

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 632/2000

Date of Decision: 4.12.2003

B.S. Nikam Applicants

Shri H.A. Sawant Advocate for applicant

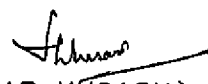
Versus

Controller of Stores, CR & Ors. Respondents

Shri S.C. Dhawan. Advocate for respondents

CORAM: HON'BLE SHRI ANAND KUMAR BHATT. MEMBER (A)  
HON'BLE SHRI MUZAFFAR HUSAIN MEMBER (J)

1. To be referred to the reporter or not? No
2. Whether it needs to be circulated to other Benches of the Tribunal? No
3. Library. yes

  
(MUZAFFAR HUSAIN)  
MEMBER (J)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 632/2000

THIS THE 10 TH DAY OF DECEMBER, 2003

CORAM: HON'BLE SHRI ANAND KUMAR BHATT. MEMBER (A)  
HON'BLE SHRI MUZAFFAR HUSAIN. MEMBER (J)

Shri B.S. Nikam, Sr. Clerk,  
DCOS (MD)'s Office, Manmad  
Central Railway, residing at  
Bhusawal Rly. Quarter  
MB 603 (B), E. Road, C. Rly,  
Bhusawal.

... Applicant

By Advocate Shri H.A. Sawant.

Versus

1. The Controller of Stores,  
Central Railway HS Office,  
CSTM, Mumbai-400 001.
  2. The Chief Personnel Officer  
(R&P) CSTM, Central Railway  
HQ Office, CSTM, Mumbai-400 001.
  3. The Dy. Chief Engineer (C)  
Bhusawal, Central Railway,  
Bhusawal.
  4. The Chief Personnel Officer (S&M),  
Central Railway HQ Office, CSTM,  
Mumbai-400 001.
  5. The Union of India, Acting  
through the General Manager,  
Central Railway, HQ Office,  
CSTM, Mumbai-1.
- ... Respondents

By Advocate Shri S.C. Dhawan.

O R D E R  
Hon'ble Shri Muzaffar Husain. Member (J)

This application is made against the inaction on the part of the administration to dispose of the applicant's representation dated 21.01.1999 regarding seniority in Bhusawal Division as per his lien. The applicant has requested to issue the following direction to the respondents:



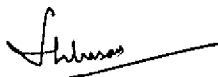
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- (a) Prepare the seniority list of the posts of the Senior Clerks of the Controller of Stores staff and stores department, scale Rs.4500-7000, circulate the same by showing the position of seniority of the applicant, Senior Clerk 4500-7000;
- (b) Prepare the seniority list of the posts of Head Clerks of the Controller of Stores staff and stores department, scale Rs.5000-8000, circulate the same by showing the position of seniority of the applicant as Head Clerk;
- (c) To give consequential benefits as pay fixation, arrears promotion etc. etc. to the applicant, as a result of the correct fixation of his seniority as Senior Clerk and Head Clerk; and
- (d) To provide for the cost of this application from the respondents.

2. The facts of the case in brief are that the applicant was appointed as Junior Clerk through the selection held by Railway Service Commission on 16.10.1980. He was posted in construction organisation, which was under the control of the Executive Engineer (C) Bhusawal. However, he was allotted for the purpose of lien, seniority, promotion, confirmation etc., to the Mumbai Division in the stores department. The applicant was hailing from Bhusawal area. He had requested for allotment in Bhusawal Division instead of Mumbai Division. But the same was rejected on 17.10.1985. Since the applicant was a Science Graduate, he was selected as senior clerk after due process of selection under graduate quota and posted under Dy. C.E.E., Bhusawal against the existing vacancy. On his promotion, he was posted at Bhusawal, but still his lien was not changed. The applicant desired to see seniority list of senior clerks. He was old that the seniority



list is under preparation and hence, the applicant did not get the seniority list in the year 1992. The applicant again addressed a letter on 11.02.1992 to the Chief Personnel Officer (S&M) BBVT and wrote several reminders, but he was not informed about the seniority position. In the year 1993 the respondents issued circular No.HPB/201/S/D/DCW dated 09.02.1993. From the above circular, it can be seen that three seniority units were formed, one for Bombay area, second for Bhusawal area and third for Jhansi area and there was a process of Managing seniority to be effective from 01.4.1993 and options were invited from staff for their seniority and regulating further promotion. In the light of the circular, the rejection of the initial request of the applicant for his lien and seniority in the Bhusawal Division was without any reason and justification. He was promoted and posted at Bhusawal but his lien and seniority was maintained at Bombay Division. He again wrote a letter dated 02.4.1993 to Chief Personnel officer (Engg. Construction) BBVT and in which he raised the point regarding position of seniority and lien etc. The personnel branch of Headquarters BBVT vide letter dated 24.12.1993 advised the APO (S&M) in respect of the lien and seniority that the lien once allotted to stores department cannot be revised by the Headquarters office, as the inter departmental arrangement can be made by the department. Action shall be taken to interpolate the name of the



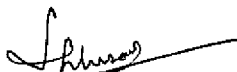
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applicant in the seniority list of senior clerk against the vacancy of the stores department. The names of the junior promoted should be advised in order to decide the proforma promotion of Shri Nikam. The aspect of allotting lien under DCOS BSL may be examined by APO (S&M). Since no action was taken by APO (S&M), Dy. CE(C) addressed another letter dated 21.9.1995 to CPO for finalising the matter expeditiously. Later on some staff including the applicant were declared surplus staff in the project by the Dy. CE(C) Bhusawal vide his office order No.48/97 and the applicant addressed a representation to CPO (Stores) CSTM dated 13.10.1997 in which he raised a number of points and requested administration to post him at Bhusawal as requested from time to time and from the beginning. APO as instructed by CPO vide letter dated 24.12.1993 to check up the aspect of the lien under DCOS BSL but the case of the applicant was not dealt by him for a number of years. The applicant was transferred and posted as Head Clerk at Parel stores department against existing vacancy and later on applicant was reverted to the post of senior clerk for the purpose of transferring him from Bombay Division to Bhusawal Division. His reversion according to the applicant is illegal and arbitrary therefore, he has also challenged the same. Applicant has also submitted that he should have been posted at Bhusawal as Head Clerk and not as senior clerk. The question of reverting the person on his own request does not arise.

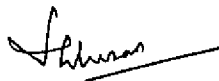
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In case of request transfer bottom seniority is always given. Therefore, applicant has filed the present OA.


3. The respondents have resisted the claim of the applicant on merit as well as on the ground of limitation. It has been contended on behalf of the respondents that this application is not maintainable in law as the applicant is praying for multifarious reliefs like challenging orders of reversion, seniority list of 1991-92 of the Mumbai area and seniority list published by the Bhusawal Division dated 21.01.1999. Hence, the OA is liable to be dismissed. The OA is also barred by law of limitation as the applicant is challenging the orders dated 12.10.1985 and 28.02.1992, seniority list of 1992, his reversion dated 13.10.1997 and 09.01.1998 and seniority list published by Bhusawal Unit in January 1999. This application is filed on 02.8.2000 which is clearly beyond the limitation as provided under Section 21 of Administrative Tribunals Act. Also the applicant does not disclose any cause of action as admittedly he was selected through the Railway Service Commission and posted to the Stores Department at Mumbai. As per rules the lien of an employee is maintained in the department or the division in which he is first appointed and the same cannot be transferred and / or changed except as provided under the rules. The applicant prior to his request dated 13.9.1997 was transferred to BSL Division on his own request. This application is therefore



liable to be dismissed. The question of this Tribunal having jurisdiction therefore does not arise. Initially the applicant was appointed as Junior Clerk through the Selection held by Railway Service Commission on 16.10.1980 but was allotted to the Stores Department at Mumbai and his first appointment was therefore in the stores department of Mumbai. However, on the request of the applicant who wanted to be posted at Bhusawal, the applicant was posted in the Construction Organisation under the control of Dy. CE(C) BSL. The applicant's lien for all purposes including seniority / promotion remained in the stores department at Mumbai. Applicant requested that his lien be transferred to BSL Unit. However, in his letter dated 19.9.1985, he did not ask for transfer to BSL Division and without his transfer to BSL Division the applicant's lien could not be transferred to BSL Division. CPO vide his letter dated 17.10.1985 therefore rightly rejected the request of the applicant. The applicant at that time was working with Dy. CE(C) BSL which is under construction organisation which does not have any permanent staff. The applicant could not have requested for change of his lien to BSL Division without adhering to the rules. Further the applicant was initially appointed as Junior Clerk and afterwards applicant again made an application for selection for the post of Senior Clerk against departmental graduate quota for Mumbai area for which he has appeared for the written test on 25.8.1985 and

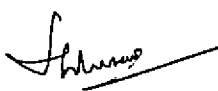


thereafter he was called for viva voce test and result of the said selection was declared by letter dated 04.4.1986. The applicant was successful in the said selection and his name appears at Sl. No.46 of the panel of the said selection. The copy of the said letter is hereto annexed and marked as Annexure R1. Thereafter the applicant was posted as Senior Clerk and since he was working at Dy. CE(C) at Bhusawal as per his own request, he was permitted to work in the same office. His lien however, continued to be at Stores Department of Mumbai Division. In 1991-92 some new Depot opened and in 1993 options were called from the persons, who are working in this new Depot and whose lien was maintained in Mumbai area as to which division they would prefer to join. Applicant at no time requested that he should be posted in new Depot. It has also been submitted that seniority list of Senior Clerk was published in 1992 by Mumbai area. However, inadvertently the applicant's name was not included in the same. Thereafter, applicant's name has been interpolated in the seniority list and shown at Sl. No.3A. Some time in 1997 the project at BSL was practically over and staff were declared surplus by Dy. CE(C) BSL. In the list of the such surplus staff the applicant's name was also included at Sl. No.4. However, before he is being declared surplus the applicant was promoted by the office of Dy. CE(C) BSL to officiate as Head Clerk and at the time of declaring





surplus he was officiating as Head Clerk in the Grade Rs.1400-2300. As the applicant was declared surplus by Dy. CE(C) BSL the applicant was posted in Parel Stores Depot, Mumbai in the same grade with effect from 06.11.1997, as Head Clerk on regular basis. While working at Parel Depot in Mumbai area the applicant by his letter dated 03.12.1997 to CPO (S&M) CSTM has made an application for own request transfer to EA to DRM/DCOS/BSL. In the said letter he has mentioned the reasons for his request transfer on medical grounds and family difficulties. In the said letter applicant has only requested that his case be considered for transfer as Senior Clerk under EA to DRM/DCOS/BSL or DRM/BSL so that he can remain at BSL with his family. His request was considered by the competent authority and he was transferred to Bhusawal in grade Rs.4500-7000 (RSRP) as per his own request and as per rules and conditions applicable to such own request transfer. Applicant was entitled to Senior Clerk only as the applicant was not entitled to be transferred on own request as Head Clerk which is intermediate grade and could have only been transferred against direct recruitment grade as per rules and terms of Note (s) Para 312 of IREM. Since the applicant was working in intermediate grade of Head Clerk he has been transferred at his own request from Bombay to Bhusawal where different seniority lists are maintained. Applicant was transferred from one unit to another unit hence he has been transferred as a Senior



Clerk on bottom seniority as per extent rules. Therefore, the applicant is not entitled to any relief as claimed.

4. We have heard learned counsel for the parties and perused the records.

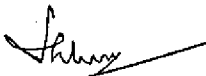
5. It has been contended on behalf of the applicant that he was from very beginning appointed as Junior Clerk and was posted at Bhusawal. Therefore, his lien was in the Bhusawal and subsequently as Senior Clerk he was also posted at Bhusawal his lien continued there. On passing Head Clerk examination, he was posted at Bombay Division which is irregular act. His posting in Mumbai Division on the plea that <sup>his</sup> seniority is at Mumbai division is not correct. His request for transfer his lien to Bhusawal Division was rejected without any reasonable ground. It has also been contended that applicant asked for seniority as Senior Clerk, but no seniority list was prepared and applicant could not know his seniority position. It born out from the record that the applicant was selected from Railway Service Commission and posted as Junior Clerk on 16.10.1980 and was allotted to the Stores Department at Mumbai. His lien remained at Bombay Division, but on his own request, he was posted in construction organisation under Dr. CE(C) Bhusawal and lien remained in stores department at Mumbai. Later on applicant was



....10.

selected as Senior Clerk in graduate quota and requested to work at Bhusawal. He continued in the office of the Dy. CE(C), Bhusawal. The same being construction organisation it has no permanent staff and applicant's lien for all purpose like seniority and promotion were maintained at the Stores Department, Mumbai area as the applicant was initially appointed there after selection by Railway Service Commission on reserve quota i.e. SC quota. Since he has never applied before 1997 for his transfer to Bhusawal Unit, his lien was not transferred.

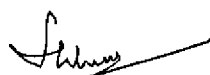
6. Learned counsel for the applicant has also argued that in the year 1993 a decision was taken to group the seniority of the staff under three places as shown in the letter dated 09.02.1993 at Annexure A4. But inspite of the repeated reminder the lien or seniority was not yet finalised and applicant could not know his seniority position. The respondents had contended in para 7 of their reply that applicant was posted as Senior Clerk by office order No.232/86 dated 29.7.86 which is annexed and marked as Exhibit R2. Further as the applicant was working as Dy. CE(C) BSL as per his own request, he continued to work in the same organisation on the promoted post. His lien however continued to be with the parent cadre i.e. Stores Department, Mumbai area. Some time in 1991-92 some new Depots i.e. BPL, GWL, ET, NKJ, AQ (NGP) were opened in the Stores Department on Central Railway. These new



...11.


Depots were manned by the staff from the Stores Department in Mumbai and the lien of the persons who are working there was maintained in the Mumbai area. Some time in 1993 the options were called from the persons who were working in these new Depots and whose lien was maintained in the Mumbai area calling for their option as to which Division they would prefer to join. As these Depots were allotted different seniority units i.e. JHS BSL, BB. In this circular in para 5 it was mentioned that the option is required to be obtained only from the staff who were posted to the new Depots / Division set up of stores under Executive Assistant to DRM from other than the seniority units to which the new Depot being merged. The applicant was working in Dy. Chief Engineering (Construction) Office, BSL and not in the newly opened Depot or Executive Assistant to DRM/BSL. Hence his seniority and promotion continued to be regularised in Mumbai Unit / Mumbai. It appears from the record that the applicant was not posted in any of the newly opened Depot whereas the options were invited from the staff working in various new depots. Since the applicant was not posted in newly opened Depot, he cannot get the benefit of seniority and posting according to Annexure A4.

7. The respondents have contended that the applicant by letter dated 03.12.1997 requested that he should be transferred to BSL Division on his own request



...12.

and had accepted the terms and conditions applicable for such transfers and he had also requested to consider him as Senior Clerk in the said application. As per the request of the applicant, he was transferred to DCOS (ACL) BSL as Senior Clerk as per his own request transfer on the terms and conditions as agreed in his application and in the proforma application which is annexed and marked as Exhibit R4. Respondents further stated that the applicant has been transferred from Mumbai seniority unit as Head Clerk and as the grade of Head Clerk is a promotion grade at Mumbai Unit as well as BSL Unit, he could only be transferred as Senior Clerk as per para 312 of IREM Volume-I. The applicant is science graduate and passed the examination from RRB as Senior Clerk. Hence he has been transferred to BSL Unit as Senior Clerk. The transfer is not allowed in the intermediate grade hence he was been considered for transfer as Senior Clerk against RRB graduate quota. His contention that he should be transferred as Head Clerk in the same grade can not be considered because it is promotional grade and not provided by the rules. He has also requested for transfer as Senior Clerk and his request having been granted, he is estopped from concluding anything to the contrary. Annexure R3 is the application for his own request transfer in which he has requested to transfer him as Senior Clerk under EA/DRM, DCOS (ACL) BSL or DRM BSL so that he can remain at Bhusaval with his family and work smoothly. Copy of the



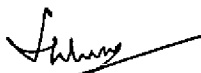
proforma application dated 03.12.1997 is produced as Annexure R4 wherein the applicant has accepted and signed all the conditions namely:

"I shall accept the bottom seniority under the rule as transfer is sought for at my own request. I shall comply with the rules and regulations and instructions connected with the duties of the post to which I am seeking transfer."

In this connection note (ii) of para 312 of IREM is also relevant which reads as under:

The expression "relevant grade" applied to grades where there is an element of direct recruitment. Transfer on request from railway employees working in such grades may be accepted provided they fulfil the educational qualifications laid down for direct recruitment to the post. No such transfers should be allowed in the intermediate grades in which all the posts are filled entirely by promotion of staff from the lower grade(s) and there is no element of direct recruitment."

Since the applicant has sought transfer on his own request and he has asked for bottom seniority of his grade i.e. Senior Clerk, he cannot complain now that he has been reverted from Head Clerk to Senior Clerk. Because the applicant was declared surplus in the construction department and he was posted in Stores Depot. Since he was substantially working as Senior Clerk and the transfer is not allowed in the intermediate grade he has been considered for transfer as Senior Clerk against graduate quota. His contention that he should be transferred as Head Clerk cannot

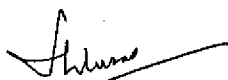


sustain in view of note (ii) of para 312 of IREM mentioned above.

8. So far as the applicant's grievance regarding non-publication of seniority is concerned the respondents contended in para 25 of their reply that the name of Shri Nikam has been interpolated in the seniority list of Senior Clerk published by DCOS/BSL Unit and his number is 26 which is below Smt. K.S. Gothale and above Smt. S.S. Deodhar. In this way, the applicant cannot say that his seniority position should be given to him.

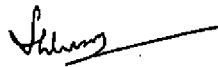
9. Learned counsel for the respondents has also resisted the application on the ground that applicant has prayed for multiple relief like challenging the order of reversion, seniority, lien of 1992 of Mumbai area and seniority list published by Bhusaval Division dated 21.01.1999. We also agree with the learned counsel for the respondents and on this ground too the application is not liable to be considered.

10. Learned counsel for the respondents also argued that the application is barred by law of limitation as the applicant is challenging the order dated 12.10.1985 and 28.02.1992, the seniority list of 1992, his reversion dated 13.10.1997 and 09.01.1998 and seniority list published by Bhusawal Unit in January, 1999. We



have considered the plea raised by the learned counsel for respondents and we are of the opinion that since the application is not filed within the prescribed time under Section 21 of the AT Act and therefore, the application is barred by limitation and no application under Section 5 of the Limitation Act has been moved seeking condonation of delay. Therefore, this application is liable to be dismissed on this ground alone.

11. In view of the discussion as aforesaid, the applicant failed to make out any ground for grant of any of the relief and thus OA is liable to be dismissed and is dismissed accordingly with no order as to costs.



(MUZAFFAR HUSAIN)  
MEMBER (J)



(ANAND KUMAR BHATT)  
MEMBER (A)

Gajan