

Date of Order : 19.9.2001

1. O.A. No. 218/1997.

Gopal Singh Bhati, s/o Shri Amar Singh Bhati, R/o 356, New BJS Colony, Jodhpur (Raj.), presently holding the post of Senior Clerk in Northern Railway, Jodhpur.

APPLICANT ..

VERSUS

1. The Union of India, through the General Manager, Northern Railways, Baroda House, New Delhi.
2. The Chief Personnel Officer, C/o Chief Personnel Office, Northern Railways, Baroda House, New Delhi.
3. The Statistical & Analysis Officer, Northern Railways, Baroda House, New Delhi.
4. The Divisional Manager, Northern Railways, Jodhpur (Raj.).

RESPONDENTS ..

2. O.A. No. 228/1997.

(i) Ashok Kumar Sharma, s/o Shri Laxmi Narain Sharma, r/o 95, Baldeo Nagar, Chopasni Road, Jodhpur (Raj.).

(ii) Sunil Kumar Bora s/o Shri J.K. Bora, c/o Dr. D.R. Purushit, Merta House, Jalori Gate, Jodhpur (Raj.).

Both presently working as Senior Clerk, Statistical & Analysis Branch, Northern Railway, Jodhpur (Raj.).

APPLICANTS ..

VERSUS

1. The Union of India, through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Chief Personnel Officer, c/o Chief Personnel Office Northern Railway, Baroda House, New Delhi.
3. The Statistical & Analysis Officer, Northern Railway, Baroda House, New Delhi.

RESPONDENTS ..

None present for the applicants.

Mr. R. K. Soni, counsel for the Respondents.

CORAM

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman,
Hon'ble Mr. Gopal Singh, Administrative Member.

ORDER

(per Hon'ble Mr. Gopal Singh)

The controversy involved in both the cases(OA No. 218/1997 & OA No. 228/1997) is same and the relief sought is also the same, therefore, both these applications are being disposed of by this common order.

2. Applicant, Gopal Singh Bhati in OA No. 218/1997 and Applicants Ashok Kumar Sharma and Sunil Kumar Bora in OA No. 228/1997 were initially recruited as Clerk in the year 1993 and were posted on the post of Office Clerk in the pay scale of Rs. 950-1500 in Ratlam Division of Western Railway. All of them sought inter Railway transfers to Jodhpur Division of the Northern Railway. In the month of March 1994, the request of the applicants was accorded to and they were transferred to Jodhpur Division of the Northern Railway with condition of bottom seniority. In terms of Railway Boards Circular dated 19.02.1987, the eligibility condition for promotion within group-C was prescribed as 2 years of service in the immediate lower grade irrespective of whether the employee belongs to reserved community or not. In terms of this circular, the applicants contended that all of them completed 2 years of service in the year 1995 and they should have been promoted to the post of Senior Clerk in the year 1995. Accordingly, they have prayed for a direction to the respondents to consider the case of the applicants for promotion to the post of Senior Clerk in the grade of Rs. 1200-2040 w.e.f. 1995, when they fulfilled the eligibility condition of 2 years for

promotion to the next higher grade within Group-C, with all consequential benefits. In the written arguments, the applicants have cited the judgment of Hon'ble the Supreme Court in the case of Ms. Ranu Mal vs. U.O.I. & Ors. reported in AIR 1994 SC 1152 and judgments of the Principal Bench of the Central Administrative Tribunal in OA No. 951/1997-Shri I. C. Joshi and Others Vs. U.O.I. & Others, in support of their contentions.

3. In the counter, the case of the applicants has been denied by the respondents. It is pointed out by the respondents that the applicants had come over to the Jodhpur Division on inter Railway transfers with a condition of bottom seniority and as and when they have completed 2 years of service in the present division, they were trade tested for promotion to the higher grade and on having passed the trade test they were promoted as such. In this connection, the respondents have relied upon the P.S. No. 11382/97 placed at Annexure R/3. It has therefore, been averred by the respondents that the applications are devoid of any merit and are liable to be dismissed.

4. We have heard the learned counsel for the respondents and perused the records of the case carefully.

5. There is no doubt that the Railway Board circular dated 19.02.1987, provides minimum eligibility condition of having rendered 2 years service in the next lower grade for promotion to the higher grade within the Group-C, and, therefore, as and when promotions are to be made on the basis of length of service(irrespective of seniority) past service of

the applicants rendered in previous establishment cannot be ignored. Both the judgments cited by the applicants also support this contention. The respondents have however, relied upon P.S. NO. 11382/97 and have held that the service rendered in the previous establishment cannot be counted for the purpose of eligibility in the main division. Since all the applicants had come on inter Railway transfers with a condition of bottom seniority, they cannot count the service rendered in previous establishment for the purpose of fulfilling the eligibility conditions for promotion to the next higher grade. In this connection, we consider it appropriate to extract below the Railway Board Circular dated 17.04.1997 (P.S. No. 11382/97).

" Copy of Rly. Board Letter No. E(NG) I-96/PM4/14 dated 17/4/1997, RBE No. 55/97.

Sub : Counting of service rendered in the old 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, wherever 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 Administration.

2. It has been decided that since transfer of a Railway servant on request on bottom seniority takes 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 alone will count for eligibility wherever a minimum length of service is specified as a condition for consideration for promotion including promotion to general selection posts.

3. Past cases decided otherwise need not be re-opened.

Please acknowledge receipt."

It is clear from the circular that for the purpose of eligibility for promotion to the next higher grade within Group-C a person who has come on inter Railway transfer on the condition of bottom seniority cannot count his past service rendered in previous establishment. Such an employee has to render minimum eligibility service in the new establishment so as to be eligible for promotion to the next higher grade. It is also pointed out that this clarification was issued by the Railway Board in the year 1997 after both the judgments cited by the applicants and this order has not been challenged by any of the applicants. Therefore, in our view this P.S. No. 11382/97 prevails unless struck down. Accordingly, we find that all the applicants have been given promotion to the next higher post immediately after completion of eligibility period of 2 years in the new division and after having passed the necessary test. Moreover, none of the applicants has complained of promotion of any of their juniors over them in these applications. In the circumstances, we do not find any merit in these applications and both the applications are liable to be dismissed. Accordingly, we pass the order as under :-

"Both the applications(OA NO. 218/1997 and OA No. 228/1997) are hereby dismissed with no order as to costs."

sd/-
(GOPAL SINGH)
ADM. MEMBER

sd/-
(B.S. RAIKOTE)
VICE CHAIRMAN

P.C.

प्राप्तिक्रिया सही प्रतिलिपि

20/9/2001.

प्रनुभाग अधिकारी (व्यायामः)

केन्द्रीय प्रशासनिक अधिकारी

जोधपुर