

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 595 of 97

Present : Hon'ble Mr.S.K.Hajra, Administrative Member
Hon'ble Mr.K.V.Sachidanandan, Judicial Member

SUVO BHATTACHARJEE
S/O Shri Sushil Kr.Bhattacharjee,
working as Accounts Clerk
in the Office of the Traffic
Accounts, E.Rly., 14 Strand
Road, Calcutta-1, R/O 35,
Raimohon Banerjee Road, 3rd Floor,
P.O.- Alambazar, Calcutta-35.

APPLICANT

VERSUS

1. Union of India, service through
the General Manager, E.Rly.,
Fairlie Place, Calcutta-1.
2. The General Manager, E.Rly.,
Fairlie Place, Calcutta-1.
3. The Chief Personnel Officer,
E.Rly., Fairlie Place,
Calcutta-1.
4. The Financial Adviser and
Chief Accounts Officer, E.Rly.,
Fairlie Place, Calcutta-1.

RESPONDENTS

For the applicant : Mr.S.K.Dutta, counsel

For the respondents: Mr.R.M.Roychoudhury, counsel

Heard on : 10.8.04

Order On : 13/8/04

O R D E R

K.V.Sachidanandan, J.M.

The applicant, who is working as Accounts Clerk in the Office of Traffic Accounts, E.Rly., is aggrieved by the non-assignment of proper seniority to the post of Accounts Clerk in terms of Para 310 of IREM and para 230 of Establishment Code Vol.I in the matter of inter-railways mutual transfer of the applicant. Aggrieved by the said inaction on the part of the respondents, he has filed this OA seeking the following reliefs :

- i) to direct the respondents to assign proper seniority position to the applicant to the post of Accounts Clerk in terms of para 310 of IREM and para 230 of Railway Establishment Code Vol.I in the matter of inter-railway mutual transfer.

ii) to direct the respondents to consider the promotion to the post of Jr.Accounts Asstt. to the applicant from the post of Accounts Clerk after assigning the proper seniority position in terms of prayer (i) above.

2. The contention of the applicant in the OA is that he joined the S.E.Rly. in Kharagpur Division as Accounts Clerk on 6.6.89 and passed the Departmental Appendix-IIA Examination in the year 1990 and was promoted to the post of Jr.Accounts Asstt. on 13.3.91 and worked in that capacity till 30.9.92 and thereafter the applicant took mutual transfer from S.E.Rly. to E.Rly. in its Traffic Accounts Deptt. as Accounts Clerk on 1.10.92 vice one Shri N.P.Das who had also passed the said Appendix-IIA Examination in the year 1987. The releasing order of the S.E.Rly. is dated 1.10.92. In a mutual transfer it is averred that the seniority of the incumbents would be guided by the Inter-Railway-Mutual Transfer (IRMT) Rules as approved by the Railway Board and in the event of any candidate having passed departmental Appendix-IIIA Examination, his seniority would be fixed after those who qualified Appendix-IIIA Examination immediately after his joining and since the applicant did not pass Appendix-IIIA Examination, his transfer to E.Rly. specifically contained the clause that his seniority in the E.Rly. would be fixed under the said IRMT Rules annexed as Annexure 'B' to the OA. In a case of Inter-Railway-Mutual Transfer on own request and transfer in the interest of Railway Service under IRMT Rules (para 310 of Estt. Manual Vol.I) both the employees would receive seniority of the juniormost transferee. The 1d.counsel for the applicant states that inspite of specific stipulation in the transfer order, the authorities concerned did not fix the seniority of the applicant under IRMT Rules and his seniority was fixed after those employees who had passed Appendix-IIA Examination after his joining to E.Rly. thereby depriving him from getting three years seniority and his juniors were promoted as Junior Accounts Asstt. w.e.f. 25.3.96 superseding the rightful and legitimate claim of the applicant.

3. The respondents have filed a detailed reply statement contending that the applicant got his initial appointment in the

office of the Sr.Divisional Accounts Officer, S.E.Rly., Kharagpur on 6.6.89 in the category of Probationary Accounts Clerk Gr.II in scale of Rs.950-1500/-(RP). The applicant passed Appendix II Examination held in February, 1990 under S.E.Rly. Thereafter, he was promoted to the post of Jr.Accounts Asstt. in scale Rs.1200-2040/-(RP) w.e.f. 11.3.91 in the cadre of S.E.Rly. The applicant took a mutual transfer to the E.Rly. as an Accounts Clerk in scale Rs.950-1500/-(RP) vide Shri Narayan Prasad Das, Accounts Clerk on 7.10.92 in the capacity of Accounts Clerk in scale Rs.950-1500/-. The applicant had been assigned seniority position at Sl.No.67 in the cadre of Accounts Clerk in accordance with Rule 310 of the Indian Railway Establishment Manual, Vol.I (1989 Edition). The applicant was downgraded in the S.E.Rly. before his release on his own volition to facilitate his mutual transfer with Shri Das of E.Rly. who was an Accounts Clerk. In terms of policy decision adopted in 1974 in E.Rly. to protect the interest of the then Appendix-IIA qualified staff awaiting for promotion to the cadre of Junior Accounts Asstt. from Accounts Clerk, the seniority of the applicant had been fixed at Sl.No.20 after Shri P.Ganesh in the cadre of Accounts Clerk in accordance with IREM 310. As his seniority has been fixed as per extant rules, there is no violation of the provision contained in the IREM in assigning his seniority in the cadre of Accounts Clerk. According to the Railway authorities his seniority had been fixed as per extant rules and the policy regarding fixation of seniority on mutual transfer, is made applicable to all such transferees and the applicant has not been singled out for application of the above policy.

4. We have heard Mr.S.K.Dutta, 1d.counsel appearing for the applicant and Mr.R.M.Roychoudhury, 1d.counsel appearing for the respondents.

5. 1d.counsel have taken us to various pleadings, evidence and averments made in the application. 1d.counsel for the applicant argued that the practise and the policy cannot be a substitute for the rules that are prevalent in the Railways. The pretext of the rules

and their application cannot evade from the rule position which is there in practice. The applicant has passed the Appendix-IIA Examination in the year 1990 and now what the respondents are trying to induct his juniors who passed the examination later than his joining this Railway on higher seniority which is against the rule position in para 310 of the Establishment Manual Vol. I. Ld.counsel for the respondents on the other hand persuasively argued that the name of the applicant was placed along with the other passed candidates in terms of item (4) of CAO/Admn's Office Order No. SC/67 dated 14.9.92 and the applicant has already been promoted to the promotional post of Jr.Accounts Asstt. w.e.f. 19.8.97 as per above Appendix-II qualifying list vide Dy.CAO/ TA's O.O.No.121p97 dated 26.8.97. The policy decision adopted by the E.Rly. in 1974 regarding inter railway transfer of E.Rly. is applicable to both 'own request' and 'mutual transfer' and therefore this course has been adopted in the case of the applicant. The Head of the Department of the Railway is competent to frame such rules.

5. We have given due consideration to the arguments advanced by the Ld.counsel for both sides. The grievance of the applicant precisely is that para 310 of Establishment Manual Vol.I is not being followed in his case. On verification of the rule position, we find that as per the said rule "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 get their seniority on the basis of the date of promotion to the grade or take the seniority of the railway servant with whom they have exchanged whichever may be lower" and in the instant case since the promotion of the applicant was later than that of Sri N.P.Das with whom he made a mutual exchange, the applicant was entitled to the benefits of seniority w.e.f. the date of his promotion in the grade as the same was lower and the aforesaid Sri N.P.Das was entitled to the seniority from the date of promotion of the applicant in the grade as the same was lower and accordingly, he has already been granted

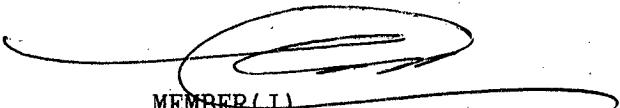
seniority w.e.f. the said date but in case of the applicant the seniority has been fixed after those employes who had passed Appendix-IIA Examination after his joining to E.Rly. which is beyond the scope of the provisions of para 310. Therefore we find that the provision of IRMT Rules was not followed while fixing the seniority of the applicant and the employees who had passed Appendix-IIA Examination after his joining to E.Rly. were put to a higher pedestal on seniority and promotion. This has necessarily deprived the applicant of getting his due seniority and as a result his juniors superseded him and were promoted earlier. The explanation given by the respondents that they have not fixed the seniority of the applicant as per para 310 of Establishment Manual Vol.I but fixed the seniority for all purposes as per local policy. They also reiterated in the reply statement that their policy is made applicable to all employees in the E.Rly.

6. We are at a loss to understand the rationality behind such a contention. On going through Annexure 'B' dated 14.9.92 where Inter Railway Mutual Transfer was allowed to the applicant, we find that there is a specific promise/terms in the said letter in clause 2 that "they will be assigned seniority as per extant rule of inter railway mutual transfer" which according to our view has not been followed in this case. When there is a rule which has got a statutory backing or force any infraction or deviation cannot be justified in the eye of law and much less to say that in the pretext of a policy decision by a Head of Department of a particular Railway such rules cannot be overlooked. If done that will affect the entire administrative process specially in different Railways which are linked to each other. It is well settled Legal position that any rule with a statutory backing under the proviso of Art. 309 of the Constitution cannot be overlooked and no one can act in contravention to the said provisions. Admittedly para 310 of the Rule is the rule applicable to all Railways and E.Rly. is no exception. Therefore we find that it is not being strictly and admittedly followed in this case as a reason

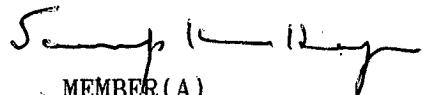
whereof the applicant has been put to great adverse consequences to his service career which is not justified.

7. Therefore in the conspectus of facts and circumstances we have no hesitation to set aside the wrong fixation of seniority of the applicant as discussed above and declare that the applicant is entitled to get the proper seniority in the post of Accounts Clerk in terms of para 310 of IREM and para 320 of Vol.I in the matter of Inter Railway Mutual Transfer. Since it has not been granted we direct the respondent No.3 or any other competent authority to consider the applicant's case for placing him in the appropriate position in the seniority list as per the above rule and give him the consequential benefits if any, if he is found otherwise fit. This exercise shall be done without disturbing the promotion, if any given to those who have been placed above the applicant wrongly. The entire exercise be completed within 2 months from the date of receipt of the copy of this order.

8. In the above circumstances the OA is allowed. No order as to costs.


MEMBER (J)

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MEMBER (A)