

**CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH**

OA NO. 23/02

Bilaspur, this the **3rd day of February, 2005**

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

Mahebdra Singh Pal
S/o Shri Trilok Chand
R/o C/o R.L.Yadav
House No.24/14, Indira Nagar
Near Bhudheswar Temple
Ratlam.

Applicant

(By advocate Shri V.Tripathi)

Versus

1. The Union of India
Through its General Manager
Western Railway
Churchgate, Mumbai.
 2. The Divisional Railway Manager
Western Railway
Ratlam.
 3. The Senior Divisional Electrical Engineer (TRO)
Office of the Divisional Railway Manager
Western Railway
Ratlam.
 4. Shri Akbar Khan
Diesel Asstt
Through Senior Divisional Electrical Engineer (TRO)
Western Railway
Ratlam.
- Respondents.

(By advocate Shri M.N.Banerjee)

ORDER

By Madan Mohan, Judicial Member

By filing this OA, the applicant has claimed the following reliefs:

- (i) Set aside the order dated 2.1.02 (Annexure A1)



- (ii) Direct the respondents to continue the applicant as Goods Driver with all consequential benefits as if the impugned order dated 2.1.02 is never passed.

2. The brief facts of the case are that the applicant was initially appointed on the post of Assistant Driver on 30.9.96 and was sent for training from 1.10.96 to 14.6.97. Thereafter he was posted at Mumbai. He preferred an application seeking mutual transfer with one Ratanlal Sukhram, Assistant Driver. The applicant's request was accepted and he was transferred. Document dated 1.10.99 sent by Ratlam Office contains the date of appointment of the applicant as 1.10.96 is filed as Annexure A-2. Accordingly the applicant joined at Ratlam on 26.4.2000 after getting relieved from Mumbai on 24.5.2000. The relieving order dated 25.4.2000 is filed as Annexure A-3. While working at Ratlam, the applicant became eligible to be considered for the post of Goods driver in the pay scale of Rs.5000-8000. Since the applicant was eligible and within the zone of consideration for selection to the post of Goods Driver, an eligibility list dated 19.12.2000 (Annexure A5) was prepared wherein the applicant's name finds place at Sl.No.84. In pursuance to the said zone of consideration the applicant appeared in a written examination and viva voce and he was declared successful in both and the applicant was selected and appointed as Goods Driver. The order dated 30.5.2001 and 11.4.2001 collectively marked and filed as Annexure A7 shows that he was promoted as Goods Driver. Accordingly the applicant joined the promotional post of Goods Driver on 18.7.2001. The applicant was shocked to receive an order dated 5.10.2001 (Annexure A9) whereby the applicant's seniority is shown at Sl.No.216. The applicant's seniority and the date of continuous officiation is altered from 1.10.96 to 17.6.97 vide order dated 5.10.2001 without giving any opportunity to the applicant. Again the applicant received another order dated 10.10.2001 (Annexure A11) whereby he was informed that his seniority on the post of Assistant Driver is erroneously mentioned and therefore the department proposed to alter the same by downgrading the applicant's position. He was further



informed that since his seniority was earlier erroneously fixed, he came within the zone of consideration for the post of Goods Driver and in view of alteration in the seniority, it was proposed that the applicant will be reverted to the post of Assistant Driver. The applicant submitted a representation dated 25.10.01 (Annexure A12). It has come to the notice of the applicant that private respondent No.4 whose name finds place at Sl.No.112 in the seniority list dated 5.10.2001 has joined in the month of Nov. 1997 as Assistant Driver on promotional post while the initial date of appointment of the applicant is 1.10.96 i.e. before the private respondent No.4. He joined at Ratlam on 7.6.97 but the authorities have placed private respondent No.4 over and above the applicant. The impugned order is arbitrary, unjust, unreasonable, unfair and violative of the principles of natural justice.

3. Heard the learned counsel for the applicant and the counsel for the private respondent No.4. It is argued on behalf of the applicant that the applicant's initial date of appointment is 1.10.96 as is shown in Annexure A-2 and not 17.6.97 as is shown in Annexure A-9. During this period, the applicant was sent for training by the respondents. Hence the applicant shall be treated to be appointed since 1.10.96. The letter issued by the respondents dated 5.10.2001 (Annexure A9) and the letter dated 10.10.2001 (Annexure A11) are apparently against rules and law and the respondents did not afford any opportunity of hearing to the applicant before passing these orders and the applicant's reversion is against law. Private respondent No.4 who had joined the service in the department of the respondents after the date of joining of the applicant was given promotion ignoring the seniority of the applicant. He further argued that the order of reversion is not passed by the competent authority. Hence this OA deserves to be allowed.

4. In reply, learned counsel for the respondents argued that the applicant was transferred on mutual basis with Shri Ratanlal, Sr.Assistant Driver. The seniority of the applicant has been given in terms of para 310



of IREM (Annexure R2). The date of appointment of Ratanlal was 14.12.93 while the applicant was given seniority from the date of his appointment i.e. 17.6.97. Hence the applicant was junior to Ratanlal. The applicant was working as Assistant Driver since 26.4.2000 in Ratlam Division. Meanwhile a selection for the post of Goods Driver was notified and the applicant was included in the eligibility test (Annexure A5) by mistake assuming the date of appointment as 1.10.96. the applicant appeared in the selection and found successful as such was given posting on the post of Goods Driver in the pay scale of Rs.5000-8000. The case of the applicant was examined thoroughly and it was found that the seniority of the applicant was wrong and the applicant was wrongly called for. To rectify the mistake, the applicant was given a show cause notice dated 10.10.2001 (Annexure A11). The applicant submitted his representation and after examining the representation, he was issued a letter dated 2.1.2002 (Annexure A1) that due to wrong fixation of seniority he was made eligible and promotion was given, therefore he was being reverted. The contention of the applicant about private respondent No.4 was also denied.

5. After hearing the learned counsel for both parties and carefully perusing the records, we find that the applicant was transferred on mutual basis with one Ratanlal, Sr. Assistant Driver. The date of appointment of Ratanlal was 14.12.93. Even if the contention of the applicant is accepted that his initial date of appointment was 1.10.96, aforesaid Ratanlal whose date of appointment was 14.12.93 was senior to the applicant and the applicant was transferred on mutual basis. We have perused para 310 of IREM in this regard. After completing successful training by the applicant, he was appointed on 17.6.97 which is the actual date of his appointment. The arguments advanced on behalf of the respondents that the date of appointment of the applicant for the purpose of the relief claimed by him was wrongly mentioned as 1.10.96 which is a clerical mistake only and without checking from the service records of the applicant and subsequently, this mistake was rectified by the respondent,



seem to be tenable, in view of the ruling of 1997 SCC L&S 83 Kuttiyappan Vs. UOI & ors., decided on 26th August 1996 in which the Hon'ble Supreme Court has held that "Seniority – Direct recruits and promotions – Process of selection for promotion starting earlier than the process of selection for direct recruitment but the direct recruits joining the posts before those selected for promotion could start working in the posts after completing the training – In such circumstances, held, the CAT rightly rejected the claim of the promotees to seniority over the direct recruits". The Hon'ble Supreme Court has also mentioned that R.306 of IREM and in its note also in which it is mentioned that "in case the training period of a direct recruit is curtailed in the exigencies of service, the date of joining the working post in case of such a direct recruit shall be the date we would have normally come to a working post after completion of the prescribed period of training".

6. Considering all the facts and circumstances of the case, we find that the applicant is not legally entitled for the reliefs claimed and the OA deserves to be dismissed. Accordingly the OA is dismissed. No costs.

(Madan Mohan)
Judicial Member

(M.P.Singh)
Vice Chairman

aa.

पृष्ठोंकन सं ओ/न्या. जबलपुर, दि.....
पतिलिपि अर्पित:-

- (1) सचिव, उच्च न्यायालय एवं होरिथान, जबलपुर
- (2) आवेदक श्री/श्रीमती/शु. के काउंसल
- (3) प्रत्यर्थी श्री/श्रीमती/शु. के काउंसल
- (4) कोषपाल, कोषरा. जबलपुर न्यायालय
सूचना एवं आपश्चर्य कार्यवाही हेतु

उप सचिव

Tri Pethi
Dor M
M. N. Bhatnagar
Dor

Issued
on 10-2-05
BS