

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

Original Application No: 547/93

Date of Decision: 18-11-98

C.K.Patil

Applicant.

Shri J.R.Azad

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri V.S.Masurkar for R.1 to 4

Advocate for
Respondent(s)

Shri S.C.Dhawan for R-5.

CORAM:

Hon'ble Shri. Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri. D.S.Bawej, Member (A)

(1) To be referred to the Reporter or not?

(2) Whether it needs to be circulated to
other Benches of the Tribunal?

D.S.Bawej
(D.S.BAWEJ)

MEMBER (A)

R.G.Vaidyanatha
(R.G.VAIDYANATHA)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA NO. 547/93

Pronounced this the 18th day of November 1998

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri D.S.Bawej, Member (A)

Chandrakant Kashinath Patil,
Assistant Coaching Clerk,
Palghar Station, Western Railway,
Palghar, Dist. Thane.

By Advocate Shri J.R.Azad ... Applicant
V/S.

1. Union of India through
General Manager,
Western Railway, Bombay.
2. General Manager, Western
Railway, Churchgate,
Bombay.
3. Divisional Railway Manager,
Western Railway, Bombay Central.
4. Senior Divisional Commercial
Supdt. Western Railway,
Bombay Central.
5. General Manager,
Central Railway, Bombay.

By Advocate Shri V.S.Masurkar
for Respondents No. 1 to 4,
and Shri S.C.Dhawan for
Respondent No. 5. ... Respondents

O R D E R

(Per: Shri D.S.Bawej, Member (A))

This application has been filed seeking
the relief of refixation of seniority of the
applicant as Commercial Clerk in the scale of
Rs.950-1540.

2. The applicant has stated his case as follows :- Against the Notification No. 2/80-81 by Railway Recruitment Board for Category 25, a panel was made and partly operated in 1983 by offering appointment to the selected candidates. Some of the candidates also joined the duty. However, subsequently the balance of the panel was frozen on account of investigation ordered for the alleged irregularities committed in the preparation of the panel. The balance panel was finally operated in 1987. The applicant was selected against this panel and was offered the post of Booking Clerk on Central Railway where he joined duty on 15.6.1987. Thereafter, the applicant made a request for mutual transfer to Western Railway and the same was allowed and the applicant joined on Western Railway in April, 1990. The applicant submits that as per Railway Board's orders dated 8.9.1986, it was directed that the candidates who have joined in 1987 from the panel prepared ^{against} ~~Notification No. 2/80-81~~ would be senior to all candidates who were directly recruited through the subsequent Notifications as well as those ^{promoted} / appointed from Group 'D' to Group 'C'. Keeping this in view, the applicant made a representation on 18.11.1989 while working on ~~Central~~ Railway to allow him the seniority in terms of Railway Board's instructions. Subsequently, on transfer to Western Railway, he made a representation on 8.9.1990 making the same request for allowing the seniority as per Railway Board's letter. He also took up the issue of seniority through the recognised Union on 10.2.1992. However, on not getting any reply, he has agitated the matter through this DA. filed on 31.5.1993.

3. The main case of the applicant is that the candidates from the panel finalised based on the Employment Notice No. 2/80-81 were allotted to Central or Western Railway, & therefore, irrespective of the fact whether the candidate is posted on Central Railway or Western Railway, he is entitled for seniority though joined in 1987 from 1983 in terms of the Railway Board's instructions dated 8.9.1986. In view of this, irrespective of his transfer to Western Railway, since he belongs to a common panel, he is entitled for seniority on Western Railway based on his panel position. The applicant, therefore, pleads that he is entitled for seniority to be fixed as per the provisions of Para 303 of Indian Railway Establishment Manual.

4. The respondents have filed written reply strongly contesting the claim of the applicant. The respondents have submitted that the applicant was transferred to Western Railway on a mutual transfer and therefore his seniority on Western Railway shall be governed by the rules applicable to mutual transfer irrespective of his seniority position on Central Railway as a direct recruit. Keeping in view the provisions in Para 303 of Indian Railway Establishment Manual, the applicant has been allowed seniority of D. Subramaniam with whom he had taken mutual transfer and the same has been notified as per letter dated 9.6.1992. The respondents therefore plead that the action taken is not arbitrary or unfair and the applicant has no case and the present OA. deserves to be dismissed.

5. The applicant has not filed any rejoinder reply for the written statement.

6. Heard Shri J.R.Azad and Shri V.S. Masurkar, learned counsel for the applicant and respondents respectively.

7. On the facts of the case, it is noted that panel of the selected candidates made by the Railway Recruitment Board against Employment Notice No. 2/80-81 was partly operated in 1983 but thereafter, further operation was withheld on account of some investigation ordered to look into irregularities in making the recruitment. The balance panel was finally operated in 1987. The applicant belonged to this panel and was offered appointment in 1987 and he joined on Central Railway. In order to protect the seniority of the candidates belonging to the above referred panel, the Railway Board had laid down the instructions stipulating that the candidates of this panel shall be as per their merit position will be senior to the directly recruited candidates of the subsequent railway recruitment notifications and panels made thereof as well as the candidates appointed or promoted from Group 'D' to Group 'C' as a one time exemption given by the Railway Board. In this connection, the applicant has brought on record the copies of the letter dated 8.9.1986 of Railway Board and 25.6.1988 of Western Railway. As brought out earlier, the applicant was originally allotted Central Railway where he joined in 1987

(V)

and subsequently in 1990 he applied for mutual transfer to Western Railway. The mutual transfer was accepted and the applicant ~~had~~ joined on Western Railway in April, 1990. The claim of the applicant is that on being transferred to Western Railway, the applicant is entitled for seniority as per his merit order in the panel against Employment Notice No. 2/80-81 since the panel was common for both Central and Western Railway. This means that the applicant claims that his seniority is to be fixed keeping in view the instructions of Railway Board with regard to allocation of seniority to the candidates of panel against Employment Notice No. 2/80-81 as brought out earlier. Considering the facts of the case, this claim of the applicant is not tenable. Though the panel was common, the applicant had been allotted to Central Railway. Once he had joined on Central Railway, he belongs to seniority unit of Central Railway and his merit position in the panel with reference to those allotted to Western Railway ^{is} then of no relevance. It is agreed that on Central Railway he is entitled for seniority with reference to 1983 though he joined in 1987 in terms of Railway Board directions referred to earlier. The applicant has stated that he made a representation in 1989 while working on Central Railway claiming seniority as per Railway Board direction but he has not come ~~out~~ indicating as to where he has been allowed seniority and what should be his position in the seniority list. In any case, this issue is not very material since the

applicant had been subsequently transferred to Western Railway on mutual transfer. Once the applicant has been transferred to another seniority unit in another railway, the seniority has to be governed by the rules governing the nature of the transfer and therefore the seniority of the applicant in Central Railway ~~is of no~~ consequence. From Ex.-'R-1' with the written statement, it is noted that the applicant has been mutually transferred to Western Railway against Shri D.Subramaniam. From the particulars furnished, it is noticed that D.Subramaniam was appointed on 29.3.1989 while applicant was appointed on 15.6.1987. The respondents have brought out that as per the rules governing mutual transfer, the applicant has to take the seniority of D. Subramaniam as he is junior to the applicant and therefore he has been correctly allowed seniority to the date of appointment as 29.3.1989. It is also further noted that as per letter dated 9.6.1992 at Exh.-'R-3', the seniority of the applicant has been interpolated in the concerned seniority list on Western Railway. During the arguments, the learned counsel for the respondents brought to our notice the provisions of Para 310 of Indian Railway Establishment Manual which are applicable to seniority in respect of mutual transfer. On going through this para, we find that the seniority as allotted to the applicant based on Exh.-'R-1' & 'R-3' is in compliance of provisions of this Para. It is, however, noted that the applicant has not challenged the order dated 9.6.1992 through this OA. and the relief has been

sought for fixing seniority in terms of provisions of Para 303 of Indian Railway Establishment Manual. Keeping in view the deliberations above, the provisions of Para 303 will not apply to the case of the applicant once he has accepted mutual transfer on his request. In view of these observations, the applicant is not entitled for the seniority as claimed and he has been allowed the seniority correctly as per the rules governing mutual transfer.

8. In the result of the above, we do not find any merit in the OA. and the same is dismissed accordingly. No order as to costs.

D.S.Baweja
(D.S.BAWEJA)

MEMBER (A)

R.G.Vaidyanatha
18-11-96
(R.G.VAIDYANATHA)

VICE CHAIRMAN

mrj.