

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.290/00382/2012

Reserved on : 19.08.2019

Jodhpur, this the 3rd September, 2019

CORAM

Hon'ble Smt Hina P. Shah, Judicial Member

Hon'ble Ms Archana Nigam, Administrative Member

Sudhir Kumar Sharma S/o Shri Shital Prasad Sharma, Aged about 48 years, R/o E-1, Brahmipuri Colony, Abu Road, District Sirohi, Rajasthan.

Applicant is presently holding the post of Divisional Material Manager, North-Western Railway, Diesel Shed, Abu Road, Sirohi.

.....Applicant

By Advocate : Mr Kuldeep Mathur.

Versus

1. The Union of India through the General Manager (P), North-Western Railway, Head Quarter Jaipur.
2. The Director Establishment (GP), Railway Board, Ministry of Railway, New Delhi.

.....Respondents

By Advocate : Mr Salil Trivedi.

ORDER

Per Smt. Hina P. Shah

The present Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking following relief(s) :

1. Declare the Final Integrated Seniority List dated 15.12.2011 (Annex. A/1) bad in the eye of law and same may be quashed and set aside.
2. The respondents may be directed to include the name of the applicant in the Final Integrated Seniority List at an appropriate

place by treating his date of appointment/entry into Group 'B' as 13.12.2003.

3. That the seniority list dated 12.01.2012 (Annex. A/23) published by the North Western Railway showing his date of regular appointment to Group 'B' as 18.04.2005 may be declared illegal.
4. The respondent No. 1 may be directed to show date of regular appointment to Group B as 13.12.2003 in the seniority list pertaining to Group B Officers of Store Department.
5. The OA may be allowed with all consequential benefits.
6. That the cost of application be quantified to the applicant from the respondents.

2. Brief facts necessary for adjudication of controversy involved in the present OA are that the applicant entered into the services of the Western Railway w.e.f. 20.12.1989 on the post of DSK-III (DMS-III) (Annex. A/2) and later on, on being successful in Limited Departmental Competitive Examination for Group B posts of AMM, applicant was promoted to Group B post of AMM and posted at Sabarmati, Ahmedabad under Western Railway (Annex. A/7 & A/8). On constitution/creation of new Zones in the Railways, applicant opted for his absorption in North Western Railway vide application dated 03.01.2004 (Annex. A/10) and respondent railway accepted his application for transfer on condition of acceptance of bottom seniority vide communication dated 20.01.2004 (Annex. A/11). Vide letter dated 03.05.2004 (Annex. A/12), applicant accepted the condition of bottom seniority in the cadre of AMM on his transfer to North Western Railway and in pursuance of the same, Railway Board vide communication dated 23.12.2004 (Annex. A/13) approved his

transfer. The applicant joined in the North Western Railway in the office of Controller of Stores, Head Quarter, Jaipur on 18.04.2005 and was posted as AMM at Abu Road vide order dated 27.04.2005 (Annex. A/14). In pursuance of his acceptance of bottom seniority, North Western Railway issued seniority list of Group B officers of Store Department as on 01.01.2007 and 01.01.2009 (Annex. A/17) and in both the seniority list the name of the applicant has been shown below Shri S.K. Baweja (S.No. 9) who was senior to him in North Western Railway on the date of his joining with bottom seniority. Thereafter, applicant was promoted to the post of Divisional Material Manager vide order dated 15.01.2010 (Annex. A/19). The Railway Board issued Provisional Integrated Seniority lists of Group B Officers of Stores Department as on 01.01.2010 and 01.01.2011 for the limited purpose of their induction to Group A/Jr. Scale of IRSS and in these seniority list the name of the applicant has been shown at serial number 118 and 114 respectively (Annex. A/20). Thereafter, the Railway Board issued Final Integrated Seniority lists of Group B Officers of Stores Department as on 01.01.2010 and 01.01.2011 wherein the name of the applicant was not shown in the entire seniority list though the date of joining of last person mentioned at serial number 199, in the seniority list, in the Group B Cadre has been shown as 05.01.2005. The applicant filed representation against the said seniority list on 16.04.2012 and on

11.02.2012 (Annex. A/21) but the same were to no avail. Applicant averred in his OA that vide letter dated 16.12.2005 (Annex. A/16), Railway Board decided that the service rendered by Group 'B' officer in previous unit, may be reckoned for the purpose of further promotion in the new unit, to the extent it does not exceed the Group 'B' service of his immediate senior in the new unit. Hence, the applicant filed present OA seeking reliefs mentioned in preceding paragraph.

3. Respondents filed reply on 30.01.2014 and they inter-alia stated that prior to the year 2010-11, empanelment of Group 'A'/Jr. Scale in each of the eight organized services of Indian Railway was done Railway-wise. Under that policy, allotment of promotion quota of Jr. Scale vacancies among different Zonal Railways/Unit was governed by the instructions contained in Board's letter No. E(GP)/2005/1/2Group 'A'/Jr. Scale of various services as per relevant Recruitment Rules to be distributed among different Railway Units taking into account the extent of Stagnation in Group 'B' officers of the department in different Railways/Units. Since this system was based on the level of stagnation in Group 'B' (in completed years) rather than the actual length of Group 'B' service in terms of years, months and days from the date of induction into Group 'B', it often resulted in UPSC recommending Railway-wise panels that included the officers who were junior to those on other Zonal Railways in terms of their

actual length of service in Group 'B'. Besides, in case of an officer being found 'Unfit', his next junior in the zone of consideration for that Railway would get empanelled if found 'Fit' even if he was much junior vis-a-vis those on other Railways. The issue was considered in detail by the Railway Board and it was decided to dispense with the existing system of Railway-wise empanelment based on the principles as mentioned in para 2 above and putting in its place, a system of empanelment in Group 'A'/Jr. Scale based on All India Integrated Group 'B' seniority in each of the eight departments from the vacancy year 2010-11. Accordingly, necessary instructions have been issued under Board's letter No. E(GP) 2009/1/97 dated 13.05.2011, wherein it has been stipulated that from the vacancy year 2010-11, a common eligibility list of Group 'B' officers of each organized service will be prepared on All India Basis in the order of their dates of induction of Group 'B' without disturbing the prevailing inter-se Group 'B' seniority on each Railway/Unit and this procedure will have limited application to the extent of forming only Group 'A'/Jr. Scale panels on All India basis. Subsequently, vide Board's letter No. E(GP) 2011/1/28 dated 14.02.2012, it was further clarified that for those officers joining other Railways at own request on bottom seniority basis in terms of instructions contained in Board's letter No. E(O)III-77/AE3/128 dated 03.12.1977, the date of Railway Board's order transferring them as such would be taken as the

Group 'B' date for the purpose of fixing their seniority on All India basis. Respondents have further stated that the Provisional Seniority Lists of Group 'B' officers of Stores Department as on 01.01.2010 and 01.01.2011 were circulated vide Board's letter No. E(GP)2011/3/1 dated 19.10.2011. In these seniority lists, Shri Sudhir Kumar Sharma of NWR (the applicant) was given placement on the basis of his date of induction into Group 'B' on NWR, i.e. 13.12.2003. However, when N.W. Railway vide their letter No. E/HQ/NWR/838/1 (Stores) dated 05.12.2011 intimated that the applicant had infact joined NWR at his own request on bottom seniority on 18/04/2005 vide Board's order No. E(O)III-2004/AE/472 dated 23.12.2004 on transfer from WR, his placement in the seniority lists was reviewed, and the final seniority lists as on 01.01.2010 and 01.01.2011 circulated vide Board's letter No. E(GP)2011/3/1 dated 15.12.2011. Accordingly, his name has been deleted from the Integrated Seniority List as on 01.01.2010 and 01.01.2011 as the Group 'B' date of last official included in the said list is 20.10.2004 and 05.01.2005 respectively. With regard to letter dated 16.12.2005 (Annex. A/16), respondents stated that the policy laid down in the Board's letter is not applicable in the instant case so far as the counting of his Group 'B' service on All India Basis is concerned as the same relating to adhoc promotion granted by the General Manager in the exigency of service at the zonal levels in terms of powers

conferred upon them vide para 214(b) of the IREC, Vol.I. On the contrary, the present case is all about regular promotion to Group 'A' against Jr. Scale vacancies of IRSS on the basis of an All India Integrated Group 'B' seniority, which is granted by the President in consultation with the UPSC in accordance with the procedure laid down by the DoP&T. Respondents thus prayed dismissal of the OA with costs.

4. Applicant filed rejoinder on 16.06.2015 reiterating the averments and contentions made in the OA.

5. Heard both the parties.

6. Learned counsel for the applicant reiterated the averments made grounds raised in the OA. He, however, inter-alia submitted that in number of similar cases, the co-ordinate Benches of this Tribunal granted the relief. He referred to the following judgments :

1. CAT Jabalpur Bench in OA No. 435/2012 dated 07.03.2019.
2. CAT Patna Bench in OA No. 176/2008 dated 24.07.2012.
3. CAT Allahabad Bench in OA No. 220/2014 dated 07.04.2017.
4. CAT Principal Bench in OA No. 1563/2013 dated 17.02.2016.
5. CAT Cuttack Bench in OA No. 424&425 of 2009 dated 08.12.10.
6. CAT Jodhpur Bench in OA No. 64/2007 dated 28.11.2008.
7. CAT Cuttack Bench in OA No. 762/2013 dated 02.12.2016.
8. Hon'ble Patna High Court in Civil Writ Jurisdiction case No. 17968/2012 dated 12.04.2016
9. Hon'ble Supreme Court judgment in case of Union of India & Ors Vs C.N. Ponnappan, (1996) 1 SCC 524.

7. On the other hand, learned counsel for the respondents also reiterating averments made in their reply, inter-alia relied upon the following judgments.

1. CAT Principal Bench in OA No. 2804/2017 dated 21.08.2017.
2. CAT Cuttack Bench in OA No. 260/00036/2014 dated 02.01.2017.

8. We have considered the arguments advanced by learned counsels for the parties, perused the record and judgments cited by them during course of hearing.

9. Before examining the legal question involved in the present OA, we wish to record undisputed factual aspect of the matter which are worthwhile to resolve the issue in hand. Applicant became Group 'B' w.e.f. 13.12.2003 when he joined his services on promotion to the post of Assistant Material Manager (AMM) through LDCE in Western Railway, which was a Group B post. Thereafter, he was transferred to North Western Railway from Western Railway on the post of AMM on his own request and he joined his services in North Western Railway on 18.04.2005 while accepting bottom seniority as seniority were being maintained Railway-wise for the post of AMM. On the basis of the said seniority list wherein applicant placed at bottom, he has been granted adhoc promotion to the post of Divisional Material Manager in the North Western Railway vide order dated

15.01.2010. At this point of time, the seniority of the cadre was being maintained Railway-wise. However, due to some administrative reasons as elaborated by the respondents in their reply, respondents decided to maintain All India Integrated Group 'B' seniority for promotion to Group 'A'/Jr. Scale on all India basis and the basis of such seniority was reckoned as date of induction in Group 'B' subject to the condition that prevailing inter-se Group 'B' seniority in each Railway/Unit will not be disturbed (page 88 of reply). Respondents thus circulated such provisional seniority lists as on 01.01.2010 and 01.01.2011 (Annex. A/20) wherein applicant's entry date into Group 'B' has been shown 13.12.2003 at serial number 118 and 114 respectively. However, in final seniority list published by the Railway Board on 15.12.2011 (Annex. A/1), the name of the applicant has not been included. Respondents' plea for non-inclusion of name of the applicant in Final All India Integrated Group 'B' seniority for promotion to Group 'A'/Jr. Scale (Annex. A/1) is that vide letter No. E(GP) 2011/1/28 dated 14.02.2012, Railway Board clarified that for those officers joining other Railways at own request on bottom seniority basis in terms of instructions contained in Board's letter No. E(O)III-77/AE3/128 dated 03.12.1977, the date of Railway Board's order transferring them as such would be taken as the Group 'B' date for the purpose of fixing their seniority on All India Basis. The rationale behind the said decision of

Railway Board has been given in the reply that “in exceptional circumstances if a Class II officer (Group B) is transferred from one Railway to another at his own request, he will be assigned bottom seniority from the date he takes over there and he will also lose all his claims for higher grade in his parent railway, for which he will have to give an undertaking. In this background of the matter, if a Group ‘B’ officer transferred to another zone on bottom seniority is allowed to count his service in Group ‘B’ rendered in the previous unit for the purpose of his promotion to Group ‘A’/Jr. Scale, he unduly pushes up the Group ‘B’ date, thereby depriving the senior officers on other Railways with earlier Group ‘B’ date of promotion, eventually defeating the very spirit of the revised system put in place in terms of Board’s letter dated 13.05.2011, which is not desirable.”

11. Before examining merits of the case on factual aspects, we wish to discuss the settled position of law and rationale of Hon’ble Apex Court for laying such law in respect of grant of bottom seniority on own request applications and counting of past services rendered by an employee. In this regard, we wish to reproduce relevant paragraph of Hon’ble Apex Court judgment in the case of K.P. Sudhakaran and another v. State of Kerala and others, (2006) SCC (L&S;) 1105, where the Apex Court held that:

In service jurisprudence, the general rule is that if a Government servant holding a particular post is transferred to the same post in the same cadre, the transfer will not wipe out his length of service in the post till the date of transfer and the period of service in the post before his transfer has to be taken into consideration in computing the seniority in the transferred post. But where a Government servant is so transferred on his own request, the transferred employee will have to forego his seniority till the date of transfer, and will be placed at the bottom below the junior-most employee in the category in the new cadre or department. This is because a government servant getting transferred to another unit or department for his personal considerations, cannot be permitted to disturb the seniority of the employees in the department to which he is transferred, by claiming that his service in the department from which he has been transferred, should be taken into account. This is also because a person appointed to a particular post in a cadre, should know the strength of the cadre and prospects of promotion on the basis of the seniority list prepared for the cadre and any addition from outside would disturb such prospects

Thereafter, the question of reckoning of past services for the purpose of eligibility for promotion came up before the Hon'ble Supreme Court in cases of employees who had been transferred on his own request and placed at bottom seniority in another wing/unit of the same department/organization where seniority of same cadre is maintained separately. The Hon'ble Supreme Court settled the law that the service rendered in the previous region, prior to transfer on compassionate ground, will be counted towards service for eligibility for consideration of such promotion. That it is a non-transferable job, makes no difference on this aspect as service is rendered in the same cadre. In this regard, we wish to quote judgment of Hon'ble Supreme Court in Civil Appeal No. 3792 of 2019 (Arising out of SLP (C) No.

31728/2018) in the case of **Pratibha Rani & Ors Vs UOI & Ors,**

which reads as under:

1. The only question which is required to be examined in these cases is whether in case of a compassionate transfer which is inter-region, the service rendered in the previous posting is liable to be counted in the new posting areas for purposes of eligibility for consideration of such promotion.

2. The appellants are working as Tax Signature Not Verified Digitally signed by CHARANJEET KAUR Assistants and on account of plea of compassionate grounds, they were transferred inter-region. The stand taken by the respondent-Department is that as per the administrative instructions, the period spent in case of inter-region transfer in the previous region, could not be counted while posting such a person in a new region for eligibility for promotion.

3. The aforesaid issue is no more res integra in view of the judgment of this Court in the case of Union of India & Ors. vs. C.N. Ponnappan (1996) 1 SCC 524 where this very issue was examined in the factual context of the same department as under :

"The service rendered by an employee at the place from where he was transferred on compassionate grounds is regular service. It is no different from the service rendered at the place where he is transferred. Both the periods are taken into account for the purpose of leave and retiral benefits. The fact that as a result of transfer he is placed at the bottom of the seniority list at the place of transfer does not wipe out his service at the place from where he was transferred. The said service, being regular service in the grade, has to be taken into account as part of his experience for the purpose of eligibility for promotion and it cannot be ignored only on the ground that it was not rendered at the place where he has been transferred. In our opinion, the Tribunal has rightly held that the service held at the place from where the employees has been transferred has to be counted as experience for the purpose of eligibility for promotion at the place where he has been transferred.

4. We may also note that in the context of a different service, on the same principle and noticing C.N. Ponnappan's case (supra), in M.M. Thomas & Ors. vs. Union of India & Ors. (2017) 13 SCC 722, it was observed as under :

"Having heard the learned counsel appearing for the parties and upon perusal of the record, we are of the view that the words of the aforesaid Rule require five years' regular service "in the respective regions". Thus, these words must be understood to mean that the candidates should have served in the respective regions, that is, the regions where they were posted earlier and the region where they seek promotion all together for five years. Thus if a candidate has served in one region and then transferred to another, and seeks promotion in that region, the rule does not require that the candidate must have acquired experience of five years in the region where he seeks promotion, for being considered eligible. What is necessary is a total experience of five years. this must necessarily be so because the service to which the rival parties belong, is an All-India Service, in which the country is demarcated into several regions. In all-India Service, the officers are posted from one region to the other in a routine manner. The purpose of the rule is that such officers are not deprived of their experience in the feeder cadre merely because they have been transferred from one place to another."

5. Thus, it is quite clear that insofar as issue of eligibility of promotion is concerned, the service rendered in the previous region, prior to transfer on compassionate ground, will be counted towards service for eligibility for consideration of such promotion. That it is a non- transferable job, makes no difference on this aspect as service is rendered in the same cadre.

12. On giving our thoughtful consideration to the matter, we find that as per condition of his intra-railway transfer, applicant has been placed at the bottom seniority. The applicant in the present OA has also not challenged the same. Applicant's prayer in the present OA is that he may be placed in the seniority lists under question while reckoning his date of actual entry in Group 'B' in his parent Railway, i.e. 13.12.2003 Western Railway without disturbing the inter-se seniority of North Western Railway wherein he has been assigned bottom seniority below Shri S.K. Baweja on account of his intra-railway transfer at his own request.

On the other hand, respondents contention is that since applicant accepting bottom seniority has given undertaking that he will lose all his claims for higher grade in parent railway, hence, for fixing of All India Integrated Group 'B' seniority as at Annex. A/1, his date of reckoning of Group 'B' service is the date on which he joined North Western Railway at bottom seniority which is 18.04.2005. It is an admitted position that at the time of intra-railway transfer of the applicant on a Group 'B' post, seniority of such cadre was being maintained Zone wise for further promotion. Neither respondents nor applicant could foresee that seniority would be maintained on All India basis while reckoning the date of entry into Group 'B' post. Had it been so, the rationale for assigning bottom seniority to the applicant in North Western Railway that 'government servant getting transferred to another unit or department for his personal considerations, cannot be permitted to disturb the seniority of the employees in the department to which he is transferred, by claiming that his service in the department from which he has been transferred, should be taken into account' would not be available to the applicant as the same would not disturb the seniority of others in the same cadre.

13. Be as it may, we find that as per condition of bottom seniority accepted by the applicant, the respondents once placed him at bottom seniority list of Group B officers of Store

Departments as on 01.01.2007 and 01.01.2009 (Annex. A/17) in the North Western Railway showing date of promotion in Group 'B' service from 13.12.2003. Original instructions of Railway Board issued vide letter No. E(GP) 2009/1/97 dated 13.05.2011 (Annex. A/22) in pursuance of administrative decision that a common eligibility list of Group 'B' officers of each organized service for forming Group 'A'/Jr Scale panels on All India basis. It has been averred that in these instructions an integrated seniority list will be prepared on All India Basis in the order of their dates of induction of Group 'B' without disturbing the prevailing inter-se Group 'B' seniority of each Railway/Unit. As such, it appears that in A/17 provisional seniority list, applicant name has been shown keeping in view both the aspect that inter se seniority of the North Western Railway has not been disturbed and past services rendered by the applicant in Group 'B' has also been reckoned with. However, subsequently, vide Board's letter No. E(GP) 2011/1/28 dated 14.02.2012, it was further clarified that for those officers joining other Railways at own request on bottom seniority basis in terms of instructions contained in Board's letter No. E(O)III-77/AE3/128 dated 03.12.1977, the date of Railway Board's order transferring them as such would be taken as the Group 'B' date for the purpose of fixing their seniority on All India basis. As such, respondents while issuing the final integrated seniority list deleted the name of the applicant keeping reckoning his date of

joining at bottom seniority in North Western Railway as entry into Group 'B' service. The said letter has not been placed on record by the respondents. In our considered view, the basis for drawing the integrated seniority lists mentioned by the Railway Board in the letter dated 13.05.2011 (Annex. A/22) that common eligibility list be prepared on All India basis in the order of their dates of induction into Group 'B' without disturbing the prevailing inter-se Group 'B' seniority on each Railway/Unit was justified as the same would not disturb the ratio of law laid down by the Hon'ble Apex Court in K.P. Sudhakaran's case as well as Pratibharani's case (supra).

14. However, respondents vide clarificatory letter 14.02.2012 (not on record) changed the position to the extent that for those officers joining other Railways at own request on bottom seniority basis in terms of instructions contained in Board's letter No. E(O)III-77/AE3/128 dated 03.12.1977, the date of Railway Board's order transferring them as such would be taken as the Group 'B' date for the purpose of fixing their seniority on All India basis. In our view, the said clarification of the Railway Board is not justified as the same violates the law laid down by Hon'ble Apex Court in K.P. Sudhakaran's case as well as Pratibharani's case (supra) as applicant's intra-railway transfer did not disturbed the seniority of other railways except North Western Railway and for the same, he

was placed at the bottom of seniority. Further, by reckoning his entry into Group 'B' service from the date of his joining in the North Western Railway on own request amounts to wiping out his past Group 'B' service rendered in Western Railway. Even otherwise also, the condition laid down by the respondents for his own request transfer was acceptance of his bottom seniority. Applicant once assigned bottom seniority now again cannot be inflicted with such loss again by putting him at loss of his seniority amongst other similarly placed employees working in other Railways since assigning him bottom seniority was limited to the North Western Railway. Hence, we find the clarification dated 14.02.2012 issued by the Railway Board, as averred in the reply, is unjustified and illegal.

15. During the course of arguments, respondents cited judgments of the CAT Principal Bench in case of Panna Lal Vs UOI & Ors dated 21.08.2017 (OA No. 2804/2017) and CAT Cuttack Bench in case of Arunjyoti Sahoo Vs UOI & Ors dated 02.01.2017 (OA No. 260/00036/14) and submitted that in similar matters, the co-ordinate Benches of this Tribunal denied the similar reliefs to the applicants therein. We have gone through both the judgments. In Panna Lal's case, from perusal of para 4 of the judgment, it appears that the applicants prayer was to negate or ignore the inter-se seniority of a Zone for the purpose of integrated seniority on All India basis whereas they were placed

at bottom seniority on intra-railway transfer. In Arunjyoti Sahoo's case, the co-ordinate Bench did not consider the rationale of assigning bottom seniority as well as issue of reckoning of past services rendered as discussed above. In the facts and circumstances of the present case, in our view, applicant cannot twice be placed at bottom seniority or put to loss of his seniority twice as respondents action of placing him in bottom seniority vis a vis employees in the Railway Zone where he sought transfer is justified but again at a later date, putting him at the bottom seniority vis a vis other similar employees of other railway zones is not justified as acceding to the request transfer of the applicant in North Western Railway cause no prejudiced or affected his seniority at all since it was being maintained Railway wise at the time of his transfer to North Western Railway.

16. In view of the discussions hereinabove made, we are of the considered view that applicant's seniority in Group 'B' officers of Stores Department as on 01.01.2010 and 01.01.2011 should be fixed in the order of his date of induction into Group 'B' subject to the condition that it should not disturb prevailing inter-se Group 'B' seniority of North Western Railway. The clarification letter dated 14.02.2012 referred by the respondents in their reply is unjustified and illegal.

17. Accordingly, final seniority list dated 15.12.2011 (Annex. A/1) circulated by the Railway Board, qua the applicant, is hereby quashed and set aside. Railway Board is directed to circulate final seniority list afresh within 03 months from the date of receipt of a copy of this order keeping in view instructions contained in their letter dated 13.05.2011 (Annex. A/22) as well as observation made in preceding paragraphs.

18. In terms of above directions, OA is allowed with no order as to costs.

[Archana Nigam]
Administrative Member

[Hina P. Shah]
Judicial Member

Ss/-