

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Dated: This the 26th day of July, 2018

Original Application No. 330/122 of 2012

Hon'ble Mr. Gokul Chandra Pati, Member – A
Hon'ble Mr. Rakesh Sagar Jain, Member – J

Sanjay Kanchan, S/o Late Ramesh Kanchan, R/o House No. 143
Chandrashekhar Azad, Jhansi.

.....Applicant

By Adv: Shri S.M. Ali

V E R S U S

1. Union of India through General Manager, North Central Railway, Allahabad.
2. Divisional Railway Manager, North Central Railway, Jhansi.
3. Senior Divisional Personnel Officer, North Central Railway, Jhansi.
4. Senior Divisional Operating Manager, North Central Railway, Jhansi.

..... Respondents.

By Adv: Shri R.K. Rai

O R D E R

By Hon'ble Mr. Gokul Chandra Pati, Member – A

Heard Shri S.M. Ali, learned counsel for the applicant and Shri D. Tiwari proxy counsel to Shri R.K. Rai, learned counsel for the respondents.

2. In this OA, the applicant seeks the following reliefs:-

- "i. To issue order or direction for commanding the respondents to fix the proper seniority Grade and pay with all consequential benefits from the date of joining at Jhansi.*
- ii. To issue order or direction to the respondents to issue the arrears of the fixation of pay alongwith 18% interest in favour of the applicant.*
- iii. To decide the pending representations of the applicant by reasoned and speaking order as per rules.*
- iv. Award the cost of the petition in favour of the applicant."*

3. The facts of the case in brief are that in the year 2002, the applicant, working in Sambalpur division under the Railways applied for mutual transfer to Jhansi division with another railway servant Shri Ashok Kumar Shah, who was working under Jhansi

division with pay scale of Rs. 4500-7000. The applicant was working as Assistant Station Master in Sambalpur division with a higher pay scale of Rs. 5000-8000. Hence, as per the guidelines, the applicant gave his option to be reverted to the lower grade of Rs. 4500-7000 to facilitate the mutual transfer with Shri Shah as it is permissible only if both the persons are in same pay scale. The request for mutual transfer was kept pending and vide order dated 3.7.2007 (Annexure A-1), Shri Shah was promoted to the pay scale of Rs. 5000-8000.

4. In the meantime, the request for mutual transfer for both the employees was accepted by the respondents vide order dated 9.1.2007, but the same was approved at lower pay scale of Rs. 4500-7000 for both the employees who had given their willingness. Finally, the mutual transfer order was issued on 4.6.2008, by which the applicant joined Jhansi division on 8.6.2008 and his pay scale was fixed at Rs. 4500-7000. It is the plea of the applicant that Shri Shah was given his seniority and pay scale after joining in Sambalpur division, but the applicant was adjusted at lower scale of pay, although at the time of mutual transfer both were working at the pay scale of Rs. 5000-8000 when the order for mutual transfer was issued on 4.6.2008. The applicant submitted the representation dated 20.8.2010 (Annexure A-7) to the General Manager (respondent no. 1), but no decision on it has been taken on it. Subsequently, the applicant has been medically decategorized and has been placed to work as clerk at pay scale of Rs. 4500-7000. The applicant has filed this OA seeking for restoration of his pay scale at Rs. 5000-8000 on the ground of parity with Shri Shah and with some of his juniors, who were stated to be getting higher pay scale vis-a-vis the applicant.

5. The case of the respondents is that both the employees were reverted to lower pay scale of Rs. 4500-7000 before allowing mutual transfer as per their willingness furnished by them and the applicant had accepted the mutual transfer order, hence, there is no merit in the claim of the applicant for higher pay scale. It is further stated that the representation of the applicant has been referred to GM (Personnel) with whom it is pending for a decision.

6. We have heard Shri S.M. Ali, learned counsel for the applicant and Shri Dharmendra Tiwari, who was appearing on behalf of the

learned counsel for the respondents. It is noted that there is nothing in the Counter Reply to explain the reason for delaying issue of order for mutual transfer till 4.6.2008 after it was approved on 9.1.2007 and why the request for mutual transfer made in the year 2002, could not be processed and approved prior to 9.1.2007 when it was approved by the competent authority.

7. Both the parties have not furnished copy of the applicable rules or the Railway Board guidelines on the issue of mutual transfer. The para 230 of the Indian Railway Establishment Code, Vol I states as under:-

"230. Transfer on mutual exchange.—In case of mutual exchange, the senior of the two employees will be given the place of seniority vacated by the other person. The junior will be allowed to retain his former seniority and shall be fitted into the seniority below the persons having the same seniority."

In this case, the applicant was senior to Shri Shah, who was in lower pay scale than the applicant at the time of submission of the request for mutual transfer. Hence, as per the para 230 of the Indian Railway Establishment Code, Vol. I, the applicant would have lost in terms of seniority after his mutual transfer to Jhansi, where he would be placed at the seniority of Shri Ashok Kumar Shah.

8. It is seen that in a similar case of Sh. Bhanu Prakash vs Union Of India (<https://indiankanoon.org/doc/194106307>), adjudicated by the Principal Bench of this Tribunal in OA No. 3788/2011, it was held as under:-

"5. The facts of the case are not disputed. The applicant first applied for mutual transfer in April 2006. Since no action was taken by the respondents on this request on the ground that Sh. Nurender Kumar Manghate with whom mutual transfer was sought was working at a level lower than that of the applicant, the applicant gave his consent for accepting lower level post on mutual transfer. This was done by him on 20.05.2008. However, his request could be acceded to only after a period of about 7 months on 06.01.2009. Meanwhile, Sh. Nurender Kumar Manghate had also got promoted to the level of the applicant. As such, on 06.01.2009 when mutual transfer was agreed to by the respondents, there was no need for reverting either the applicant or Sh. Nurender Kumar Manghate as both at that time were working at the same level. However, the respondents while considering the application of the applicant dated 20.05.2008, lost sight of the fact that in the intervening period Sh. Nurender Kumar Manghate had got promoted. Consequently, they ordered mutual transfer along with reversion of the applicant. In our considered opinion on the actual date on which the transfer was ordered, since both the applicant and Sh. Nurender Kumar Manghate were in the same grade pay, there was no need to resort to reversion. The approach adopted by the respondents is hyper technical. The Scheme of mutual transfer has been framed

for the benefit of the employees. However, the respondents are implementing it in a manner that it is acting to the detriment of the employees thereby defeating its very purpose. Had the respondents been careful they would have realized that since they had taken considerable time to take a decision on the application of the applicant dated 20.05.2008, position of the employees involved in the transfer could have under-gone a change during the intervening period. Thus, due to negligence or mistake committed by the respondents the applicant has been made to suffer.

6. In view of the above facts and circumstances of the case, the O.A. is allowed. Impugned order dated 08.06.2011 is quashed by which the representation of the applicant for refixation of his seniority was rejected by the respondents. We direct that the seniority of the applicant be refixed by holding that the inter railway transfer of the applicant was without reversion from the grade pay of Rs.2400/-. There will be no order as to costs."

9. The facts in the instant OA are similar to the facts in the OA No. 3788/2011 in which the employees were also reverted before mutual transfer although both were at a higher pay scale. In the instant OA, the applicant was reverted to the pay scale of Rs. 4500-7000 at the time of mutual transfer although Shri Ashok Kumar Shah with whom he had applied for mutual transfer, was also working in same pay scale as the applicant i.e. Rs. 5000-8000. Hence, the order of reversion of the applicant at the time of mutual transfer on 4.6.2008 was to implement of the willingness for reversion given by the applicant at the time of submitting mutual transfer request in 2002 mechanically.

10. In the circumstances, following the decision of this Tribunal in OA No. 3788/2011 as quoted above, we allow this OA and direct the respondent no. 1/competent authority to consider passing an appropriate order to re-fix the seniority and the pay scale of the applicant at Rs. 5000-8000, ignoring the order of his reversion at the time of mutual transfer on 4.6.2008 to Jhansi, with all consequential benefits as per the rules within three months from the date of receipt of a copy of this order. After the medical de-categorization of the applicant in September, 2008 as stated in para 4.5 of the OA, his pay scale shall also be re-fixed, if required, as per the rules.

11. The OA is allowed as above. No costs.

(Rakesh Sagar Jain)
Member – J

(Gokul Chandra Pati)
Member – A

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