

Central Administrative Tribunal
Principal Bench

OA No.2115/2003

New Delhi this the 26th day of September 2005.

Hon'ble Mr. V.K. Majotra, Vice-Chairman (A)

Hon'ble Mr. Shanker Raju, Member (J)

Yogendra Kumar Pathak,
S/o Kishan Chand Pathak.
R/o 209/D2, Western Central Railway Colony,
Tughlakabad,
New Delhi-110 044.

-Applicant

(By Advocate Shri K.K. Patel)

-Versus-

Union of India through:

1. General Manager,
Western Central Railway,
Jabalpur.
2. Divsional Railway Manager,
Kota Division,
Western Central Railway,
Kota Division.
3. Sr. Divisional Electrical Engineer, (TRS),
Kota Division,
Western Central Railway,
Kota.

-Respondents

(By Advocate Shri Rajinder Khatter)

ORDER

Mr. Shanker Raju, Hon'ble Member (J):

By virtue of this Application applicant has sought quashing of orders dated 14.7.2003 and assignment of seniority in the grade of Rs.800-1150 and further notional promotion as Fitter Grade-II w.e.f. 29.5.1994.

2. Applicant was appointed on permanent basis as Diesel cleaner khallasi on 9.7.1981 and was promoted as senior Khallasi on 1.1.98 on upgradation of the post. Meanwhile, vide notification dated 30.4.1986 respondents proposed to install a new Electrical Loco Shed at Tughlakabad, Kota Division of Western



Railway. Vide his application dated 26.8.1988 applicant requested for transfer to Electric Loco Shed, Kota Division, Tuglakabad, on personal grounds. Accordingly, he was posted in a lower grade of Rs.750-950 as khallasi and relieved on 17.1.1989. Applicant joined at Tuglakabad on 19.1.1989. By an application dated 17.10.1989 applicant requested for consideration of his transfer on administrative grounds, as done in other cases, which was recommended by Senior DEE on 17.10.1989. Prior to the transfer on 20.11.1990 in view of seniority list issued applicant has sought promotion as senior khallasi in the grade of Rs.800-1150. Applicant was subjected to trade test to the post of Fitter Grade-III in the pay scale of Rs.950-1500 for filling up the vacancies in Loco Shed at Tughlakabad though was declared successful his name was shown at serial No.25 in the panel of select list of Fitter Grade-III and was promoted on 3.3.1990. Seniority of applicant was revised as khallasi and as he was not found eligible as per the seniority relegated by an order dated 13.7.91, he was reverted as khallasi from Fitter Grade-III. Applicant challenged reversion order in OA-1723/1991 where directions were issued to consider his case in ELF Grade-II in accordance with the extant rules and regulations on the subject. Applicant was continued as ELF-III but subsequently on 2.1.1994 appeared in the trade test of ELF Grade-II. However, claim of applicant for promotion to the grade of ELF Grade-II was rejected vide order dated 23.12.1996, which led to filing of CP No.47/1999, which was dismissed on 13.8.1999, with liberty to applicant to challenge the order. By an order dated 4.2.1998 claim of applicant was rejected.

3. The above orders were subject matter of OA-1362/2000, which was disposed of on 11.11.2002. Taking cognizance of the fact that applicant's seniority was later on revised to consider his case for promotion as ELF Grade-II and Grade-I. Vide orders dated 14.7.2003 claim of applicant was rejected, giving rise to the present OA.



4. Learned counsel for applicant states that as per the decision of the Full Bench of the Tribunal in **K.A. Balasubramanian v. Union of India & Others**, 1987 (4) ATC 805, even in request transfers past service has to be considered for eligibility. In the above backdrop it is stated that once though on transfer applicant had joined on his own request there were only 40 khalasis in the Division but the respondents instead of placing applicant at serial No.41 brought him down even below the persons who have joined from other Divisions.

5. Shri K.K. Patel, learned counsel of applicant contended that respondents have not adhered to their own order dated 9.5.1989 where options have been called for filling up posts in new Electrical Loco Shed and as his option was duly recommended by Senior DEE the trade test conducted earlier on 13.2.1990 where seniority dated 8.2.1990 was considered to be final, juniors of applicant who continued as Fitter Grade-II are juniors to applicant and those instructions dated 15.1.1999 issued by respondents have been violated. In nut shell, claim of applicant is that before reversion and relegating seniority applicant has not been accorded an opportunity to show cause and while interpreting Rule 312 of the Indian Railway Establishment Manual (IREM), which deals with transfer on request it is stated that in the light of the decision of the Apex Court in **Arun Kumar Chatterjee v. South Eastern Railway and Others**, (1985) 2 SCC 451, 'officiating' does not connote 'temporary', name of applicant should have been put at an appropriate place in the seniority list.

6. Learned counsel would contend that applicant vis-à-vis one Rakesh Kumar who has been given seniority and promotion even on his transfer on request applicant has been arbitrarily discriminated in violation of Articles 14 and 16 of the Constitution of India.

7. On the other hand, respondents' counsel Shri Rajinder Khatter, vehemently opposed the contentions and stated that earlier on the assumption that

applicant had joined on request transfer on 18.8.1989 he was accorded seniority at serial No.25 but on coming to know of this misrepresentation applicant's joining from 19.1.1989 was reckoned and he was placed at serial No.150 of the corrected seniority. As it had been found that due to earlier seniority applicant who had been given promotion was not coming within the zone of consideration and was not eligible, the reversion has taken place.

8. Learned counsel would content that once applicant was transferred on his own request he has to be brought down to the bottom of the seniority and mere recommendation for transfer on administrative grounds by Senior DEE is not a final decision and on transfer on request seniority is to be treated as bottom as per paragraph 312 of the IREM. It is also contended that in so far as Rakesh Kumar's case is concerned, a corrective measure has been taken to cancel his promotion vide order dated 15.9.2005 and applicant has been promoted from 4.8.2003 in the pay scale of Rs.4000-6000 in Grade-II and due seniority has now been assigned to him.

9. In the rejoinder, learned counsel of applicant states that as the cadre closed in 1990 persons have been brought in over and above applicant and order passed on 29.5.2005 by the respondents would be hit by Section 19 (4) of the Administrative Tribunals Act, 1985.

10. We have carefully considered the rival contentions of the parties and perused the material on record, including the departmental record produced by the respondents.

11. In our considered view, seniority once settled cannot be unsettled after a long lapse of time. The seniority of 1990 now cannot be questioned. Moreover, any change in the seniority would bring about prejudice to the employees who are affected parties and their non-impleadment is not in consonance with the principles of natural justice, as held by the Apex Court in A.M. Sushant v. M.

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Sujatha, (2000) 10 SCC 197 and B.S. Bajwa v. State of Punjab, (1998) 2 SCC

523. Applicant has admittedly asked for a request transfer and on the assumption that he had joined on 18.8.89 seniority was assigned at serial No.25 but in this seniority applicant was shown promoted as Grade-II but later on, on correction of his seniority from the due date, i.e., 19.1.1989 his seniority was assigned at serial No.157 and in that view of the matter as applicant could not come within the zone of consideration and would not have figured in the select list he was reverted.

12. As regards conversion of request transfer to transfer on administrative grounds, in the light of recommendation of Senior DEE in pursuance of option, mere option would not confer a right upon applicant unless it is finally accepted and as Senior DEE's recommendation has not culminated into a final decision, applicant cannot assail his grievance on that ground.

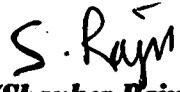
13. As far as seniority assigned to applicant is concerned, paragraph 312 of IREM is very clear, as on request transfer one has to be brought on the bottom and the interpretation given in Arun Kumar's case would not apply in his case, as therein the dispute was officiating, which has now been done away with.

14. As regards Full Bench decision in K.A. Balasubramanian (supra), though it is not disputed that past service is to be reckoned for eligibility, yet seniority plays an important role in promotion. If one is not senior enough, cannot be promoted.

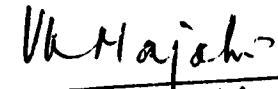
15. In Rakesh Kumar's case though applicant has sought parity, but a wrong action cannot confer upon him a vested right as negative equality has no place in law. Moreover, now, as corrective action has been taken, law shall take its own course. However, applicant has failed to establish his own right to claim the relief.



16. In the result, for the foregoing reasons, as applicant has now been promoted, we do not find any good ground to interfere with the orders passed by the respondents. OA lacks merit and is accordingly dismissed. No costs.


(Shanker Raju)
Member(J)

'San.'


26.9.05
(V.K. Majotra)
Vice-Chairman(A)