

(2012) 12 AHC CK 0051

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. (S/B) 561 of 2001

Smt. Manju Misra

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 04-12-2012

Acts Referred:

Constitution of India, 1950 — Article 73

Citation : (2013) 1 ADJ 755

Hon'ble Judges : Vinay Kumar Mathur, J;Rajiv Sharma, J

Bench : Division Bench

Advocate : I.B. Singh, for the Appellant; Asit Kumar Chaturvedi, Pratul Kumar Srivastava and Vinay Shanker, for the Respondent

Final Decision : Dismissed

Judgement

1. By the Court.--The instant writ petition has been preferred by the petitioner against the order of Central Administrative Tribunal, Lucknow Bench, Lucknow dated 11.4.2001 whereby the OA which was registered as TA No. 1949 of 1997 has been dismissed. The petitioner has further prayed for quashing of the impugned orders dated 12.9.1985 and 20.9.1985 regarding the reversion of the petitioner. The petitioner further seeks quashing of the seniority list dated 27.9.1984 and 11.1.1985 and has prayed for mandate to opposite parties to maintain the seniority of the petitioner vis-a-vis respondent Nos. 4 and 5 as per letter dated 2.7.1979. Brief facts giving rise to the instant petition are that the petitioner and the respondent Nos. 4 and 5 alongwith 40 others were selected by the Railway Service Commission Board, Allahabad for the post of Enquiry-Cum-Reservation Clerk in short "ERC" in the grade of Rs. 330-560/-. The selected candidates were sent for induction training at Chandausi Training Centre between 21.8.1978 to 18.10.1978. On successful completion of the training in view of the Rule 303 Clause-A of Indian Railway Establishment Manual (IREM-vol-I), the petitioner was placed at serial No. 10 whereas respondent Nos. 4 and 5 were placed at serial Nos. 19 and 20 respectively. The petitioner has contended that

the seniority of all ERCs was maintained at zonal level. The petitioner was posted at Delhi railway station on the post of ERC while respondent Nos. 4 and 5 joined at NDCR, New Delhi and thus the petitioner and the opposite party Nos. 4 and 5 were posted in one zonal railway. Due to some personal reasons the petitioner sought her transfer from Delhi to Lucknow and was transferred in view of her request vide order dated 12.12.1979. Pursuant to the order, the petitioner joined at Lucknow on 1.1.1980. The petitioner has further contended that the post of ERC grade-III in pay-scale 330-560/- was restructured as ERC grade-II in pay-scale 425-640/- vide letter of General Manager (P) Northern Railway dated 11.1.1985 and the petitioner was also placed in the 425-640 grade after the transfer of the petitioner from Delhi to Lucknow. The seniority list of ERCs was published on 27.9.1984 in which the petitioner was placed at serial No. 549 while respondent Nos. 4 and 5 were placed at serial Nos. 396 and 397 respectively. It has been contended that seniority list shows that there was a common cadre of all ERCs at zonal level and the seniority of the petitioner vis-a-vis respondent Nos. 4 and 5 was wrongly decided. Respondent Nos. 4 and 5 later on pleaded that since the petitioner was transferred on her own request as such her seniority was to be fixed at the bottom of the cadre, but the same plea is not sustainable because there was one seniority list based on zonal level and even on the transfer of the petitioner on request her seniority could not have been affected. It is also stated that on 29.1.1985. Respondent Nos. 4 and 5 also managed their transfer from NDCR Delhi to Lucknow and another seniority list dated 11.1.1985 was prepared but was not published or circulated due to restructuring of the cadre from grade-III to grade-II. In this list also petitioner was placed in the bottom at serial No. 227 whereas respondent Nos. 4 and 5 were shown at Serial Nos. 99 and 100. The petitioner further contends that the seniority of ERCs was maintained on the zonal level and it was a centralized post under the direct control of General Manager, Northern Railway, New Delhi and vide order dated 19.8.1985, the cadre was decentralised at divisional railway level and was placed under the direct administrative control of Divisional Railway Manager. Before 19.8.1985 the petitioner and also respondent Nos. 4 and 5 had been transferred to Lucknow Division and seniority on the basis of merit after training was maintained. Copy of the merit list of 2.1.1979 has been filed as Annexure 8 to the writ petition. Subsequently, vide order dated 12.9.1985, the petitioner was reverted to grade-III, therefore, the petitioner filed writ petition No. 5277 of 1985 in this Court in which an interim order was passed and both the orders of reversion were stayed. However, due to creation of Central Administrative Tribunal, the writ petition was transferred to Lucknow Bench of Central Administrative Tribunal and was re-numbered as TA No. 1949 of 1987. In the meantime, on the basis of wrong seniority list, respondent Nos. 4 and 5 were promoted as Supervisors in 1994 while the petitioner was promoted as Supervisor on 18.9.2000. The Central Administrative Tribunal vide impugned order dated 11.4.2001 has dismissed the original application of the petitioner. It has been contended that the Central Administrative Tribunal has wrongly interpreted Rules 311 and 312 Indian Railway Establishment Manual (IREM) Vol.

I. It has been stated that the note 1 of Rule 312 was inserted by Railway Board on 21.1.1986. Therefore, the seniority before 21.1.1986 could not have been disturbed due to insertion of the said note to Rule 312. Further contention of the petitioner is that the Central Administrative Tribunal has wrongly relied upon circular dated 4.6.1979. Copy of which has been filed as Annexure 10 to the writ petition because the Circular refers to the employees who have been transferred from one seniority cadre unit to another seniority cadre unit and the same is not applicable in the petitioner's matter as the petitioner's transfer was not from one seniority unit to another seniority unit and the seniority at the relevant time was maintained at the zonal level. It has also been pleaded that the circular cannot override the provisions of rules.

2. The respondents have contended that when the petitioner was appointed in the Northern Railway, Delhi Zone had seven Divisional Headquarter including Delhi Division and Lucknow Division and the seniority list of the ECRs employees working in the pay scale of Rs. 330-560/- and below were maintained at their respective divisional levels. Likewise, the seniority of the respondent Nos. 4 and 5 was also maintained by the Delhi Division. It has been contended that the petitioner was transferred from Delhi Division to Lucknow Division of Northern Railway in 1979 on her request which was conditionally allowed vide order dated 12.12.1979. The transfer order dated 12.12.1979 of the petitioner specifically mentions that she was being transferred to Lucknow on her request at the bottom seniority under the existing rules. The petitioner has deliberately avoided to file copy of the transfer order dated 12.12.1979. Reliance has been placed on the instructions issued in the light of letter of Ministry of Railways, in the matter of inter-divisional and inter-railway transfers on request. Further the respondents have placed reliance on Master Circular No. 24 of the Northern Railway in respect of transfers of non-gazetted servants and emphasis has been laid on para Nos. 5, 5.1 and 5.2 of the said Master Circular. It has also been contended that the unit of seniority has been clarified in para No. 5.1 of the said Master Circular which means unit of seniority or another Division. Therefore, in view of para No. 5.2 of the Master Circular, the petitioner was rightly placed at the bottom of the seniority on request transfer from one seniority unit to another unit or as per Para No. 5.1, one Division to another Division of the same Railway. The respondents have also placed reliance on the instructions of Railway Board dated 31.3.1971. The respondents have contended that the petitioner was transferred on her request from Delhi Division which is a separate seniority unit to Lucknow Division which was also having separate seniority list. As such on the basis of instructions to Ministry of Railways issued on 19.3.1971 and copy of the printed serial [No. 5414 dated 27.8.1971] she was rightly assigned bottom seniority at the joining at new seniority unit. The respondents have further stated that the post of ERCs was a divisional controlled post as is clear from General Manager (P) letter dated 18.7.1978 according to which ERCs in grade of Rs. 330-560/- were under the control of the division. Note 1 of para 312 of the IREM Vol. I which was added on 21.1.1986 was not a new provision as the same existed

earlier also in the form of instructions of Ministry of Railway dated 31.3.1971 and also Para 2 in printed serial No. 5414 dated 27.8.1971. It has been submitted that reversion of the petitioner was not a punishment, she was reverted because she lost her seniority due to request transfer from Delhi Division to Lucknow Division. Respondents have further contended that the posts of ERCs in the grade of Rs. 425-640/- were transferred/diverted from one Division to another Division vide letter dated 11.1.1985 and the petitioner who was working in the grade of Rs. 330-560/- under the control of Divisional Railways was appointed to officiate as ERCs in the grade of Rs. 425-640/- as a temporary measure. Subsequently vide order dated 12.9.1985 the post of ERCs in the grade of Rs. 425-640/- were reverted back to their respective Divisions and, therefore, order dated 12.9.1985 was issued, petitioner and similarly placed persons were reverted back to their substantive grade. No junior to the petitioner continued in the grade of Rs. 425-640/-. There is no illegality or infirmity in the judgment and order of the Tribunal.

3. We have heard Sri I.B. Singh, learned Senior Counsel for the petitioner assisted by Sri Mohd. Ateeq Khan and Sri Pratul Kumar Srivastava, learned counsel for respondent Nos. 1, 2 and 3 and have also carefully perused the record.

4. Learned counsel for the petitioner has submitted that the petitioner and respondent Nos. 4 and 5 and some other candidates were duly selected by the Railway Services Commission Board for the post of Enquiry-cum-Reservation-Clerk in the pay scale of Rs. 330-560/- and were sent for training at Chandausi Training Centre between 21.8.1978 to 18.10.1978 on the basis of performance and in view of Rule 303. The petitioner was placed at serial No. 10 while respondent Nos. 4 and 5 were placed at serial Nos. 19 and 20 respectively, therefore, they were junior to the petitioner. He has further contended that seniority of ERCs is maintained at zonal level. The petitioner as well as the respondent Nos. 4 and 5 were posted in Delhi i.e. in the same zonal Railway. However, due to personal reasons, the petitioner made a prayer for transfer from Delhi to Lucknow which was accepted vide order dated 12.12.1979 and she in compliance of the order reported on 1.1.1980 at Lucknow. Learned counsel for the petitioner has further submitted that the post of ERC grade-III in the pay-scale of Rs. 330-560/- was upgraded and restructured in grade-II in pay scale of Rs. 425-640/- from 11.1.1985 and the petitioner was also placed in the pay scale of Rs. 425-640/-. Further submission is that in the seniority list of ERCs dated 27.9.1984 surprisingly, the petitioner was placed at serial No. 549 while respondent Nos. 4 and 5 were placed at serial Nos. 396 and 397. There was absolutely no justification of placing the petitioner below respondent Nos. 4 and 5 in the seniority list. Another seniority list dated 11.1.1985 was prepared but the same was not published or circulated in which the petitioner was placed at the bottom at serial No. 227 while respondent Nos. 4 and 5 were placed at serial Nos. 99 and 100 respectively. The post of ERC was a centralised post under the direct control of General Manager, Northern Railway, New Delhi. The cadre was

subsequently decentralised at Divisional Railway level and was placed under direct administrative control of DRM. Since respondent Nos. 4 and 5 were also transferred to Lucknow Division, thereafter, the initial inter-se seniority on the basis of merit after training ought to have been maintained. Further submission is that vide order dated 12.9.1985, the petitioner was reverted back to grade-III. Therefore, she preferred the writ petition in which both the orders of reversion were stayed. However, due to creation of Central Administrative Tribunal, the petition was transferred to Lucknow Bench of the Central Administrative Tribunal. Meanwhile, respondent Nos. 4 and 5 were promoted as Supervisor in 1994 while the petitioner could be promoted as Supervisor on 18.9.2000. Learned counsel for the petitioner has further submitted that vide impugned order dated 11.4.2001, the original application of the petitioner has been wrongly dismissed by the Tribunal misinterpreting Rules 311 and 312 of the Indian Railways Establishment Manual, Vol. I. The Central Administrative Tribunal committed error in misinterpreting the note appended to Rule 312 which was inserted by the Railway Board on 21.1.1986. The note was not retrospective in its application, therefore, it was enforceable only after 21.1.1986. Therefore, there was no justification for disturbing the seniority before 21.1.1986 in the light of note of Rule 312. The Circular dated 4.6.1979 relied upon by Central Administrative Tribunal refers only about the employees who have been transferred from one seniority cadre unit to another seniority cadre unit and the case of the petitioner is not governed by the said Circular as the petitioner was not transferred from one seniority unit to other seniority unit as the seniority was maintained at the relevant time at the zonal level. In this view of the matter, the instant writ petition is liable to be allowed and judgment and order dated 11.4.2001 passed by the Central Administrative Tribunal is liable to be quashed.

5. Learned counsel for the respondent Nos. 1 to 3 has submitted that the seniority of the employees working in the pay scale of Rs. 330-560/- and below was maintained at respective divisional levels. The seniority of the petitioner was also maintained at the divisional level at Delhi Division of the Northern Railway. Respondent Nos. 4 and 5 were also appointed as ERCs and after completion of the training at Chandausi were placed at serial Nos. 19 and 20 respectively while the petitioner was placed in the said list at serial No. 10. The petitioner and the respondents were appointed in pay-scale of Rs. 330-560/-, since a request was made by the petitioner for her transfer from Delhi Division to Lucknow Division of the Northern Railway in 1979, therefore, in view of the prevailing rules her request was conditionally allowed vide order dated 12.12.1979 and she was transferred to Lucknow Division. There is a specific mention in her transfer order dated 12.12.1979 that she was being transferred to Lucknow Division on her own request and would be placed at the bottom of the seniority list. Further submission is that the petitioner has deliberately avoided to file copy of the transfer order. Copy of the instructions issued by the Ministry of Railways on 31.3.1971 on the record to transfer of request has been filed as Annexure 1 to the written submissions. Learned counsel for the respondents has further pointed

out that Master Circular No. 24 was issued in respect of transfer of non-gazetted servants.

6. Paragraph Nos. 5.1 and 5.2 of the Circular are relevant. Para No. 5 provides that if a person is transferred on request within same unit of seniority i.e. in the same Division, he will not lose seniority while in Paragraph No. 5.1, the term unit of seniority has been explained which means inter division of the same Railway/ inter-Railway. Thus the petitioner was transferred from Delhi Division to Lucknow Division which is a separate unit of seniority and therefore, her seniority was not protected. Paragraph No. 5.2 provides that in case of transfer on request from one unit of seniority to another unit of seniority, such person should be placed in seniority list below all the existing staff both permanent and regular in the relevant grade. There is a clear distinction in the case of the petitioner and the respondent Nos. 4 and 5 because the transfer from one seniority unit to another seniority unit at Lucknow in the case of the petitioner was made on her request while in the case of the private respondents their transfer was not made on their request. The respondent Nos. 4 and 5 were not liable to be placed at the bottom in Lucknow Division and their seniority was protected. Northern Railway headquarter issued printed serial No. 5414 dated 27.8.1971 through which instructions for implementation of the Circular dated 31.3.1971 dealing with inter-divisional and inter-railway transfers on request were issued. The Tribunal has rightly interpreted in Paragraph No. 9 of its judgment that the post of ECRC in pay scale of Rs. 330-560/- was under the control of the Division. Further submission is that though note to Rule 312 of IREM Vol. I was added on 21.1.1986 but same provision existed earlier also in the form of instructions of Ministry of Railways dated 31.3.1971 and printed serial No. 4514 dated 27.8.1971. Learned counsel has further submitted that the reversion of the petitioner from pay-scale of Rs. 425-640/- to Rs. 330-560/- by order dated 20.9.1985 was not a punishment but was a result of her losing seniority on the basis of request transfer from one seniority unit to another seniority unit. The findings of the Tribunal in Para No. 12 of the judgment are correct and no junior to the petitioner has been retained in the grade of Rs. 425-640/- in the seniority list. The petition is devoid of merit and is liable to be dismissed and the judgment and order of the Tribunal is liable to be affirmed.

7. It may be borne in mind that administrative instructions do not override specific statutory rules but in order to fill up the vacuum due to administrative exigency at times administrative instructions which are not inconsistent or in contradiction to the statutory rules are issued which have a binding effect. Article 73 of the Constitution of India clarifies the position in this respect. In the instant writ petition it is not disputed that the petitioner and respondent Nos. 4 and 5 were duly appointed as ERCs and after successful completion of training, the petitioner was placed senior in merit list to respondent Nos. 4 and 5 and all the said three persons were posted in the Northern Railway at New Delhi. It is also not disputed that a request was made for transfer from Delhi Division to Lucknow Division of the Northern Railway by the petitioner which was allowed vide order

dated 12.12.1979 as a consequence of the transfer, the petitioner joined at Lucknow in 1980 as ERC grade-I. Though in the judgment of the Tribunal in Paragraph No. 5 as well as in the counter-affidavit it has been stated that in the transfer order of the petitioner dated 12.12.1979, there was a specific mention that she would be placed at the bottom. No proof in rebuttal/denial has been filed by the petitioner. In absence of any proof in rebuttal of the said statement, it will be presumed that there was such mention as has been stated in Paragraph No. 5 of the judgment and also in the counter-affidavit of the respondents. It is also admitted that respondent Nos. 4 and 5 were subsequently transferred vide order dated 29.1.1980 on the basis of administrative exigencies.

8. Seniority position of the petitioner as contained in seniority list dated 2.1.1979 on successful completion of training at Chandausi is at serial No. 10 while respondent Nos. 4 and 5 have been placed below her at serial Nos. 19 and 20. In the seniority list dated 27.9.1984, the petitioner has been placed at serial No. 549 while respondent Nos. 4 and 5 have been placed at serial Nos. 396 and 397 respectively. Respondent Nos. 4 and 5 have been placed senior to the petitioner in the list dated 11.1.1985 prepared by the Northern Railway of ERCs. It is apparent that the ERCs grade-I were appointed in grade-II in pay scale of Rs. 425-640/- in the officiating capacity and while the petitioner was placed at serial No. 227, respondent Nos. 4 and 5 were placed at serial Nos. 99 and 100. It may be pertinent to mention that Rule 311 of IREM Vol. I provides that the seniority of Railway servants, on transfer from one cadre to another cadre in the interest of the administration is regulated from the date of promotion/date of appointment to the grade, as the case may be. This provision deals with the transfer and interest of the administration.

9. Rule 312 deals with the transfer on request. It is true that note-1 of Rule 312 has been inserted on 21.1.1986 much after the joining of the petitioner at Lucknow and also after publication of the 1984 seniority list and preparation of the 1985 list. The note to Rule 312 makes the provision applicable to cases of transfer on request from one cadre/division to another cadre division on the same Railway. Rule 312 is reproduced for better understanding of the facts and legal position.

The seniority of Railway servants transferred at their own request from one Railway to another should be allotted below that on existing confirmed, temporary and officiating servants in the relevant grade for 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

10. Thus it is clear that Rule 312 was made applicable on the transfer on request. However, in Para No. 5.2 of the Master Circular No. 24 issued on the basis of the instructions of the Railway Board dated 31.3.1971, it was provided that Railway servants transferred on their request from one unit of seniority to another should be assigned bottom seniority in the relevant grade on the date they join the new unit i.e. they should be placed in the seniority list below all the

existing staff both permanent and regular in the relevant grade on the date they join the new unit irrespective of their length of service and status in the former unit. In Paragraph No. 5.1, the terminology unit of seniority has been explained which provides that unit of seniority means inter-division on the same Railway/ another Railway.

11. In Para 5, the transfers within the same unit of seniority have been protected. Instructions were issued vide printed serial No. 5414 dated 27.8.1971, in compliance of the Ministry of Railway Circular dated 31.3.1971 dealing with inter-divisional and inter-Railway transfers on request.

12. The arguments that the seniority of the ERCs was maintained at the zonal level do not find force. It appears that seniority of post of ERCs in the pay-scale of Rs. 330-560 was maintained at the divisional level and not at the zonal level. There is force in the submissions of respondents that the seniority of the ERCs in the grade of Rs. 425-640/- was maintained at the headquarter level of the zonal Railways. In the judgment of the Tribunal in Paragraph No. 9, there is a mention of letter No. 754-E/20 (Triplicate EIO) in which it was provided that post of ERC grade of Rs. 150-240 which was later revised to Rs. 330-560 will continue to remain a division controlled post. Therefore, the finding of the Tribunal on the basis of the said letter and also in view of the reference contained in the letter of General Manager (P) dated 18.7.1978 appears to be correct and it is apparent that the transfer of the petitioner was inter-divisional transfer and therefore, the administrative directions as contained in Paragraph 5.2 of the Master Circular No. 24 and also the printed serial No. 5414 dated 27.8.1971 by which instructions were issued for the implementation of the Railway Circular dated 31.3.1971 were issued, were applicable before the insertion of note-I to Rule 312 of IREM Vol. I., on 21.1.1986. The finding of the Tribunal in this respect as contained in Paragraph No. 10 of the judgment appear to be sound and correct. It appears that the petitioner was misled when he was reverted to grade of Rs. 330-560/- from the grade of Rs. 425-640/- vide order dated 20.9.1985 but the reversion was not a punishment as has been clarified by respondents but was a consequence of losing the seniority as the petitioner was placed below in view of the prevailing administrative instructions at the bottom on the basis of inter-divisional transfer from New Delhi seniority unit to Lucknow seniority unit on her request.

13. In our considered view, the judgment and order of the Tribunal is sound and correct and no infirmity or illegality has been found in it, therefore, it does not require any interference. In view of the above discussion, the writ petition is devoid of merits and as such it is dismissed. No order as to costs.