

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION No. 274/2013

With

MISC. APPLICATION NO. 370/2013

Jaipur, the ^{6th} 10th December, 2013

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER
HON'BLE MR. A.J. ROHEE, JUDICIAL MEMBER

Suresh Kumar D son of Shri Deva Ram, aged about 53 years, resident of House No. 371/43, Dholla Bhata, Pooja Marg, Ajmer and presently working as Vehicle Driver, Grade I in Management Department, office of Divisional Railway Manager, North Western Railway, Ajmer Division, Ajmer.

... Applicant

(By Advocate: Mr. C.B. Sharma)

Versus

1. Union of India through the General Manager, North Western Zone, North Western Railway, Near Jawahar Circle, Jagatpura, Jaipur.
2. Divisional Railway Manager (Establishment), North Western Railway, Ajmer Division, Ajmer.
3. Pradeep Kumar son of Shri Chaturbhuj, working as Vehicle Driver, Grade I in Management Department, Office of Divisional Railway Manager, North Western Railway, Ajmer Division, Ajmer.

... Respondents

(By Advocates: Mr. R.G. Khinchi – Respondent nos. 1 & 2.
None present for respondent no. 3.)

ORDER

PER HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

The present OA has been filed by the applicant being aggrieved by the order of the respondents dated 21.03.2013 (Annexure A/1) vide which the private respondent no. 3, Shri Pradeep Kumar, has been assigned seniority above the applicant.

Anil Kumar

2. The brief facts of the case, as stated by the learned counsel for the applicant, are that in the seniority lists dated 26.03.2003 (Annexure A/2), 31.03.2007 (Annexure A/3), 27.05.2011 (Annexure A/4) and 06.09.2012 (Annexure A/5), the applicant is senior to private respondent no. 3, Shri Pradeep Kumar. Thus official respondents have always shown private respondent no. 3, Shri Pradeep Kumar, as junior to the applicant since 2003. The private respondent no. 3 never objected against any of the seniority lists issued in the last 20 years even when the respondents called for objections of seniority lists published from time to time. Now vide order 21.03.2013 (Annexure A/1), the private respondent no. 3 has been placed above the applicant in the seniority list.

3. This order dated 21.03.2013 has not been approved by the competent authority i.e. respondent no. 2. Hence, the order dated 21.03.2013 has been issued without any competence and, therefore, it should be quashed and set aside.

4. The learned counsel for the applicant further stated that seniority list cannot be revised after 20 years. In this regard, he referred to Para No. 321(b) of IREM Vol. I, which has been quoted by him in Para No. 4.5 of the OA and the same is reproduced below:-

"321(b) Staff concerned may be allowed to represent about the assignment of their seniority position within a period of one year after the publishing of the seniority list. No cases for revision in seniority list should be entertained beyond this period."

Anil Kumar

5. Thus he argued that the respondents have acted against the provisions of IREM. On this ground also, the order dated 21.03.2013 (Annexure A/1) be quashed and set aside.

6. He further submitted that the respondent no. 3 was declared surplus in 1993 and thereafter he was posted at Udaipur and further came to Ajmer on his request. On that basis also, he cannot be allowed seniority, as ordered. The official respondents want to keep away the applicant from his due promotion in the grade pay of Rs.4200/- on retirement of Shri Mohan Singh on 31.12.2013. Therefore, they have lowered the seniority of the applicant.

7. On the contrary, the learned counsel for the respondents admitted that according to the seniority lists placed at Annexure A/2 to Annexure A/5, the applicant has been shown as senior to private respondent no. 3, Shri Pradeep Kumar.

8. He further submitted that private respondent no. 3, Shri Pradeep Kumar, made representations on 23.08.2004 and 11.01.2004 to give him seniority of Driver Grade III w.e.f. 08.05.1990 but at that time, no effective action was taken in the matter by the answering respondents.

9. The private respondent no. 3, Shri Pradeep Kumar, again made an application on 16.07.2012 to revise his seniority and the matter was examined through the competent authority and it was decided to revise the seniority of private respondent no. 3, Shri

Anil Kumar

Pradeep Kumar. Accordingly, the notice was issued to the applicant. The objection submitted by the applicant was duly considered and decided and thereafter the order dated 21.03.2013 (Annexure A/1) has been issued and it is perfectly valid and legal.

10. He further argued that as per available record, according to order No. 281 dated 13.12.1993 of the Deputy Chief Accounts Officer (Traffic Account), Ajmer (Annexure R/1), the post of Driver in the pay scale of Rs.950-1500/- was abolished. Therefore, the private respondent no. 3 was posted at Regional Training School, Udaipur as per available vacant post and he joined his duties on 17.12.1993.

11. The learned counsel for the respondents submitted that as per the Circular dated 10.04.1996 (Annexure R/2), the private respondent no. 3, was entitled for his original seniority and, therefore, respondent no. 3 has been given seniority according to the rules and instructions on the subject. He also referred to letter dated 20.02.1995 (Annexure R/3). The respondents have acted according to the instructions contained in this letter with regard to the revision of seniority list etc.

12. With regard to the submission of the learned counsel for the applicant that the competent authority has not approved the revision of seniority order dated 21.03.2013 (Annexure A/1), the learned counsel for the respondents submitted that the decision with regard to the revision of seniority was taken by the answering

Anil Kumar

respondent no. 2 with the prior approval of the Divisional Railway Manager as per rules. Therefore, the order dated 21.03.2013 (Annexure A/1) has been passed after the approval of the competent authority.

13. Therefore, he submitted that the action of the respondents in determination of the seniority of private respondent no. 3 is according to the provisions of law and instructions on the subject.

14. The private respondent no. 3, Shri Pradeep Kumar, neither appeared in person nor through his counsel. He was sent notice by the learned counsel for the applicant through Speed Post. He refused to take the notice as per the report of the Postal Department.

15. Heard the learned counsel for the parties and perused the relevant documents on record. The learned counsel for the applicant had argued that the respondent no. 3 was declared surplus in 1993 and thereafter he was posted at Udaipur and further came to Ajmer on his own request. When any employee is transferred from one unit to another unit on request then he is not given the seniority of the original unit. On the other hand, the learned counsel for the respondents has submitted that as per the circular dated 10.04.1996 (Annexure R/2), the private respondent no. 3 was entitled to his original seniority. We have carefully perused the circular dated 10.04.1996 (Annexure R/2) which provides for giving seniority to the staff rendered surplus in the new

Anil Kumar

units where they are transferred. According to this circular, the respondent no.3 would have been entitled to his original seniority when he was transferred to Udaipur but the respondents have not clarified whether the private respondent no.3 was entitled to his seniority when he was transferred from Udaipur to Ajmer on his own request. In the Railways, when an employee is transferred from one seniority unit to another seniority unit on his own request then he is not entitled to his original seniority of the unit from where he seeks transfer. Thus we are of the opinion that private respondent no. 3 was not entitled for his original seniority at Ajmer after being transfer from Udaipur.

16. It is admitted between the parties that as per seniority lists dated 26.03.2003 (Annexure A/2), 31.03.2007 (Annexure A/3), 27.05.2011 (Annexure A/4) and 06.09.2012 (Annexure A/5), the applicant has been shown senior to private respondent no. 3, Shri Pradeep Kumar. However, on a representation given by private respondent no. 3 dated 16.07.2012, the matter of seniority was re-examined. A show cause notice was issued to the applicant also. The applicant submitted his reply dated 28.02.2013 (Annexure A/7) in which he raised objections regarding the seniority being revised after 20 years. He also referred the provisions of Para No. 321 (b) of IREM Vol. I. The respondents thereafter vide order dated 21.03.2013 revised the seniority of private respondent no. 3, Shri Pradeep Kumar, and placed his name above the applicant. We have carefully perused the provisions of Para 321 (b) of IREM Vol. I. The provisions of Para 321 (b) of IREM Vol. I are quoted below:-

Anil Kumar

"321(b) Staff concerned may be allowed to represent about the assignment of their seniority position within a period of one year after the publishing of the seniority list. No cases for revision in seniority list should be entertained beyond this period."

17. This Para clearly provides that staff concerned may be allowed to represent about assignment of their seniority position within a period of one year after the publishing of the seniority list. It further provides that no case for revision in the seniority list should be entertained beyond this period. In the instant case, private respondent no. 3 has represented to the official respondent for the revision of his seniority after about 20 years. Even if we go by the seniority list dated 26.03.2003 (Annexure A/2), the applicant has represented in 2012 against his seniority i.e. about 10 years after the publication of his seniority list. In this seniority list, the name of the applicant is at sr. no. 3 of Driver working in the pay scale of Rs.4500-7000/- (RP) while the name of the private respondent no. 3 appears at sr. no. 5 in the seniority list of Driver working in the pay scale of Rs.4500-6000/-. Thus it is clear from this seniority list that private respondent no. 3 was not only junior to the applicant in the seniority list but he was also working in the lower pay scale than the applicant. In the covering letter dated 26.03.2003, it has been specifically mentioned that if any employees have any objection about his seniority then they can submit representation through proper channel within one month from the issue of this circular. No representation shall be considered, if they submitted beyond this time frame but the respondents have not placed any representation on record

submitted by the private respondent no. 3 though they have admitted that the representation was submitted by the private respondent no. 3 on 23.08.2004 and 11.01.2004 but the answering respondents did not take any effective action in the matter at that point of time. Even these representations are beyond time limit of one month given by the official respondents in their circular dated 26.03.2003.

18. Similarly, another seniority list issued by the respondents is 31.03.2007 (Annexure A/3). While publishing this seniority list, the official respondents gave one month's time to the employees to represent against this seniority list, if they were aggrieved. Even in this seniority list, the applicant has been shown as senior to private respondent no. 3. There is no record to show that the private respondent no. 3 represented against this seniority list.

19. The respondents again published seniority list dated 27.05.2011. Again the respondents provide opportunity to the concerned employees to represent against this seniority list but private respondent no. 3 did not represent against this seniority list. In this seniority list also, the applicant is senior to private respondent no. 3.

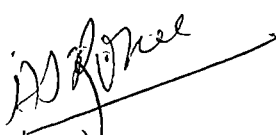
20. Even according to the provisions of Para 321 (b) of IREM, there is time limit of one year within which the concerned employee can represent about assignment of their seniority position in the

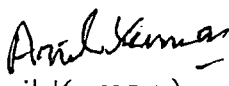
Amal Kumar

seniority list. It categorically states that no cases for revision in the seniority list should be entertained beyond this period.

21. There is a definite purpose of prescribing time limit for making representation against the seniority position. If there is no time limit prescribed for filing representation by the concerned employee then it could unsettle the settled position over a long period of time and this could not be in the interest of the administration. The official respondents have nowhere mentioned as to why the provisions of Para 321(b) of IREM Vol. I were not followed in this case. The order dated 31.03.2013 issued by the respondents (Annexure A/1) has been issued in violation of the provisions of Para No. 321 (b) of the IREM Vol. I. Therefore, it is quashed and set aside. The applicant shall be treated as senior to private respondent no. 3, Shri Pradeep Kumar, and he shall be entitled to all consequential benefits.

22. Thus the OA is allowed of with no order as to costs.


(A.J. Rohee)
Member (J)


(Anil Kumar)
Member (A)

AHQ