediary grade(s) in which all the posts are to be filled up entirely by promotion from lower grade and where there is element of direct recruitment. In the circumstances, the Applicant could not have asked for relief as he has prayed for.

Having heard both sides, perused the records placed before us and also ^{the} rule, referred to by both ^{the} counsel, as well as the letter of request dt. 6.1.91 submitted by applicant wherein he had declared that he is willing to accept the bottom seniority in the scale of Rs.1200-2040/- and that he will abide by the rules and instructions as laid down in inter divisional transfer matters.

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As the Applicant had already bound himself by the extant Rules in the matter of transfer on own request from one Railway to another, we see no merit in coming up in this Original Application with the grievance which does not exist. However, having come on transfer from Bilaspur to Kharagpur Division, when he was officiating in higher grade, he is entitled to protection of pay under Railway Board's order dated 20.08.1999. We hope and trust, if the pay of the Applicant has not been determined/ fixed, the same shall be determined/ fixed by the Respondents strictly in accordance with the Railway Board's letter No. F(E)II/91/Misc./2 dated 20.8.1999 and the said exercise should be carried out, if not already done within a period of 120 days from the date of receipt of a copy of this order. Our order in this Original Application is governed by the decision of this Tribunal in O.A. No. 712/1994 disposed of on 3.4.1996; which relied on the decision of the Hyderabad Bench of this Tribunal dated 14.11.1994 rendered in OA No. 1252 of 1994/and Ernakulam Bench of this Tribunal in OA No. 333-400/1992 dated 26.2.1993.

In the result, this Original Application is disposed of in the aforestated terms. No costs.

Manoranjan Mohanty
15/03/04
(Manoranjan Mohanty)
Member (Judicial)

B.N. Som
78/3/04
(B.N. Som)
Vice-Chairman

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