

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 22nd day of March, 2011

O.A. No. 136/2008

CORAM:

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

- 1 Ganesh Lal Vishwakarma s/o Shri Bulaki Ram, presently working as Senior Clerk in the pay scale 4500-7000 in Establishment Branch c/o DRM Office, North Western Railway, Jaipur r/o Plot No.381, Udhog Nagar, Jaipur.
- 2 Satish Kumar Sharma s/o Shri Mool Chand Sharma, presently working as Senior Clerk in the pay scale 4500-7000 in Establishment Branch c/o DRM Office, North Western Railway, Jaipur r/o Plot No.175, Prithviraj Nagar, Durgapura, Jaipur.
- 3 Shiv Lal Meena s/o Shri B.P.Meena, presently working as Senior Clerk in the pay scale 4500-7000 in Establishment Branch c/o DRM Office, North Western Railway, Jaipur r/o Plot No.19, Shiv Ram Colony, Jagatpura, Jaipur.
- 4 Ram Kumar Meena s/o Shri Sugam Lal, presently working as Senior Clerk in the pay scale 4500-7000 in Establishment Branch c/o DRM Office, North Western Railway, Jaipur r/o Plot No.64, Kailashpuri, Jagatpura, Jaipur.
- 5 Ms Meena Saxena d/o Shri S.C.Saxena, presently working as Senior Clerk in the pay scale 4500-7000 in Establishment Branch c/o DRM Office, North Western Railway, Jaipur r/o D-449, Malviya Nagar, Jaipur.

.. Applicants

(By Advocate: Dr. Saugath Roy)

Versus

1. The Union of India through
General Manager,
North Western Railway,
Hasanpura Road,
Jaipur
2. The Divisional Railway Manager,
North Western Railway,
Power House Road,
Jaipur
3. Shri Mangat Ram Thal,
working as Senior Clerk in the
Pay scale 4500-7000 in
Establishment Branch,
c/o DRM Office,
North Western Railway,
Jaipur.

.. Respondents

(By Advocate: Ms. Sonal Singh, proxy counsel for Shri Alok Garg for resp. No.1 & 2 and Shri R.K.Sharma for resp.No.3)

ORDER (ORAL)

The present Original Application is filed jointly by the applicants who are holding the post of Senior Clerk and aggrieved of the impugned order passed by respondent No.2 on 19.3.2008 and 1.1.2008 by which respondent No.3 who is much junior to the present applicants in the cadre of Senior Clerk has been made senior against the provisions of the statutory rules given in Indian Railway Establishment Manual (IREM) regarding seniority and representation of the applicants regarding wrong placing of respondent No.3 over them has not been considered by the official respondents.

2. As per the seniority list of Senior Clerks Ann.A/2 published by respondents, applicant No. 1 is shown at No.3, applicant No.2 at No.6, applicant No.3 at No.8, applicant No.4 at No.9 and applicant No.5 at No.13. In this seniority list of Senior Clerks name of respondent No.3 find place at Sl.No.14. The respondent No.3 was holding the post of Canteen Manager and due to declaration of canteen as public canteen, respondent No.3 was absorbed and declared as employee of Railways w.e.f. 1.4.1990 pursuant to the Hon'ble Supreme Court judgment. Thereafter, vide order passed by the Railways on 7.10.2003 lien of respondent No.3 who was holding the post of Canteen Manager was created in the MOCG unit w.e.f. 1.4.1990 as Clerk in the pay scale of Rs. 950-1500/3050-4590. Pursuant to this, respondent No.3 has not joined the MOCG Branch and as per his option, he was transferred to Establishment Branch vide order dated 20.2.2004.

3. Admittedly, the applicants who are working as Senior Clerk in the Establishment Branch have not been provided any opportunity while absorbing respondent No.3 in the Establishment Branch and further granting him promotion in the cadre of Head Clerk on 15.12.2005 and in the seniority list dated 21.9.2007, name of respondent No.3 was shown at Sl.No.14. The applicants have pleaded that seniority of non-gazetted railway employees are governed by the rules given in the IREM and Rule 312 of IREM says about transfer on request and further lays down the procedure how the seniority will be determined in cases of transfer on request. It says the seniority of employee on request 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.


4. The controversy arose when vide order dated 1.1.2008 a show cause notice was published and objections were called by which position of respondent no.3 was likely to be changed from No. 14 to 2A in the seniority list published on 21.9.2007 retrospectively by giving him proforma promotion and he was directed to be placed above the applicants. The applicants submitted their representation on 15.1.2008 within the stipulated period and thereafter also the applicants jointly submitted another representation on 3.3.2008 but without considering representations so filed by the applicants, respondent No.2 contrary to the provisions contained in Rule 312 of the IREM and without affording opportunity of hearing to the applicants, placed respondent No.3 above the applicants at No. 2A in the seniority list. Thus, the applicants by way of this joint Original Application prayed for quashing and setting aside the impugned order dated 19.3.2008 (Ann.A/1).

5. In support of his submissions, the learned counsel appearing on behalf of the applicants referred the judgment in the case of P.Satyanarayana Rao and Anr. vs. S.V.P.Sarvani and Ors., reported at (2009) 1 SCC 419 wherein the Supreme Court has observed that in case the appellant got transferred from the subordinate office to the office of the Head of Department at his own request and if he did not wish to forego his service in the subordinate service, he



need not have made any such request and would have remained in the subordinate office. Once he makes a request for transfer to the office of the Head of Department, then, he must undergo the consequences of transfer and he cannot claim that his service in the subordinate office must be added to his service in the office of the Head of Department for the purpose of seniority. Further placed reliance on the judgment in the case of Surendra Singh Beniwal vs. Hukam Singh and Ors., reported at (2009) 6 SCC 469 wherein the Supreme Court has observed that since respondent No.1 applied for a voluntary transfer, obviously, he has to be placed at the bottom of the seniority list of the Lecturers already working there. This is the meaning of the words "same cadre and category". The learned counsel further relied upon the case in Union of India and Ors. vs. Deo Narain and Ors., reported at (2009) 2 SCC (L&S) 985 wherein it was held as under:-

"According to law laid down in C.N.Ponnappan case, (1996) 1 SCC 524 if an employee is transferred from the department to another department on compassionate ground, he would be placed at the bottom of seniority list in the transferee department. Hence, at the time of his transfer in the transferee department, all employees in the same cadre who were very much serving at that time would be shown above such transferee employee and in such combined seniority list, the transferred employee would be shown as juniormost. The only thing which the Supreme Court said in C.N.Ponnappan case was that such an employee who had already worked in a particular cadre and gained experience, will not lose past service and experience for the purpose of considering eligibility when his case comes up for consideration for further promotion. Government of India's Letter dated 20.5.1980 as also in a subsequent communication dated 23.5.1997 issued by the Ministry of Finance, Department of Revenue are in consonance with C.N.Ponnappan case. The two concepts viz. (i) eligibility and (ii) seniority are quite distinct, different and independent of each other. A person may



be eligible, fit or qualified to be considered for promotion. It does not, however, necessarily mean that he must be treated as having requisite "seniority" for entry in the zone of consideration. Even if he fulfils the first requirement, but does not come within the zone of consideration in the light of his position and placement in "seniority" and second condition is not fulfilled, he cannot claim consideration merely on the basis of his eligibility or qualification. It is only at the time when "seniority" cases of other employees similarly placed are considered that his case must also be considered."

6. Now the question for consideration before us is whether the ratio decided by the Hon'ble Supreme Court is applicable in the facts and circumstances of the present case or not. It is admitted fact that option was called from respondent No.3 vide Ann.R/2 dated 19.8.2003. Pursuant to this letter, the applicant sent his option vide his letter dated 20.8.2003 requesting that he may be absorbed in the establishment department but has not joined. The learned counsel appearing on behalf of private respondent No.3 has drawn our attention towards Ann.R/3/7 whereby lien of respondent No.3 was fixed in the MOCG unit vide letter dated 7.9.2003 and on the request made by respondent No.3 the matter was again examined vide letter dated 4.12.2003, through which, it was directed to reconsider case of respondent No.3 and request of respondent No.3 was accepted vide letter dated 20.2.2004 fixing him in the establishment department at his own request.


7. On perusal of seniority list of Senior Clerks in the grade of Rs. 4500-7000 it is evident that all the applicants were shown senior than respondent No.3 as his name find place at Sl.No.14, but vide impugned order Ann.A/1 dated 19.3.1998, the seniority of



respondent No.3 was fixed above Shri Ganesh Lal Vishwakarma (applicant no1.) and placed him at sl.no.2A of the seniority list.

8. Upon perusal of the material placed on record and after giving thoughtful consideration to the documents annexed by the parties and having carefully gone through the judgments cited before us, it is not disputed that canteen services of respondent No.3 were regularized in view of the judgment passed by the Supreme Court and as per his option respondent No.3 opted for establishment department and at his own request, lien in the establishment department was given. But determination of seniority showing respondent No.3 senior than the applicants appears to be contrary to the ratio decided by the judgments as referred hereinabove. In the light of these judgments, respondent No.3 who has given his option to fix his lien in establishment department cannot be placed above the persons who are already working in the establishment department. It appears that the respondents have not properly considered representation and objections so filed against revision of seniority. Thus, the impugned order Ann.A/1 dated 19th March, 2008 is contrary to the settled principles of law and also to Rule 312 of the IREM and it deserves to be quashed and set-aside.

8. Thus, we are inclined to accept the Original Application and quash and set-aside the impugned order Ann.A/1 dated 19.3.2008. The OA stands allowed with liberty that respondents can draw seniority list afresh after due consideration of just and valid objections filed by the applicants and also in accordance with the



ratio decided by the Hon'ble Supreme Court and in accordance with provisions of law. The OA is allowed as observed hereinabove with no order as to costs.

Anil Kumar

(ANIL KUMAR)
Admv. Member

K.S. Rathore

(JUSTICE K.S.RATHORE)
Judl. Member

R/