

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

LIBRARY

No. O.A. 920 of 2011

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Ms. J. Chandra, Administrative Member

Prasanta Kumar Ghosh,
S/o Sri T.K. Ghosh,
Aged about 51 years,
Working for gain as JE-I/E. Rly./Asansol,
Now officiating as at present residing at
546/III/7/Hospital Colony Andal,
Burdwan – 713 321.

..... Applicant.

Versus

1. Union of India,
Through General Manager,
Eastern Railway,
Fairlie Place,
Kolkata – 1.
2. Division Railway Manager,
Eastern Railway,
Asansol.
3. Sr. Divisional Personnel Officer,
Eastern Railway,
Asansol.
4. Sr. Divisional Engineer (Co-ord.)
Eastern Railway,
Asansol.
5. Divisional Railway Manager,
E.C. Rly./Mughalsarai.

..... Respondents.

6. Parth Mitra,
(SE/P.Way/Panagarh)
Panagarh Railway Colony,
Qtr. No.69, P.O. Panagarh,
Burdwan.
7. Suranjan Sarkar,
(JE/P.Way/West)
Qtr. No.19 ABC,
South Colony Andal,
Burdwan – 713 321.
8. Tarun Kr. Das,
(SE/P.Way/West)

Qtr. No.13,
South Colony Andal,
Burdwan, PIN – 713 321.

9. M.C. Mandal (JE/P.Way/Yard)
Qtr.No.476/II/7,
Traffic Colony Andal,
Burdwan PIN – 713 321.

10. S.N. Roy (SE/P.Way/Suiri)
Qtr.No.16 ABC,
Suri Railway Colony,
Suri.

..... Private Respondents.

For the Applicant : Mr. C. Sinha, Counsel

For the Respondents : None

Order dated: 11-3-16 .

ORDER

Per Ms. Bidisha Banerjee, Judicial Member:

Heard Ld. Counsels for both the parties.

2. The applicant would seem aggrieved with in regard to a seniority list dated 30.8.2010 (Annexure A-7) of Junior Engineers Gr.-I/P. Way, whereby & whereunder his date of appointment reflected as 15.12.87/10.92, placed him below all the inductees of 1991, as also the appellate order dated 13.1.11 (Annexure A-9). He would thus seek the following reliefs:

"8.(a) To set aside and quash impugned seniority list of JE Gr.I dated 31.08.2010 issued by Divisional Personnel Officer, Eastern Railway, Asansol.

(b) To set aside and quash letter dated 13.01.2011 issued by Sr. Divisional Personnel Officer, Eastern Railway, Asansol as regard applicant is concerned.

(c) To direct the respondents to assign correct seniority position to your applicant taking into account his date of appointment PWI Gr.III as 15.12.86 or 15.12.87 i.e. date of taking independent charge as PWI and place him at seniority list dated 31.8.2010 in between Sl. No.33 & 34.

(d) Any other order or orders as the Hon'ble Tribunal deems fit and proper."

3. The admitted facts would be noticed as under:

The applicant joined Mughalsarai as a Trainee Apprentice PWI Gr. III, on 15.12.86 in the Mughalsarai Division of the Eastern Railway. As per Service Record after completion of full training he joined in the PWI Post on regular basis on and from 15.12.1987 in Mughalsarai Division, i.e. after the cut of date of submission of Option on 01.11.1987.

The applicant along with other regular PWIs opted for fixing lien and Seniority at Asansol Division. The Options of the regular PWIs were only considered and the Option of the Trainee Apprentice were considered as a "own request"

In order to implement the said Decentralization Scheme of the PWIs, the Chief Personnel Officer, Eastern Railway vide Office Order dated 26.12.1990 passed ordered transfer of regular staffs who opted for lien. The name of the applicant appeared at Serial No. 54 of the said List (R-1).

Subsequently vide Office Order dated 20.11.1992 the Chief Personnel Officer, Eastern Railway informed that out of said Office Order 26.12.1990 total 23 nos. PWIs were transferred as per their option and remaining optees would be transferred as and when vacancy also save and except those who have been absorbed in working posts after effective date of decentralization, i.e. 01.11.1987 and the names of those PWIs Gr. III appear at Serial Nos. 46 to 76 of the said Office Order dated 26.12.1990.

By an office order dated 10.9.92 the applicant was treated as transferred as per his own request as issued by the Senior Divisional Personnel Officer, Eastern Railway, Asansol (R-3).

4. The respondents would contend that the conjoint reading of the Office Orders dated 26.12.1990 and 20.11.1992 alongwith the Order of transfer dated 10.9.92 treating him as transferred on own request would make it crystal clear that the applicant was transferred from Mughalsarai Division to Asansol Division on his own request and not on any administrative ground or as per his option.

His representation was duly considered by the Chief Personnel Officer, Eastern Railway, who clarified the position on 05.01.2011 and communicated to the applicant on 13.01.2011 (R-4).

5. The Ld. Counsel for the applicant on the contrary would strenuously urge, drawing our attention to the Annexure A-1 dated 10.7.91 and a sparing letter for PWI/IOWs (Annexure A-2) dated 26.5.92 that the orders ^{of} would manifest that the applicant was never treated as a "trainee" on transfer to Asansol Division as per his own request.

He would further invite our attention to the Provisional Seniority lists dated 23.4.93 (Annexure A-3) wherein applicant figured with his date of appointment as follows:

Sl.No.	Name	Dt. of birth	Dt. of appt.	Dt. of wkg. In the present grade	Dt. of conf.	Divn/Unit where now posted.	Divn/Unit where opted for maintaining lien & seniority.	Remarks
Xxx	xxx	Xxx	xxx	xxx	xxx	xxx	xxx	xxx
33.	P.K. Ghosh	6.9.90	15.12.86	15.12.87	Offg.	PWI/UDL	DRM/ASN	

And further to Annexure A-4, an office order dated 22.3.2000, extracted hereunder for clarity:

“ Eastern Railway

No. F/E-22/1/PWI.

Asansol, dt. the – 22nd March/2000

Office order.

The following orders have been passed by the competent authority to have its immediate effect:-

Having been found suitable for the post of JE Gr.I (P. Way) in scale Rs. 5500-9000/- (RSRP), the following Jr.II (P. Way) in Sc. Rs. 6000-8000/- (RSRP) are appointed to officiate as such and retained at their present place of posting.

Sl.No.	Name	Design/Sts.	Promotion as JE Gr.I (P. Way) at.
1.	Sri Santanu Chakraborty	JE-II(P. Way)/DGR	DGR
2.	Prasanta Kumar Ghosh	-do- UDL(W)	UDL(W)

Option if any in terms of CPO/CCC's Sl.No.178/81 may be exercised by the staff concerned within one month from the date of issue of this order.

Charge reports of the staff concerned may be sent to this office in due course.

Copy forwarded to the following for information receipt/action please.

For Sr.Dvl. Personnel Officer/As Asansol.

1. Sr. DEN/Co-ord/ASN.2.Sr.JAO/ASN.3.SE/P. Way/ASN and UDL(W)/UDL.

For Sr.Dvl. Personnel Officer/As Asansol.”

He would further refer to a Provisional Seniority list of JE(P-Way) Gr.I, issued on 5.12.2002 (Annexure A-5), which ~~would~~ reflect the position of the applicant as under:

Sl.No	Name (S/Sri)	Section	Dt. of birth	Dt. of appointment service	Dt. of offg. In the grade	Remarks
xxx	Xxx	xxx	xxx	xxx	xxx	xxx
19.	Prasanta Kr. Ghosh	UDLW	6.9.60	15.12.86	23.3.2000	

Since none of the provisional seniority lists depicted his date of appointment as 10.9.992, Ld. Counsel would vociferously submit and allege that the respondents have mislead this Tribunal with incorrect postings. He would submit that the impugned seniority list of 31.8.2010 (Annexure A-7), which modified his date of appointment to 10.9.1992 in absolute deviation from the earlier seniority lists (supra) and to his detriment, as well as the impugned speaking order dated 13.1.11 which rejected his prayer for correction, deserved to be quashed.

6. In view of the rival contentions supra the question falling for consideration would be whether the date of regular appointment of the applicant in Asansol is 15.12.1987 or 10.09.1992.

7. We discerned infra:

(i) Inarguably and irrefutably the applicant got appointed as PWI on regular basis, at Mughalsarai on 15.12.87 i.e. after the cut of date for option, which was 1.11.87.

(ii) He figured in the list of optees prepared on 26.12.90 (R-1) at serial No.47 but was not transferred immediately thereafter.

(iii) His transfer was affected only on 10.9.92, and the order clearly and unambiguously spelt out the following: (extracted with supplied emphasis for clarity)

"2. On being released from DRM/MGS, Sri P.K. Ghosh, PWI/III in scale Rs.1400-2300(RP) under AEN/DOS, is posted as PWI Gr.III under PWI/DGR on his same pay, grade and capacity vice Sri C.K. Pankoj, PWI/III transferred (item 1 above).

Sri Ghosh reported to this office on 07.9.92, the period from 7.9.92 to 10.9.92 may be treated as waiting for posting.

The transfer of the abovenamed staff are effected at their own request they are not eligible TA, Pass and Joining leave etc. As per extant rules."

It is not the case of the applicant that he was unaware of the transfer order dated 10.9.92 whereby he was treated as a transferee on his own request.

(iv) The seniority lists of JE-I (P-Way) at Annexures A-3 and A-5 which the applicant banked upon, were only provisional in nature.

(v) The final seniority list placed him below all the appointees of 1991, in Asansol division, in view of (iii) supra.

(vi) The applicant never challenged treatment of his transfer, from Mughalsuraj to Asansol Division, as transfer on own request, at the material time i.e. in 1992. He happily subjected himself to such treatment. Accordingly his date of appointment fell on 10.9.1992, as reflected in the seniority list under challenge, giving him bottom seniority at the place of joining i.e. Asansol, below all inductees of 1991.

(vii) Therefore at this distant date he would have no claim for altering the settled position of 1992.

(viii) He would also be considered as guilty of laches, waiver and acquiescence, having agreed to change of his seniority in 1992.

It is trite, axiomatic and settled law that Courts would not come to the rescue of such persons who themselves are guilty of waiver and acquiescence.

(ix) The applicant would be estopped by his conduct having omitted to challenge alteration of his seniority since 1992 and thereby having induced the respondents to act on a belief that he had agreed to such alteration. He had

voluntarily forsaken assertion of a right to the proper opportunity. He was never compelled to join the new posting that way. He had an opportunity to protect his earlier seniority by not accepting transfer. Rather he had agreed to transfer treating the same as transfer on own request which would invariably forfeit his past seniority.

Here, we would be tempted to quote Hon'ble Apex Court in **Dr. Karan Singh -vs- State of Jammu & Kashmir [(2004)5 SCC 698]** on estoppel abandonment of a claim, waiver and acquiescence.

"19. The Division Bench in the impugned judgment, as earlier noticed, has held that "either there was relinquishment of right or waiver voluntary". Before we examine the facts to decide this issue, reference may be made to certain decisions on the aspects of estoppels, abandonment and waiver. The leading case on estoppels is that of *Pickard v. Sears* 6 (1837)6 AD & EI 469 : 112 ER 179 wherein Lord Denman, C.J. in delivering judgment, inter alia, said: (ER p. 181)

"His title having been once established, the property could only be divested by gift or sale; of which no specific act was even surmised.

But the rule of law is clear, that, where one by his words or conduct wilfully causes another to believe the existence of a certain state of things, and induces him to act on that belief so as to alter his own previous position, the former is concluded from averring against the latter a different state of things as existing at the same time;" (See Bigelow on Estoppel, pp. 606, 607.)

20. In *Mitra Sen Singh v. Janki Kuar* AIR 124 PC 213 : 51 IA 326 (AIR at p. 214) with regard to estoppels, it was stated:

"There is no peculiarity in the law of India as distinguished from that of England which would justify such an application. The law of India is compendiously set forth in Section 115 of the Indian Evidence Act, Act 1 of 1872. It will save a long statement by simply stating that section, which is as follows:

'When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative to deny the truth of that thing.' "

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25. In *Municipal Corpn. Of Greater Bombay v. Dr. Hakimwadi Tenants' Assn.* 1988 Supp SCC 55 it was held: (SCC p. 65, para 14)

"In order to constitute waiver, there must be voluntary and intentional relinquishment of a right. The essence of a waiver is an estoppels and where there is no estoppels, there is no waiver. Estoppel and waiver are

questions of conduct and must necessarily be determined on the facts of each case."

26. For the purpose of the present case, the principles laid down in *Provash Chandra Dalui v. Biswanath Banerjee* 1989 Supp (1) SCC 487 are quite apt. One of the questions that came up for consideration in the said decision was whether there was estoppels, waiver, acquiescence or res judicata on the part of the respondents as in the earlier proceedings they treated the appellants as thika tenants before the Controller. It was held that the essential element of waiver is that there must be a voluntary and intentional relinquishment of a known right or such conduct as warrants the inference of the relinquishment of such right. It means forsaking the assertion of a right to the proper opportunity. It was held that voluntary choice is the essence of waiver for which there must have existed an opportunity for a choice between the relinquishment and the conferment of the right in question."

The authorities having treated him as transferred to Asansol on his own request and having acted upon his omission to challenge such settled position, (as the employee never raised a hue and cry over final settlement of his seniority since 1992) could not be asked to alter the settled position.

8. In view of the revelations as hereinabove we find no merit in this application. It is accordingly dismissed. No Costs.

(J. Chandra)
AM

(Bidisha Banerjee)
JM

drh