

THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET

APPLICATION NO.: _____

Applicant(s)

Respondent (s)

Advocate for Applicant (s)

Advocate for Respondent (s)

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

27-5-2011

OA. 271/2010

Mr. Sunil Sandaria counsel for applicant.
Mr. V.S. Chaturvedi counsel for respondents.

Argument heard.

The OA & several disposed of
by a separate order.

Anil Kumar

(Anil Kumar)

Member (A)

K. S. Rathore

(Justice K.S. Rathore)

Member (G)

Mr

SDM

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 27th day of May, 2011

ORIGINAL APPLICATION No.271/2010

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

M.L.Phulwari,
Private Secretary Grade-I (Gazetted)
to DRM, North Western Railway,
Ajmer (Rajasthan).

(By Advocate : Shri Sunil Samdaria)

... Applicant

Versus

1. Union of India through
General Manager,
North Western Railway,
Zonal Office, Ganpati Nagar,
Jaipur.
2. General Manager,
Western Railway,
Churchgate,
Mumbai.
3. Railway Board through
its Secretary,
Rail Bhawan,
New Delhi.
4. Shri Dharmendra Kumar,
PS to Sr.Dy.General Manager,
NWR HQ Office, Hasanpura Road,
Jaipur.
5. Shri M.A.Alam,
PS to Chief Medical Supdt.,
NWR Divisional Hospital Opp.UIT,
Jodhpur.
6. Shri Rajiv Chandel,
PS to Chief Medial Director,
NWR HQ Office, Hasanpura Road,
Jaipur.

Anil Kumar

7. Shri R.P.Meena,
PS to Chief Operating Manager,
NWR HQ Office, Hasanpura Road,
Jaipur.
8. Shri K.Suya Prakash Rao,
PS to General Manager,
NWR HQ Office, Hasanpura Road,
Jaipur.
9. Shri Radhey Shyam Meena,
PS to Chief Safety Officer,
NWR HQ Office, Hasanpura Road,
Jaipur.
10. Shri Amar Lal Meena,
PS to Chief Signal & Telecommunication Engineer,
NWR HQ Office, Hasanpura Road,
Jaipur.
11. Shri Gajraj Meena,
PS to Chief Engineer (Co-ordination),
NWR HQ Office, Hasanpura Road,
Jaipur.
12. Sh.Vinod Kumar
PS to Managing Director
Centre for Railway Information System
Chyankya Puri New Delhi.110021
13. Sh. Grish Mathur
PS to Chief Commercial Manager NWR
N.W.R. Head Quarter Office, Hasanpura Road,
Jaipur.302006.
14. Sh.Ramesh Kumar
PS. To Controller of Store,
N.W.R. Head Quarter Office, Hasanpura Road,
Jaipur.302006.
15. Sh.Ved. Pal,
PS to Chief Personnel Officer,
P.W.R. Head Quarter Office, Hasanpura Road,
Jaipur.302006.
16. Sh. Hemant Kumar
PS to Divisional Rail Manager PWR
Divisional Office
Jaipur302006
17. Shri Sri Narayan Meena
PS to Chief Electrical Engineer
N.W.R. Head Quarter Office, Hasanpura Road,
Jaipur.

Anil Kumar

18. Shri Rajeev Tanwar,
PS to Divisional Railway Manager,
NWR Divisional Office,
Bikaner.

... Respondents

(By Advocate : Shri V.S.Gurjar)

ORDER (ORAL)

This OA is directed against the incorrect and invalid placement of the applicant in the seniority list dated 5.2.2010 (Ann.A/1), wherein the applicant has been illegally placed below respondents No.4 to 18. The applicant has further challenged the legality and validity of the order dated 10.2.2010 (Ann.A/2), whereby his representation against the incorrect placement in the seniority list has been illegally rejected.

2. The brief facts of the case, as stated by the applicant, are that respondent No.2 issued a notification dated 6.1.2003 (Ann.A/3) notifying the vacancies for selection to Group-B post of Private Secretary (PS) Grade-I in the pay scale of Rs.7500-12000. For the aforesaid selection to the post of PS-I, an eligibility list (Ann.A/4) was prepared and name of the applicant figured in at S.No.5. The applicant was promoted, posted and transferred to the post of PS-I at CME/CCG vide order dated 29.4.2003 (Ann.A/7). He assumed the charge at CCG, Mumbai, as PS-I to CME on 9.5.2003.

3. That, vide application dated 29.5.2003 (Ann.A/9), the applicant made a request to the Railway Board for inter-railway transfer from Western Railway to North Western Railway for the reasons contained therein. The said request of the applicant was accepted and he was transferred to NWR vide order dated 11.12.2003 (Ann.A/11) and in consequence thereof the applicant took over the charge as PS-I at DRM office, Ajmer, on 13.1.2004 (Ann.A/12). Though the applicant had taken over the charge at DRM Office, Ajmer, on 13.1.2004, yet his case for permanent absorption/transfer of lien in NWR

Anil Kumar

was pending with respondent No.3. The applicant made a detailed representation to the Railway Board for transfer of his lien on 12.7.2005 (Ann.A/14). With regard to transfer of lien, the applicant had also made an application under RTI, which was replied to vide letter dated 4.8.2006 (Ann.A/15). Bare perusal of the Ministry's response vide letter dated 4.8.2006 would demonstrate the arbitrariness on the part of the respondents. The applicant again made a request for the transfer of his lien/permanent absorption in NWR vide letter dated 17.8.2006 (Ann.A/16). But, when no orders were passed despite repeated representations, the applicant filed an OA [No.21/2007] before the Tribunal. However, during pendency of the said OA, the Railway Board issued an order dated 6.7.2007 (Ann.A/18) formally accepting the request of the applicant for inter-railway transfer. [Though, in fact, the applicant had been transferred vide order dated 11.12.2003.] Vide order dated 6.7.2007, the applicant was also directed to be assigned the seniority in terms of the Railway Board's letter dated 3.12.2007. In sequel thereto, respondents No.1&2 also issued the orders on 24.7.2007 (Ann.A/19 & A/20) assigning him the seniority in terms of the Railway Board's letter dated 3.12.2007. In view of the aforesaid orders, OA 21/2007 filed by the applicant became infructuous and the same was disposed of as such vide order dated 13.11.2007 (Ann.A/21).

4. That, in the meantime, respondent No.1 issued a notification dated 5.4.2006 (Ann.A/22) for making selection for promotion to Group-B post of PS-I on ad hoc basis in the pay scale of Rs.7500-12000. Vide order dated 22.1.2007 (Ann.A/23) 15 candidates [private respondents No.4 to 18] were placed on the promotional panel and were directed to be promoted to the post of PS-I vide order dated 26.2.2007 (Ann.A/24). The Railway Board issued a letter on 27.1.2009 (Ann.A/25) directing regularization of the services of PS-I from the date of their promotion on ad hoc basis. In view of the said letter of the Railway Board, services of the applicant as well as of respondents No.4 to 18 were directed to be regularized vide order dated 31.3.2009 (Ann.A/26) from the

Anil Keenan

date of their promotion as per the charge report which was mentioned against their names. Bare perusal of the letter dated 31.3.2009 would demonstrate that services of the applicant had been regularized w.e.f. 9.5.2003, however, the services of respondents No.4 to 18 had been regularized w.e.f. 1.3.2007, 26.2.2007, 28.2.2007 & 31.7.2007 respectively. As name of the applicant was placed below respondents No.4 to 18 in the order dated 31.3.2009, the applicant made representation(s) to respondent No.1 on 27.4.2009 & 17.9.2009 with regard to incorrect assignment of his seniority. When the aforesaid representations were not decided by respondent No.1, he was constrained to file an OA [No.2/2010] before this Tribunal. The Tribunal disposed of the said OA vide order dated 7.1.2010 directing respondent No.1 to decide the representation of the applicant within three months. Respondent No.1 thereafter passed an order on 10.2.2010 rejecting the representation of the applicant. The applicant however submitted another representation to respondent No.1 on 2.3.2010 (Ann.A/31) but even the same did not evoke any positive response. Hence, the applicant has filed the present OA praying for the following relief :

- "i) to quash and set aside the seniority list dated 5.2.2010 and the order dated 10.2.2010 and direct the respondents to place the applicant above the private respondents in the impugned seniority list of PS Grade-I.
- ii) to grant all consequential reliefs and benefits which applicant is entitled to as a consequence of setting aside of the seniority list dated 5.2.2010 and the order dated 10.2.2010 including the monetary one with interest @ 18% p.a.
- iii) Any other relief which this Hon'ble Court deem fit and proper in facts and circumstances of the case may also be passed in favour of the applicant.
- iv) Award cost of the application."

5. The official respondents have filed their reply contesting the claim of the applicant. In the reply, they have submitted that the seniority list dated 5.2.2010 (Ann.A/1) and the order dated 10.2.2010 (Ann.A/2) are perfectly legal, valid and

Anil Kumar

inconsonance with the service law jurisprudence. The respondents have submitted that the applicant was transferred from Western Railway to NWR, Jaipur, at his own request clearly stipulating the condition to the effect that the orders are issued in terms of para-5 of the Railway Boards' letter bearing No.E(GP) 2002/1/18 dated 13.5.2003 maintaining lien of the applicant on Western Railway. The Railway Board has clearly mentioned in the letter dated 4.8.2006 that the request of the applicant for transfer was considered in terms of the instructions contained in the Railway Board's letter dated 3.12.1977. The competent authority in the Railway Board had decided to defer the request of the applicant till finalization of the recruitment rules. A bare perusal of Ann.A/15 would reveal that claim of the applicant and the OA is not sustainable in the eye of law and, therefore, merits rejection.

6. The respondents have submitted that the applicant was transferred from Western Railway to NWR vide Western Railway's order dated 11.12.2003 but his lien was not transferred by the Western Railway. Subsequently, the Railway Board vide letter dated 6.7.2007 transferred his lien from WR to NWR at his own request. It was also mentioned in the Railway Board's letter that the applicant will be assigned bottom seniority in terms of the Board's letter dated 3.12.1977. Hence the OA merits rejection in limine. They have further stated that the representations dated 27.4.2009 and 17.9.2009 made by the applicant were considered by the competent authority in compliance with the directions issued by the Tribunal and the applicant was suitably replied vide letter dated 10.2.2010 (Ann.A/2). The respondents have denied that the applicant has been assigned wrong seniority. In fact, the competent authority thoroughly examined the matter of seniority of the applicant before deciding his representations. According to the Railway Board's letter dated 3.12.1977, if a Class-II Officer is transferred from one railway to another at his own request, he is assigned bottom seniority from the date he takes over there. Even though, the applicant joined as PS-I to DRM/AII on 13.1.2004, his lien was

Amil Kumar

maintained on the WR. At that stage, the applicant did not loose his claim for promotion to higher grade in his parent Railway i.e. WR, therefore, since the applicant was holding his lien at WR irrespective of the fact that he was working on NWR, the Railway Board's letter dated 3.12.1977 did not become applicable to his case. The applicant submitted his application for permanent absorption at bottom seniority in NWR on 14.9.2004 but his request was not agreed to by the Railway Board as advised vide their letter dated 6.7.2005. The applicant submitted another prayer on 27.2.2006 for transfer of his lien from WR to NWR and his orders for transfer to NWR at his own request were issued by the Railway Board vide letter dated 6.7.2007 with the stipulation that he should be assigned bottom seniority in terms of the Railway Board's letter dated 3.12.1977. Therefore, the applicant has been assigned seniority of PS-I on NWR w.e.f. 6.7.2007 in terms of Railway Board's letter dated 3.12.1977. In view of these facts and the material available on record, respondents No.4 to 18, who have been promoted and taken over the charge before 6.7.2007, have been rightly ranked senior to the applicant. The respondents have, therefore, submitted that the present OA has no merit and the same deserves to be dismissed with costs.

7. Heard learned counsel for the parties and perused the material available on record. Learned counsel for the applicant reiterated the same facts as stated by him in the earlier OA [No.21/2007]. His main contention was that since the applicant was transferred from WR to NWR vide order dated 11.12.2003 and since the applicant, in compliance of that order, joined at DRM Office, Ajmer, on 13.1.2004, therefore, his seniority should be counted from 13.1.2004 and not from the date of transfer of his lien. He referred to Railway Board's circular dated 3.12.1977 (Ann.A/32), which provides that if a Class-II Officer is transferred from one railway to another at his own request, he will be assigned bottom seniority in Class-II on that railway from the date he takes over there and he will also loose all his claims for promotion to the higher grade in his

Anil Kumar

parent railway. He will have to give undertaking to this effect before his request for transfer is acceded to. He argued that in compliance of the transfer order, the applicant joined at the new place of posting on 13.1.2004, therefore, his seniority in NWR should be counted from that date.

8. On the contrary, learned counsel for the respondents argued that vide order dated 11.12.2003 (Ann.A/11) the applicant was only transferred from WR to NWR at his own request and posted as PS-I in the office of DRM, Ajmer, in the same scale of pay. He drew our attention to Note-2 of the said order, which reads as follows :

“2. The above orders are issued in terms of para 5 of Railway Board’s letter No.E(GP) 2002/1/18 dated 13.5.2003 maintaining the lien of Shri M.L.Phulwari and Shri G.R.Joshi, transferred to North Western Railway – Jaipur and West Central Railway – Jabalpur respectively, mentioned at item no.09 and 04 respectively, on Western Railway.”

He argued that this note clearly indicates that lien of the applicant and Shri G.R.Joshi was maintained on the WR. This condition was very well known to the applicant before he joined at NWR at Ajmer and he accepted this condition before joining NWR. Therefore, he cannot claim now that he should be given seniority from the date of taking over the charge at Ajmer. Since his lien was maintained at WR, he was entitled to further promotions in his parent railway i.e. WR. The Railway Board’s circular dated 3.12.1977 (Ann.A/32) clearly mentions that once a Class-II officer is transferred from one railway to another, he will also loose all his claims for promotion to the higher grade in his parent railway. But, in this particular case, since his lien was retained by a specific order of the WR, therefore, he could claim for promotion to higher grade in his parent railway. Therefore, the provisions of the Railway Board’s circular dated 3.12.1977 (Ann.A/32) would not be applicable in the case of the applicant. As lien of the applicant was transferred from WR to NWR at his own request on 6.7.2007, therefore, the provisions of the Railway Board’s circular dated 3.12.1977

Anil Kumar,

would not be applicable from the date of transfer of the lien from WR to NWR. Therefore, the applicant has been assigned the seniority of PS-I on NWR w.e.f. 6.7.2007 and since respondents No.4 to 18 were promoted and posted prior to 6.7.2007, therefore, they have been given seniority above the applicant.

9. Having considered the rival submissions of the parties and after perusal of the relevant documents, we are of the view that there is no ground of interference by this Tribunal in the orders passed by the official respondents. Though the applicant was transferred on 11.12.2003 and joined at NWR on 13.1.2004 but his lien was not transferred. Since there was a specific mention in his transfer order that his lien is being retained on WR and knowing it fully that his lien is being retained on WR, he accepted the transfer order and joined his new place of posting. Therefore, now the applicant cannot claim that his seniority be fixed from the date of his transfer or from the date of his joining at the new place of posting.

10. In view of the observations made hereinabove, we do not find any infirmity in the seniority list dated 5.2.2010 (Ann.A/1) and the decision taken by the official respondents on the representation of the applicant dated 10.2.2010 (Ann.A/2). Therefore, we find no merit in this OA and the same being devoid of merit is dismissed with no order as to costs.

Anil Kumar
(Anil Kumar)
Member (A)

K.S.Rathore
(Justice K.S.Rathore)
Member (J)

vk