
(2006) 09 MP CK 0044

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 809 and 810 of 2002

Maresh Chand Sharma

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 05-09-2006

Acts Referred:

Citation : (2006) 3 MPJR 380 : (2006) 4 MPLJ 370

Hon'ble Judges : A.K. Patnaik, C.J.;Abhay Gohil, J

Bench : Division Bench

Advocate : D.K. Katare, for the Appellant; H.D. Gupta, with S.B. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Patnaik, C.J.

These two writ petitions under Article 226/227 of the Constitution are directed against the order dated 14th September, 2002 passed by the Central Administrative Tribunal, Jabalpur, Bench Jabalpur in O.A. No. 423/96.

The facts briefly are that the petitioner in W.P. 809/2002 joined the Railway service in the year 1985 as Fitter Grade-III at Diesel Component Works, Putiala and the petitioner in W.P. No. 810/2002 joined the Railway service in 1982 at Bombay and was transferred to Dahod in the Loco Workshop as Chargeman "A" in the year 1985. In 1993 both the petitioners were transferred to RSK (Rail Spring Karkhana) of the Central Railway at Shitholi on their own request. On 30-9-1994 and 27-7-1994 the petitioners were promoted as fitter Grade I in RSK Shitholi. Thereafter the two petitioners were communicated with the decision dated 23-5-1996 of the Chief Personnel Officer, Central Railway, in which it was stated that the cadre of RSK Gwalior will be closed w.e.f. 31-5-1996 and that the seniority of the staff in RSK will be determined in accordance with the principles laid down for determination of seniority of non-gazetted staff of RSK and the said principles were stated in paragraph 1 to 8 in the said communication dated

23-5-1996 of the Chief Personnel Officer, Central Railway. Paragraph 1(b) of the said communication dated 23-5-1996 of the Chief Personnel Officer, Central Railway stated that staff who have come on transfer on their own request from other Railways on or before 31-5-1996 will get bottom seniority in the recruitment grade. Aggrieved by the said principle for determination of seniority in para 1(b) of the communication dated 23-5-1996 of the Chief Personnel Officer, Central Railway, the two petitioners filed O.A. No. 423/1996 before the Central Administrative Tribunal, Jabalpur (for short "the Tribunal") claiming that their past service in the grade before they were transferred to RSK of Central Railway should be counted for determination of seniority in RSK. The Tribunal in its impugned order dated 14th September, 2002 held that the petitioners have no case for revision of seniority giving them benefit of their past service before request transfer as the same was not provided in Rule 312 of I.R.E.M. (Indian Railway Establishment Manual). Aggrieved by the said order dated 14th February, 2002 of the Tribunal, the petitioners have filed these writ petitions under Article 226/227 of the Constitution.

Mr. D.K. Katare Learned Counsel for the petitioner, submitted that the cadre of RSK was open upto 31-5-1996 and the two petitioners were transferred from other railways to RSK in Central Railway prior to 31-5-1996 and hence their services in Railway prior to their joining in RSK should be counted towards their seniority in the cadre in which they joined in RSK. He further submitted that other railway employees, namely Shri D.M. Rahalkar and S.K. Saxena, have been given the benefit of their past services in other railways prior to their joining in RSK and if the petitioners are also not given similar benefit of their past service in the railway other than Central Railway, they will suffer discrimination and their right under Articles 14 and 16 would stand violated. He further submitted that both the petitioners after having joined in RSK had been promoted in the year 1994 to the post of Filter Grade-I and hence the authorities have accepted the seniority of the petitioners counting their past service in the railway from which they were transferred to RSK of Central Railway and at this stage they cannot take a new stand that their past services in Railways other than the Central Railway will not be counted towards their seniority in RSK.

Mr. H.D. Gupta, learned Senior Counsel for the Railways, on the other hand, submitted that it will be clear from the reply of the respondents in the writ petition that the staff who have come on transfer from other Railways on administrative grounds and not on their own request have been given their seniority taking into account their past services in other Railways, but those who have come to RSK from other Railways on their own request, have been given their seniority ignoring their past services in other Railways in accordance with the aforesaid Rule 312 of I.R.E.M. In support of his aforesaid contention, he cited the decision of the Supreme Court in K.P. Sudhakaran and Another Vs. State of Kerala and Others, .

Rule 312 of I.R.E.M., which deals with transfer on request, along with the two

notes appended thereto are quoted hereunder:

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 servants.

Note : (1) This applies also to cases of transfer on request from one cadre/division to another cadre/division on the same railway.

Rly. BD. No. E(NG) 1-85 SR 6/14 on 21-1-1986.

(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 transfers should be allowed in the intermediates grade 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.

No. E(NG) 1-69 SR 6/15, dated 24-6-1969 ACS-141.

A reading of the aforesaid Rule 312 shows that the seniority of railway servants transferred at their own request from one railway to another has to 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 servants. This being the statutory rule of seniority, the petitioners, who have come from other railways to the Central Railway on their own request and have joined in RSK in Central Railway have to be assigned the bottom seniority in the relevant grade in which they have joined.

It is true as has been submitted by Mr. Katare that both the petitioners had joined RSK when the cadre of RSK was still open and that the cadre of RSK was closed only on 31-5-1996. But the fact remains that the petitioners have come from other railway to the Central Railway and the provision in Rule 312 of I.R.E.M. quoted above is clear that once an employee is transferred from one railway to another railway at his own request, he has to be assigned bottom seniority in the grade in which he has been transferred in the other railway to which he has been transferred. But if there is a transfer within the railway from one cadre to another cadre, until the cadre to which a railway employee is transferred from another cadre within the same railway is closed, a question may arise as to whether such employee transferred from one cadre to another cadre within the same railway should be given bottom seniority or should be allowed his past services in the previous cadre to be counted towards seniority in the new cadre or not. This is because of what is provided in note (1) appended to Rule 312 of the I.R.E.M. that the Rule 312 of I.R.E.M. will also apply to case of

transfer on request from one cadre to another cadre of the same railway.

Regarding the contention of Mr. Katare that some other employees, namely Shri D.M. Rahalkar and Shri S.K. Saxena, have been given the benefit of their past services in other railways and have been accorded seniority accordingly in RSK, the return filed by the respondents is not clear as to whether Shri D.M. Rahalkar and Shri S.K. Saxena were transferred on administrative ground or on their own request, though it is stated in the said return that only staff, who have been transferred on administrative ground from other railway have been given the benefit of their past service in the cadre in the other railways. In any case, seniority of railway employees has to be governed by the statutory rules in force and Rule 312 of I.R.E.M. is clear that where a railway employee is transferred from one railway to another on his own request, he has to be assigned bottom seniority in the grade to which he has been transferred and in case the said two officers Shri D.M. Rahalkar and Shri S.K. Saxena have been given seniority in RSK contrary to the said Rule 312 their seniority is open to challenge before the appropriate forum.

In the impugned order, the Tribunal has held that the two petitioners knew about the aforesaid Rule 312 of I.R.E.M. that they will be allowed bottom seniority in the recruitment cadre in RSK in Central Railway to which they have been transferred and hence they could not have been given the benefit of their past services. In the impugned order the Tribunal has also held that the respondents will strictly re-examine the seniority position of others to whom Rule 312 applies and further that since the seniority of such other persons have not been challenged before the Tribunal, it was not necessary for the Tribunal to ponder over their seniority and that the Tribunal should confine its scrutiny to the position of the petitioners only whose seniority matter was before the Tribunal. In our considered opinion, the aforesaid view taken by the Tribunal in the impugned order cannot be faulted. We are therefore, not inclined to interfere with the impugned order of the Tribunal and we accordingly dismiss the writ petitions.