

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 148 of 2004

On this the 10th day of December, 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

Pradeep Kashiv, S/o. Shri M.L. Kashiv,
aged about 41 years, R/o. 303-C,
Habibganj Colony, Bhopal-(MP).

... Applicant

(By Advocate - Shri Vaibhav Tiwari)

V e r s u s

1. Union of India, through
Chairman, West Central Railway,
Railway Board, Mumbai.
2. General Manager, West Central
Railway, G.M. Office, Jabalpur.
3. Chief Personal Officer, West
Central Railway, G.M. Office,
Jabalpur.
4. P.K. Chattupadhyay, Head Clerk,
Controller Officer/Head Quarter,
Railway Electrification, Danapur
(MH).

... Respondents

(By Advocate - Shri M.N. Banerjee)

O R D E R

By M.P. Singh, Vice Chairman -

By filing this Original Application the applicant has
claimed the following main reliefs :

- "ii. to set aside the impugned order dated 19.2.2003 (Annexure A-1) passed by Assistant Chief Personal Officer,
- iii. to command the respondents to issue a fresh gradation list and provide seniority to the applicant above respondent No. 4 (Shri P.K. Chattupadhyay),
- iv. to command the respondents to fix the lien of the applicant in the Bhopal Division as fixed by order dated 29.11.1999 (Annexure A-9) with adequate seniority with all consequential service/promotional benefits."

2. The brief facts of the case as stated by the applicant are that the applicant was appointed as Senior Clerk through Railway Recruitment Board, Bhopal vide letter dated 26th December, 1986. He was promoted to the post of Head Clerk vide

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order dated 1st February, 1988 on adhoc basis. The services of the applicant were regularised on the post of Head Clerk with retrospective effect from 10th January, 1991, vide order dated 31st February, 1992 (sic 31st March, 1992). He was absorbed against a vacant post of Head Clerk in Bhopal Division on 15th May, 1992 (Annex-A-5).

2.1 As regards the lien of the applicant the matter was referred to the Chief Personnel Officer (Electric) Mumbai for adjudication. The Chief Personnel Officer vide letter dated 3rd April, 1991 authorised Jhansi Division to decide the lien of the applicant. After perusal of the record, the Chief Personnel Officer (Administration), Mumbai has fixed the lien of the applicant in Bhopal Division vide order dated 29th November, 1999. In compliance of the order dated 29th November 1999, the gradation list was amended vide order dated 24th December, 1999 and the applicant was placed at serial No. 3 above the respondent No. 4. Thereafter the respondent No. 3 ignoring all the previous orders passed regarding the fixation of the lien of the applicant issued the impugned gradation list dated 19th February, 2003 (Annexure A-1), wherein the applicant is placed at serial No. 15 and the respondent No. 4 is placed at serial No. 1. Against the impugned gradation list the applicant made representation on 28th February, 2003 to get appropriate seniority. According to him, his all efforts have failed and his representation remained unheard. Hence, this Original Application.

3. The respondents in their reply have stated that the applicant was initially appointed as Senior Clerk in Jhansi Division. He was promoted as Head Clerk on regular basis with effect from 10th January, 1991. The lien of the applicant was initially maintained at Jhansi Division as Senior Clerk and thereafter as Head Clerk. While the applicant was holding his

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(Jamdar) Ukrani of Bhopal Division and the applicant of Jhansi Division on usual terms and conditions applicable for such transfer vide their order dated 1.11.1995. In pursuance of this approval accorded by the Zonal Headquarter, the Divisional Railway Manager, Bhopal Division has issued the necessary office order No. 1046/1995, dated 29.11.1995 (Annexure R-VI). The Zonal Headquarter vide their letter dated 1.1.2003 (Annexure R-IX) has clarified the position to the DRM, Bhopal that the applicant was holding his lien in Jhansi Division and not under DRM, Bhopal Division and further asked him to take necessary action accordingly. It is on this clarification the DRM, Bhopal has issued the draft gradation list of Head Clerk of Bhopal Division on 19th February, 2003 and has invited objections from the concerned persons. The same is challenged by the applicant.

5.1 The contention of the applicant that he was holding his lien with the Bhopal Division from the day he joined as Senior Clerk and later on ~~after he was promoted to the post of~~ a) Head Clerk and that he is senior to private respondent No. 4 as his date of initial appointment as Senior Clerk being 26th December, 1986, is not correct. The respondents in their reply have clearly stated that the applicant was appointed in Jhansi Division on 26th December, 1986 before formation of the Bhopal Division. The Bhopal Division came into existence with effect from 1.1.1987. This fact has neither been denied by the applicant nor he has submitted any documentary proof to rebut this fact stated by the respondents. In support of his claim that he was absorbed in Bhopal Division as Head Clerk he is relying on the letter dated 15.5.1992 issued by the Divisional Electrical Engineer, Bhopal (Annexure A-5) and the letter dated 23.2.1994 (Annexure A-8) issued by the DRM, Jhansi Division. As far as the letter dated 15.5.1992
is concerned,
(Annexure A-5), the Divisional Electrical Engineer is not the

competent authority to absorb the applicant as Head Clerk in Bhopal Division and therefore, the contention of the applicant that he has been absorbed in Bhopal Division vide order dated 15.5.1992 is not tenable. As regards the letter dated 23.2.1994 (Annexure A-8) issued by the DRM(K), Jhansi, it is only a proposal sent to the DRM, Bhopal with a request that the lien of the applicant be fixed with Bhopal Division. In response to this, the DRM, Bhopal vide his letter dated 29.11.1994 (Annexure R-VIII) has rejected the proposal and categorically stated that the lien of the applicant is fixed with Jhansi Division and there is no question of change of the applicant's lien from Jhansi to Bhopal Division.

6. After close scrutiny of the relevant papers submitted by both the parties, we find that the applicant has nowhere mentioned the fact in the pleadings that his lien was transferred from Jhansi Division to Bhopal Division under his own request of mutual transfer with Smt. Anita (Jamdar) Ukrani. However, he has admitted this fact in para 4 of his rejoinder, wherein he has stated that he was forced to agree to this. All the documents relied upon by the applicant to prove his lien with Bhopal Division are issued by the lower authority who are not competent to transfer his lien to Bhopal Division. He has only tried to mis-lead and confuse the issue by producing the letters which are mostly written at the level of Divisional Electrical Engineer who is not the competent authority to decide the ^{fixation of} lien and seniority of the applicant. Therefore, we find that the seniority of the applicant in the gradation list issued on 19th February, 2003, has correctly been fixed by the competent authority and is in order. Hence, no irregularity or illegality has been committed by the respondents while issuing the gradation list dated 19th February, 2003.

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7. In view of the discussion made above, we do not find any merit in this Original Application and the same is liable to be dismissed. Accordingly, the Original Application is dismissed with no order as to costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

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पृष्ठांकन से ओ/न्या.....जबलपुर, दि.....
प्रतिलिपि दाखि दिनत:-

(1) सचिव, उच्च न्यायालय वार एक्सिस्टेशन, जबलपुर
(2) आवेदक श्री/महिला/पुरुष.....के काउंसल Varbhav Tewari
(3) प्रत्यर्थी की/कीमती/पुरुष.....के काउंसल Dev-DBR
(4) व्यवसाय, लोकांश, जबलपुर ज्या शब्दों
सूचना एवं आवश्यक वार्ताएँ हेतु

Issued
on 13.12.04
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PR Bhav Dev
IBP