

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH

OA No.509/2004

Jabalpur, the 27th day of October, 2004.

C O R A M

Hon'ble Mr.M.P.Singh, Vice Chairman
Hon'ble Mr.A.K.Bhatnagar, Judicial Member

1. Rajendra Kumar Meena
S/o Shri Roop Koshor Meena
2. Prem Raj Meena
S/o Late Ram Sahaye Meena
3. Brijmohan Meena
S/o Shri Dhansi Ram Meena
4. Gangadhar Meena
S/o Shri Chandraram Meena
5. Sarwan Kumar Meena
S/o Shri Prabhat Ram Meena

Applicants

(Applicant No.1 is Sr.Section Officer,
Applicants 2 to 5 are Section Officers,
O/o F.A., CAO, JDA Building
Marhatal, Jabalpur).

(By advocate Shri S.Paul)

Versus

1. Union of India
Ministry of Railway
through General Manager
West Central Railway
Jabalpur.
2. The General Manager
West Central Railway
Jabalpur.
3. The Financial Advisor & Chief Accounts Officer
(Administration)
West Central Railway, Jabalpur.
4. Shri S.S.Hada
Section Officer
through the Financial Advisor &
Chief Accounts Officer (Admn.)
West Central Railway, Jabalpur.
5. Shri K.C.Sheel
Section Officer
through the Financial Advisor &
Chief Accounts Officer (Admn.)
West Central Railway, Jabalpur.
6. Shri S.C.Pathak
Section Officer through the Financial
Advisor & Chief Accounts Officer(Admn.)
West Central Railway, Jabalpur.

Respondents.

(By advocate:Shri M.N.Banerjee)

WV

O R D E R

By A.K.Bhatnagar, Judicial Member

By this OA, the applicants have prayed for the following reliefs:

- (i) Set aside the order dated 1.4.2004 Annexure A1 whereby the private respondents own request transfer registration is shown over and above the applicants. If necessary, set aside clause 5 of notification dated 4.2.04.
- (ii) Declare that the applicants are senior for the purpose of transfer under name noting also, and direct the respondents to treat the applicants as senior for the purpose of own request transfer qua the private respondents and accordingly process the applications of own request transfer as per law.

2. The brief facts of the case as per the applicants are that applicant No.1 is working as Senior Section Officer and applicants 2 to 5 are working on the post of Section Officers. A chart containing necessary service particulars of the applicants is filed as Annexure A2. The applicants were initially working under Western Railway and were posted at Ajmer and Mumbai (Church Gate) whereas the private respondents were working under the then western Railway in Kota Division. On the formation of new Railway zone i.e. West Central Railway w.e.f. 1.4.2003, options were called for from the employees who wanted to switch over to West Central Railway. The applicants exercised their options and accordingly were transferred to Jabalpur zone of West Central Railway. The private respondents were brought to Jabalpur from Kota Division by giving them adhoc promotion as Section Officers vide order dated 4.7.03 (Annexure A3) containing certain conditions in clauses 'd', 'e', and 'f'. The adhoc arrangement made vide order dated 4.7.03 was terminated/cancelled vide order dated 8.1.2004. Consequently the private respondents and other employees who were given adhoc promotion stood reverted with immediate effect (Annexure A4). The applicants



are much senior than the private respondents for which Annexure A5 is filed for ready reference. Thereafter a regular promotion order dated 30.1.2004 (Annexure A6) was passed thereby the applicants and the private respondents were promoted on their respective posts on the same date. However, the applicants' position is higher in the promotion order being senior to the private respondents. It is claimed by the applicants that there exist a provision for own request transfer in the respondent department which is known as "Name Noting Policy". As per the said policy, the employees are required to prefer an application for their own request transfer to the station/division of their own choice. A register is maintained wherein the request of the employees and the date is mentioned by which seniority in the matter of own request transfer is maintained. A person who has made a request at earlier point of time has a preferential right over the persons who made a subsequent request. The apprehension of the applicants is that as the private respondents preferred applications for their own request transfer under Name Noting Policy at the time of their adhoc promotion in pursuance of order dated 4th July 2003, which was ultimately cancelled vide order dated 8.1.2004, it may affect the interests of the applicants being seniors. As the applicants and the private respondents were legally promoted by a common order dated 30.1.2004, the applicants and the private respondents preferred a regular application for own request transfer to the station/division of their choice i.e Kota. As the applicants are senior to the private respondents which is reflected in the promotion order itself and the date of making own request transfer is same, the department should have given preference to the applicants vis-a-vis the private respondents. In the notification dated 1.4.2004 (Annexure A7) a list of employees

is given in which the date of registration is also mentioned. The date mentioned against the applicants is shown as 8th July, 2003 while that of the private respondents is shown as 8th July 2003. The applicants feeling aggrieved preferred representations which are cumulatively marked as Annexure A8. But no heed was paid to the genuine request of the applicants. Another letter dated 4.2.2004 (Annexure A1) was passed whereby in clause 5 it is mentioned that "for staff who had joined on adhoc basis as SO/TIA/ISA, the adhoc period has been counted for Name Noting in the category of SO/TIA/ISA as a special case". If it is applicable to the private respondents, then it is certainly going to affect the interests of the applicants. The applicants have no objection in own request transfer of S/Shri Chandan Malsutar, M.K.Singhal, ^{being senior to others} HS Meena and Sukhram Chapola is made prior to the applicants. ^{the applicants approached that} The matter of transfer to Kota Division of the employees if takes place, the applicants may ^{not} get seniority in the matter of transfer because of the dates mentioned against their names. Therefore, the applicants have filed this OA.

3. Learned counsel of the applicants submitted that as the applicants and the private respondents are promoted on 30.1.2004 and the applicants are senior to them, both preferred applications under Name Noting Policy. Thus the applicants are legally senior to the private respondents for consideration of transfer. The department cannot treat the earlier applications made by the private respondents on 8th July 2003 as date of registration because it is arising out of adhoc arrangement which automatically stood cancelled on termination of the arrangement. The action of the department in issuing the order dated 1.4.2004 thereby showing the private respondents' date of registration as 8th July 2003 is arbitrary, unjust, unreasonable and illegal.

4. Learned counsel for the respondents resisting the claim of the applicants filed a counter reply which was followed by a rejoinder filed by the applicants. The learned counsel for the respondents submitted that the Name Noting System is a scheme for the personal benefit of staff and to regulate the sequence of transfers so that there is an element of practical fairness, based on "first request, first transfer". The Railway Board's letter dated 1.10.71 is filed as Annexure R1. The tenor of the letter is that a reasonable and equitable policy, to redress the real problem of staff who need to be transferred, on promotion, generally should be available. No rules nor any formal procedures have been laid down by the department. Seniority is relevant for further promotions or for benefits specifically accorded in the order of seniority. The name noting system considers only the date of registration for transfer (which usually corresponds to the posting of the employee to the station) and not the seniority at all. He also emphasised that seniority has no relevance in the name noting system. Formation of the West Central Railway was made on 1.4.2003. It had as staff, on the date of formation, working in the Jabalpur/Bhopal Divisions which had earlier been in the Western Railway and the Kota Division, which earlier had been in the Western Railway. Staff of the various Railways had also been given the option to become part of the newly formed West Central Railway. The seniority (cadre) of staff in WCR was kept 'open' till it was finalized, based on 'dates of entry into respective grades' of staff from different seniority units and the inter-se seniority, in case of staff from the same seniority unit. This finalization was to be done only after all 'option' staff had reported or till the date for such reporting was over. The date of closing of



seniority was fixed as 31.10.2003 as notified by the Railway Board vide letter dated 30.10.2003 (Annexure R2). Due to the need of supervisory staff in the newly formed WCR, the available qualified staff were therefore given adhoc promotions to occupy the vacant supervisory posts, largely at Jabalpur. This was done vide order dated 4.7.03 (Annexure R3). The promotions were adhoc because the seniority list had not been prepared as the cadre was still open. The benefits being kept provisional were hence the benefits that would otherwise have accrued based on seniority. The staff from Kota had come on transfer and such of them as desired to register for transfer and posting in Kota were allowed to ~~so~~ register their names. The persons came on promotion and persons working as regular SOs and the clerical staff were immediately given adhoc promotion against vacant posts and their names were registered accordingly, who desired their posting at Kota. The seniors among these persons were registered below the juniors who had come to Jabalpur on adhoc promotion, as name noting was not seniority based. On 31.10.2003, the cadre was declared closed (Annexure R2), when it became possible to prepare seniority lists and to declare regular, seniority based promotions to the supervisory post of SO and Senior SO. The two categories are functionally the same, although the post of SSO is a promotion from the post of SO. For this reason, SOs and SSOs are treated equally in respect of posting and duties. They are also treated equally for 'name noting'. The learned counsel for the respondents further submitted that while ordering the regular promotion of the staff, viz. based on seniority, it was noticed that a rule in fixation of pay of staff who were on adhoc promotion, followed by regular promotion, would cause an anomaly in the pay of the staff. Normally, adhoc promotion is given to senior staff, pending the regular selection

procedure. When the selections are held finally, if the seniors who had been promoted adhoc qualify and they continue in the higher grade, then the period of adhoc promotion is counted for the purpose of increments in the regular grade. This does not result in any anomaly as the staff given the benefit are already the seniors. As this rule would apply to the present instances of junior staff who had been given adhoc promotion purely because seniority lists had not been prepared, it would have resulted in the anomaly of juniors getting higher pay or earlier increments than seniors who got promoted later. The learned counsel further submitted that the system of name noting is based on equity and is an administrative device to assure fair dealing in the posting of persons to the station of choice. In the present case this principle is being followed in its true spirit. The priority of registration for transfer was notified on 4.2.04 (Annexure R4). There are no instructions that the system should be governed by seniority. It was hence just and proper that the names of the earlier registered persons be retained in the order of registration. He further submitted that the adhoc promotion would not fetch any benefits of regular promotion to the employees with regard to substantive pay or seniority. This condition does not affect name noting. The applicants themselves have accepted this. The learned counsel finally submitted that in view of the facts and circumstances mentioned in the counter reply, this OA is liable to be dismissed being devoid of merit.

5. The learned counsel for the applicant in his rejoinder has stated that since the date of registration of the private respondents is much prior to that of applicants, they have a preferential right under the Name Noting Policy for own request transfers. As a policy, there is no dispute so far as this stand of the respondents is concerned. This is not in dispute that the private

WV

respondents were promoted earlier as a stop gap arrangement by order dated 4th July 2003. There is a clear stipulation that this promotion will not provide them any claim of the higher post. Thus, on the strength of this adhoc promotion when private respondents prefer representations for own request transfers, their transfers could have been at best for their substantive post. These employees were working as Accounts Assistants and were given adhoc promotion as SO and therefore could not have claimed own request transfers on the post of SO, which had been cancelled on 8.1.2004 (Annexure A4). Thus the stop gap arrangement of adhoc promotion no more existed after 8.1.2004 and thereafter most of the private respondents and the applicants were promoted by order dated 30.1.2004. Once the adhoc promotion stood cancelled on 8.1.2004 and on getting regular promotion on 30.1.2004, the applicants and the private respondents preferred a representation under the Name Noting Policy on the same date i.e. 30.1.2004. Thus, since the requests for own request transfers were made on 30.1.2004, the seniority and the placement on the promotional post will play a role and will be a determining factor. Since the applicants are admittedly senior to the private respondents, they are entitled for getting a preferential right for transfer under the Name Noting Policy.

6. we have heard the learned counsel for the parties and perused the records. Admittedly, a person who made a request at an earlier point of time has a preferential right over the person who made a request subsequently as stated in para 4.9 of the OA. It is also an admitted fact that seniority is not the basis for registration of transfer.

WV

respondents were promoted earlier as a stop gap arrangement by order dated 4th July 2003. There is a clear stipulation that this promotion will not provide them any claim of the higher post. Thus, on the strength of this adhoc promotion when private respondents prefer representations for own request transfers, their transfers could have been at best for their substantive post. These employees were working as Accounts Assistants and were given adhoc promotion as SO and therefore could not have claimed own request transfers on the post of SO, which had been cancelled on 8.1.2004 (Annexure A4). Thus the stop gap arrangement of adhoc promotion no more existed after 8.1.2004 and thereafter most of the private respondents and the applicants were promoted by order dated 30.1.2004. Once the adhoc promotion stood cancelled on 8.1.2004 and on getting regular promotion on 30.1.2004, the applicants and the private respondents preferred a representation under the Name Noting Policy on the same date i.e. 30.1.2004. Thus, since the requests for own request transfers were made on 30.1.2004, the seniority and the placement on the promotional post will play a role and will be a determining factor. Since the applicants are admittedly senior to the private respondents, they are entitled for getting a preferential right for transfer under the Name Noting Policy.

6. we have heard the learned counsel for the parties and perused the records. Admittedly, a person who made a request at an earlier point of time has a preferential right over the person who made a request subsequently as stated in para 4.9 of the OA. It is also an admitted fact that seniority is not the basis for registration of transfer.

WV

The only contention of the applicants is that the action of reversion ~~would~~ annul the registration for transfer. It is already mentioned that adhoc promotion would not fetch any benefit to the regular employees with regard to substantive pay or seniority. This condition does not affect the name noting system which has been accepted by the applicants also. We have also gone through A1 notification dated 4.2.04 and also A-7 dated 1.4.04 which have been issued ~~as~~ per the Name Noting Policy (Accounts Staff) which have not affected the applicants adversely. The only grievance of the applicants is that the private respondents who were promoted on adhoc basis had submitted their applications prior to the applicants. The order of adhoc promotions had been annulled by the subsequent order. This anomaly should be removed by the respondents and the applicants be treated seniors and the transfer orders be considered ~~as~~ seniority basis from the date of applications dated 30.1.2004.

7. After considering the submissions of the learned counsel for both parties and carefully perusing the records, we find that the applicants are contesting this case on a mere apprehension ~~and~~ we find no merit in this case. Accordingly the OA is dismissed being devoid of merit.

(A.K.Bhatnagar)
Judicial Member

(M.P.Singh)
Vice Chairman

aa.

पूछांकन सं. ओ/न्या..... जवलपुर, दि.....

पत्रिनिधि अचो दिन:

(1) सचिव, ओ/न्या अधिकारी वार एवं दिवियारा, जवलपुर

(2) आवेदन क्रमांक/प्रक्रमांक नं. काउंसल

(3) अधिकारी नं. काउंसल

(4) अधिकारी, लोधरा अन्तर्गत नगरपाली नगर

सूखना एवं अन्यायामुक्त नगर

3. Paul
MN Banjre

रप. रजिस्ट्रर 28-10-04

Issued
on 28.10.04
by