

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 611 of 1999

Jabalpur, this the 4th day of February, 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri G. Shanthappa, Judicial Member

A.K. (Ashok Kumar) Pathak,
S/o. Late Shri Mahadeo Rao Pathak,
aged about 41 years, Head Clerk,
Office of D.R.M.(P), Central Railway,
Jabalpur Division, Jabalpur (M.P.) Applicant

(By Advocate - Shri P.R. Bhave)

V e r s u s

1. Union of India, through Ministry of Railways, Rail Bhawan, New Delhi.
2. Chief Personnel Officer (Administration), Central Railway, Headquarter Office, Personnel Branch, CST Mumbai.
3. Divisional Railway Manager (Personnel), Central Railway, Jabalpur Division, Jabalpur (MP). Respondents

(By Advocate - Shri S.P. Sinha)

O R D E R

By G. Shanthappa, Judicial Member -

The above Original Application is filed seeking the relief for quashing the impugned order dated 07/11.10.1999 (Annexure A-1), passed by the Divisional Railway Manager (Personnel), respondent No. 3 and headquarter office letter dated 29.06.1999 (Annexure A-2) issued by the Chief Personnel Officer (Administration), respondent No. 2. He has also sought further relief for direction to the respondents for issue of differential scale of pay after reversion with interest at the rate of 16% per annum from 07/11.10.1999 till its payment.



2. The brief facts of the case, as stated by the applicant are that the respondents had issued a notification in the year 1982 for filling up certain posts. The applicant ~~had~~ ^{ap} appeared for selection to the post of Junior Clerk ^{vide} ~~sp~~ communication dated 02.09.1985 he was informed that he been qualified and appointment order will follow in due course. Subsequently the applicant was appointed as Junior Clerk in the grade of Rs. 950-1500/- and was placed under Dy. Chief Engineer (Construction) Ajni, Nagpur and posted under Depot Store Keeper (Doubling), Betul. He belongs to 1982 batch, though he was appointed in the year 1987. His lien was also not fixed. The Department had issued a letter dated 28.2.89 and 20.03.1990, directing to obtain first and second preference to divisions from the non-technical staff to facilitate fixation of their lien. The applicant submitted his willingness/nomination/option for two divisions i.e. ^{sp} Jabalpur division and Bhopal division. The applicant joined in the year 1987, but his lien was not fixed till April, 1990. Finally vide order dated 27.12.1993, the lien of the applicant was fixed in Personnel Clerical cadre of Jabalpur division. Before fixation of his lien, the applicant opted for his transfer from Nagpur division to Jabalpur division. Vide DO dated 16.11.1993 (Annexure A-8), it has been clearly observed by the respondents that allotment of lien from the date of appointment is a liability of administration and that request transfer being a subsequent event it has nothing to do with the allotment of lien. It was only after this DO letter the allotment was fixed vide order dated 27.12.1993 (Annexure A-7). The respondents have issued the order dated 16.11.1993 in respect of the lien of the applicant. The relevant part of the said letter is extracted below :

CK "You will very kindly appreciate that allotment

of lien from the date of appointment to the incumbent is a must and is a liability of Administration in order to regulate the seniority and promotion of staff. The Hd Qrs Office has never confirmed whether Shri A.K. Pathak holds lien anywhere before communicating the sanction of competent authority for his transfer to JBP Division."

Subsequently the impugned order at Annexure A-1 dated 07/11.10.1999 is passed in respect of the applicant reverting him from the post of Head Clerk (P) in grade of Rs. 5000-8000/- to the post of Senior Clerk in the grade of Rs. 4500-7000/-. In the said letter the respondents have reiterated that the applicant has been transferred from Engg. (W/A) Cadre to Personnel Cadre at his own request and resumed duty as Jr. Clerk (P) in the grade of Rs. 950-1500/- in Personnel Clerical Cadre with effect from 27.04.1992 only and below Smt. Yashoda Taneja, as he has passed the suitability test for the post of Sr. Clerk Grade Rs. 1200-2040/- and already promoted as Sr. Clerk Grade Rs. 4500-7000/- and as such assigned proper seniority in grade of Rs. 4500-7000/- below Smt. Yashoda Taneja from the date of promotion of Smt. Yashoda Taneja with effect from 12/1996.

3. The grievance of the applicant is that he lost his seniority from the year 1982 and also there is a reduction of the salary while fixing the seniority. Discrimination has been shown to the applicant. The applicant has compared his service with the service of another employee Ku. Anita Alfred Junior Clerk. She is working in the pay scale of Rs. 950-1500/- and requested for her transfer to Jabalpur division at her own request on usual terms and conditions for such transfer. Her request for transfer to Jabalpur has been agreed vide letter dated 14.08.1988. To show the discrimination the applicant ^{and he has} ~~has~~ produced Annexure A-10 dated 08.06.1989 in which the name of Ku. Anita Alfred has

been assigned at serial No. 21 and vide Annexure A-11 for assignment of proper seniority to staff selected, her lien has been fixed at Jabalpur division and she has been empanelled as Senior Clerk with effect from 20.06.1988. Annexure A-12 provides that as Ku. Anita Alfred has worked as Senior Clerk at Nagpur for 8 months, 8 days so he is eligible for next increment after working as Senior Clerk at Jabalpur division for 3 months 22 days. To show that another discrimination is shown to the applicant, he has filed Annexure A-13 dated 12.11.1998, where one Smt. Sukanya Sharma, Sr. Clerk has been initially appointed on 09.09.1987 has been interpolated in the seniority giving her benefit of seniority, promotion and fixation on proforma basis on par with her immediate juniors and with actual benefits only from the date she shouldered the higher responsibilities at each stage. Smt. Sharma's name in the seniority list of Personnel Ministerial cadre, Junior Clerk in the grade of Rs. 950-1500/3050-4590/- has been interpolated between Shri A.K. Pathak and Smt. Pratibha Dixit, Jr. Clerk according to merit order and employment notification. In the same order dated 30.11.1998 the seniority of the applicant is kept below Smt. Pratibha Dixit with effect from 22.12.1982. The case of the applicant is that the lien has to be given on the date of appointment as adopted to other employees by exercising the powers under Para 312 of IREM. Since the applicant could not get the relief he has approached this Tribunal for grant of reliefs as prayed in the OA.

4. Per contra the respondents have filed their reply contending that the applicant has not exhausted the remedies available to him. The relevant para of the reply is as follows :

"It is submitted that on this wrong fixation of seniority, person effected made grievance which was take up by the National Railway Mazdoor Union a recognised Union and hence a complete brief history relating to fixation of seniority was sent to Chief Personnel Officer, Bombay on 10.12.1998 and 21.6.99 on going through the facts the Chief Personnel Officer by order dated 29.06.1999 (Ann A/2) issued an order that since the applicant had made a request for transfer accepting bottom seniority from non-personnel to Personnel and which was accepted on fixing bottom seniority the seniority fixed in Personnel Department from the date of appointment is in correct and that his seniority in Personnel Department be fixed from the date of joining the personnel department. Thus this direction issued is as per the Railway Boards order contained in para 312 of the Indian Railway Establishment Manual and has rightly been corrected by superceding the letter dated 27.12.1993 so far it related to fixation of seniority in personnel cadre from the date of appointment. Since the seniority corrected by letter dated 29.6.99 and he was assigned seniority in personnel cadre from 27.4.92, it was found that by virtue of the same he was not entitled to the promotion of Head Clerk and as such an order of reversion was issued vide letter dated 7/11-10-99 (Ann A-1)."

The respondents have supported the action taken by the authorities. The case of the applicant has been considered. The applicant himself had accepted to loss ^{of} his seniority on transfer to personnel cadre, hence he cannot complain for the same. Rule 312 of IREM has been fully considered and appropriate order has been passed. The applicant has failed to prove his case. The respondents have prayed that there is no justification for granting the relief as prayed for.

In support of their case the respondents have produced the transfer letter of the applicant. The applicant's another ~~transfer~~ letter submitted to the respondents ^{which} clearly indicates that the applicant accepted bottom seniority under the rules, as transfer was sought for at his own request. When there is a specific declaration made by the applicant in his application for transfer, he cannot ask ~~for~~ ^{this time} for the reliefs as prayed for. The said letter has been accepted by the respondents on 04.05.1988 and he has been

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accommodated in Jabalpur division. The respondents have also produced Annexure R-7 dated 16.01.1991 in which the applicant has sought for transfer from engineering to personnel Department. He himself has asked for transfer and now he is comparing his services at par with other employees which is not sustainable under Para 312 of IREM.

5. Subsequent to filing the reply the applicant has filed the rejoinder by submitting some more documents. There is no much factual informations narrated and clarified. To the rejoinder of the applicant the respondents have filed their reply contending that the applicant was transferred from non-personnel department to personnel department. He was entitled for the bottom seniority as per Para 312 of IREM. Hence on joining the personnel Department he was assigned the seniority from 27.4.1992 as per the letter dated 26.7.93. On account of the applicant's own request for transfer he has been assigned bottom seniority as per rules and as per the admissions in the declaration dated 16.01.1991. Hence the applicant has no case and the OA is liable to be dismissed.

6. After hearing the advocate for the applicant and the advocate for the respondents, after perusal of the pleadings and the documents, including the orders of this Tribunal in OA No. 512/1999, dated 22.03.2000, we decide the case finally.

7. The admitted facts are that the applicant had requested for his own transfer from one department to another department. The request of the applicant has been considered. The applicant has submitted his second applica-

requesting for
tion for transfer/changing the division. That was also
considered and necessary orders were passed, by the compe-
tent authority by assigning the seniority as Junior Clerk
with effect from 27.04.1992 by placing the applicant below
Smt. Yashoda Taneja. On the basis of the documents submitted
by the applicant vide Annexure A-9 to Annexure A-14 the
respondents have considered the case of other employees.

Under the said orders the case of the applicant has not been
considered.

8. It is relevant to extract the Para 312 of IREM :

"312. Transfer on request - The seniority of
Railway servants transferred at their own request
from one railway to another should be allotted below
that of the existing confirmed, temporary and offici-
ating railway servants in the relevant grade in the
promotion group in the new establishment irrespec-
tive of the date of confirmation or length of
officiating or temporary service of the transferred
railway servants.

Note - (i) This applies also to cases of transfer on
request from one cadre/division to
another cadre/division on the same
railway.

(Rly. Bd. No. E(NG) I-85 SR 6/14 of
21.1.1986)

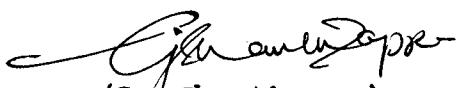
(ii) The expression "relevant grade" applies
to grade where there is an element of
direct recruitment. Transfers on request
from Railway employees working in such
grades. No such transfers should be
allowed in the intermediates grades in
which all the posts are filled entirely
by promotion of staff from the lower
grade(s) and there is no element of dir-
ect recruitment.

(No. E(NG) I-69 SR 6/15, dated
24-6-1969) ACS-14)."

The applicant has also cited orders of this Tribunal in
OA No. 512/1999, dated 22.03.2000 in which the reliefs are
granted for upgradation in the scale of Rs. 5000-8000/- with
effect from 01.01.1996 alongwith all consequential benefits
including the arrears of pay. On perusal of the documents &
pleadings, we find that it is a fit case to consider the

case of the applicant and direct the respondents to consider the case of the applicant on par with the other employees i.e. Ku. Anita Alfred, Smt. Pratibha Dixit for allotment of lien on the date of appointment. It is submitted by the respondents that the orders passed in OA No. 512/1999, dated 22.3.00 has been challenged before the Hon'ble High Court of Madhya Pradesh. The writ petition is pending. If the respondents want to make any recovery of the excess payment made by them, to the applicant, the same will be subject to the outcome of the orders in the writ petition arising out of the above referred Original Application.

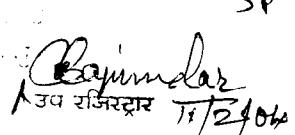
9. Accordingly, the Original Application is partly allowed with direction to the respondents to consider the case of the applicant for grant of lien on the date of appointment, ^{as deserved above.} To comply the said order, the respondents are given two months time, from the date of receipt of copy of this order. No costs.


(G. Shanthappa)
Judicial Member


(M.P. Singh)
Vice Chairman

Recd. 11-2-04

प्रकाशकन सं. ओ/व्हा. जात्यारु. दि.
प्रिया.
(1) राधिका.
(2) रमा.
(3) रमेश.
(4) रमेश.
"SA"
..... राजिनदर PR Bhawne
..... राजिनदर SP Sinha


उप सचिव 11/2/04