

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

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Date of Order : 28/01/2001

O.A.NO. 426 OF 1998

Pooa Ram S/o Shri Shiv Das Ram by caste Jat, aged about 41 years, presently working as Head Clerk, Compilation Office, Western Railway, Ajmer.

.....Applicant.

VERSUS

1. Union of India through Secretary, Ministry of Railways, New Delhi.
2. The Chairman, Railway Board, New Delhi.
3. The General Manager (Establishment), Western Railway, Churchgate, Mumbai.
4. The Statistical and Analysis Officer, Compilation Office, Western Railway, Ajmer.
5. Smt. Mamta Sharma, Head Clerk, Statistical Branch, Office of the S.A. Officer (ETA), Western Railway, Delhi Vishanganj, Delhi.

.....Respondents.

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CORAM :

HON'BLE MR.A.K.MISRA, JUDICIAL MEMBER

HON'BLE MR.S.K.AGRAWAL, ADMINISTRATIVE MEMBER

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Mr. Amitabh Bhatnagar, Counsel for the applicant.

None is present for the respondents.

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ORDER

(Per Hon'ble Mr.A.K.Misra,J.M.)

The applicant had filed this O.A. with the prayer that the reversion order dated 17.11.1998 (Annex.A/3), Office Memo dated

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20.4.1998 (Annex.A/1) and Office Memo dated 5.11.1998 (Annex.A/2), be quashed and set aside and the respondents be directed to assign seniority to the applicant in the cadre of Head Clerk. Alternatively, after quashing the aforesaid office memos, Annexes. A/1, A/2 and A/3, the departmental authorities be directed to place the applicant in the same cadre and the position in which he was working on the post of Head Clerk prior to 15.11.1996.

2. The applicant had prayed for interim relief seeking stay of operation of order dated 17.11.1998 (Annex.A/3). After consideration, it was directed on 18.12.1998 that the impugned reversion order dated 17.11.1998 shall remain in-operative till next date. The said interim order continued thereafter and is still in force.

3. Notice of the O.A. was given to the respondents who have filed their reply to which a rejoinder was also filed by the applicant. It was contended by the respondents that the applicant, while he was working as Head Clerk on ad hoc basis in the office of Senior Accounts Officer (FTA) Delhi Kishanganj, Delhi, had come to the compilation office, Ajmer, on mutual transfer basis with Smt. Mamta Sharma, respondent No.5, who was working as Head Clerk in the said Ajmer Office. It is stated by the respondents that while applying for mutual transfer, the applicant did not describe himself to be an ad hoc Head Clerk. Thus, giving the concerned authority an impression that the applicant was working as Head Clerk as regularly promoted candidate. Subsequently, it was discovered that the applicant was working in the Delhi Office as Head Clerk on ad hoc basis and, therefore, his transfer was treated as request transfer and consequently, the applicant was assigned bottom seniority amongst the Senior Clerks and was retained at Ajmer. The impugned orders are perfectly legal as the applicant himself was party to suppression^{of} the material facts and had secured the benefit of mutual transfer unfairly. Therefore, the Original Application deserves to be dismissed.

4. We have heard the learned counsel for the parties and have gone

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through the case file.

5. The facts of the case are not much in dispute but they are necessary to be mentioned to clarify the position under which the respondents had passed the impugned order reverting the applicant to his substantive post treating his case as of request transfer.

6. It is stated by the applicant that while working on the post of Clerk (Lower Division Clerk) in the office of S.A.O. (FTA) DKZ, he was promoted to the post of Senior Clerk (Upper Division Clerk) w.e.f. 1.1.1988 on the basis of seniority-cum-suitability test. Subsequently, the applicant was confirmed on the post of Senior Clerk vide order dated 21.9.1994. It is further stated by the applicant that on 4.8.1995, he was promoted to the post of Head Clerk which became vacant due to promotion of one Shri Dharampal, Head Clerk, to the post of Chief Clerk w.e.f. 2.8.1995. Since the applicant was promoted on the clear vacancy, therefore, it was not mentioned in his promotion order that he was being promoted on ad hoc basis. Shri Dharampal retired on 30.11.1997 and, therefore, the vacancy caused by Shri Dharampal had become permanent and the applicant was entitled to be confirmed on the post of Head Clerk on 3.8.1997. It is stated by the applicant that he applied for mutual transfer with Smt. Mamta Sharma in the year 1996. Initially, the applicant was informed that Smt. Mamta Sharma was working as Head Clerk on ad hoc basis, therefore, mutual transfer cannot be effected but subsequently, when Smt. Mamta Sharma was made regular w.e.f. 3.9.1996 she again made an application for reconsideration of her application for mutual transfer. Thereafter, mutual transfer was affected vide order dated 15.11.1996 Annex.A/7. It is alleged by the applicant that thereafter, vide order dated 20.4.1998 the applicant was informed that at the time of mutual transfer of applicant with Smt. Mamta Sharma, the applicant was working as Head Clerk on ad hoc basis, as such, his transfer on mutual exchange is not valid and, therefore, the same is being converted into transfer on request basis and seniority be assigned ^{be followed,}

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to the applicant in the cadre of Senior Clerk. In this connection, it is stated by the applicant that he was never told that he was being promoted as Head Clerk on ad hoc basis and, therefore, he had not misrepresented to the authorities at the time of his mutual transfer and, therefore, treating the applicant's transfer as request transfer and consequently, reverting the applicant to the post of Senior Clerk would cause the applicant a recurring loss of 700/- per month and, therefore, the action of the respondents deserves to be quashed and the applicant is entitled to the prayer as mentioned above.

7. We have considered the rival contentions and have also considered the arguments of the learned counsel for the parties. It is stated by the respondents in their reply that the office of the Senior Accounts Officer (FTA), Delhi. Kishanganj, Delhi, had also not mentioned in its letter that the promotion of Shri Poosa Ram as Head Clerk was on ad hoc basis with the result that the competent authority at the Headquarters Office, Mumbai, remained under the bonafide belief that the promotion of Poosa Ram was on regular basis. As per their information, both the officials were holding the post of Head Clerk on regular basis, therefore, approval to the said mutual transfer was accorded. This fact shows that the correct requisite information was not passed-on to the higher authorities, therefore, in our opinion, the applicant alone cannot be held responsible for this. Had the forwarding authority at Delhi intimated in the mutual transfer application the ad hoc status of the applicant on the post of Head Clerk, probably, mutual transfer would not have been ordered. No doubt, by such suppression of requisite information the applicant was benefited in securing mutual transfer to Ajmer. But, this by itself does not mean that he should have been adjusted at Ajmer by giving bottom seniority in the cadre of Senior Clerks. In our opinion, the authorities on discovery of ad hoc status of the applicant, should have sent him back to his parent cadre at Delhi and should not have at that stage consider the applicant's hardship and order his retention at Ajmer at the bottom seniority in the cadre of Senior Clerks. No doubt, the respondents had passed the impugned order

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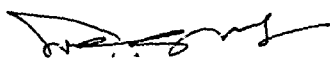
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reverting the applicant after notice to him but, in our opinion, such exercise was not at all necessary. In fact, the right thing should have been, to send back the applicant to Delhi. At this stage, we are not impressed with the applicant's contention that by giving him bottom seniority in the cadre of Senior Clerk at Ajmer, he would lose his seniority by many numbers. Since the applicant has prayed in alternative that he can be sent back to Delhi in the same cadre and position on which he was working on 15.11.1996, therefore, working-out the seniority position of applicant at Ajmer, is of no use.

8. Considering the facts and circumstances of the case, we are of the opinion that the applicant does not deserve to be retained at Ajmer even as a request transfers case. He deserves to be sent back to Delhi on the same post on which he was working at the time of his mutual transfer, at his own expenses. We are also of the opinion that in this mutual transfer, Smt. Mamta Sharma, is not to be blamed for any reason whatsoever. Therefore, cancellation of applicant's mutual transfer and sending him back to ^{Delhi Kishanganj,} Delhi, should in no way adversely affect Smt. Mamta Sharma, respondent No.5.

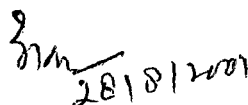
9. The Original Application, therefore, deserves to be partly accepted.

10. The Original Application is, therefore, partly accepted and the impugned order of reversion dated 17th November, 1998 (Annex.A/3), is hereby quashed. The applicant should now be transferred back to Delhi Kishanganj, Delhi, at his own cost in the same cadre, position and post on which he was working prior to 15th November, 1996, within a period of one month from the date of communication of this order. The parties are left to bear their own cost.



(S.K.AGRAWAL)

Adm.Member



28/8/2001

(A.K.MISRA)

Judl.Member

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