

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

JODHPUR BENCH, AT JAIPUR.

TA No.2114 of 1986
(CAR No.134/82).

Date of Order: 20th Nov., 1991.

Union of India

- Applicant.

Mr.G.P. Soral

- Counsel for the
Applicant.

Vs.

Jaswant Singh

- Respondent.

Mr.J.K. Kaushik

- Counsel for the
Respondent.

CORAM:

1. The Hon'ble Mr. Kaushal Kumar - Vice Chairman.
2. The Hon'ble Mr. Gopal Krishna - Member (Judl.)

Mr. Kaushal Kumar, Vice Chairman.

This is a Civil Appeal (CAR No.134/82) instituted in the Court of District Judge, Kota which now stands transferred to this Tribunal under Section 29 (1) of the Administrative Tribunals Act, 1985 as T.A.No.2114/1986. This appeal was preferred by the Union of India against the judgment and decree dated 16/7/1982 passed by Additional Munsif and Judicial Magistrate No.2 South Kota in Civil Suit No.5/78. The plaintiff in the Civil Suit (respondent in the TA) had inter alia sought for a declaration that the order communicated vide letter dated 2nd September, 1976 from the Chief Commercial Superintendent (E)/KTT disturbing his seniority in the cadre of Ticket Collector in Kota Division be quashed. The suit was partly decreed by the learned Munsif against which the Union of India preferred the appeal in the Court of District Judge which now stands transferred to this Tribunal.

2. The respondent (plaintiff in the Civil Suit) was appointed as a Ticket Collector in the Western Railway, Bombay Division where he joined in September, 1962 after completion of his training in the Zonal Training School, Udaipur. The respondent made a representation for being posted to Kota Division. His request was acceded to in 1964 and he was transferred and posted in Kota Division on 4/10/1964. In



M. Murali
20.11.91

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accordance with the provision of Rule 312 of the Indian Railway Establishment Manual, he was assigned bottom seniority in Kota Division. It later came to the notice of the Railway Administration that certain persons in Bombay Division who had applied for their transfer to Kota Division on dates earlier than that of the respondent had not been accommodated and transferred to Kota before the respondent. These persons were transferred to Kota Division only in the year 1969 but they were assigned the same seniority as the respondent, namely October, 1964. The relevant communication of the Western Railway dated 24th November, 1973, is extracted below :-

"
WESTERN RAILWAY
No.E.839/4/15/5/Vol.III 24th November, 1973.

To

The DS(E)/KTT

Sub: Seniority of Shri Hari Prasad Sharma and others as Ticket Collectors.

...

On the representation of Shri Hari Prasad Sharma, Railway Board had called for remarks. These were sent to them under this office letter No.E.839/4/15/5 Vol.II dated 17/9/73. The Board have carefully considered the matter and have observed that while S/Shri Hari Mohan Sharma, Hari Prasad Sharma and Ram Prasad Gupta had applied for their transfer to Kota Division on 5/7/62, 7/5/63 and 28/6/63. Shri Jaswant Singh Babel had applied 16/7/1963. Ignoring the claim of his seniors on the name noting register Shri Jaswant Singh Babel was relieved to effect his transfer on 6/10/64, even though there was no directive from Head Quarter Office, to relieve in preference to his seniors. The Railway Board feels that this Administration has erred in the matter and they have decided that S/Shri Hari Mohan Sharma, Shri Hari Prasad Sharma and Ram Prasad Gupta be assigned seniority over and above Shri Jaswant Singh Babel as Ticket Collector and all of them be deemed to have been relieved on transfer to Kota Division w.e.f. from 6/10/64. The date of seniority of all the 4 persons viz. Hari Mohan Sharma, Hari Prasad Sharma and Ram Prasad Gupta and Jaswant Singh Babel shall be reckoned from the date of which Shri Babel has reported for duty in the Kota Division after his release from Bombay Division on 6/10/64. The Board have also stated that seniors to Shri Babel may be given proforma fixation wherever necessary.



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20/11/81

2. The Board's decision mentioned above may please be implemented and this office advised so that Board can be advised suitably, as desired by them.
3. Please acknowledge receipt.

sd/B.K. Kombrabail
for Chief Commercial Supdt. (E)
BOMBAY."

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3. Subsequently, the Railway Board reconsidered the matter and found that even though some of the incumbents transferred from Bombay to Kota Division on their own request had joined Kota Division in the year 1969, they had become senior to those persons who had joined earlier in the years 1965, 1967 or 1968 in Kota Division. Therefore, a decision was taken which was communicated vide letter dated 2nd September, 1976, by which the seniority of the respondent was fixed below those who had joined earlier than June, 1969. The contents of the said letter are reproduced below :-

" Copy of letter No.EC.839/4/15/5/Vol.III dt.2/9/1976 from CCS(E) CCG to the DSO (E) KTT.

Sub: Promotions, reversions and transfers of class III staff - Commercial Department - Bombay Division - TCs/TTEs.

Please refer to this office letter No.E.839/4/15/5 Vol.II dt.24/11/1972 conveying Board's decisions regarding assignment of seniority of S/Shri Hari Mohan Sharma, Hari Prasad Sharma, Ram Prasad Gupta from the date Shri Jaswant Singh Babel reported for duty on Kota Division after his release from BCT Division was sent. This issue was under examination of the Board. On re-consideration, the Board have now decided vide their d.o. letter No.E(NG)176 SR6/9 dt.12/8/1976 that their intention was that Shri Jaswant Singh Babel should be kept below the other employees and not that Shri Babel's position should be kept fixed and the other three should be brought above him.

2. In view of the decision of the Board their seniority may be recast and this office advised early".

4. The revised seniority order was issued on 3rd Feb., 1978.

The same is also extracted below :-

"

WESTERN RAILWAY.

Divisional Office,
Kota Junction.

OFFICE ORDER

Sub: Seniority of class III staff - Ticket Checking Branch - Kota Division.

Ref: This office order No.even dated 7.12.73 and 28.9.76

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20/2/1981*

The seniority of S/Shri Hari Mohan Sharma, Hari Pd. Sharma, Ram Prasad Gupta and Jaswant Singh Babel who joined from BCT Division at their own request was under consideration of the Railway Board. As per Board's decision received under CCS(E) CCG's letter No.EC.839/4/15/5/Vol.III dated 2.9.76 Shri Jaswant Singh Babel who was junior to other above on BCT Division but joined earlier on this division, is to be given seniority below these TCs.

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2. In supersession of the seniority position advised under this office order No.ET/1030/15 dated 7.12.73 and 28.9.76 the seniority position of these employees is now as under :-

S.No.	Name	Desig.	Date of Birth.	Date of apptt.	Remarks.
1.	Shri Satish Kumar Chaturvedi	TC	10.7.44	28.4.67 27.2.69	Joined from BVP Division.
2.	" Hari Mohan Sharma	TC	1.12.31	21.5.56 10.3.69	Joined from BCT Division.
3.	" NK Chaturvedi	TC	19.5.43.	28.4.67 17.3.69	Joined from BVP Division
4.	" Khalilur Rehman	TC	21.7.41	30.8.67 17.3.69	- do -
5.	" KT Mamtani	TC	27.1.42	29.10.65 28.3.69.	- do -
6.	" Rohitash Kumar Mishra	TC	23.11.48	2.11.68	JP Divn.on mutual exchange with Sh.T.N. Punjwani who joined on 1/4/69 from BVP Divn.
7.	" Hari Pd.Sharma	TC	2.9.36	1.9.62 6.6.69	Joined from BCT Division.
8.	" Ram Prasad Gupta	TC	14.6.32.	4.4.56 5.6.68	- do -
9.	" Jaswant Singh Babel	TC	3.8.36	5.9.62 4.10.64	- do -

The above named staff may be advised accordingly.



No.ET/1030/15

sd/
D.S.(E)/KTT

Dated 3/2/1978.

Copy forwarded for information and necessary action to -

- 1.SS KTT, SM AF/IDH/BTE, BXN, GGC, SWM,
- 2.DCTI KTT, CTI GGC, BXN
- 3.Sr.DAO KTT/DAJO KTT, M & P Files.
- 4.CCS(E) CCG.
- 5.Shri K.Varadarajan, SPO(T) CCG with reference to his D.O.No EC.1030/4/11/5 of 1.2.1978."

5. Rule 312 of the Indian Railway Establishment Manual deals with the assignment of seniority in cases of transfer on request. The same reads as follows :-

"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".

*M. Nambiar
20/11/91*

DWS

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6. Admittedly, the respondent had joined in Kota Division in the year 1964 and, therefore, he was entitled for assignment of seniority in Kota Division at the bottom of all those who had joined before him in Kota Division. The assignment of the same seniority to those incumbents who had also given their option for transfer to Kota before the respondent but could not be transferred to Kota earlier than 1969 because of an administrative lapse was on a notional basis only. However, there was no ground whatsoever to submerge the seniority of the respondent below those who joined in Kota Division after he had joined in 1964. The respondent's right to claim seniority from 1964 flows from an established fact namely that he had actually joined in Kota Division in that year coupled with the provision of Rule 312. The assignment of the same seniority to certain other persons although placed above the respondent was only on a notional basis since they had exercised their option for transfer to Kota earlier than the respondent. This was done to cover an administrative lapse on the part of the Railway Administration. But merely because these other incumbents had joined in 1969 the legal right of the respondent who had joined in October, 1964 cannot be snatched away. As such there was no **valid** legal ground for submerging the seniority of the respondent below any other incumbents who had joined in Kota Division after him either on the basis of their direct placement in Kota Division or on having exercised their option for transfer to Kota Division on dates subsequent to that of the respondent. In the circumstances, we uphold the judgment and decree of the learned Munsif.

7. The grounds taken in the appeal are rather vague and do not stand judicial scrutiny. The appeal is accordingly dismissed with no order as to costs.

G.Krishna 20-11-91.
 (GOPAL KRISHNA)
 MEMBER (Jud1.)

h. - hanu
 20-11-91
 (KAUSHAL KUMAR)
 VICE CHAIRMAN.