

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

18

ORDERS OF THE BENCH

Date of Order: 21.02.2012

OA No. 84/2010

Mr. A.K. Bhargava, counsel for applicant.
Mr. M.K. Meena, counsel for respondents.

Put up the matter on 29.03.2012 for hearing.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

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

Kumawat

29-3-2012

OA NO. 84/2010

Mr. A.K. Bhargava, counsel for the applicant
Mr. M.K. Meena, counsel for respondents

Heard the learned counsel
for the parties.

For the reasons dictated
separately, the OA stands disposed
of.

Anil Kumar
(ANIL KUMAR)
Admn. Member

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 29th day of March, 2012

ORIGINAL APPLICATION No. 84/2010

CORAM :

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

Gyan Prakash Gautam son of Late Shri Purshottam Gautam, aged 33 years, resident of Quarter No. 8-A, R.E. Double Storey, Railway Colony, Kota. Presently posted in the Office of Divisional Railway Manager, Kota as a Protocol Inspector.

... Applicant

(By Advocate: Mr. A.K. Bhargava)

Versus

1. Union of India through the General Manager, West Central Railway, Church Gate, Mumbai.
2. The Divisional Railway Manager, West Central Railway Manager, Kota.
3. Shri Kamal Singh Solanki, Commercial Inspector, O/o CMI, Railway Department, Bharatpur.

.... Respondents

(By Advocate: M.K. Meena)

ORDER (ORAL)

Brief facts of the case are that the applicant was selected on the post of Commercial Inspector in the pay scale of Rs.5000-8000 vide order dated 22.01.2007 (Annexure A/9) and was posted at Jabalpur. That respondent no. 2 notified to the General Manager (P), West Central Railway, Jabalpur that lien of the applicant is retained in the cadre of Commercial Inspector, therefore, the employee is required to proceed for training. The office order dated 09.06.2008 (Annexure A/12) was also issued stating that competent authority has accorded

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approval in favour of the applicant to maintain his lien at sr. no. 4 at Kota Division (Annexure A/12). The applicant vide order dated 30.06.2008 (Annexure A/13) was transferred from Jabalpur to Kota Division on the same post and in the same pay scale since his lien was at Kota Division. Subsequently, the respondent no. 2 issued seniority list vide order dated 17.12.2009 showing the name of the applicant at sr. no. 6 in the pay scale of Rs.9300-34800. The services rendered by the applicant at Jabalpur were not taken into consideration while issuing the seniority. Therefore, the applicant submitted a representation dated 21.01.2009 (Annexure A/16) before the authorities. The respondent vide letter dated 23.10.2009 (Annexure A/18) conveyed their decision that vide letter dated 12.09.2007 and 11.04.2008, a list of three Commercial Inspectors working in the pay scale of Rs.5000-8000/- was issued on 09.06.2008. After merging the two pay scales of Rs.5000-8000 and Rs.5500-9000 in the pay scale of Rs.9300-34800 + 4200 Grade Pay, the applicant stands at no. 6 and, therefore, no promotion can be granted to him. The applicant again submitted a representation dated 11.12.2009 (Annexure A/19) against the above communication but the authorities did not consider his request and hence aggrieved by his seniority, the applicant has filed the present OA.

2. The respondents have filed their reply. The respondents have stated that the applicant was promoted to the post of Commercial Inspector vide letter dated 22.01.2007 in the pay

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scale of Rs.5000-8000 in the Jabalpur Headquarter office and not in Kota Division and was posted under Chief Commercial Manager, Jabalpur. That the lien of the applicant was kept at Kota Division at sr. no. 4 and to that effect information was conveyed to the office of General Manager (Personnel) Jabalpur by the office of DRM vide letter dated 13.06.2008 (Annexure A/11). They have further stated that seniority has been assigned according to Kota Division as his lien was at Kota (Sr. no. 4). The persons who are senior to the applicant at Kota Division have been given promotion and no junior to the applicant has been given promotion. The three employees namely, S/Shri Kamal Singh, Hari Ram Meharolia (SC) and Rajiv Saxena are senior to the applicant in order of seniority of the panel. Therefore, the claim of the applicant does not survive. The respondents have further stated that in the present scale of Commercial Inspector of Rs.9300-34800/- + 4200 Grade Pay, the old pay scale of Rs.5000-8000/- and pay scale of Rs.5500-9000/- were merged and after merging of the scale, the name of the applicant comes at sr. no. 6 and Commercial Inspector in the pay scale of Rs.9300-34800 + 4200 Grade Pay, there are only three vacancies and the persons senior to the applicant have been placed on the panel and, therefore, the OA has no merit and it should be dismissed.

3. Heard the learned counsel for the parties and perused the relevant documents on record. Learned counsel for the applicant argued that the applicant was promoted to the post of

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Commercial Inspector in the pay scale of Rs.5000-8000 vide order dated 22.01.2007 while working at Jabalpur. However, his lien was retained at Kota and subsequently, he was transferred to Kota Division on the same post and with the same pay scale vide order dated 30.06.2008. Therefore, his seniority should be counted from the date of his promotion at Jabalpur i.e. 22.01.2007. Therefore, he argued that the applicant should be declared senior to those three employees, who were promoted as Commercial Inspector after him though they were working in Kota Division. He also argued that he got certain information under the Right to Information Act and he drew our attention to letter dated 03.03.2011 (Annexure A/23) which states that one Commercial Inspector was transferred to Kota Division on administrative grounds and copy of that order has been enclosed with that information. The enclosed letter pertains to the transfer of the applicant (Gyan Prakash Gautam) from Jabalpur to Kota Division (Annexure A/24). He also drew our attention to Para 306 and Para 311 of the IREM Vol. I, which reads as under:-

"306 Candidates selected for appointment at an earlier selection shall be senior to those selected later irrespective of the dates of posting except in the case covered by Paragraph 305 above."

"311 TRANSFER IN THE INTEREST OF ADMINISTRATION- Seniority of railway servants on transfer from one cadre to another in the interest of the administration is regulated by the date of promotion/date of appointment to the grade as the case may be."

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Learned counsel for the applicant argued that, therefore, the applicant should be given seniority from the date of his promotion in Jabalpur.

4. On the contrary, learned counsel for the respondents argued that the applicant was transferred from Jabalpur to Kota Division at his own request and, therefore, according to the rules, he was given bottom seniority. Three officials, who were promoted to the post of Commercial Inspector in Kota Division prior to the joining of the applicant as Commercial Inspector, therefore, they have been rightly given seniority over the applicant. He admitted that the applicant was promoted at Jabalpur on the post of Commercial Inspector in the pay scale of Rs.5000-8000 vide order dated 22.01.2007 and he was subsequently transferred to Kota Division vide order dated 30.06.2008. He referred to the office order dated 12.09.2007 (Annexure R/4) whereby the name of Shri Kamal Singh Solanki was provisionally approved on the panel of Commercial Inspector on 12.09.2007. He argued that since the applicant joined at Kota after 30.06.2008, therefore, Shri Kamal Singh Solanki was senior to the applicant. He argued that the action of the respondents is as per the rules and, therefore, the OA has no merit and it should be dismissed.

5. Having heard the rival submissions of the respective parties and after careful perusal of the documents on record, it is clear that the applicant was promoted on the post of

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Commercial Inspector in the grade of Rs.5000-8000 vide order dated 22.01.2007. This fact has not been disputed by the respondents. It is also not disputed that the lien of the applicant was retained at Kota Division in the pay scale of Rs.5000-8000/- (Annexure A/11). It is also not disputed between the parties that the applicant (Shri Gyan Prakash Gautam) was transferred from Jabalpur to Kota Division as Commercial Inspector and in the same pay scale as he was working at Jabalpur vide order dated 30.06.2008 (Annexure A/13). The argument of the learned counsel for the respondents that since the applicant was transferred at his own request from Jabalpur to Kota and, therefore, he was given the bottom seniority does not hold good in view of the fact that he has not been able to show any document/proof that the applicant had made a request for his transfer from Jabalpur to Kota Division. On the contrary, learned counsel for the applicant had sought information under the Right to Information Act. This information shows that one Commercial Inspector was transferred on administrative grounds from Jabalpur to Kota Division and copy of this order has been enclosed, which shows the name of the applicant, Gyan Prakash Gautam. The transfer order dated 30.06.2008 (Annexure A/13) does not indicate that this transfer order was issued at the request of the applicant. Therefore, the transfer order dated 30.06.2008 (Annexure A/13) cannot be treated as transfer at the request of the applicant and since the applicant was transferred in the interest of administration or on

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administrative grounds, therefore, his seniority has to be fixed according to Para 311 of IREM Vol. I, as quoted above.

6. Accordingly, we direct the respondents to fix the seniority of the applicant according to the observations made above. The applicant would also be entitled to all consequential benefits. The respondents are expected to complete this exercise expeditiously but not later than three months from the date of receipt of a copy of this order.

7. With these observations, the OA is disposed of with no order as to costs.

Anil Kumar
(Anil Kumar)
Member (A)

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

AHQ