

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
 BOMBAY BENCH, "GULESTAN" BUILDING NO.6
 PRESOCOT ROAD, BOMBAY-1

(19)

John Francis Mohan Lall
 96 EWS Ridge Road Colony
 Block No. 5 11, Vishwakarma Nagar
 Nagpur

.. Applicant

V/s.

1. Union of India
 through Secretary
 Rail Bhavan
 New Delhi
2. The General Manager
 S.E. Railway
 Garden Reach
 Calcutta
3. The Divisional Railway Manager
 S.E. Railway
 Near Railway Station
 Nagpur
4. The Divisional Personnel Officer
 S.E. Railway
 Nagpur Division
 Near Railway Station Nagpur
5. Shri Arunkumar Josephdass
 Turner under Divisional
 Mechanical Engineer, (Diesel)
 S.E. Railway, Motibagh Shed
 Post. Begnabagh, Nagpur

.. Respondents

Coram: Hon. Shri P S Chaudhuri, Member (A)
 Hon. Shri T C Reddy, Member (J)

APPEARANCE

Mr. M. Husain
 Advocate
 for the applicant

Mr. P N Chandurkar
 Counsel
 for the respondents

JUDGMENT
 (PER: P S Chaudhuri, Member (A))

DATED: 13-09-1991

This application has come to the Tribunal by way of transfer under section 29 of the Administrative Tribunals Act, 1985 from the Nagpur Bench of the Bombay High Court in terms of its order dated 21.11.1985 on writ petition no.835/85 which was filed before it on 29.4.1985. In it the applicant who is working as Turner in the Diesel Locoshed, South Eastern Railway, Motibagh, Nagpur, is seeking the quashing of seniority and promotion of respondent no.5 qua him.

John Francis Mohan Lall

2. The applicant was appointed as Khalashi at Nainpur on 9.4.1973. On 26.8.1977 he came to the Diesel Locoshed, Motibagh, Nagpur on mutual transfer with one Ramlal Chotelal, who, we are told across the Bar, was probably appointed in 1964 or there abouts. A seniority list of Diesel Khalashis was published on 23.10.1980 in which he was shown at Sr.No.152 and Respondent No.5 was at Serial No.128. He made a representation against this on 11.3.1983. The subsequent developments in the careers of the applicant and respondent no.5 do not concern us because all that we are concerned with is the seniority of the applicant qua respondent 5.

3. The respondents nos. 1 to 4 have contested the applicant's claim by filing their written statement. During our Circuit Sitting at Nagpur, we have heard Mr. M. Hussain, learned counsel for the applicant and Mr. P N Chandurkar, learned counsel for the respondents, 1 to 4.

4. Respondent no.5 has neither replied nor was he present.

5. The respondents did not deny that the applicant was appointed on 9.4.1973 and came to Diesel Locoshed, Motibagh on 26.8.77 on a mutual transfer with Ramlal Chotelal. They contend that his seniority ^k recons from 26.8.77 because of note 4 to order dated 11/12-8-1977 by which he was transferred, which says that :

"Sri John Francis will count seniority in Diesel Organisation from the date he reports for duty at Diesel Shed, Motibagh".

On the other hand, Respondent 5 who was appointed on 8.11.1976 came to Diesel Shed, Nagpur in the administrative interest. So, even though he joined Diesel shed Motibagh on 1.9.1979 he retained his seniority as per his date of appointment of 8.11.1976. Based on this, since respondent no. 5's date for seniority is 8.11.1976 whereas the applicant's date for seniority is 26.8.1977, respondents 1 to 4 contend that Respondent 5 is senior to the applicant.

6. There is no dispute regarding the date for seniority of Respondent 5. What we have to examine is the date of seniority of the applicant. The respondents have relied on the note to the order dated 11/12-8-1977 that we have quoted earlier. They have contended that there is nothing exceptional in this provision because there was a similar note in another similar mutual transfer order of one S.A. Towheed dated 10.6.1976. But on looking at these orders we find that in both of them there is also another note which says :

"Since the mutual transfer of the above named staff is arranged on their own request, their seniority will be determined as per extant rules".

We have to see whether these two notes are in harmony with each other. To decide this point we have to see what are the extant rules. The extant rules are contained in para 310 of the Indian Railway Establishment Manual issued by the Railway Board. This para 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."

If this para is to be applied the applicant's seniority should not have been based on the date that he reported

at Diesel Shed, Motibagh, but should instead have been based on either his seniority at Nainpur or Ramlal Chotelal's seniority at Motibagh Diesel Shed which ever is lower. It is thus apparent that the two notes are in conflict with each other. To resolve this dispute we have to see which gets higher precedence. To find the answer to this question we have to look at the Indian Railway Establishment Code, Paras 157 and 158 of the 1971 edition of this Code deals with power to frame rules and are reproduced below:

***157.** - The Railway Board have full powers to make rules of general application to non-gazetted railway servants under their control.

"158. The General Managers of Indian Railways have full powers to make rules with regard to non-gazetted railway servants under their control provided they are not inconsistent with any rules made by the President or the Railway Board."

A plain reading of these rules makes it clear that instructions issued by the General Manager cannot be inconsistent with any rules made by the Railway Board. Note 4 in question was not even made by the General Manager but by the Divisional Authority. So, there is no question whatsoever that it is para 310 that will hold the field. Against this background, we are of the opinion that the applicant is entitled to a re-fixation of his seniority based on the provisions of para 310 of the Indian Railway Establishment Manual.

7. In this view of the matter we are of the opinion that the application deserves to succeed. This may involve consequential promotion with retrospective effect. In such an eventuality the question of payment of arrears will arise. It is now well settled that in such cases whereas there will be notional pay fixation based on revised seniority, there will be no payment of arrears for work not done - see Paluru Ramakrishnaiah & Ors. V. Union of India & Another AIR 1990, SC 166.

8. We accordingly direct Respondents 1 to 4 to refix the seniority of the applicant in terms of the provisions of para 310 of the Indian Railway Establishment Manual and to grant him all consequential benefits other than arrears within a period of three months from the date of receipt of a copy of this order. In the circumstances of the case there would be no order as to costs.

T. Chandrasekhar Reddy
(T C Reddy)
Member (J)

P. S. Chaudhuri
(P S Chaudhuri)
Member (A)

13-9-1991