

1/6

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

O. A. No. 13/2012

[Date of hearing: 29.3.2012]

Date of order: 29th March, 2012.

CORAM

HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE MR. B.K. SINHA, ADMINISTRATIVE MEMBER

Poona Ram son of Shri Madha Ram,
Aged about 34 years resident of C/o Shri Dau Lal Pareek,
H.No.10, Nahar Singhji Ka Ahatta,
Behind Naman Petrol Pump
Ratanada, Jodhpur, at present
Employed on the post of Loco Pilot Goods
at Samdari Railway Station, NWR,
District Barmer.

...Applicant

(By Advocate Mr.J.K.Mishra)

Vs.

1. Union of India through General Manager,
HQ Office, North Western Railway,
Malviya Nagar, Jawahar Circle,
Jaipur-17.

2. Sr. Divisional Personnel Officer, North Western Railway,
Jodhpur Division, Jodhpur.

3. Shri Ramkesh Meena, Loco Pilot Goods,
Jodhpur Railway Station, Jodhpur, NWR.

4. Naval Kishore Meena, Loco Pilot Goods,
Jodhpur Railway Station, Jodhpur, NWR.

...Respondents

(By Advocate Mr.Salil Trivedi)

O R D E R

Per Dr. K.B. S. RAJAN JUDICIAL MEMBER

The applicant, initially joined the Ajmer Division of the North Western Railways in October, 2000 as Assistant Loco Pilot, had, on the basis of mutual transfer, vide Para 310 of IREM, got posted to Jodhpur Division in April, 2008, his counterpart in transfer being one Shri Aswani James, Assistant Loco Pilot. He was later on promoted to the post of Loco Pilot Goods w.e.f. 18-02-2010 in the Jodhpur Division.

2. The applicant has been making representations to the respondents for assigning the seniority as held by his counterpart Shri Aswani James, on the

basis of his initial appointment. In this regard Annexure A-7 letter dated 24-04-2010 is stated to be one of the many such representations. However, no action is stated to have taken by the respondents.

3. While the practice as also the rule in respect of circulation of draft seniority list as and when published is that the same is made available to all for reference and to make representations to have errors if any rectified, in so far as the seniority list of Asst. Loco Pilot is concerned one such seniority list was published on 19-07-2011 vide Annexure A-1 covering letter and the seniority list, which however, was not made known to the applicant. As per the said letter at Annexure A-1, errors if any were to be made known to the respondents within a month. However, since the applicant could not know about the publication of the seniority list and as the applicant could come to know about the same in the recent past through his counsel, he could not file any such representation. In the seniority list, the error in respect of the seniority of the applicant, according to him, is that as per para 310 of the IREM, the seniority position of the person transferred from Jodhpur Division (Aswani James in this case) would be available to the person transferred to this Division on mutual transfer basis (i.e. the applicant in this case). And, the said Aswani James was placed at serial No. 78 in the seniority list with the remarks And, the applicant's position has been reflected at Serial No. 99 of the list. The applicant has, therefore, filed this OA seeking the following reliefs:

"(i) That the impugned order dated 19.7.2011 (Annexure.A1) may be directed to be declared illegal to the extent of assigning seniority to the applicant at Sl.No.99 and the same may be quashed accordingly.

(ii) That the official respondents may be directed to assign correct seniority to the applicant on the post of Asst.Loco Pilot and given his due seniority position above Shri Ramkesh Meena and Manish Kumar respondents No.3 and 4, respectively for all purposes. He may also be allowed all consequential benefits as per rules.

(iii) That any other direction, or orders may be passed in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.

(iv) That the costs of this application may be awarded."

4. When the case came up for admission hearing, the presence of the Senior Railway Counsel in the Court has been taken advantage of to consider the case. A copy of the OA has been handed over to the said Railway counsel.

5. Counsel for the applicant submitted that the placement of the applicant at a place far below the place where the counterpart of the applicant i.e. Aswani James figured in is against the provisions of para 310 of the IREM. He has further stated that in view of the fact that the relief claimed is against the respondents, who have not followed the rules of seniority on mutual basis, as held in the case of **A Janardhana vs Union of India** (AIR 1983 SC 769) save impleading in a representative capacity those whose seniority would be affected others who may be affected need not be impleaded in this O.A. Accordingly, private respondents No. 3 and 4 have been impleaded, as their seniority position would be immediately affected.

6. The counsel further explained that Shri Aswani James had initially joined the railways as Asst. Loco Pilot on 25-03-2000 but case on mutual transfer with one Shri Suresh Kumar Meena (Date of appointment 01-07-2005) and taken up the lower seniority of 01-07-2005. The applicant whose date of initial appointment is November, 2000 in Ajmer Division has got the mutual transfer from Aswani James and in the seniority list, on the basis of Rule 310 of IREM, he would retain the lower seniority of 01-07-2005. The seniority position of the aforesaid Meena and Aswani being respectively 77 and 78 vide Annexure A-1, the applicant's seniority would be 79 whereas, he has been placed at serial No. 99. It is this part of the seniority list which has been challenged in the OA.

7. Senior Railway Counsel has submitted that the seniority list impugned is only a provisional seniority and not final one and the applicant has not filed any representation. He has, further stated that he may be permitted to seek instructions and file counter.

8. The seniority list is of July, 2011 and if the case is kept pending it may take some time for the case to be decided and the same may ravel the situation, if in the intermediate period, certain promotion takes place on the basis of the seniority list impugned herein. When a rule position is not properly pressed into service, it would be advisable if the correct interpretation of the Rule is reflected, the same would avoid complications in future. Hence, the Tribunal is of the considered view that instead of lingering on with the case, this OA could be disposed of explaining the rule position and directing the respondents to consider the case of the applicant on the basis of the extant Rule position.

9. At the outset, though only one month time has been given for making representations and the applicant could not make such a representation, as the applicant has averred that he was not informed of the publication of the same, he should not be non-suited from filing such a representation. For, the applicant has been vigil right from the beginning and his various representations remained unanswered as stated in the OA. In all expectation, the seniority list would not have been made final, in which event, the applicant could be given an opportunity to make the representation. Or for that matter, the OA itself could be treated as representation. However, the law to be applied would be explained by the Tribunal.

10. Para 310 of the IREM reads as under:-

"Mutual Exchange.-Railway servants transferred on mutual exchange from one cadre of a division, office or railway to the corresponding cadre in another division, office or railway shall retain their seniority on the basis of the date of promotion to the grade or take the seniority of the railway servants with whom they have exchanged, whichever of the two may be lower."

11. If the averments of the applicants are true, the seniority of the applicant shall be the one which the aforesaid Aswani James had been assigned i.e. 79. (Effective seniority of the applicant if the names of the aforesaid Suresh Kumar Meena and Aswani James are removed from the scene (they having already been transferred out of Jodhpur Division), would be 77.) Since the applicant has only replaced another one in the seniority list, his position would not affect

any other persons and the decision in the case of **A. Janardhana** supra fully applies to the facts of the case.

12. The above is subject to verification of the facts by the respondents. Interest of justice would be met if a direction is issued to the respondents to consider the entire OA as a representation and consider the case of the applicant in the light of the above legal provision relating to rule 310 of the IREM and the decision communicated to the applicant.

13. In view of the above, the respondents are directed to keep the above legal position in view and consider the case of the applicant for placement of the seniority in the grade of Asst. Loco Pilot and in the event of the applicant's position in the seniority list being advanced, notice to the affected individuals be given by the respondents in accordance with the prescribed procedure or practice in vogue before effecting the correct seniority position of the applicant.

14. The OA is disposed of on the above lines. No costs.

(B.K.Sinha)
MEMBER (A)

(Dr. K.B.S.Rajan)
MEMBER (J)

jrm