
(2009) 05 MAD CK 0015
In the Madras High Court
Case No : Writ Petition No. 9642 of 2006

K.C. Divakaran

APPELLANT

Vs

Union of India (UOI) and The Central Administrative Tribunal

RESPONDENT

Date of Decision : 14-05-2009

Acts Referred:

Constitution of India, 1950 — Article 12, 14

Citation : (2009) 05 MAD CK 0015

Hon'ble Judges : P.K. Misra, J;D. Hariparanthaman, J

Bench : Division Bench

Advocate : P.V.S. Giridhar, for the Appellant; V. Radhakrishnan for Saseedharan, for Respondents 1 - 3, for the Respondent

Judgement

D. Hariparanthaman, J.—The petitioner is a Maths Graduate. He entered into Railway service on 06.09.1990 as Clerk Grade II in Rs. 950-

1500 scale through Railway Recruitment Board. He was appointed in the Mechanical Department (non Accounts Department) of the Integral

Coach Factory (ICF), Chennai.

2. Later, the petitioner was promoted as Clerk Grade I (CG-I) in Rs. 1200-2040 scale of pay by an order dated 29.07.1994.

3. On 04.08.1995, he sought for inter departmental transfer to Accounts Department in the same ICF.

4. The third respondent passed an order dated 15.02.1996 posting the petitioner as Accounts Clerk in Rs. 950-1500 scale on bottom seniority

and fixing the pay at Rs. 1050/-. At that time, he was receiving Rs. 1,230/- as his basic pay in the post of Clerk Grade - I.

5. While so, he made a representation dated 16.01.1998 requesting the third respondent to post him as Junior Accounts Assistant which is the

equivalent grade to that of Clerk Grade - I carrying the scale of pay of Rs. 1200-2040, citing some instances wherein the same grade was given on transfer to the new Department.

6. However, his request was rejected by an order dated 06.05.1998.

7. In the year 1997, he passed the concerned Accounts test. In these circumstances, he was promoted as Junior Accounts Assistant by an order dated 12.04.2000. Thereafter, on completion of three years of service, he was further promoted as Accounts Assistant by an order dated 12.04.2003.

8. In the meantime, the petitioner made an appeal dated 04.10.2000 to the second respondent and also a reminder dated 03.05.2003 requesting to post him as Junior Accounts Assistant with effect from 01.02.1996 in the scale of Rs. 1200-2040 and to give him consequential benefits.

9. It is the further case of the petitioner that the General Manager also made an endorsement, ""examined and put up"" in his representation claiming the equivalent grade of Junior Accounts Assistant on his transfer to Accounts Department with effect from 01.02.1996.

10. In these circumstances, he approached the Tribunal by filing Original Application in O.A. No. 1121 of 2004 praying for a direction to the respondents to place him in the place of Junior Accounts Assistant in the scale of Rs. 1200-2040 from 01.02.1996 with all consequential benefits including advancement of date of promotion to the next grade of Accounts Assistant.

11. The Tribunal disposed the O.A. No. 1121 of 2004 on 06.12.2004 at the stage of admission itself by directing the second respondent to dispose of the representations dated 04.10.2000 and 03.05.2003.

12. Thereafter, the petitioner made a representation dated 17.12.2004 to the second respondent enclosing the aforesaid order of the Tribunal. The second respondent passed an order dated 22.12.2004 giving the following reasons for rejecting the request:

i) That at the time of seeking transfer to Accts Dept., the applicant had not indicated the grade of post to which he was seeking transfer.

ii) That the applicant had accepted the offer and joined as Accts Clerk in scale Rs. 950-1500 though the offer was in a lower grade.

iii) That he gave the representation only after 2 years for restoration of the grade.

iv) The provisions in IREM and Board's letters referred to by the applicant are only enabling provisions and not binding ones.

v) That in the case of applicant it was decided to allow the transfer only in the grade of Rs. 950-1500 in view of the pending RRB indents against

DR quota and the applicant's substantive status being clerk grade II and that the grade in which the applicant was taken (Accts clerk in scale Rs.

950-1500) was also an initial recruitment grade.

13. This led to filing of another Original Application in O.A. No. 69 of 2005 before the Tribunal. The same was rejected by the Tribunal by an

order dated 01.12.2005 which leads to the filing of the present writ petition.

14. The learned Counsel for the petitioner strenuously argued that he is entitled to the equivalent grade on inter departmental transfer in view of

para 312 of IREM, which is extracted here-under:

312 TRANSFER ON REQUEST:

The seniority of railway servants transferred at their own request from one railway to another should be allotted below that of the existing

confirmed, temporary and officiating railway servants in the relevant grade in the promotion group in the new establishment irrespective of the date

of confirmation or length of officiating or temporary service of the transferred railway servant.

Note:

(1) This applies also to cases of transfer on request to other departments within the same Railway.

(2)The expression ""relevant grade"" applies to grade where there is an element of direct recruitment. Transfers on request from railway employees

working in such grades may be accepted in such grades. No such transfer should be allowed in the intermediate grades in which all the posts are

filled entirely by promotion of staff from the lower grades and there is no element of direct recruitment.

15. He also relies on letters dated 30.09.1965, 29.01.1966 and 06.12.1996 of the Railway Board categorically providing for request transfer to

intermediary grades if there is an element of direct recruitment to those grades. According to him, the inter departmental transfer to a particular

intermediary grade is not permissible only when that grade has to be filled solely through promotions. That is, if the particular intermediary grade is

filled partly through direct recruitment and partly through promotion, the inter departmental transfer to such intermediary grade is permissible if the concerned person possesses the educational qualification for direct recruitment.

16. The relevant portion of the letter dated 30.09.1965 is extracted here-under:

...The Board have considered the matter and observe that there should be no objection to such transfers being allowed in posts in grades which

are filled partly by direct recruitment and partly by promotion of staff from ranks, provided the Railway employees seeking transfer on request fulfil

the educational qualifications laid down for direct recruitment. Such employees on transfer could be set off against the posts reserved for direct recruitment.

17. The relevant paragraphs in the Railway Board's letter dated 29.01.1966 is as follows:

Reference Boards letter of even number dated 30/09/1965 (See Appendix 10) on the above subject. It is further clarified that inter Railway or

Inter-Divisional transfers on Personal request should not be allowed in such intermediate grades where there is no element of direct recruitment, all

posts in such grades being filled entirely by promotion of staff in the lower grade(s).

....

Indian Railway Establishment Manual Correction

Slip No. 138 Chapter III

Rule 12: Add the following as Note 2 below this Para and existing Note be renumbered as Note 1:

The expression ""relevant grade"" applies to grades where there is an element of direct recruitment. Transfer on request from Railway employees

working in such grades may be accepted provided they fulfil the educational qualifications laid down for direct recruitment. No such transfers

should be allowed in the intermediate grades in which all the posts are filled entirely by promotion of staff from the lower grade(s) and there is no

element of direct recruitment.

18. The relevant passage from the Railway Board's letter dated 06.12.1996 is as follows:

3. A number of administrative instructions laying down the guidelines etc. for

effecting such transfers have been issued from time to time. These instructions as also the provisions of the code and the Manual have also been briefly incorporated in para 5 of the Master Circular No. 24 issued on the subject of transfer. These rules and instructions enjoin the following:

Para 312 of IREM & Board's letter(i) Request transfers are allowed No. E(NG)I-71/TR/1 dated. only in initial recruitment grades 31.03.1971. or in such intermediate grades in which there is an element of direct recruitment.

19. The learned Counsel for the petitioner pointed out that the Tribunal erred in holding in paragraph No. 6 of the order that the case is not one of direct recruitment, but of inter departmental transfer. It is also pointed out that while the Tribunal in paragraph 7 of the order extracted the relevant passage from the Railway Board's letter dated 29.01.1966 which has been extracted above, the Tribunal erroneously held that the Railway employees who seek inter departmental transfer shall not be posted in the intermediary grade, but in the lowest grade only.

20. Such a conclusion is on the face of it contrary to the relevant passage extracted by the Tribunal, according to the counsel for the petitioner. The learned Counsel for the petitioner pointed out that the Tribunal held in paragraph 7 of the order that the Railway employees seeking inter departmental transfer will be accommodated only to the lowest grade and not to the equivalent grade.

21. The learned Counsel for the Railways, vehemently argued that the word ""relevant grade"" used in the various letters of the Railway Board referred to by the petitioner and para 312 of IREM refer to the initial grade for which the person seeking transfer is appointed. According to the learned Counsel for the Railways, since the petitioner was appointed in Clerk Grade - II and not to Clerk Grade - I, he could not seek a post equivalent to Clerk Grade - I.

22. In paragraph No. 13 of the counter affidavit, the Railway Department states that the cases of Smt. Vinoda Mathew and Smt. C.K.Rajlakshmi cited by the petitioner could not be of any use to the petitioner as those persons were initially recruited as Clerk Grade - I and that therefore, they

were appointed to the equivalent post of Junior Accounts Assistant on their inter departmental transfer.

23. We are not in agreement with the arguments advanced by the learned Counsel for the Railways. According to us, the case of the petitioner is

identical to Smt. Vinoda Mathew and Smt. C.K.Rajlakshmi because the petitioner was also holding the post of Clerk Grade - I pursuant to the

order dated 29.07.1994 promoting him as Clerk Grade - I when he was transferred by an order dated 15.02.1996 to the Accounts Department

and that therefore, the third respondent was not correct in distinguishing the cases of Smt. C.K.Rajlakshmi and Smt. Vinoda Mathew.

24. The other reasons stated in the order of the third respondent dated 22.12.2004 rejecting the request have no substance. The Department

cannot act arbitrarily and whimsically in the matter of petitioner's transfer stating that the applicant had not indicated the grade of post to which he

was seeking transfer. The Department while transferring him inter departmentally from one Department to another, they should follow the extant

rules. The transfer to the lower post could not be justified on the ground cited by the Department. In fact, we perused his request for transfer. His

request was not to post him in the lower post. His request was simply to transfer him to Accounts Department. Therefore, it is incumbent on the

part of the Department to transfer him to the equivalent post and not to a lower post. The Department being State under Article 12 of the

Constitution could not come with such plea that since the petitioner joined the lower post without protest, he should not ask for posting him at the

equivalent grade. The other reason given by the Railway Department in the order dated 22.12.2004 that the Railway Board's letters and para 312

of IREM are only enabling provisions and "not binding ones" is shocking and atrocious. The Department could not ignore their own instructions.

Thus, the action of the Railways Department is arbitrary and violative of Article 14 of the Constitution.

25. The very purpose of the Railway Board's letters and IREM is that the person seeking transfer should not eat up the promotional opportunities

of the persons who are waiting for their turn. Therefore, the IREM and the Railway Board's letters are categorical in terms that if the intermediary

grade to which transfer is sought provides for direct recruitment, the transfer is permissible.

26. Therefore, we are inclined to quash the order of the Tribunal. However, we are not inclined to confer him the benefit of seniority in view of the petitioner not making the concerned persons who could be affected in the event of his prayer is granted. Further, since the petitioner approached the Tribunal belatedly and also he did not actually carry out the work in the concerned post, we are not granting arrears consequent to our direction issued here-below and the petitioner is only entitled to notional fixation of pay that will put him in higher pay prospectively.

27. We, therefore direct the respondents to post the petitioner as Junior Accounts Assistant with effect from 01.02.1996 on his transfer to Accounts Department and also to grant consequential promotions without affecting / altering the seniority of others and accordingly refix his pay notionally. The respondents are directed to complete this exercise within a period of two months from the date of receipt of a copy of this order.

28. With the above direction, the writ petition is disposed of. No costs.