

**THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET**

(2N)

APPLICATION NO.: _____

Applicant(s)

Respondent (s)

Advocate for Applicant (s)

Advocate for Respondent (s)

NOTES OF THE REGISTRY


ORDERS OF THE TRIBUNAL

20.08.2007

OA No.597/2003

Mr. P.V. Calla, Counsel for applicant.
Mr. R.G. Gupta, Counsel for respondents.

Heard the learned counsel for the parties. The OA
is disposed of by a separate order.


(R.R.BHANDARI)
MEMBER (A)


(KULDIP SINGH)
VICE CHAIRMAN

AHQ

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

Jaipur, the 20th day of August, 2007

ORIGINAL APPLICATION NO. 597/2003

CORAM:

HON'BLE MR. KULDIP SINGH, VICE CHAIRMAN
HON'BLE MR. R.R. BHANDARI, ADMINISTRATIVE MEMBER

Vinod Kumar son of Shri Suwa Singh, aged about 40 years, at present working as Head TTE in the office of CTI (Amenities), North West Railway, Ajmer Division, resident of House No. 765/29 Nagbai, Pipal Ka Kuwa, Dhola Bhata Road, Ajmer.

By Advocate: Mr. P.V. Calla

.....Applicant

Versus

1. Union of India through the General Manager, North West Railway, Opposite Railway Hospital, Jaipur.
2. The Divisional Rail Manager, North West Railway, Ajmer Division, Ajmer.
3. Shri Chetan Kumar Rajoria, Travelling Ticket Inspector through DCTI, North West Railway, Ajmer.

By Advocate: Mr. R.G. Gupta


.....Respondents

ORDER (ORAL)

The applicant assailed the order dated 04.11.2003 (Annexure A/1), vide which, his seniority has been modified by the office of DRM, Ajmer.



2. The facts, in brief, are that the applicant was working as Head TTE w.e.f. 01.03.1993 at Kota Division. The applicant made a representation seeking his transfer on mutual basis with one Shri Bhagwan Das Rajaq. The mutual transfer was allowed and subsequently, the applicant was transferred at Ajmer vide order dated 01.05.1998 and he joined his duties on 17.5.1998 and Shri B.D. Rajaq joined as Head TTE at Kota Division. After the mutual transfer, vide order dated 06.03.2003 (Annexure A/10), seniority list was issued wherein the name of the applicant was shown as Head TTE at sl. No. 68. Subsequently, the respondents realized that the person, Shri B.D. Rajaq, with whom the mutual transfer of the applicant was effected was an ad hoc employee. Therefore, they have issued a show cause notice dated 11.09.2003 to the applicant to explain as to why his seniority in the cadre of Head TTE may not be changed on the ground that at the time when he joined at Ajmer Division, Shri B. D. Rajaq has not cleared the selection on the post of Head TTE and thereafter they have issued the impugned order dated 04.11.2003 changing the applicant's seniority position. The impugned order has been challenged on various grounds. The applicant alleged that while working as Head TTE, the applicant was transferred from Kota Division to Ajmer Division, his seniority was also fixed in the bottom of the cadre as is evident from order dated 06.03.2003 (Annexure A/10). However by passing the impugned order dated 04.11.2003 (Annexure A/1), the applicant has been made junior to his juniors and in this view of the matter, the action of the respondents is bad in



the eyes of law and therefore, the impugned order dated 04.11.2003 should be quashed and set aside.

3. The respondents have contested the OA, justifying the impugned order. In defence, they have stated that the impugned order has been issued in pursuance of Paragraph No. 310 of the IREM, which reads as under:-

"310 MUTUAL EXCHANGE - Railway servants transferred on mutual exchange from one cadre of a division, office or railway to the corresponding cadre in another division, office or railway shall their seniority on the basis of the date of promotion to the grade or take the seniority of the railway servant with whom they have exchanged, whichever of the two may be lower."

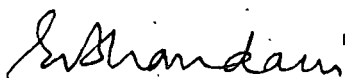
4. On perusal of Para No. 310 of the IREM, as reproduced above, it revealed that whenever there is a mutual transfer, candidate who is transferred will get the seniority of that person with whom he is transferred but in this case, it appears that a mistake has been committed by the respondents. Here in this case, there is a mutual transfer between regular Head TTE and ad hoc Head TTE, who was holding the substantive lower rank. This is an administrative lapse on the part of the respondents and for this administrative lapse, the applicant cannot be made to suffered and he cannot be reverted to lower rank particularly when he had already cleared for the selection for the post of Head TTE. He may be given seniority at the bottom existing at Ajmer Division which was earlier done vide Annexure A/10.



5. Thus we find that the impugned order vide which the seniority of the applicant has been depressed is penal in nature because by impugned order it is not only the seniority which is depressed rather the applicant has been reduced to a lower rank for not fault on his part. The reduction in rank is otherwise against the rules. So the respondents cannot invoke para 310 of IREM to reduce the rank of applicant and to cover their lapse when they permitted the mutual exchange between a substantive employee and ad hoc employee.

6. Accordingly, we hold that impugned order dated 04.11.2003 (Annexure A/1) cannot be sustained and the same is quashed and set aside. The applicant is entitled for all consequential benefits.

7. With these observations, the OA is disposed of with no order as to costs.


(R.R. BHANDARI)
MEMBER (A)


(KULDIP SINGH)
VICE CHAIRMAN

AHQ