

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 715 of 2002

Indore, this the 22nd day of July, 2004

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

Radheshyam Malviya
S/o Shri HP Malviya,
Aged about 38 years,
R/o Qr. No. RB-II/32-B,
Railway Colony,
Shakti Nagar, Habibganj
Bhopal.

APPLICANT

(By Advocate - Shri S. Paul)

VERSUS

1. Union of India
through its Secretary,
Ministry of Railway,
New Delhi.
2. The General Manager,
Central Railway,
Mumbai CST Mumbai
3. The Chief Personnel Officer(T)
Central Railway,
Mumbai CST, Mumbai
4. The Divisional Railway Manager
Central Railway
Bhopal Division,
Bhopal

RESPONDENTS

(By Advocate - Shri S.P. Sinha for official respondents
Shri L.S. Rajput for private respondent)

ORDER

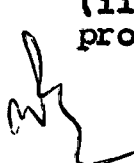
By M.P. Singh, Vice Chairman -

By filing this OA, the applicant has sought the following main reliefs :-

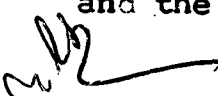
"(ii) Set aside the order dated 17.7.2002
Annexure A-1 read with order of CPO dt.11.7.2002
mentioned therein.

(ii) Consequently command the respondents to
provide seniority of the applicant as Senior Clerk
as per the merit position in RRB and consequently
alter/modify/enhance the applicant's position
for the purposes of seniority and selection
conducted on the post O.S.-II & OS-I etc.

(iii) Consequently direct the respondents to
provide all service benefits arising thereto".

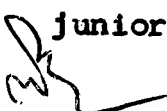


2. The brief facts of the case are that the applicant was selected and appointed as a Senior Clerk, on which post he joined on 1.12.1986. As per the merit list prepared by the Railway Recruitment Board he was placed at serial no.36, whereas the private-respondents were at serial nos.58 and 126. The private respondents ^{are} could join their duties on 3.10.1986 and 14.10.1986 respectively, whereas the applicant joined his duties on 1.12.1986. As per para 303(b) of the Indian Railway Establishment Manual (for short 'IREM'), the seniority is required to be assigned to the candidates according to the merit position obtained by them in RRB, since for the post of Senior Clerk the employees are not required to undergo ^{are} ~~for~~ any training and they were directly appointed on a working post. The applicant and private-respondents were subsequently promoted as Head Clerk on 20.9.1989 on adhoc basis. On 16.5.1991 the applicant was confirmed as Head Clerk. He was placed as Head Clerk below the private respondents. He has submitted a representation dated 1.1.1993 claiming seniority on the basis of the merit list of RRB for the post of Senior Clerk. On 20.5.1995, the Senior DPO issued a show cause notice to alter the seniority of the candidates in view of the prayer made by the applicant. On 30.10.1996, a notification for filling up the post of Office Superintendent Grade-II (for short 'OS-II') was issued. In the zone of consideration, the private-respondents were shown senior to the applicant notwithstanding the fact that vide letter dated 22.2.1996 the applicant has been shown as senior to the private respondents. Vide order dated 15.1.1997, (Annexure-A-5) the private-respondents were again shown over and above the applicant. The applicant again preferred a representation on 21.1.1997. He also submitted representations to Senior DPO and DRM on 23.8.2001 and 11.1.2002 (Annexures-A-11 & A-12 respectively) However, the respondents vide their impugned order dated 17-7.2002 had replied that seniority will be maintained from the date of joining as Senior Clerk. The applicant was further promoted as OS-I in the pay scale of Rs.6500-10500 vide order dated 26.8.2002 and the official-respondents still continue to show private-



respondents over and above the applicant in the seniority list. Hence he has filed this OA.

3. The respondents in their reply have stated that Bhopal Division came into existence on 1.7.1987 comprising of parts of Bhusawal/Jhansi & Kota divisions. The applicant and private-respondents were selected by the RRB, Bhopal ^{in 2} by the same panel in the year 1986 but were allotted to different divisions. The applicant was allotted to Jhansi division and was later posted in Bhopal division where he joined on 1.12.1986, whereas the private-respondents 6 and 7 were posted in Jabalpur Division where they joined on 3.10.1986 and 14.10.1986 respectively. Options were given to those persons who did not want to remain in Bhopal division that they may opt for posting in their parent divisions. Since there was a shortage of staff in Bhopal division, options were invited from the staff in other divisions, if they intend to opt for Bhopal division. On administrative account, the applicant continued in Bhopal division, while the respondents 6 and 7 who were working in Jabalpur Division opted for transfer to Bhopal Division. Hence, they were transferred from Jabalpur division to Bhopal division on 10.6.1987 carrying their original seniority i.e. from the date of joining in Jabalpur division. The cadre in Bhopal division was open and was in floating position. On closure of the cadre on 24.10.1988, the seniority list of Senior Clerks, on which post the applicant and private-respondent nos. 6 & 7 were working, was prepared on the basis of joining the working post in accordance with Para 302 of the IREM. The applicant and private-respondents were promoted as Head Clerk by the same order dated 28.2.1991 and in the seniority list published on 16.5.1991 the applicant was shown junior. On representation from the applicant, a proposal was made to revise the seniority list which was published on 20.5.1995. The respondents 6 and 7 submitted objections which were again considered and the old seniority of the applicant as per list dated 13.3.1995 was revived. Thus, the applicant was being shown junior to the private-respondents 6 & 7 in the seniority list;



issued on 24.10.1988, 16.5.1991, 13.3.1995, 6.7.1998 and 27.7.2001 continuously. Hence after lapse of 14 years from the date of 1st seniority list dated 24.10.1988, there is no question of change of seniority on the post of Senior Clerk and thereafter on promoted post based on the 1st seniority list. Hence there is no case for correction.


3.1 The respondents further state that Para 303(b) of the IREM is applicable in respect of first posting in the same department/division. Hence Para 302 of the IREM is the proper rule and the seniority of the applicant and private-respondents has correctly been fixed by the respondents. Therefore, the OA is liable to be dismissed.

4. Heard the learned counsel of both the parties.

5. The learned counsel for the applicant has stated that the applicant and private-respondents were recruited through RRB and it is an admitted position that the applicant has been placed above the private-respondents in the merit position of the RRB. It is also not in dispute that ~~both~~ the applicant and private-respondents were transferred to Bhopal division in the administrative exigencies. The learned counsel has, therefore, submitted that seniority in the initial grade of Senior Clerk maintained on the basis of RRB Merit list, should be maintained and the applicant should be shown senior to the private-respondents. He has submitted that seniority of the applicant and private respondents is required to be fixed in accordance with provisions of Para 303(b) of the IREM.

6. On the other hand the learned counsel for the respondents has stated that the seniority of the applicant and private-respondents has rightly been fixed in terms of Para 302 of the IREM.

7. We have given careful consideration to the arguments of both the learned counsel.



8. Para 302/of the IREM speaks as under -

"302 Seniority in initial recruitment grades-

Unless specifically stated otherwise, the seniority among the incumbents of a post in a grade is governed by the date of appointment to the grade. The grant of pay higher than the initial pay should not, as a rule, confer on a railway servant seniority above these who are already appointed against regular posts. In categories of posts partially filled by direct recruitment and partially by promotion, the criterion for determination of seniority should be the date of regular promotion after due process in the case of promotee and the date of joining the working post after due process in the case of direct recruit, subject to maintenance of inter-se-seniority of promotees and direct recruits among themselves. When the dates of entry into a grade of promoted railway servants and direct recruits are the same they should be put in alternate positions, the promotees being senior to the direct recruits, maintaining inter-se seniority of each group.

303. The seniority of candidates recruited through the Railway Recruitment Board or by any other recruiting authority should be determined as under:-

(a)...

(b) In the case of candidate who do not have to undergo any training in training school, the seniority should be determined on the basis of the merit order assigned by the Railway Recruitment Board or other recruiting authority."

8.1 It is not in dispute that the applicant and private-respondents have been appointed as Senior Clerk on the basis of the same panel, the applicant being senior to both the private-respondents. The applicant was allocated to Jhansi Division whereas the private-respondents were allocated to Jabalpur division. We have gone through para 302 and para 303(b) of the IREM. We find that the seniority of the candidates recruited through RRB or any other recruiting authority is determined in terms of the provisions laid down in Para 303(b) *ibid*. In this case the candidates who do not have to undergo any training the seniority should be determined on the basis of merit assigned by the RRB or any other recruiting authority. In this case it is not in dispute that in the panel prepared by the RRB the applicant was shown senior to private-respondents 6 & 7. It is also not the case of the respondents that the applicant has been transferred to Bhopal Division at his own request and granted bottom seniority. Since the applicant and private-respondents were working in the same division i.e. Bhopal division

since ^{its} after inception, the seniority is to be regulated in terms of para 303(b). Although the respondents have shown the private-respondents 6 & 7 senior to the applicant all along for last many years, however, it is also a fact that the applicant has been representing continuously for fixation of his correct seniority and at one point of time, the respondents have also agreed to fix his seniority over private-respondents 5 & 6 ⁷ and they have also issued notices to private-respondents. In view of these facts, the objection taken by the respondents that seniority cannot be disturbed is not justified and is rejected. Therefore, the argument put forth by the applicant, is fully supported by the provisions of Para 303(b) of the IREM.

9. In the result, for the reasons recorded above, the O.A. is allowed. The respondents are directed to fix the seniority of the applicant as Senior Clerk above private-respondents in terms of para 303(b) of the IREM and accordingly grant all the consequential benefits to the applicant. The respondents are directed to implement the aforesaid direction within a period of four months from the date of communication of this order. No costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

rkv.

पृष्ठान्कन सं ओ/न्या.....जबलपुर, दि.....
पत्तिलिपि अद्योषित:-
(1) सचिव, उच्च न्यायालय बार एसोसिएशन, जबलपुर
(2) आवेदक श्री/श्रीमती/कु.....के काउंसल
(3) प्रत्यर्थी श्री/श्रीमती/कु.....के काउंसल
(4) बंधुपाल, के.प्र.अ., जबलपुर न्यायपीठ
सूचना एवं आवश्यक कार्यवाही हेतु
उप रजिस्ट्रार

S. Paul
SP Sinha
2 S Rajput

Issued
On 5-8-04
BS