

Arun Kumar Chatterjee

Vs

South Eastern Railway and Others

Civil Appeal No. 387(N) of 1981

(A. P. Sen, D. P. Madon JJ)

01.03.1985

JUDGEMENT

A. P. SEN, J. -

1. This appeal by special leave raises a question as to whether the appellant upon his transfer from the North-Eastern Railway, at his own request, to the South-Eastern Railway was entitled under Rule 312 of the Railway Establishment Manual, to be placed in the seniority list below the existing confirmed and officiating staff in the relevant grade and not below the temporary staff.
2. Put very shortly, the essential facts are these. The appellant was holding the substantive post of a clerk in the Commercial Department of the North-Eastern Railway w.e.f. May 22, 1956 and had applied for his transfer to the South-Eastern Railway in the same post. On October 15, 1958, he was transferred from the North-Eastern Railway, at his own request, to the South-Eastern Railway and was posted at the Sealdah Division on his existing pay and scale against an existing vacancy. In 1967, the seniority list of the clerks in the Sealdah Division was prepared by the South-Eastern Railway and in that list the appellant was placed below the temporary staff. Immediately upon his being placed below the temporary staff, the appellant made two representations, one dated March 4, 1967 and the other dated April 11, 1967, in the matter complaining that he could not be placed below the temporary staff, but without any avail.
3. Finding that there was no redressal of the wrong done to him, the appellant sent a reminder to the Chief Personnel Officer by name dated December 21, 1973. The Chief Personnel Officer by his communication dated October 19, 1974, informed the appellant that his representation was rejected. On April 30, 1975, the appellant moved the Calcutta High Court under Article 226 of the Constitution for the issue of an appropriate writ, direction or order in the matter of his inter se seniority, and the High Court issued a rule nisi. During the pendency of that rule, respondents 7 to 45 arrayed in that petition whom the appellant considered to be junior to him were promoted to a higher post. On August 10, 1976, the appellant filed another petition under Article 226 of the Constitution challenging their promotion. On the same day, the High Court issued a rule nisi and also directed that the South-Eastern Railway would be at liberty to confirm respondents 7 to 45 in their post of promotion but such confirmation would be subject to the result of the rule. In the view of the interim order passed by the High Court, the Chief Personnel Officer by his letter dated October 10, 1976 clarified :

The above promotion orders are issued on provisional basis subject to result of the rule obtained by Sri Arun Kumar Chatterjee, Clerk, CCS (Refunds) Office, in the Hon'ble High Court at Calcutta.

4. A learned Single Judge by his judgment and order dated February 9, 1979 following the decision of Anil kumar Sen, J. in Lal Mohan Paul v. General manager, Eastern Railway, Calcutta (Civil Rule No. 620(W)/70, dated April 23, 1974) held that in pursuance of rule 312 the relative seniority of the appellant was governed by the Railway Board's Circular No. 1565-A dated January 31, 1950 and not by its subsequent circular dated December 31, 1966. The learned Single Judge accordingly set aside the impugned order of the Chief Personnel Officer, South-Eastern Railway dated October 7, 1974 and ordered that the Railway Administration should re-fix his seniority below all permanent and officiating clerks on the date of his transfer in the Sealdah Division of the South-Eastern Railway but above the temporary clerks in that Division. He further directed that the appellant would be entitled to promotion w.e.f. such date as he was eligible for such promotion according to the seniority so fixed.

5. The General Manager, South-Eastern Railway preferred an appeal under Clause 15 of the Letters Patent against the judgment of the learned Single Judge. A Division Bench of the High Court by its judgment dated February 11, 1980 while upholding the view expressed by the learned Single Judge as to the construction and effect of Rule 312 of the Manual, held that the Circular No. 1565-A dated January 31, 1950 governed the inter se seniority of the appellant. It however observed that due to inordinate delay on his moving the Court, there was no justification for interfering with the promotions already made of respondents 7 to 45 and made the following direction :

In the circumstances, we do not think that we shall be justified in interfering with promotions granted to the respondents. We, however, feel that the appellants should have placed respondent 1 in the seniority list above the temporary staff. The Board's circular may be given effect to in the case of the transfer which had taken place after the date of the said Circular, but before that date we find no justification why in the face of Rule 312 respondent 1 should not have been given the proper seniority by placing him above the temporary staff. In our opinion, respondent 1 should be placed immediately below the remaining respondents in FMA 588 of 1979, the seniority list. The judgment of the learned judge is modified to the extent indicated above.

It accordingly modified the judgment and order of the learned judge to the extent indicated above.

6. We have set out the facts at some length. It would appear from these facts that there was no delay, much less inordinate delay, on the part of the appellant in filing the petition under Article 226 of the Constitution for the protection of his right as to inter se seniority. Earlier, he had made three representations to the departmental authorities in the matter without any redress. If the attention of the learned Judges had been drawn to these facts, they would not have made the aforesaid modification. It is however, argued that the order of posting on transfer communicated by the Chief Personnel Officer dated October 14, 1958 specifically stated that the seniority of the appellant would be counted from the date of his posting below all permanent and temporary clerks. In his supplementary rejoinder, the appellant has controverted this fact and there is nothing on record to show that the said order of posting was ever communicated to him.

7. Rule 312 of the Railway Establishment Manual reads as follows :

Transfer on request - Seniority of railway servants transferred on their own request from one Railway to another should be allowed below that at the existing confirmed/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 service of the transferred railway servant.

8. We may then set out the two circulars issued by the Railway Board explaining the purport and effect of Rule 312. Circular No. 1565-A dated January 31, 1950 was explanatory and, insofar as material, reads :

On transfer at the employee's own request or to save his own interest his position should be at the bottom of the seniority list of the all permanent employees of his grade, if he is permanent and at the bottom of the whole list of employees (both permanent and temporary) in his grade, if he is temporary.

9. The Railway Board's subsequent circular dated December 31, 1966 sought to clarify that the term 'officiating' in Rule 312 includes temporary staff as well and that an employee transferred at his own request to a new establishment should be placed at the bottom of the seniority list in his relevant grade in that establishment. It provides :

It has been brought to the notice of the Railway Board that the orders contained in their letter No. E-55-SR-6/3 dated May 19, 1955 have been interpreted by your administration so as to exclude temporary staff from the purview of the term officiating staff, occurring therein. The Board desire to point out that the term 'officiating' occurring in Board's letter dated May 19, 1955 includes temporary staff as well. That is to say that an employee transferred at own request to a new establishment should be placed at the bottom of the seniority list in the relevant grade in that establishment.

10. There can be no doubt on the terms of Rule 312 of the Manual read with Railway Board's Circular No. 1565-A dated January 31, 1950 that the appellant having been transferred, at his own request, from one railway to another, had to be placed below all the existing confirmed and officiating staff in the relevant grade, irrespective of the date of his confirmation or the length of his service. The appellant on the date of his transfer i.e. on October 15, 1958 was not governed by the Railway Board's circular dated December 31, 1966. In Lal Mohan Paul case (Civil Rule No. 620(W)/70, dated April 23, 1974), Anil Kumar Sen, J. in a case where a railway employee was transferred on September 30, 1959, at his own request, from one railway to another held that he was governed by the Railway Board's Circular No. 1565-A dated January 31, 1950 and not by the subsequent circulars and therefore was entitled to be placed in the seniority list below the existing confirmed and officiating staff in the relevant grade and not below the temporary staff. We uphold the view expressed by Sen, J. in Lal Mohan Paul case (Civil Rule No. 620(W)/70, dated April 23, 1974).

11. That apart, the Railway Board's interpretation in the aforesaid circular dated December 31, 1966, of the term 'officiating' in Rule 312 of the Railway Establishment Manual, as including both officiating as well as temporary staff, was apparently wrong. According to its ordinary connotation, the word 'officiating' is generally used when a servant having held one post permanently of substantively, is appointed to a post in a higher rank, but not permanently or substantively, while still retaining his lien on his substantive post i.e. officiating in that post till his confirmation. Such officiating appointment may be made when there is a temporary vacancy in a higher post due to the death or retirement of the incumbent or otherwise. In contrast, the word 'temporary usually denotes a person appointed in the civil service for the first time and the appointment is not permanent but temporary i.e. for the time being, with no right to the post.

12. We find no justification for the attitude adopted by the Railway Administration in depriving the appellant of his legitimate rights. Loss of seniority of a Government servant with consequent loss of promotional prospects, higher pay and emoluments is a matter of serious consequence to him. When the appellant by his representations drew the attention of the departmental authorities to the injustice done to him, it was their duty to have rectified the mistake and re-fixed the seniority of the appellant. It was precisely to meet a situation of this kind that the Railway Board's circular dated October 16, 1964 was issued. It provides that if a person has been promoted but not on the date on which he should have been promoted due to some administrative error then the employee should be assigned correct seniority vis-a-vis his juniors already promoted irrespective of the date of promotion. It further provides that the pay of such employee in higher grade on promotion will be fixed pro forma at the stage which he would have reached if he had been promoted at the proper time. There was no reason for the Railway Administration to have deprived the appellant of the benefit of the aforesaid circular, particularly in view of the decision of Anil Kumar Sen, J. in Lal Mohan Paul case (Civil Rule No. 620(W)/70, dated April 23, 1974).

13. The result therefore is that the appeal must succeed and is allowed with costs throughout. The order passed by the Division Bench of the Calcutta High Court making a modification in the judgment of the learned Single Judge is set aside and the judgment and order of the learned Single Judge allowing the writ petition filed by the appellant is restored.

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