

(2014) 03 P&H CK 0141

In the Punjab And Haryana At Chandigarh

Case No : CWP No's. 2356-CAT of 2003 (O and M)

Union of India and Another

APPELLANT

Vs

Bhupinder Kumar and Another

RESPONDENT

Date of Decision : 21-03-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 03 P&H CK 0141

Hon'ble Judges : Sanjay Kishan Kaul, C.J.;Arun Palli, J

Bench : Division Bench

Advocate : Jagdish Marwaha, for the Appellant; Aman Chaudhary, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Arun Palli, J.—Brief narration of facts, to an extent they are material and necessary, would be in order. Respondent -Bhupinder Kumar joined Rail Coach Factory (RCF), Kapurthala (petitioner before us), as a casual Khalasi on 21.05.1986. On qualifying a trade test, he was promoted as Skilled Typist. During the course of service at RCF Kapurthala, he applied for the post of Typist against an advertisement issued by Railway Recruitment Board (RRB), Jammu. Having been selected, his name was approved and included in the panel for Diesel Component Work (DCW), Patiala. His case has been that he informed his Controlling Officer at RCF Kapurthala for relieving him as and when he receives the letter of appointment from DCW, Patiala. However, Chief Engineer (T.S.), RCF, Kapurthala, vide letter dated 19.01.1988, addressed to Deputy Chief Personnel Officer, RCF, Kapurthala requested for allowing the respondent to continue at RCF Kapurthala itself on loan basis for a period of two years. Consequently, vide letter dated 28.01.1988, office of OSD (RCF) requested DCW, Patiala that though the respondent was recommended for appointment to their unit, but he be temporarily given to RCF Kapurthala for a period of two years, as his services were essentially required for the said organisation. Vide letter dated 26.02.1988,

DCW Patiala, informed RCF Kapurthala that the panel in which the name of the respondent exists, consisted of 40 persons out of which only 7 had been appointed by that time and since the name of the respondent was at Serial No. 30, he could be appointed only on the maturity of his turn. Eventually, DCW Patiala vide letter dated 17.08.1988 forwarded the matter in relation to the appointment of respondent to RCF Kapurthala.

2. Correspondence between the two organisations further reveal that vide letter dated 28.09.1988, RCF Kapurthala, had requested DCW Patiala, for retention of the lien of the petitioner at Patiala. However, in response DCW Patiala, vide letter dated 21.12.1988, informed that there was no question of retention of the lien of the petitioner at DCW Patiala as the same was to be retained at RCF Kapurthala only. It is stated, though not required, yet RCF Kapurthala sent a letter to DCW Patiala for police verification of the respondent, vide letter dated 17.08.1988. Further, post receipt of the letter dated 17.08.1988, the matter was prolonged for one reason or the other and it was only on 08.03.1989 that the RCF Kapurthala offered a fresh appointment to the respondent and he joined on the same day.

3. Grievance of the petitioner is, a candidate lower than the respondent in the panel was appointed w.e.f. 20.06.1988 and since the respondent was transferred from DCW Patiala to RCF Kapurthala, purely on administrative ground, he was entitled to seniority w.e.f. the date a person lower in merit in the panel was appointed i.e., 20.06.1988. Initially, the representation made by the respondent to the authorities in this regard was rejected vide order dated 11.12.1989. But he again represented and this time the petitioner acceded to his prayer, vide order dated 20.01.1992. Accordingly, necessary correction was carried out in the seniority list and as a result the respondent also earned his promotions, first, as Senior Clerk and then as Head Clerk. The next promotion of the respondent from the post of Head Clerk was to the post of Superintendent Grade II i.e., a selection post. The respondent appeared in the written test and viva voce and qualified the same, culminating into his appointment on 11.01.1997.

4. A complaint was made by one Swaran Singh working as Head Clerk, against the seniority assigned to the respondent but the same was rejected on 17.02.1997. It appears, the matter was also sent at some stage to the Vigilance Cell of RCF Kapurthala and even a clarification was sought from the Railway Board by the Chief Personnel Officer. Later a decision was taken by the petitioner to alter the date of appointment of the respondent from 17.08.1988 to 08.03.1989, as indicated in the letter dated 09.02.1998. As a result, the position of the respondent was also lowered down in the seniority list of Clerk-cum-Typist.

5. In the wake of the above, the respondent approached the Central Administrative Tribunal (for short, "the Tribunal") vide O.A. No. 108-PB-98.

6. In a nutshell, the grievance of the respondent, as set out before the Tribunal, was that he was retained by the administrative authorities at RCF Kapurthala as

his services were essentially required by the said organization and it was pursuant to their request to DCW Patiala, his panel was transferred to RCF Kapurthala. Once he was transferred from Patiala to Kapurthala, to meet the administrative conveniences/exigencies, his date of appointment/seniority had to be fixed on the basis of his merit position in the panel or in any case from 17.08.1988, when DCW Patiala sent his panel to RCF Kapurthala for the purpose of appointment.

7. We may briefly point out, the petitioner before us (Union of India), in its reply before the Tribunal, clarified that it was, in fact, on the request of the respondent for retention at RCF Kapurthala, a letter dated 12.02.1988 was sent to the Chief Administrative Officer, DCW Patiala, vide which it was informed that the respondent had requested the RCF authorities for his absorption in RCF Kapurthala. The authorities at DCW Patiala were requested to send all the relevant papers regarding his empanelment so that his case could be processed for giving him appointment. It was pursuant to the said request, the panel was actually transferred to RCF Kapurthala, vide letter dated 17.08.1988. Respondent was appointed as Clerk-cum-Typist w.e.f. 08.03.1989 and assigned seniority accordingly. Since his appointment as Typist was afresh, his service had to be reckoned from the date he had actually been appointed in RCF Kapurthala i.e., on 08.03.1989. The error vide which respondent was assigned seniority w.e.f. 17.08.1988 was rectified vide order dated 09.02.1998 and the seniority of the respondent was re-fixed w.e.f. 08.03.1989.

8. The short question, for consideration before the Tribunal was as to whether the respondent was retained at RCF Kapurthala by the administrative authorities as his services were essentially required and it was pursuant to the request made by the RCF Kapurthala that his panel was transferred by DCW Patiala.

9. Ex facie, the Tribunal relied upon the documents i.e., a letter written by Chief Engineer (TS), RCF, Kapurthala to Deputy Chief Personnel Officer on 19.01.1988 (Annexure R1) and a letter was written by RCF Kapurthala to DCW Patiala on 28.01.1988 (Annexure R2). On a conjoint reading of the said two letters, the Tribunal arrived at a conclusion that it was the administration at RCF Kapurthala, which had expressed the desire to retain the respondent with them, since his services were essentially required to the said organization. Resultantly, his panel was transferred from DCW Patiala to RCF Kapurthala. It was held, this would, in fact, fall within the meaning of transfer on administrative grounds. That being so, the O.A. was allowed and the order revising the date of appointment of the respondent from 17.08.1988 to 09.03.1989 and consequently orders assailed in the said proceedings were declared illegal and were, accordingly, quashed.

10. Thus, this petition and this is how we are seized of the matter.

11. We have heard the learned counsel for the parties and perused the records.

12. Short but a significant question, which arises for our determination is, whether respondent was actually sought to be retained by the administration at

RCF Kapurthala on account of administrative exigencies as his services were essentially required by the said organization and it was pursuant to their requirement/request to DCW Patiala, the panel of the respondent was transferred to RCF Kapurthala, for appointment in the said organization.

13. If the answer to the question, we have formulated, is in affirmative, then, certainly his transfer from DCW Patiala to RCF Kapurthala being in administrative interest, as a result of an arrangement between the two organizations, his date of appointment/seniority has to be fixed in terms of his merit position in the panel. Or in any case, when his case was forwarded by DCW Patiala to RCF Kapurthala on 17.08.1988.

14. As indicated above, the Tribunal allowed the O.A. A bare reading of the order shows that the conclusion recorded by the Tribunal is precisely based upon the two letters i.e., a letter dated 19.01.1988 and the letter dated 28.01.1988 (supra). It would be apposite, at this juncture, to refer to the contents of the said two letters, which reads as thus:--

Kanwaljit Singh

Chief Engineer(TS) Rail Coach Factory, Kapurthala Railway Accounts Colony
Jalandhar City

DO No. E-5/RCF/JUC/Steno

January 19, 1988

My dear Suri,

Subject: Post of Shri Bhupinder Kumar, Typist

Shri Bhupinder Kumar was employed as a casual khalasi in this Organisation and has been doing the work of typing. He is well conversant with the Civil Engineering office work. He has now been selected by RRB/Jammu and posted under C.A.O., DCW, Patiala vide letter- copy enclosed.

I would request that the employee is retained in RCF for a period of two years. Necessary action may kindly be taken at your end.

Yours sincerely Sd/- (Kanwaljit Singh)

xx xx xx xx

OFFICE OF THE O.S.D. RAIL COACH FACTORY (KXH) BMC Chowk, Mahay Market,
JALANDHAR CITY

No. 220/28-E/RCF/Typists

Dated: 28.1.88

Subject: Recruitment of Typist grade Rs. 950-1500.

Shri Bhupinder Kumar is presently working in this Organisation on casual basis

since 21.5.86 and has been doing the work of typing. He is well conversant with the civil Engg. Office Work.

He has been selected by RRB/Jammu and his name has been placed on the panel No. 115 merit No. 30, which has been recommended for appointment to your unit.

The services of the above named are very much essential for this organization. It is, therefore, requested that he may be given to this organization temporarily, on loan, for a period of two years. However, his lien will be kept in your unit till he is in RCF.

Sd/- For Officer on Special Duty RCF/KXH/JUC

15. We find it absolutely expedient and necessary to point out here, the petitioner in its reply to the O.A., though admitted the existence of the aforesaid letters, however, it was clarified that, in fact, it was pursuant to the request made by none other than the respondent to the Chief Engineer (RCF), under whose control he was working at the relevant time, the Deputy Chief Personnel Officer, RCF Kapurthala was asked by the Chief Engineer for retention of the respondent at RCF Kapurthala. Accordingly, on the request of the petitioner, which was recommended by the Chief Engineer, a letter dated 28.01.1988 was sent to DCW Patiala.

16. It would be apposite to refer to yet another letter dated 12.02.1988, written by the office of OSD (RCF), Jalandhar to Chief Administrative Officer, DCW Patiala. The said letter completely unravels the truth and is a decisive factor to answer the question, which arises for our consideration. The same reads as thus:--

Office of the O.S.D. Rail Coach Factory

No. 220/28-E/RCF/JUC/Typists Dated: 12.02.88.

The Chief Administrative Officer, D.C.W. Indian Railways, PATIALA.

Sub: Selection for the post of Temp. Typist scale Rs. 950-1500(RPS).

Ref.: RRB/JAs Panel No. RS/JS/WE/22287 dt. 16.11.87 (Panel No. 115)

Sr. No. 30 of the above mentioned panel named Shri Bhupinder Kumar requested this office for his absorption in this Organisation instead of in D.C.W., Patiala due to his unavoidable circumstances.

He can be absorbed in this organisation and can be given appointment against existing vacancies.

As such you are requested to send all the relevant papers regarding his appointment so that the case may be processed further for giving his appointment.

Sd/- for Officer on Special Duty Rail Coach Factory (KXH) JALANDHAR CITY

Copy to:--

The Chairman, Rly. Recruitment Board, Railway Colony, Jammu-Srinagar (West)
for information pl.

17. A bare analysis of the contents of the afore-reproduced letters, irresistibly shows that it was, in fact, the respondent who had moved the authorities at RCF Kapurthala for his permanent absorption in the said organisation instead of an appointment in DCW Patiala, citing his unavoidable circumstances. He prayed that he could be given appointment against the existing vacancies. This brings to fore, that the respondent, who was already employed in the said organisation i.e., RCF Kapurthala, post his selection in the panel for appointment in DCW Patiala, which is a separate establishment, was not willing to move out of Kapurthala. And he was willing to be appointed afresh against existing vacancies at Kapurthala. Therefore, he requested the authorities at Kapurthala for his retention and permanent absorption in the said organisation by affording the appointment afresh against existing vacancies.

18. Not just this, another letter dated 08.08.1988 (Annexure P2), was written by none other than the respondent himself, to the authorities at DCW Patiala, which fortifies the above position. The same reads as thus:--

To The CME (RET) D.C.W. Patiala

Sub: Trf. my name from the panel of Typists. R/Sir,

I beg to say that, I am working as a casual Typist in RCF Complex at Jalandhar City. I have been selected by RRB/PAT as Typist and placed on panel No. 115 assigning Merit No. 30. It is further pointed out that I have been declared fit in Medical test(C-1) under M.C. No. 114855 dt. 23.12.86 by DMOPUC. Your goodself has agreed to transfer my name from panel.

So it is requested that my name from panel may kindly be transferred to RCF as I have already fit in medical test.

Yours faithfully, Sd/- Bhupinder Kumar C/Typist RCFPUC

Dt. 8.8.88 D/A. MEMO ATTACHED.

19. The letter dated 08.08.1988 (refer to above) was dealt with by the authorities at DCW Patiala, in the manner indicated below, and the notings show that it was on the request of respondent the matter for his transfer from DCW Patiala to RCF Kapurthala was considered and processed:

Transfer of name from the panel of Typist.

Sh. Bhupinder Singh whose name is at Sl. No. 30 has submitted his application for transfer of his name from DCW to RCF.

In this connection, a letter of RCF/Kapurthala was received vide at Sl. No. 181 in which CPO have decided that his case will be considered only when his turn will come for appointment. Now his turn has come. His case may be considered for transfer. A letter in this connection had also been sent to RCF vide at Sl. No. 183.

For information and necessary action please.

Sd/- 12/8

Sd/- Dy. CME (R/OT)

Sd/- 14/8

20. Things go further as there is yet another document i.e., a letter dated 01.03.1989, written by RCF Hussainpur to the DCW Patiala vide which a request was made to send police verification/certificates of the respondent so as to enable the RCF Hussainpur to issue an order of appointment in favour of the respondent. The contents of the said letter read as thus:--

Shri Bhupinder Kumar skilled khalasi of civil engineering branch of Rail Coach Factory has been selected as Typist by the RRB/JAT and was placed on the panel of DCW/PTA.

Subsequently the employee had requested to transfer his case from your unit to this organisation which has been considered and his case has also been transferred to this office for giving him appointment. However it is noticed from the papers transferred by your unit that his Police Verification which was done at yours has not been sent alongwith the other papers, resulting which appointment order of the employee is held up for the same.

You are requested to please send the police verification certificate of the employee received from the police authorities per bearer to enable this office to issue appointment order in favour of him.

Please also advise, from which date his junior has been appointed in your organisation.

21. Conspectus of the above position, leads us to an irresistible and inescapable conclusion that the respondent post- his selection and inclusion of his name in the Select Panel for the purpose of appointment in DCW Patiala, was unwilling to leave RCF Kapurthala, where he was employed and working. Thus, he requested his administrative authorities at RCF Kapurthala citing his personal circumstances for his retention and permanent absorption in the same organisation by affording him a fresh appointment against the existing vacancies. Indeed he was given a fresh appointment in scale of Rs. 950-1500 as Typist w.e.f. 08.03.1989 and was assigned seniority accordingly as per the existing rules. He could not be afforded any deemed date of appointment prior to 08.03.1989. In other words, the date of his actual appointment could not be anti dated.

22. A reference to a person having been appointed on 20.06.1988, being lower in

merit to the respondent in the Select Panel, was of no consequence in the situation. The said person was actually appointed in DCW Patiala pursuant to his selection on the basis of Select Panel. Had the respondent opted to be appointed and joined at DCW Patiala, he would have been fully entitled to be assigned seniority on the basis of his panel position, but he chose not to. Thus, it appears, that the respondent having succeeded in his pursuit to convince the authorities for his transfer from DCW Patiala to RCF Kapurthala, he then raked up another issue i.e., seniority on the basis of his panel position. This was wholly unwarranted.

23. There is yet another aspect of the matter. As is discernible from the records, the representation of the petitioner of 12.04.1989 was formally rejected by the Deputy Chief Personnel Officer, RCF Kapurthala vide letter dated 11.12.1989. It appears that the respondent, at the relevant time enjoyed the confidence of certain senior officers and had their ear too. Therefore, on another representation made by the respondent, the authorities acceded to his prayer and his date of appointment was altered to 17.08.1988 instead of 08.03.1989. Complaint made by one Swarn Singh (HC) working as Head Clerk against assigning seniority to the respondent w.e.f. 17.08.1988, was rejected vide order dated 17.02.1997. It would be crucial, at this stage, to refer to the stand set out by the petitioner, in its reply to the O.A. in this context and the same reads as thus:--

(xxv) Not denied that Sh. Swarn Singh filed a complaint against the seniority of the applicant on 06.02.97. But the applicant who was Office Supdt./Min. and was controlling the Ministerial Section at that time managed to get the representation rejected vide order dated 17.02.97 (A-21).

24. We may also point out that although the complaint made by Swarn Singh (as narrated above) was rejected, however, the irregularities alleged to have committed by the respondent while working in the Ministerial Section were noticed by the Vigilance Department. The vigilance inquired into the matter and requested the Chief Personnel Officer (RCF) to rectify the error in relation to assigning seniority to the respondent w.e.f. 17.08.1988. The administrative error was, accordingly, ordered to be rectified.

25. We may also take cognizance of a Railway Board's letter No. 2504 - Circular No. 847-E/38-II(Eiv) dated 15.05.1964 (Annexure P10), which reads as thus:--

Serial No. 2504 -Circular No. 847-E/38(Eiv), dated 15.5.1964.

Sub: Determination of seniority who are given paper lien and then seek for transfer to different seniority groups.

The Railway Board in their letter No. E-55 RRI/25/3-A, dated 25.5.1956 circulated vide this office letter No. 220-E/O/w(Eiv), dated 28.8.1956 directed that temporary employees recruited locally for projects, who subsequently get selected through the Rly. Service Commission for appointment to Railway

service, should be given paper lien on open line, and become eligible for all the benefits to which Railway Service Commission recruits are entitled. As a rule, the seniority of such staff is to be determined with reference to their panel position.

Cases have, however, come to notice where in some of the employees, who, had been given paper lien on one division, requested for the transfer of their lien to another Division, while continuing to work on construction projects. A question has been raised as to how the seniority of the staff in such cases is to be determined.

The matter has been examined and it has been decided that such cases are to be dealt with on the same lines as seeking transfer from one office to the other or from one seniority group to the other at their own request resulting in consequential loss of seniority as per extant orders.

These orders will taken effect from the date of issue of this letter and the past cases dealt with otherwise need not be reopened.

26. In view of the above, apparently the finding recorded by the Tribunal that it was purely the administration at RCF Kapurthala, in view of the administrative convenience, that had expressed its desire to retain the respondent in the said organisation and it was pursuant to their requirement-request, the respondent was transferred from DCW Patiala to RCF Kapurthala, is wholly erroneous and unsustainable. So much so, the observation recorded by the Tribunal, that despite insisting upon the petitioner to show any document which could indicate that the appointment of the respondent at Kapurthala was pursuant to his own request, nothing was brought to its notice in the form of any application or any document, is contrary to record. The letter dated 12.02.1988 (Annexure P8) formed part of the records of the Tribunal so did the letter dated 01.03.1989 (Annexure P9). A letter dated 08.08.1988 appended with the petition as Annexure P2 is written by none other than the respondent himself to DCW Patiala, yet he had the audacity to maintain in the written statement filed before this Court that he never made any request either to DCW Patiala or RCF Kapurthala for his transfer. That being so, we unhesitatingly record that the respondent consciously and calculatively suppressed the clear, correct and complete position from the Tribunal. Thus, we do not find him entitled to any indulgence by this Court, particularly in proceedings under Article 226 of the Constitution of India. Even otherwise, on a conspectus of the whole matter, as analysed and examined above, we see no reason, least plausible we are impelled to set aside the order dated 08.05.2002, passed by the Tribunal, which is as we may point out remained stayed during the pendency of this petition since 24.02.2003.

27. The Civil Writ Petition is, accordingly, allowed and the order dated 08.05.2002 passed by the Tribunal is set aside and the prayers made in the O.A. by the respondent are, accordingly, declined. Parties are left to bear their own costs.