

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
 O.A. No. 723 of 2005

Dated : 11th September
 December, 2011

C O R A M

Hon'ble Shri A.K.Jain, Member [Administrative]
 Hon'ble Mrs.Bidisha Banerjee, Member [Judicial]

Birendra Prasad, S/o Late Rajendra Prasad, resident of Village – Dhankal
 Tola, P.O. & P.S. - Athmal Gola, Patna.

Applicant

By Advocate : Shri J.K.Karn

Vrs.

1. The Union of India through the General Manager, E.C. Railway, Hajipur.
2. The General Manager, Eastern Railway, Kolkata.
3. The Chief Personnel Officer, East Central Railway, Hajipur.
4. The Chief Personnel Officer, E. Railway, Kolkata.
5. The Divisional Railway Manager, E.C. Railway, Danapur.
6. The Divisional Railway Manager, Asansol.

Respondents.

By Advocate : Shri S.K.Singh, ASC

O R D E R

Bidisha Banerjee, Member [Judicial] :-

The speaking order dated 22.11.2004 passed by the General Manager, East Central Railway, Hajipur is under challenge and the prayer is made as follows :-

“8.1 The letter dated 22.11.2004 [Annexure-A/4] may be quashed and set aside.

“8.2 The respondent authorities may be directed to correct fixation of seniority and pay of the applicant from 14.10.1988 as Clerk Gr. I in scale of Rs. 330-560 Rs. 1200-2040 [RP] in Danapur Division to save him from monetary loss and further promotion, pursuant to the departmental scheme and in the light of various judicial pronouncement.”

2. In an earlier OA, bearing no. 93 of 2004, the applicant had come up with a

prayer for correction of his seniority w.e.f. 14.10.1998 as Clerk Grade I in the scale of Rs. 330-560 to Rs. 1200-2040 [RP] in Danapur Division being aggrieved by non consideration of his representations dated 30.01.1997, 7.11.1997, 02.12.1997, 19.05.1998, 19.06.1998, 30.07.1998, 15.09.1998, 11.05.2000, 28.01.2001, 22.08.2001 and 15.04.2002.

3. The representation dated 15.04.2002, which will clarify the position, is as follows :

“That I was appointed as Clerk Gr. II in scale of Rs.260-400 [RS] duly selected by RRB/Kolkata and posted in Asansol Division on 03.05.1982. A written and oral test was conducted by RRB/Patna in 1984 for appointment against graduate quota amongst the serving employees. I was declared successful and was allowed to work as Clerk Gr.I in scale of Rs. 330-560[RS]/Rs.1200-2040 [RP] w.e.f. 03.05.1982.

I applied for transfer from Asansol Division to Danapur Division in the year 1982 when I was working as Clerk Gr.II with CPO/CCC's kind approval. I was transferred from Asansol Division to Danapur Division in the year 1987 when I was posted as Clerk Gr. I w.e.f. 29.03.1985 in scale Rs.330-560 [RS]/Rs.1200-2040 [RP], I was released on transfer from Asansol Division to Danapur Division in the year 1988 as Clerk Gr. II in scale Rs. 260-400 [RS]/Rs.950-1500[RP] same capacity as in the year 1982. I was spared on 10.05.1988 from Asansol Division and joined at Danapur Division on 14.10.1988 under Sr. DPO/DNR. As per rules I was transferred as Clerk Gr. I in scale Rs. 330-560[RS]/Rs.1200-2040 [RP] against direct recruitment quota. The clerk Gr. I is recruitment grade also.

Shri Anjani Kumar Srivastava, Clerk Gr. II w.e.f. 13.05.1982 in scale Rs. 260-400 [RS] of Dhanbad Division also applied for his transfer to Danapur Division while he was merely Clerk Gr. II in the year 1982 and his transfer for Danapur Division was also accepted to and Sri Srivastava was ordered to be transferred from Dhanbad Division to Danapur Division as Clerk Gr. I in scale Rs.330-560 [RS]/Rs.1200-2040 [RP] in the year 1988. He was released on his same status, i.e. Clerk Gr. I in scale Rs. 330-560 [RS] Rs.1200-2040 [RP] which status was acquired after 1984 in serving graduate quota like me. Since Sri Srivastava also applied for Danapur Division as Clerk Gr. II in scale Rs. 260-400 [RS] in the year 1982 and at the material time he was working as Clerk Gr. I in scale Rs. 330-560

[RS] but he was released on his same status just before my arrival at Danapur Division.

By virtue of my seniority so assigned as Clerk Gr. II in scale Rs. 260-400/- [RS]/Rs.950-1500 [RP] at Danapur after appointment in serving graduate quota by RRB/Patna, I was again allowed to work as Clerk Gr. I w.e.f. 06.05.1992 in Danapur Division. Seniority and pay was not allowed in spite of my repeated appeals. This has resulted in pecuniary loss in my pay.

Sir, it is needless to mention here that such matter have been examined in consultation with Legal Advisor of Railway Board and have been decided that all cases related to serving graduates are to be dealt in accordance with CPO/CCC's letter No.E.308/Court Cell/Graduate Clerk dt. 22.01.1997 and in compliance with Hon'ble Supreme Court, New Delhi's judgment dated 12.03.1996 as well.

Under the facts stated above, I fervently requested you to kindly pass necessary orders to protect my pay as well as seniority at par with the case of Sri A.K. Srivastava from 14.10.1988 as Clerk Gr. I in scale Rs. 330-560 [RS]/Rs 1200-2040 [RP] in Danapur Division to save my monitory loss and further promotion. For this act of your kindness, I shall remain ever pray to God for you long life and prosperity.”

4. The said OA No. 93 of 2004 was disposed of on 04.02.2004 by the following order :

“This original application has been preferred by the applicant for direction to the respondents for correct fixation of seniority and pay of the applicant from 14.10.1988 as Clerk Gr. I in the scale of Rs. 330-560 [RS] – Rs.1200-2040 [RP] in Danapur Division.

2. The applicant was appointed as Clerk Gr. II in the scale of pay Rs. 260-400 in Asansol Division on 03.05.1992 and thereafter appeared in the written and oral test conducted by RRB/Patna. He was allowed to work as Clerk Gr. I in the scale of Rs. 330-560 [RS]/Rs.1200-2040 [RP] w.e.f. 29.03.1985. Thereafter, the applicant was transferred to Danapur Division on his request in the same pay scale as the applicant was provisionally in the year 1982. However, his pay was not fixed as per the norms and instructions issued by the respondents vide Annexure-A/1. The applicant has sought relief for correct fixation of his pay in view of the decision passed by the Hon'ble Apex Court dated 12.03.1996. He has made various representations to the respondents, which are still pending with them.

3. In order to explain the delay in approaching this Court at such a belated stage, the applicant has submitted that his case involved monetary benefits and, therefore, it is recurring cause of action and law of limitation is not applicable to the present case. In support of his contention, he has placed reliance on the decision of the Hon'ble Apex Court in M.P.Gupta's case [1995 SCC (L&S) 1273]. At the very outset, it is submitted by the learned counsel for the applicant that the matter can be disposed of at the admission itself, in the interest of justice, as his representations are still pending before the concerned respondents vide Annexure-A/2 series, by giving direction to them to decide these representations in the light of decisions of the Hon'ble Apex Court as per law.

4. So far as the point of limitation is concerned, we find force in the contention of the learned counsel for the applicant. After hearing the learned counsel for the applicant, we are of the considered opinion that the matter can be disposed of at the admission stage itself while giving direction to respondents no.11 to decide the representations of the applicant and thereafter pass appropriate reasoned and speaking order in accordance with law within a period of three months from the date of receipt/production of a copy of this order along with copy of the OA, which is directed to be treated as representation, and also after giving an opportunity to the applicant of being heard. Needless to say that we have not expressed any opinion on the merit of the case.”

5. The speaking order under challenge is issued pursuant to the order passed in OA 93 of 2004 and it is stated that -

“2. The applicant has been afforded opportunity on 02.11.2004 to explain the matter before the undersigned in respect of his claim. The main contention of the applicant is for correction in fixation of seniority as the case of seniority of similarly placed Shri A.K. Srivastava was settled and also for payment from 14.10.1988 as Clerk Dr. I in scale of Rs.330-560/Rs.1200-2040 [RP] in Danapur Division.

It appears from record that the applicant, Birendra Prasad was appointed as Clerk Gr. II in scale Rs. 260-400 w.e.f. 03.05.1982. He requested for inter divisional transfer from Asansol Division to Danapur Division accepting bottom seniority in the grade i.e. Rs260-400 in the year 1982. The applicant was subsequently promoted as Clerk Gr. I scale of Rs. 330-560 against Graduate Quota.

Meanwhile, the request of the applicant for his transfer from Asansol

Division to Danapur Division as Clerk Gr. II was accepted by the competent authority and as per his option he was reverted to Clerk Gr.II in scale of Rs. 260-400/950-1500 w.e.f. 04.05.1988 in terms of CPO/E.Rly./Kolkata's letter no.E.1140/2/Misc./Clerk/DNR/86 dated 10.08.1987.

On joining Danapur Division he was posted under CYM/Garhara in same pay, grade and capacity vide DRM[P]/Danapur's order No.384/88 dated 19.05.1988.

Thereafter, he again requested for his transfer to Personnel Deptt. Of Danapur Division which was accepted vide DRM[P]/Danapur's order No.777/88 dated 07.10.1988. As the said transfers were made on the own request of the applicant, therefore, as per extant rules, his seniority was assigned below all permanent and temporary Clerks of the Personnel Deptt. in Clerk Gr.II in scale Rs.260-400.

Moreover, it reveals from Service record that Sri Prasad had been extended the benefit of proforma fixation in scale Rs.330-560/1200-2040 from 03.05.1982 to 28.03.1985 erroneously though his seniority position has been maintained correctly.

So far as the matter of Shri A.K. Srivastava is concerned, it is found that Sri Srivastava was transferred from Dhanbad Division to Danapur Division at his own request. He was working as Clerk Gr. I and he had applied for his own request transfer against DR quota vacancies in Clerk Gr. I. As per approval of the competent authority vide CPO/E.Rly./Kolkata's letter No.E/1140/Misc./Clerk/DNR/86 dt. 07.01.1988 Shri Anjani Kumar Srivastava was transferred as Clerk Gr. I against DR quota vacancies on acceptance of bottom seniority and posted in Danapur Division below of permanent and temporary Clerks Gr. I of Danapur Division.

Thus, while Sri Birendra Prasad applied for inter-divisional transfer as Clerk Gr.II and opted for reversion from Clerk Gr.I to Clerk Gr. II for effecting his transfer from Asansol Division to Danapur Division, Shri A.K. Srivastava applied for his transfer to Danapur Division as Clerk Gr.I against DR quota vacancies and he was transferred by the competent authority as such.

6. The respondents have contested the OA by filing written statement which is more or less reiteration of the speaking order under challenge.
7. We have heard the learned counsel of both the sides, considered their rival

contentions and perused the documents on record. It appears that while issuing the speaking order, the General Manager had not taken into consideration the fact that the applicant had applied for his transfer from Asansol Division to Danapur Division in the year 1982 while working as Clerk Gr. II in the scale of Rs.260-400. The said representation was kept pending till 1988. In the meantime, the applicant got promoted as Clerk Gr. I w.e.f. 29.03.1985 in the scale of Rs. 330-560/1200-2040 [RP]. On his promotion to Clerk Gr. I, he made a fresh prayer on 20.6.1985 stating as follows :

"I applied for my transfer from Asansol Division to Danapur Division in the year 1982 while I was working as Clerk Gr. II. Now I am working as Clerk Gr. I in the scale of Rs. 330-560 w.e.f. 29.03.1985. As a result, accept my transfer against direct recruitment quota.

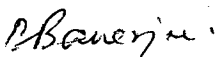
I shall be highly obliged if you kindly accept my transfer in Clerk Gr. I in scale Rs. 330-560 [RS] instead of Clerk Gr. II in scale of Rs. 260-400 [RS] from Asansol Division to Danapur Division." [Annexure-A./5], which manifests that he neither opted for his reversion nor did he omit to ask for his adjustment against direct recruitment quota vacancies which the respondents have tried to mislead.

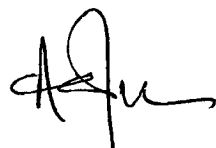
8. The said prayer was followed by another prayer dated 18.06.1986, both being addressed to the Chief Personnel Officer, Eastern Railway, Calcutta. Thus, the respondents ought to have considered sanction to his transfer from Asansol Division to Danapur Division as Clerk Gr. I as prayed for. In total non consideration of his representations as aforesaid, the applicant who was Clerk Grade I, was transferred from Asansol Division to Danapur Division as Clerk Gr. II and posted as such in Danapur Division, ^{which meant after his reversion he} i.e. after he ~~is reverted~~ ^{was} he ~~is~~ transferred to Danapur.

9. The applicant has also tried to bring to our notice similarity of his case with the case of one Anjani Kumar Srivastava who was Clerk Gr. II when he applied for his transfer from Dhanbad Division to Danapur Division in 1982. In the year 1984, Shri Srivastava became Clerk Gr. I and made a representation afresh, for his transfer as Clerk Gr. I. His prayer was acceded to and Shri Srivastava was ordered

while the applicant claims to have made a fresh prayer for his transfer as Clerk Gr. I consequent to his promotion as Clerk Grade I in Asansol, it is also a fact that at the material time, he accepted his reversion to Clerk Gr. II and his transfer to Danapur as Clerk Grade II without demur. On joining at Danapur as Clerk Grade II, he again prayed for his transfer to Personnel Department of Danapur Division and as such while acceding to his prayer, he was assigned bottom seniority in Clerk Gr. II in Danapur Division, as back as in 1988, which he assailed for the first time in 2004 i.e. after a long gap of almost 8 years. The application numbered as OA 93 of 2004 was disposed of with direction to pass speaking order without delving into the merits, and the speaking order was passed in 2004, which cannot revive a belated claim.

10. In view of the aforesaid, as the claim relates to the period of 1988 and the OA is filed for the first time in 2004, when the matter is not decided on merits, and filed for a second time challenging the speaking order, and as we have to deal with the merits of the claim, we hold that the claim is hopelessly barred by limitation and accordingly the OA is dismissed with no order as to costs.


[Bidisha Banerjee]
Member [Judicial]
mps.


[A.K. Jain]
Member [Administrative]