

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 19th day of April, 2011

Original Application No. 199/2006

CORAM:

**HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)**

Bhagwan Singh Chauhan
s/o Shri Hetram Chauhan,
r/o L-178, Railway Colony,
Gangapur City, now a days working as
Senior Goods Driver (Senior Goods Loco Pilot),
West Central Railway,
Gangapurcity, Kota Division.

.. Applicant

(By Advocate: Shri S.K.Jain)

Versus

1. Union of India
Through the General Manager,
West Central Railway,
Jabalpur.
2. Divisional Railway Manager,
West Central Railway,
Kota Division,
Kota.
3. Senior Divisional Electrical Engineer/
Traction Rolling Operator (Operation),
West Central Railway,
Kota Division,
Kota.
4. Divisional Railway Manager,
West Central Railway,
Bhopal.

.. Respondents

(By Advocate: Shri R.G.Gupta)

O R D E R

Per Hon'ble Mr. Justice K.S.Rathore, M(J)-

Brief facts of the case are that the applicant was appointed on 4.7.1988 in the railway in Bhopal Division and thereafter promoted as Goods Driver, pay scale Rs. 5000-8000 vide order dated 31.10.1996 (Ann.A/18). The applicant sought mutual transfer from Bhopal Division to Kota Division with one Shri Sanjiv Kumar Chaturvedi which was accorded vide order dated 3.3.1999 and consequential order dated 31st January, 2000 was passed by the respondents and posted vide order AnnA/4 dated 30.6.2000.

2. The controversy arose when the applicant was promoted Senior Goods Driver vide order dated 27.8.2003 (Ann.A/7) and his position in the seniority has been shown at Sl.No.47 (sic) in the seniority list dated 22.4.2005 (Ann.A/1) whereas in the seniority list published on 10.6.2003 (Ann.A/6), name of the applicant has been shown at Sl.No.53.

3. Aggrieved and dis-satisfied with the final seniority list, the applicant filed representations on 28.2.2001, 28.4.2002, 10.3.2003, 15.7.2003, 15.9.2003, 21.6.2004, 10.11.2004 and 20.5.2005 and the same were rejection by the respondents vide order dated 22.4.2005 (Ann.A/1A). Therefore, the applicant has preferred this OA asking for relief that the applicant be shown below Shri Padam Singh



Gurajr and above Shri Akhilesh Kumar Sharma who were given posting vide order dated 23/26.2.2001 (Ann.A/19). It is further prayed that the applicant be assigned seniority for the ad-hoc period as he had worked in Bhopal Division w.e.f. 20.11.1996 and be declared senior to Shri Sanjiv Kumar Chaturvedi on mutual transfer and he be assigned seniority by fixing his name vice Shri Sanjiv Kumar Chaturvedi and be given promotion to the post of Senior Goods Driver, Grade Rs. 5500-9000 and then be posted as Passenger Driver/Passenger Loco Pilot and higher posts with all consequential benefits, seniority and arrears of salary.

In support of his submissions, the learned counsel appearing for the applicant alternatively prayed that assuming that the applicant is junior to Shri Sanjiv Kumar Chaturvedi he be assigned seniority on the post of Goods Driver designated as Goods Loco Pilot in the grade Rs. 5000-8000 for the period he had worked continuously on adhoc basis i.e. w.e.f. 20.11.1996 and necessary corrections be done in the seniority list on that basis and be given promotion to the post of Senior Goods Driver in the grade of Rs. 5500-9000 and then to the post of Passenger Loco Pilot in the grade Rs. 5500-9000 w.e.f. the date his juniors were promoted. Further prayed that arrears of salary also after fixation be given.

4. The main thrust of the learned counsel appearing for the applicant is that on mutual transfer, the applicant had to be assigned seniority of Shri Sanjiv Kumar Chaturvedi and the applicant had to be treated as appointed on the post of Goods Driver w.e.f. 20.11.1996 and according to Rule 2030 of Indian Railway



Establishment Code, 1985 Edition, the senior person shall be assigned the position of the junior person on transfer. That being so, the applicant will acquire the seniority of Shri Sanjiv Kumar and on that basis the applicant shall be given promotions and he be fitted below Shri Padam Singh Gurjar and above Shri Akhilesh Kumar Sharma as these persons were given posting vide order dated 23/26.2.2001.

4. Per contra, the respondents in their reply submitted that Shri Sanjiv Kumar was promoted as Goods Driver vide order dated 11.12.1996 but actually and physically he was promoted as Goods Driver w.e.f. 9.7.98 (2.3.98) whereas the applicant was promoted as Goods Driver w.e.f. 9.7.98, therefore the period of adhoc promotion w.e.f. 20.11.1996 will not be counted for the purpose of seniority.

5. The learned counsel appearing for the respondents referred to Para 216 (ii)(c) of the Indian Railway Establishment Manual (IREM) which provides that notification for adhoc promotions against selection posts should specifically include a remark to the effect that the person concerned has not been selected for promotion and that his temporary/adhoc promotion gives him no right for regular promotion and that his promotion is to be treated as provisional and the provisional/adhoc promotion carry no benefit of seniority. On mutual transfer, the seniority based on regular promotion is only counted. The applicant is undisputedly promotee of later date in comparison to his counter-part of mutual exchange namely Shri Sanjiv Kumar. It is further submitted that the applicant has himself accepted that he was promoted as Goods Driver on



adhoc basis in scale Rs. 5000-8000 on 20.11.96 and was regularized as Goods Driver on 9.7.98. As regards Shri Sanjiv Kumar, he was regularly promoted on 2.3.98 on completion of the penalty of withholding of increment vide letter No.E/L/839/2 Vol.3 (Ann.R/1), which is also not denied by the respondents but if subsequently such employee is regularized in the same scale, the adhoc promotion will not be counted for seniority purpose. Thus, claim of the applicant that his seniority should be counted from 30.7.96 i.e. the date of promotion of Shri Sanjiv Kumar shown in panel notified vide letter dated 30.7.96 cannot be accepted and it is clear that on mutual transfer the seniority based on regular promotion is only counted.

6. The learned counsel appearing for the applicant placed reliance on the judgment rendered by the Hon'ble Apex Court in the case of T.Vijayan and others vs. Divisional Railway Manager and others, 2000(3) ATJ 89 wherein the Hon'ble Apex Court while considering Para 216 has held that adhoc promotion to the post of First Fireman in the railways is permissible pending regular selection. Respondents No. 4 to 143 they were promoted on ad-hoc basis in the exigencies of service pending regular selection and adhoc promotion was regularized w.e.f. 16.12.1991. Appellants therein were directly recruited in 1990. Period of adhoc service of respondents No. 4 to 143 held would be counted towards seniority.

Further placed reliance on the provisions of para 312 of the IREM which are reproduced as under:-



"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 officiating railway servants in the relevant grade in the promotion group in the new establishment irrespective of the date of confirmation or length of officiating or temporary service of the transferred railway servants."

7. The Hon'ble Apex Court in the case of Swapan Kumar Pal and Ors. vs. Samitabhar Chakraborty and Others, 2001 SCC (L&S) 880 considered the question (a) whether the adhoc promotion of the respondents could be held to be a regular promotion, after due process of selection, merely because the suitability test had not been held at regular intervals, as was required to be held under Para 214(c)(v) of the Railway Establishment Manual and (b) whether regular promotion given to adhoc employees by holding a test dated back to the date of adhoc promotion. The Hon'ble Supreme Court held that:-

"From para 213 and 214 of the Railway Establishment Manual it is apparent that promotion can be given only when the employee concerned is considered fit to perform the duties of the higher post and a person can be considered fit only after he passes the prescribed test held for the purpose. The post of Senior Clerk is a non-selection post. The procedure for making promotion to non-selection post has been indicated in Para 214(c). Para 214 (c)(iii) unequivocally indicates that the employee only after passing suitability test should be placed in the select list and further those who do not pass the qualifying test cannot be given promotion merely to make up the quota fixed for them. Although in para 214(c)(v) a suitability test is required to be held at intervals, which should not be less than six months, in a case like the present one where such suitability test had not been held and persons were promoted from Junior Clerk to Senior Clerk on the basis of their seniority on ad hoc basis, such ad hoc promotion cannot be held to be regular promotion after due process of selection. It can be a promotion cannot be held to be regular after due process of selection. It can be a promotion by due process only when the suitability test, as indicated in para 214(c)(iii) is held and the employee concerned qualifies the



said test. Therefore, the seniority of promotees in the cadre of Senior Clerk can be counted only from the date of regular promotion, after due process of selection."

9. Same view has been taken by the Hon'ble Supreme Court in the case of State of Rajasthan and ors. vs. Jagdish Narain Chaturvedi reported at 2009(3) Apex Court Judgments (339 (SC) that the adhoc appointment does not count for the purpose of seniority.

10. As per the settled proposition of law and considering the facts and circumstances of the case, it has not been disputed that Shri Sanjiv Kumar was promoted as Goods Driver on 2.3.98 whereas the applicant was promoted w.e.f.. 9.7.98, therefore, the period of adhoc promotion as claimed by the applicant from 20.11.1996 cannot be counted for the purpose of seniority, but as the relief claimed by the applicant that if the applicant is junior to Shri Sanjiv Kumar, he be assigned seniority of Goods Driver now designated as Goods Loco Pilot w.e.f. the date his juniors were promoted and the applicant had to be assigned seniority below Shri Padam Singh Gurjar and above Shri Akhilesh Kumar Sharma as these persons were given posting much after the applicant i.e. vide order dated 23/26.2.2001.

11. Considering the submissions made on behalf of the respondents, as per the settled proposition of law, adhoc appointment does not count for the purpose of seniority. So far as alternative prayer made by the applicant that he may be assigned seniority below Shri Padam Singh Gurjar and above Shri Akhilesh



Kumar Sharma is concerned, we deem it proper to direct the applicant to represent before the respondents for determination of seniority placing his name below Shri Padam Singh Gurjar and above Shri Akhilesh Kumar Sharma. At this stage, we refrain ourselves to grant relief to place the applicant below Shri Padam Singh Gurjar and above Shri Akhilesh Kumar Sharma as the applicant failed to implead the aforesaid persons as party-respondents and on the back of these persons, no adverse/prejudicial order can be passed against these persons. Therefore, we give liberty to the applicant to represent before the respondents for assigning him seniority, as discussed hereinabove, and it is for the respondents to consider representation of the applicant in accordance with the provisions of law and shall decide the same after undertaking the exercise within a period of three months from the date of receipt of a copy of this order.

12. With these observations, the OA shall stand disposed of with no order as to costs.

Anil Kumar
(ANIL KUMAR)

Admv. Member

K. S. Rathore
(JUSTICE K.S.RATHORE)

Judl. Member

R/