

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH : PATNA**

Registration No. :- OA 728 of 2005.

Date of Order :- 12th October, 2011

C O R A M

HON'BLE MR. A. K. JAIN,MEMBER [A]
HON'BLE MS. BIDISHA BANERJEE,MEMBER [J]

Arun Mahatha, son of Shri Dhaneshwar Mahatha, resideint of c/o Shri Shiv Shankar Prasad, Mohalla-Bigrahpur [Karbighiya], P.O.-Karbighiya, P.S.-Jakkanpur, District- Patna.

..... Applicant.

By Advocate :- Shri Gautam Saha.

Versus

1. The Union of India through the Secretary, Railway Board, New Delhi.
2. General Manager, East Central Railway, Hajipur.
3. Chief Personnel Officer, East Central Railway, Hajipur.
4. General Manager, Eastern Railway, Rairlie Place, Kolkata.
5. Chief Personnel Officer, Eastern Railway, Fairlie Place, Kolkata.
6. Chief Commercial Manager, East Central Railway, Hajipur.
7. Divisional Railway Manager, Danapur Division, East Central Railway, Danapur, Khagaul.
8. Senior Divisional Personnel Officer, Danapur Division, East Central Railway, Danapur, Khagaul.
9. Senior Divisional Accounts Officer, Danapur Division, East Central Railway, Danapur, Khagaul.
10. Senior Divisional Commercial Manager, Danapur Division, East Central Railway, Danapur, Khagaul.

..... Respondents.

By Advocate :-Shri A.K.K.Sahay.

ORDER

A. K. JAIN, MEMBER [A]: This OA has been filed by the applicant for following relief. :-

8.[I]-For direction upon the respondents to fix the seniority of the applicant taking into account the date of initial appointment of the applicant as 03.11.1987 and also keeping in view the fact that the applicant has been transferred from Howrah Division to Danapur Division on administrative ground by the respondent no. 5 Chief Personnel Officer, Easter Railway, Kolkata vide office order dated 23.12.1997 and duly spared on 31.12.1997 vide letter dated 31.12.1987.

8.[II]-For direction upon the respondents to make payment of the salary of the applicant, for the period 24.03.1988 to 30.01.1989 along with appropriate rate of interest.

8.[III]-For holding that the applicant is legally entitled for fixation of his seniority taking into account the date of initial appointment is 03.11.1987 as well as Inter Divisional transfer of the applicant from Howrah Division to Danapur Division on administrative ground in 1997 and also payment of arrears of salary for the period 24.03.1988 to 30.01.1989.

8.[IV]-For direction upon the respondents to produce all necessary/relevant records/documents, regarding the case of the applicant before this Hon'ble Tribunal, for its perusal and consideration in the interest of justice and fair play.

8.[V]-For any other appropriate relief or reliefs to which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

2 The case of the applicant is that in pursuance of employment notice 1/84 issued by Railway Recruitment Board, Patna, he submitted his application for Class-III post. On being declared successful in the written test and interview, the Senior Personnel Officer [PC], Easter Railway, Calcutta, vide letter dated 03.11.1987 [Annexure A/7] asked him to report to SPO/Recruitment at once. Accordingly, he reported at the office and after

scrutiny of documents, he was handed over letter dated 19.11.1987 informing him that he had been selected to undergo training at Zonal Training School, Bhuli, Dhanbad as Trainee Commercial Clerk for a period of 60 days and further practical/line training of one month [Annexure A/8]. Prior to issuance of the said letter, the applicant underwent a medical examination and was declared medically fit by Divisional Medical Officer, Howrah. The applicant completed his initial training of Commercial Clerk at Zonal Training School, Bhuli, Dhanbad from 30.11.1987 to 06.02.1988 and thereafter he was sent to Divisional Railway Manager, Danapur Division for practical/line training [Annexure A/9]. It is the contention of the applicant that on completion of the said training from 17.02.1988 to 28.03.1988, he reported to Divisional Commercial Superintendent, Danapur Division in pursuance of the instructions contained in aforesaid letter and that test was conducted there in which he was declared successful and was directed to be ready for posting. In the meantime, the Principal, ZTS, Bhuli, Dhanbad also sent result of initial training concluded on 06.02.1988 vide letter dated 11.03.1988 in which applicants' name appeared at Sl. 24 [Annexure A/11].

3 It is further contention of the applicant that thereafter all the candidates whose names were appearing in letter dated 11.03.1988, were posted in different Divisions of the Eastern railway except 5 reserved category [SC] candidates namely Shri Vijay Rajwanshi, Shri Subhash Paswan, Shri Gulab Chand Prasad Shri Bibha Kant Kumar and the applicant. Subsequently two of them namely Shri Vijay Rajwanshi and Shri Bibha Kant Kumar were given posting at Hathidah and Kiul stations



respectively. The applicant and Shri Subhash Paswan represented to the authorities. Thereafter, with reference to CPO, ER letter dated 09.12.1987, Senior Divisional Personnel Officer, Danapur wrote a letter dated 10.01.1989 to Chief Personnel Officer, Eastern Railway, Calcutta, enclosing therewith the representation of Shri Subhash Paswan and the applicant and informing that there was no vacancy of Commercial Clerk in the Division at that time. It was also requested that action be taken at CPO's end to absorb them. [Annexure A/12]. Another letter dated 17.01.1989 was also issued to OS/E.Rectt., Danapur by OS/E intimating that the applicant, Shri Subhash Paswan and Shri Gulab Chand Prasad had been declared successful after initial training at Bhuli, Dhanbad as well as after practical/line training by Senior Divisional Commercial Superintendent, Danapur [Annexure A/13]. Subsequently, Chief Personnel Officer, Eastern Railway, Calcutta issued letter dated 20.01.1989 addressed to Divisional Railway Manager, E.R. Howrah asking him to post the applicant, Shri Subhash Paswan and Shri G.C. Prasad in Howrah Division [Annexure A/14]. This letter was issued in partial modification of earlier letter dated 06.02.1988. It was also stipulated in the letter that the other terms and conditions mentioned in the earlier letter would hold good. Pursuant to this letter, Divisional Personnel Officer, ER, Howrah issued order dated 03.02.1989 posting the applicant as Leave Reserve Commercial Clerk at Dumardah station. Other two candidates were also posted. The aforesaid order also stipulated that the applicant was present in the office of DPO, Howrah from 31.01.1989 to 03.02.1989 for posting order and hence, his stipend for the above period be changed

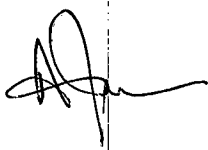


accordingly [Annexure A/15]. The applicant reported for duty at Dumardah station on 04.02.1989.

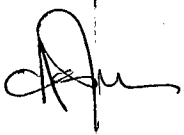
4 The applicant has added that in the year 1990, Shri Subhash Paswan, applied for inter divisional transfer on own request which was allowed and he joined Danapur Division in September 1991[Annexure A/16]. In the year 1997, the applicant was also transferred to Danapur Division from Howrah Division on administrative ground vide order dated 23.12.1997 issued by CPO, ER, Kolkata followed by letter dated 29.12.1997 issued by Divisional Personnel Officer, Howrah. Accordingly, the applicant was spared on 31.12.1997 by Booking Supervisor, Howrah and was directed to report to DRM, ER, Danapur [Annexure A/17] and he reported to respondent no. 7 on 02.01.1998. Subsequently, vide order dated 20.01.1998 [Annexure A/18], he was posted as Senior Enquiry clerk in the scale of pay of Rs. 4000-6000 [R.S.R.P.] at Danapur Central Enquiry but his seniority was not fixed by the authorities of Danapur Division. Later the applicant was transferred to Patna Junction and posted as Senior Booking clerk.

5 Heard the learned counsel for both the sides.

6 The learned counsel for the applicant submitted that the applicant was selected through RRB, obviously against declared number of vacancies. As per own admission of the respondents, he successfully completed the initial training at ZTS, Bhuli, Dhanbad which ended on 06.02.1988 and the practical/line training in Danapur Division from 17.02.1988 to 23.03.1988. It is also clear from the order dated 21.01.1989 issued by CPO, ER, Calcutta which ^{was} issued in partial modification of earlier

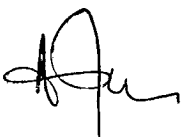


letter dated 06.02.1988 that the applicant was earlier posted to Danapur Division. However, the authorities of Danapur Division did not issue the order of posting of the applicant in an arbitrary and malafide manner whereas they issued posting of all other excepts 5 SC candidates immediately after completion of training. If there was no vacancy in Danapur Division, the fact should have been reported to the CPO, ER, Calcutta immediately which was not done. Instead the authorities of Danapur Division, without any reason sat over the matter. It was only after repeated representations by the applicant and another candidate that they wrote to CPO, ER, Calcutta in January 1989 which is after a lapse of one year, about non availability of vacancy in Danapur Division. It is not the case of the respondents that selection of the candidates was not against any declared vacancy. As such, even the posting of the applicant in Howrah Division got delayed merely because of lapses on the part of the authorities in Danapur Division for which the applicant should not be made to suffer in the matter of fixation of his seniority or payment of salary of the intervening period when he was awaiting posting orders. The learned counsel for the applicant also stated that Shri Subhash Paswan, who was transferred to ECR on his own request has been given seniority as per his original position though as per rules he should have been given bottom seniority. On the other hand, the applicant's seniority has not yet been fixed by the authorities in Danapur Division, He, therefore, prayed for allowing the prayers made in the OA.



selection and on completion of training, the applicant was appointed as Commercial clerk in the scale of Rs. 957-1540/- in Howrah Division on 04.02.1989. Subsequently he was promoted as Senior Commercial clerk in the scale of Rs. 1200-2404/- w.e.f. 12.07.1994. He was transferred to Danapur Division on administrative ground. He reported at Danapur Division on 02.01.1998 and was posted as senior Commercial Clerk in the scale of Rs. 4000-6000/- (pre-revised Rs. 1200-2040). Subsequently, he applied for mutual transfer in 1998 with another staff of Asansol Division. The staff of Asansol Division reported at Danapur but the applicant could not be spared to join at Asansol Division due to a very serious vigilance case against him for which he has been served with a major penalty charge sheet. After finalization of disciplinary proceedings, an order was issued whereby the Station Manager, Patna was directed to release the applicant from Danapur Division but applicant was still working in the Division. As he was to be released, his seniority could not be assigned.

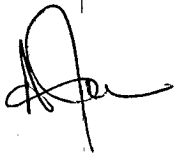
8 The learned counsel for the respondents further stated that after completion of initial and practical training, a formal test is conducted to find out whether trainee is fit for job or otherwise. If he does not come upto the mark, he is sent for further line training. Again after completion of training, posting is given to the trainee on availability of vacancy. Regarding payment of stipend/pay for the period from 24.03.1988 to 30.01.1989, the respondents have stated that if the applicant was working in the office for that period, he could have requested for payment for the said period to DRM, Howrah as payment^{for} waiting period were to be made by that office



after applicants' joining. However, no such request was made by the applicant and as such at this belated stage, it was not feasible to trace more than 16 years old records.

9 We have perused the records and considered the submissions made by the parties.

10 At the out set, we note that the applicant was appointed as Commercial Clerk in the Howrah Division after completion of Training. As such, his initial fixation of seniority as Commercial Clerk was to be done in Howrah Division/E.R. There is no averment on the part of the applicant challenging his date of joining in Howrah Division. There is also no averment by the applicant that any objection was raised by him about non-fixation or wrong fixation of his seniority as Commercial Clerk in Howrah Division. We further note that he was promoted to the grade of Senior Commercial Clerk in the year 1994, obviously based on his seniority as Commercial Clerk in that Division. It was only thereafter that he was transferred to Danapur Division on administrative ground. Therefore, the issue involved now is fixation of his seniority in the grade of Senior Clerk in Danapur Division. The ground for non fixation of seniority of the applicant as stated by the respondents is not considered justified at all. Serving of a charge sheet or pendency of disciplinary proceedings do not debar fixation of seniority of an employee. He can not be denied even a consideration for promotion. Only difference will be that if there is a disciplinary proceeding pending against him, the result will be kept in sealed cover. Again prayer for mutual transfer is also no ground for non-



fixation of seniority of the applicant. In fact, it is all the more important to fix the same because the seniority of incoming incumbent on mutual transfer will depend on the same. Finally, his non release on mutual transfer or his not joining at the new place after sparing him also can not be a reason for not fixing his seniority at least for the period of his posting in the Division. There are separate matters on which authorities can take appropriate action.

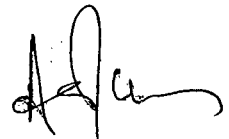
11 As to the question of payment of salary for the period after completion of training and before joining at Howrah Division, the applicant in para 4.13 has stated that after practical training, some test was conducted by Senior divisional Commercial Superintendent, Danapur in which he was declared successful and was directed^{AQ} to be ready for posting immediately. This clearly shows that the applicant was not given a posting order nor did he join any duty. Thus he was neither on training nor did he work on any post during the period. The claim of applicant for payment of salary for this period on the ground of delay in issuing order of posting by the respondents is considered a stale^{claim AQ}. If the applicant was aggrieved, he should have approached^{the AQ} Tribunal much earlier. Thus, we are not inclined to entertain this at this stage.

12 In view of the foregoing discussion, we dispose of the OA with direction to respondents no. 3 and 7 to fix the seniority of the applicant in the grade of Senior Commercial Clerk as per rules for the period of his posting in Danapur Division after his transfer from Howrah Division treating his said transfer as on administrative ground. This action should be completed by the respondents within a period of three months from the date

of receipt/production of a copy of this order. If the applicant has since been transferred to any other Division, that Division shall ^{Mr} ~~be~~ accordingly ^{Mr} ~~be~~ informed about the said fixation of seniority by the above mentioned respondents.



[Bidisha Banerjee]
Member (J)



[A. K. Jain]
Member (A)

pkl/