

(R.W)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 725/89

Transfer Application No:

DATE OF DECISION: 31.1.95

Shri Subhash Gopal Patil Petitioner

Shri D.V.Gangal Advocate for the Petitioner

Versus

Union of India & Ors. Respondent

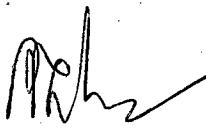
Shri V.S.Masurkar Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

The Hon'ble Shri P.P.Srivastava, Member (A)

1. To be referred to the Reporter or not ?
2. Whether it needs to be circulated to other Benches of the Tribunal ?


(P.P.SRIVASTAVA)

MEMBER (A)


(M.S.DESHPANDE)

VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

(25)

OA.NO. 725/89

Shri Subhash Gopal Patil ... Applicant

V/S.

Union of India & Ors. ... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande
Hon'ble Member (A) Shri P.P.Srivastava

Appearance

Shri D.V.Gangal
Advocate
for the Applicant

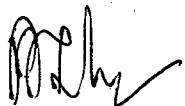
Shri V.S.Masurkar
Advocate
for the Respondents

JUDGEMENT

Dated: 31/1/85

(PER: P.P.Srivastava, Member (A))

The applicant had joined Central Railway as Mechanical Fitter at Bhusaval on 13.5.1974. He was promoted as Fitter Grade-II in 1981. The post of Chargeman 'B' is filled up 50% by direct recruitment, 25% by the departmental promotes and 25% through a competitive examination. The respondents held an examination to fill in the 25% by direct recruitment ranker's quota for promotion to the post of Chargeman 'B' in the scale Rs.425-700. The applicant appeared in the selection and was declared successful. After undergoing training the applicant was promoted to the post of Chargeman Grade-'B' and posted vide order No. HPB/706/EL/Rankers/VI, dated 22.10.1985 placed at Annexure-'B'. The applicant's name appeared at Sr.No. 15 in the above list. The respondents accommodated five employees out of ranker's quota at E.L.W. Bhusaval itself



whose names appeared in the same order S/Sh. M.B.Mahajan, Sudhir S.Patil, S.R.Nihare (ST), S.T.Badgujar and C.U.Pawar (SC). The remaining 26 employees along with the applicant who had successfully qualified in the promotion test were posted to Bombay Division. The applicant joined duty at Bombay on 19.11.1985. Out of the persons who were posted in Bombay S/Sh. A.L.Galphade, P.L.Sonar, V.Parshuraman, S.H.Hemade, B.L.Patil, A.G.Gulde, P.D.Zophe, G.G.Barapatre, S.T.Mahajan and S.D.Dahale refused in writing that they did not want to carry out promotion on transfer to Bombay Division. The applicant after joining at Bombay on 19.11.1985 applied for transfer to Bhusawal on 1.1.1986. The applicant has mentioned that although S/Sh. P.S.Sagale, H.D.Nasikkar, A.K.Patil and P.D.Singnurkar also requested for transfer to Bombay somewhere in February-March 1986 but they were transferred earlier than the applicant although they applied for the transfer after the applicant had applied for the same.

2. Meanwhile, those employees who had refused promotion were later on accommodated at Electrical Locomotive Workshop, Bhusawal by releasing certain vacancies for the direct recruitment quota. The applicant has mentioned that he should have been posted before these 8 employees as he had carried out the order and the 8 employees had refused to therefore carry out the order and before posting them he should have been considered for posting on transfer from Bombay to Bhusawal. The respondents' releasing direct recruitment quota in favour of 8 employees is an act of favouritism shown to these persons. All these employees were accommodated in Bhusawal on 2.3.1987 before the applicant was released to

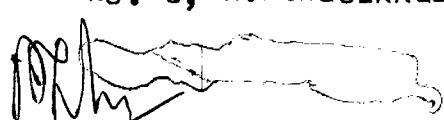


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join at Bhusawal where he joined on 16.6.1987.

The applicant did not know of his seniority position as the seniority list was not published by the respondents. The seniority list was published by the respondents on 6.10.1989 which is placed at Annexure-'K'. However, the applicant has represented against the promotion of Shri A.L.Galphade as Chargeman Grade 'A' as Shri Galphade is junior to him, since he had refused to go on promotion to Bombay. Since the respondents have not acceded to any of the requests of the applicant, he has approached this Tribunal and has sought following reliefs (a) hold and declare that the applicant should be promoted as Chargeman 'A' w.e.f. November/December 1988 when Shri Sagale and others were so promoted, (b) hold and declare that the respondents No. 5 to 16 are junior to the applicant in the cadre of Chargeman 'B' and Chargeman 'A', (c) hold and declare that promotions of Respondents No. 5 to 11 and 16 are illegal and should be quashed, (d) To hold and declare that the seniority list dt.6.10.1989 and dt. 11.5.1992 (Annexure K & L) is illegal and should be quashed, and the applicant should be placed between Shri P.B.Tayde, Shri P.S.Sagle i.e. between Sr.No. 97 to 98 of Annexure K and Sr. No. 82 to 83 of Annexure L.

3. The respondents have submitted the reply. In the reply the respondents have brought out that the applicant was posted to Bombay on promotion and four others vide order which is placed at Annexure-'B'. The respondents have brought out that since five vacancies were available, the employees senior five were accommodated at Bhusawal and remaining Apprentice Mechanics (Rankers) were transferred and posted on Bombay Division as there were no vacancies at Bhusawal. The applicant along with the Respondents No. 5,6,7 & 8 had joined the Bombay Division on promotion. Respondent No. 5, H.D.Nasikkar is at Sr.No. 3 in Annexure-'B'. Respondent



No. 6, P.S.Sagle is at Sr.No. 8 in the same list. Respondent No. 7, A.K.Patil is at Sr.No. 5 in the same list while Respondent No. 8, P.D.Singnurkar is at Sr.No. 1 in the same list. The respondents have also brought out that the 8 persons whose names have been given by the applicant out of these 26 refused promotions. The employees who had refused promotions were not considered for promotion upto the period of one year. However, when some posts were created at Bhusawal, they were posted there since the cadre of E.L.W., Bhusawal is independent cadre and has no link with therefore Bombay Division. The applicant has no claim for posting in E.L.W., Bhusawal once he joined the Bombay Division.

4. The case of the applicant for re-transfer was considered according to the rules. It is brought out by the respondents that in Bombay Division, there are different units and the applicant was posted under Divisional Elect.Engineer (TRS) Kurla along with one Shri P.S.Sarode while Respondents No. 5 & 6, H.D.Nasikkar and P.S.Sagle were accommodated under Additional Chief Mechanical Engineer, Matunga and Respondent No. 7, A.K. Patil and Respondent No. 8 P.D.Singnurkar were posted at Kalva. The three units Kurla, Matunga and Kalva are different units and have their own cadres and therefore the releasing of the employees from these different units was dependent upon the exigencies of service as prevailing in three different units. The applicant who was working in DE TRS Kurla was released before Shri sarode who was also working there and as he had applied earlier to Sarode, however, the Respondents No. 5,6,7,8 who were working in other unit i.e. ACME Matunga and Kalva were released according to their seniority in those units and were released in those units. according to the administrative exigencies. It has so happened that Respondents No. 5,6,7,8 have been relieved

earlier than the applicant and had joined earlier at Bhusaval.

The respondents have also mentioned that
 5. L the rules of seniority which governed the present case is of Indian Railway Establishment Manual Para 312 concerning rules on transfer on own request.

6. We have heard both the counsels and perused the records. The main thrust of the counsel for the applicant was on the two points. He argued that the respondents who had refused promotion and who were debarred for one year had no right to be posted at Bhusaval Division as the posting order transferring them to Bombay had not been cancelled and according to the rules they should have been relieved for being posted to Bombay Division after one year again and their names should have been struck off the panel according to the rules on the subject. He has also argued that in any case, since the applicant obeyed the orders of administration, he should have been transferred back and given a posting at Bhusaval before those who had refused to carry out the orders of the administration. The counsel for the applicant argued that the respondents who refused promotion and did not carry out the transfer were shown undue favouritism and the applicant has not been treated justly and fairly by the administration and he had a prior claim to be posted at Bhusaval before

Respondents 9 to 16. The Counsel for the applicant Mr. Gangal has argued that seniority on promotion is to be governed by Rule 309 which reads as under :-

"309. Seniority on promotion - Paragraph 306 above applies equally to seniority in promotion vacancies, due allowance being made for delay if any in joining the new posts in the exigencies of service."

Para 306 referred in Para 309 reads as under :-

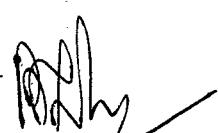
"306. Candidates selected for appointment at an earlier selection shall be senior to those selected later irrespective of the dates of posting except in the case covered by paragraph 305 above."

Since the Respondents No. 9 to 16 who had refused promotion and even did not carry out transfer after one year which is required as per rules, their names required to be deleted from the panel and therefore according to Para 306, the applicant, since he had carried out the transfer on promotion, would rank senior to the respondents 9 to 16 since they no longer would be on the panel.

7. Counsel for the applicant has also argued that the Respondent No. 4, i.e. Divisional Electrical Engineer, TRS, Central Railway, Kurla has not been fair to the applicant as although he had applied for transfer on 1.1.1986 and Respondents No. 5,6,7,8 had applied later than the applicant, ^{Mr.} ~~admittedly~~, the applicant should have been relieved first as there is one seniority list for Bombay Division. Therefore, in all fairness the applicant should be placed in seniority above Respondents No. 5,6,7,8 who were relieved earlier than him by showing favouritism.

8. Counsel for the respondents Mr. Masurkar has argued that the selection for the rankers quota and Chargeman Grade 'B' was on the basis of all Railways vacancies and was not only for Bhusawal Division. He has also argued that once the applicant had accepted his promotion in Bombay Division, he has no claim for lien in Bhusawal Division and he could come back to Bhusawal Division or E.L.W. Bhusawal only as a measure of transfer on request which is governed by Para 312 of the I.R.E.M. which reads as under :-

"312. Transfer on request :- The seniority of railway servants transferred at their own request from one railway to another should be allotted below that of the existing confirmed and officiating railway servants in the relevant grade in the promotion group in the new establishment irrespective of the date of confirmation or length of officiating service of the transferred railway servants."



Therefore the claim of the applicant that he should have been considered for posting at Bhusawal when the vacancy occurred there in preference to Respondents No. 9 to 16 is not based on any rules.

9. Regarding relieving of Respondents No. 5,6,7,8, the counsel for the respondents has argued that the applicant was posted under D.E.Kurla while Respondents No. 5 & 6 were working at Matunga and Respondents No. 7 & 8 were working at Kalva ^{and} ~~since~~ these are independent units. The exigency of work would decide as to whether the applicant could be relieved on transfer on request. He has also argued that under DE Kurla where the applicant was working another employee from the same promotional list, Shri P.S.Sarode was also posted and since he had applied after the applicant, he was relieved only after the applicant was relieved. The counsel for the respondents has also mentioned that the release of the applicant from DE, TRS Kurla has been according to his turn and his case cannot be compared with the employees who were relieved from the units of ACME, Matunga and DE, TRS Kalva.

10. We have considered the arguments of both the counsels and perused the record. We are inclined to agree with the counsel for the respondents on the question that the applicant has no right to be posted at Bhusawal Division once he has accepted transfer on promotion to Bombay Division as the two are independent divisions and the applicant has his lien in Bombay Division after his posting there. We are also not inclined to agree with the argument of learned counsel for the applicant that the respondents would ~~lose~~ these position on panel since they have not carried out the transfer to Bombay Division. Thus

we are of the opinion that the applicant has no right vis-a-vis respondents No. 9 to 16 for being posted at Bhusawal Division. As far as release of Respondents No. 5,6,7,8 who were also working in the Bombay Division is concerned, it is seen that they had applied later than the applicant but due to exigency of service have been released earlier than the applicant as they were working in different units. No material has been produced before us to show malice or undue favour to respondents No. 5 to 8. In the absence of any material to show malice, we are not inclined to agree with the argument of counsel for applicant on this point. Thus we hold that there were no malafide intentions or special favour were shown to these respondents in the matter of relieving them for being posted in Bhusawal Division in preference to the applicant. The respondents have rightly granted seniority to the applicant in terms of Para 312 of I.R.E.M.

11. In these circumstances, we find no reason to interfere with the seniority list of Chargeman Grade 'B', consequently the reliefs claimed by the applicant cannot be granted. The OA. is dismissed. There will be no order as to costs.


(P.P. SRIVASTAVA)
MEMBER (A)


(M.S. DESHPANDE)
VICE CHAIRMAN

mrj.