
(2003) 04 MP CK 0023

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1574 of 2003

Shaileswar Roy Chowdhury

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 07-04-2003

Acts Referred:

Administrative Tribunals Act, 1985 — Section 21
Constitution of India, 1950 — Article 226

Citation : (2004) 1 MPLJ 487

Hon'ble Judges : Bhawani Singh, C.J; Sugandhi Lal Jain, J

Bench : Division Bench

Advocate : M.R. Chandra, for the Appellant;

Final Decision : Dismissed

Judgement

S.L. Jain, J.

Invoking extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of Certiorari for the quashment of the order dated September 9, 2002, passed by the Central Administrative Tribunal (hereinafter referred to as the "Tribunal"), in O.A. No. 1427/97 by which the petitioner's application for protection of pay which the petitioner was drawing in Bombay Division before his transfer to Nagpur Division, was rejected.

The brief resume of the facts required to be stated for disposal of the writ petition is that the petitioner was selected for the post of Commercial Clerk in the initial grade of Rs. 975-1540, in the Bombay Division of Central Railway in year 1997. The petitioner got his name registered for inter-divisional transfer to any station in M.P. or Nagpur Division of Central Railway with the headquarter office, Bombay (Mumbai) on 6-5-1978. To mitigate the hardship caused to the railway servants seeking transfer from one Division to other Division, a cell was set up in the head quarter office of Central Railway.

It is put forth by the petitioner that the rule for replacement of initial grade commercial clerk from one Unit to another is that the person whose application for inter-divisional transfer is pending is required to be filled in first on availability of initial grade vacancies without any hitch or delay and the rest vacancies to be filled in by fresh recruitment. But, ignoring the beneficial provisions of priority basis inter-divisional transfer intended to protect loss of employees' seniority and promotion to higher grade, the Unit of Bombay Division did not allow and spare the petitioner to carry out such inter-divisional transfer during the period 1978 to 1992 in spite of availability of vacancies.

However, in Bombay Division during the period of 1978 to 1992 on the basis of his seniority, the petitioner was allowed substantive promotion to further higher grade of Rs. 1200-2040 with effect from 1-4-1987 and next higher grade of Rs. 1400-2300 with effect from 13-6-1990. The petitioner was relieved on his transfer to Nagpur Division, after a gap of 14 years vide order dated 13-7-1992, which he was drawing his basic pay as Rs. 1480/- in the higher grade of Rs. 1400-2300, but before his transfer the railway authority at Bombay Division refrained from reverting the petitioner to his initial recruitment grade of Rs. 975-1540. The petitioner carried out the transfer in good faith and bona fide belief that the transfer of the petitioner will be treated on the administrative ground and would not be treated as transfer on request and would not be put to any reversion or loss of seniority in the grade of Rs. 1400-2300.

According to the petitioner, in the new unit, he was posted as goods clerk in the grade of Rs. 975-1540, in Chanda station of Maharashtra State instead of any station in M.P. as opted through the application for inter-divisional transfer by downgrading the post in grade of Rs. 1200-2040, but the higher duties and responsibilities attached to the post was not changed. It is also the case of the petitioner that initially the authority of Nagpur Division allowed him pay at the rate of Rs. 1480/- per month but from September, 1993 pay was reduced causing both loss of pay and promotional grade.

The petitioner filed the Original Application No. 142/97 before the Tribunal praying that his pay of Rs. 1480/- which he was drawing in Bombay Division in the scale of Rs. 1400-2300 before his being transferred to new Unit of Nagpur Division be protected and his seniority be counted in the grade of Rs. 1500-2300 as per rules in the new unit.

The aforesaid petition was combated by the respondents. It was put forth by them that the petitioner was transferred from Bombay Division to Nagpur Division at his own request made in the application dated 6-5-1978. He could not be relieved till 1992 because during the pendency of his application for transfer there were many posts vacant in Bombay Division and it was not possible to spare him in the interest of railway administration despite availability of vacant post in Nagpur/Jabalpur Division. As per rules, the seniority of applicant was assigned below that of existing confirmed, temporary and officiating railway servants. In the relevant grade in new establishment and as per rules the

fixation of the applicant was made in the lower grade on bottom fixation at the stage of Rs. 1390 in the time scale of Rs. 975-1540. The petitioner was reverted to initial grade on the strength of his declaration made in proforma B. The respondents have also denied that the petitioner was performing the duties/responsibilities of higher grade at Chanda Station. The petitioner was posted against the clear vacancy of Commercial Clerk in pay scale of Rs. 975-1540.

It was also pleaded by respondents that the petitioner had approached the Tribunal after a lapse of four years, therefore, his application was hopelessly barred by limitation as per section 21 of the Administrative Tribunals Act, 1985.

The petition was dismissed holding that the petitioner is entitled to get his seniority at bottom at the lowest of all other officers in that grade and grade of seniority to the petitioner in the higher scale cannot be permitted. The Tribunal also held that the seniority and pay protection in the higher post could have been allowed only if the petitioner was holding a substantive post. Since the petitioner was not holding the substantive post in the pay scale of Rs. 1200-2040, or the higher scale of Rs. 1400-2300, therefore, he was not entitled to pay protection. Since the Tribunal did not find any merit in the application submitted by the petitioner, it did not go into the question of limitation.

Being aggrieved by the above order, passed by the Tribunal, the petitioner has challenged the same in this writ petition.

We have heard Shri M.R. Chandra, learned counsel appearing for the petitioner and perused the record.

Assailing the order of the Tribunal, it is submitted by Shri Chandra that the Tribunal has absolutely erred in law in refusing the relief to petitioner though he was entitled to get the same. It is also urged by him that the Tribunal failed to appreciate that the petitioner was transferred after 14 long years of his making request for his inter division transfer, even though there were vacancies available in Nagpur and Jabalpur Division. The reason for not considering the application was assigned by the respondents in their return. According to the respondents, during the pendency of the application of the petitioner many posts were vacant in Bombay Division, therefore, in the interest of railway administration it was not possible to spare him.

From the copy of the application for transfer Annexure P-2 it is clear that the petitioner himself prayed for his transfer and offered that he will accept the bottom seniority under the rules as the transfer is sought for at his own request. If after lapse of 14 years the petitioner did not desire his transfer he could have so requested to the railway authorities but on his transfer he readily joined in Nagpur Division. Now, he is estopped from saying that it was not a case of transfer at his own request and the transfer was on administrative ground. Therefore, the contention that the transfer of the petitioner to Nagpur Division should not be treated as transfer at his own request is devoid of substance.

The learned counsel for the petitioner next contended that even if the petitioner was placed below the existing confirmed as well as officiating and temporary railway servants in the relevant grade, in the new establishment his pay which he was drawing in Bombay Division ought to have been protected. Our attention was drawn to the letter dated 2-12-1996 regarding the pay protection which states as under:

The Federation have cited an example that "A" was in grade of Rs. 1200-1800 as a result of his promotion against one of the upgraded posts under Cadre Restructuring and his substantive pay in the said scale is Rs. 1290/-. He was transferred to another seniority unit on his request in the scale of Rs. 850-1500. After his transfer to lower post, his basic pay of Rs. 1290/- is not being protected.

Board have considered the matter and it is clarified that in all such cases, pay drawn by a substantive holder of higher posts on voluntary transfer to a lower post when the pay drawn in the higher post is less than or equal to maximum of the scale of pay of the lower post, his substantive pay is to be protected.

According to the petitioner he was promoted in the higher pay scale of Rs. 1200-2040 and then next higher pay scale of Rs. 1400-2300 but he was not posted against the substantive post since his substantive post was in the pay scale of Rs. 975-1540. The petitioner could not establish before the Tribunal that on promotion he was holding a substantive post. The letter dated 2-12-1996 referred to above, also speaks of pay drawn by a substantive holder of higher post. Since the petitioner was not the holder of the substantive post, his pay was rightly fixed in the pay scale of Rs. 975-1540. The learned counsel for the petitioner also submitted that the declaration of the petitioner in proforma B was not obtained before relieving him. This was a confirmatory indication that the said transfer was purely on administrative ground and not at the request of the petitioner.

If the petitioner was not willing to be reverted in the pay scale of Rs. 975-1540, he should have requested the concerned railway authorities to that effect. When he was reverted in the pay scale of his substantive post which he did not object at that time and willingly joined at Chandrapur, he is now estopped from putting any grievance in the matter.

Under the facts and circumstances of the case, the petitioner cannot claim seniority in the higher scale. The original application of the petitioner was rightly dismissed by the Tribunal.

For the aforementioned reasons, we do not find it to be a fit case for interference in the order of the Tribunal. There is no merit in this petition and the same is accordingly dismissed in limine.