


7
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No. 286 of 2002
Cuttack, this the 16th day of August, 2004

Bijay Kumar Mohanty Applicant
Vrs.
Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? Yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? Yes


(M.R. MOHANTY)
MEMBER (J)


(B.N. SGM)
VICE-CHAIRMAN

8
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CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN

AND

HON'BLE SHRI M.R.MOHANTY, MEMBER (J)

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Sri Bijay Kumar Mohanty, aged about 40 years, Son of Sudarsan Mohanty, resident of C-27A, Traffic Colony, S.E. Railway, Jatni, at present working as Sr. Clerk in the Office of Sr. D.P.O., S.E. Railway, Khurda Road.

..... Applicant

Advocates for the applicant - Dr. D.B.Mishra.

Vrs.

1. Union of India, represented through its General Manager, S.E. Railway, Garden Reach, Calcutta-43.
2. Chief Personnel Officer, S.E. Railway, Garden Reach, Calcutta-43.
3. Divisional Railway Manager, S.E. Railway, Khurda Road, Jatni-752050.
4. Sr. Divisional Personnel Officer, S.E. Railway, Khurda Road, Jatni-752050.
5. K.D.R. Acharya, Sr. Typist.
6. B.V.Roy, Sr. Clerk.
7. B.K.Sahoo, Sr. Clerk.
8. A.K.Sabat, Sr. Clerk.
9. Purnima Das Mahapatra, Sr. Clerk.
10. Jitendra Rout, Sr. Clerk.

(Sl. No. 5 to 10 are working in the Department of Personnel, S.E. Railway, Khurda Division, Jatni, Dist. Khurda).

..... Respondents

Advocates for the Respondents - Mr. D.N.Mishra, Mr. Ashok Mohanty

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ORDER

SHRI B.N.SOM, VICE-CHAIRMAN

This O.A. has been filed by Shri Bijay Kumar Mohanty, at present working as Sr. Clerk in the Office of Sr. Divisional Personnel Officer, South Eastern Railway, Khurda Road, challenging the impugned order, dated 3.05.01 (Annexure-13) issued by Respondent No.3, altering his seniority position in the gradation list as on 1.7.98 (Annexure-10) from Sl.No.42 to Sl.No.43 (A) after more than 30 months of the publication of gradation list. He has approached the Tribunal to quash the impugned order dated 3.5.01, and to direct the Respondents not to disturb his seniority position.

2. The facts of the case in a nutshell are that the applicant after being appointed as Sr. Clerk against direct recruitment graduate quota in the office of Controller of Stores (in short COS) Garden Reach had applied for inter-Division transfer to Khurda Road Division on personal ground which was approved by the competent authority (Respondent No.2) on 13.12.94. Thereafter he joined the new division on 21.12.94. In due course a seniority list was published by the Respondent No.4 on 10.3.98 with the condition that it will become final after one month of issue and officers were asked to point out errors or omissions, if any, within that period of one month from the date of receipt of the seniority list. It was after about two and half years of the publication of this seniority list that he received a show-cause notice dated 3.2.01 from the Respondent No.4 to the effect that his seniority had been wrongly assigned in the seniority list dated 10.3.98 and therefore it was proposed to correct his

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seniority position from Sl.No.48 to 48(A), below the name of Shri J.N.Rout, in terms of foot note No.2 of that office order No.P/3/20/par/SC/Seniority List/93 dated 9.1.95. He thereupon, submitted representation to the show cause wherein he argued that his seniority has been correctly assigned at Sl.No.42 as he was a direct recruit Sr. Clerk under graduate quota. He was, therefore, entitled to the fixation of seniority according to paragraph 302 of India Railway Establishment Manual (in short IREM) Vol.I, 1939 and he being a direct recruit, he was entitled to rank senior to the promotees, as in the case of Private Respondents Nos. 5-10. However, the Respondents ignored his representation and refixed his seniority according to para 312 of IREM.

3. The Respondents have ~~reputed~~ ^{reputed} the arguments of the applicant stating that his case was considered for transfer in terms of para 312 of IREM. Quoting from the said para they have submitted that seniority of Railway servant, transferred at his own request from one Railway to another is allowed, below that of the existing, temporary and officiating Railway servant in the relevant grade in the promotion group in the new establishment irrespective of the date of confirmation or length of officiation of the transferred Railway servant. They have, therefore, concluded that as the applicant was transferred at his own request, he had to take the bottom position, in the seniority, below the existing confirmed/temporary/officiating officials and for this purpose his past service or mode of recruitment will be of no avail. As Shri J.N.Rout, Sr. Clerk, (Respondent No.10) was the juniormost Senior Clerk of the Personnel Department of Khurda Road Division on that day,

therefore, the applicant could not have been given any other higher place than the one below Respondent No.10. Thus, assigning him senior position at Sl.No.42 was a mistake which came to notice on receipt of representation from the private Respondents. They have also argued that the administration has inherent right to rectify a mistake. The applicant can't raise any objection to the same.

4. We have heard the Ld. Counsel for both the parties and have also perused the records placed before us. The applicant has also filed a rejoinder.

5. The issue raised by the applicant in this O.A. is whether determination of his seniority in Khurda Division, where he had come on transfer on his own request, should be made under para 302 or 312 of IREM, Vol.I. The argument of the applicant is that as he is a direct recruit Sr. Clerk under graduate quota and the competent authority on his request (Annexure-5) had approved his transfer under direct recruit graduate quota vacancy, on his joining the new cadre he should be treated as a direct recruit and his position to be determined on the basis of roster of vacancies between a direct recruit and a promotee. If the roster principle is followed, then the Respondents need to place only one promotee above him instead of putting seven promotees above him. He has also assailed the decision of the Respondent No.4 on ground of limitation, that a seniority list which was issued in July, 1993 (Annexure-10) could not have been modified/corrected after about two and half years later. He has relied on the ratio of the judgement of the Hon'ble Apex Court in the case of S.S.Rathore Vrs. State of M.P. (AIR 1990 SC 10) and L.Chandra

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Kumar (1972 2 SLR 1 SC). He has further submitted in this regard that he being a direct recruit Sr. Clerk his seniority can only be determined under para 302 of IREM.

6. We have carefully examined the issue raised by the applicant. Admittedly, he was a direct recruit graduate quota Sr. Clerk, but his reliance on para 302 IREM for the purpose of seniority of a transferee appears to be unsustainable. The Rules laid down at para 302 of IREM concerns determination of seniority of a direct recruit at initial recruitment to service. The initial recruitment of the applicant to service took place in the year 1988 in the office of COS and his seniority was fixed in terms of para 302 at that time. But, his transfer to Khurda Road, Personnel Department, was not made ^{on} ~~as~~ an initial recruitment basis. It was a subsequent recruitment after his initial recruitment and for such subsequent recruitment/appointment seniority is to be determined under a separate rule and in the instant case as his appointment to Khurda Road was made at his own request, the governing rule of seniority for this purpose is clearly laid down under para 312 of IREM, Vol.I. We would also like to observe that it has been laid down therein that Railway servant, seeking transfer from one Railway to another within the zone, should be allowed seniority below that of the existing confirmed, temporary and officiating Railway servant. We have no reason to doubt that the applicant was not aware of this rule position, when he applied for transfer to Khurda Road vide his letter dated 2.6.94. We also found from Annexure-3, a memo issued by the Officer D.R.M(P), approving inter-Division transfer of the applicant dated 9.1.95, it was clearly written there that

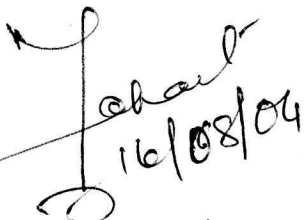
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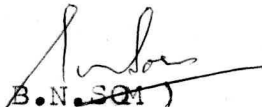
his being a case of inter-Division transfer on his own request, he will not be entitled to any transfer benefit, that he will rank junior to all permanent/temporary/officiating Sr. Clerk on the date of his joining that division. It is not the case of the applicant that he had contested these conditions of his transfer before he agreed to move on transfer. So, it is not open to him now to contest these conditions.

7. Our answer to the issue raised in this O.A., therefore, is that, whether a direct recruit or a promotee Railway servant makes request for transfer to another division/railways in his own interest, his seniority will be determined in the new unit/cadre, only according to the principle laid down in para 312 of IREM as transfer from one office to another or from one Railway to another or from one Division to another is permissible only under that rule. That being the law position, the objection raised by him on ground of limitation is of no application. It is already a settled position of law that administration has inherent power to rectify its own mistake. In this regard, we would refer to the Full Bench decision of Hon'ble Punjab & Haryana in the case of Sunder Lal and others Vs. State of Punjab and others (1970 SLR 59) where it has been held that where the Government has taken a decision which later turns out to be not correct, it could not be said that the mistake must be allowed to be perpetuated and that the Government has no power to rectify that mistake even after the same is discovered. Similar view was taken by a Full Bench of the Patna High Court in the case of S.A.F. Abbas and others Vs. State of Bihar and others (AIR 1970 Patna 397). In the case of Ranjit Singh Vs. President of India

(1971 SLR 561) a Division Bench of the Hon'ble High Court of Punjab and Haryana, relying on Sunder Lal's case (supra) and S.A.F. Abbas's case (supra), has held that every administrative authority has an inherent right to rectify its own mistake unless there is some specific provision of law which prohibits such a course.

8. In sum, the applicant, having been transferred from the office of Chief Controller of Stores SER, Garden Reach, to Personnel Department, Khurda Road Division, on his own request, is not entitled to fixation of the seniority in the new unit under para 302 IREM. His seniority has been correctly fixed under para 312 IREM, Vol. I and therefore, this O.A. fails. No costs.


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SENGUPTA)
VICE-CHAIRMAN

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