

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10860 of 2015

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Anirudh Banshidhar Sharma son of late Bansidhar Sharma, Mill Wright Fitter Gr-II
under D.M.E. (Diesel), E.C. Railway, Samastipur.

.... Petitioner/s

Versus

1. The Union of India through the G.M., E.C. Railway, Hajipur.
2. The G.M. (P), Central Railway, Mumbai.
3. The G.M. (P), N.E. Railway, Gorakhpur.
4. The Divisional Railway Manager, E.C. Railway, Samastipur.
5. The Sr. D.P.O., E.C., Railway, Samastipur.
6. The D.M.E. (Diesel) E.C. Railway, Samastipur.

.... Respondent/s

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Appearance :

For the Petitioner	:	Mr. M. P. Dixit, Mr. S. K. Dixit, Mr. Shailendra Kumar, Mr. Sunil Kumar and Mr. Sanjay Kumar Chaubey, Advocates
For the Railways	:	Mr. Bindhyachal Singh with Mr. Manish Prakash, Advocates

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 12-05-2016

The challenge in the present writ application is to an order dated 20th February, 2015 passed by the Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as the ‘Tribunal’), whereby an Original Application filed by the petitioner for granting him pay scale of Rs. 4500-7000 as Mill Wright Fitter Gr.-I was declined.

The petitioner was working as Mill Wright Fitter Grade-I in the pay scale of Rs. 4500-7000 on 16.05.1998 in Central



Railway, Kalyan, Mumbai. The petitioner made a request for transfer to Samastipur on 05.06.2000 on account of family circumstances. It is such request which was accepted on 09.01.2001 when the petitioner was transferred to North Eastern Railway, Gorakhpur (now East Central Railway, Samastipur). In the communication of transfer, the pay scale of the petitioner has been mentioned as Rs. 3050-4590 as a Mill Wright Fitter Grade-I.

The grievance of the petitioner is that he was in the pay scale of Rs. 4500-7000 as a Mill Wright Fitter Grade-I and on transfer he cannot be placed in the lower grade. The petitioner filed an Original Application No. 918 of 2003 before the Tribunal since he was being paid the salary in the scale of Rs. 3050-4590. The said application was decided on 27.10.2009 when the following order was passed:

“5. In these circumstances, the instant O.A. is allowed and the respondent no. 4, D.R.M., E.C. Railway, Samastipur is directed to go through the records without waiting for a reply from the Central Railway, Mumbai or Kalyan and fix the appropriate pay scale of the applicant from the date he joined in the Diesel Loco Shed, Samstipur. From the face of the record, it appears that pay scale of Rs. 4500-7000 was given at the time of joining.”

It is in pursuance of such direction, speaking order was

passed by the Divisional Railway Manager, Samastipur on 24.02.2010. It has been observed to the following effect:

“As per the aforesaid rules, it is obvious that the Inter Railway Transfers on request can only be accepted in recruitment grades and not in the intermediates grades. The applicant Sri Anirudh Banshidhar Sharma was working in scale Rs. 4500-7000 (RSRP) as Mill Wright Fitter Gr. I before his transfer on own request to Samstipur Division which is an intermediate grade in which all the posts are filled entirely by promotion of staff from the lower grade i.e. Mill Wright Fitter Gr. II in scale of Rs. 4000-6000 (RSRP). There is no element of direct recruitment in the grade Rs. 4500-7000 (Mill Wright Fitter Gr. I). The own request transfer of Sri Anirudh Banshidhar Sharma was accepted as Mill Wright Fitter Gr. III in scale Rs. 3050-4590.

The Railway Board vide his letter No. P (E)II/91 Misc./2 date 20.08.99 (Clarifications vide Railway Board's letter No. P(E)II 2003/FOP/1/Misc. dated 17.04.2007) have clarified that in the case of an employee holding a higher post on regular basis and seeks transfer on his own request to lower post, fixation of his pay in the lower grade would be done at the stage equal to the pay drawn by him in the higher post subject to the maximum of the lower post not being exceeded. Sri A.B. Sharma, at the time of his transfer at his own request of Samastipur Division, was drawing pay of Rs. 4750/- and his pay on own request transfer as Mill Wright Fitter Gr. III in scale Rs. 3050-4590 was fixed on 4590/- i.e., maximum of the lower post w.e.f. 15.01.2001.

In view of the abovementioned facts, I come

to the conclusion that Sri Sharma has rightly been placed in Mill Wright Fitter Gr. III scale Rs.3050-4590 in which element of direct recruitment exists. Further his pay on Rs.4590/- has been fixed w.e.f. 15.01.2001 correctly and as per rule.”

Still aggrieved, the petitioner filed O.A. No. 601 of 2011, which has since been dismissed by the Tribunal on 20th February, 2015, that is the order impugned in the present writ petition. The Tribunal has referred to the Railway Board's letter dated 08.02.2000 to hold that the Inter Railway Transfers on request can only be accepted in direct recruitment grades and not in the intermediate grades. It was found that the Mill Wright Fitter Grade-I is an intermediate grade in which all posts are filled up entirely by promotion of staff from the lower grade and there is no element of direct recruitment in Mill Wright Fitter Grade-I in the pay scale of Rs.4500-7000. Thus, the Tribunal found that higher scale is not permissible since Fitter Gr. I is a promotional avenue and that the respondents were right in adjusting him in the lower direct recruitment grade.

Learned counsel for the petitioner relies upon paras 227 and 229 of the Indian Railway Establishment Code. Para 227 authorizes the competent authority to transfer a Railway servant to one post to another except on account of inefficiency or misbehaviour

or on his written request. Para 229 is transfer on request within the same seniority group or different group or a mutual exchange. Such paras do not deal with Inter Railway Transfer which has been dealt in para 226. Para 226 reads as under:

“226. Transfer – Ordinarily, a railway servant shall be employed throughout his service on the railway or railway establishment to which he is posted on first appointment and shall have no claim as of right for transfer to another railway or another establishment. In the exigencies of service, however, it shall be open to the President to transfer the railway servant to any other department or railway or railway establishment including a project in or out of India. In regard to Group C and Group D railway servants, the power of the President under this rule in respect of transfer, within India may be exercised by the General Manager or by a lower authority to whom the power may be re-delegated.

Railway Ministry’s decision- Requests from railway servants in Groups C & D for transfer from one railway to another on grounds of special cases of hardships may be considered favourably by the railway administration. Such staff transferred at their request from one railway to another shall be placed below all existing confirmed and officiating staff in the relevant grade in the promotion group in the new establishment, irrespective of date of confirmation or length of officiating service of the transferred employees.”

On the other hand, the stand of the Railway is at para

312 of the Indian Railway Establishment Manual, 1989, Volume-I which reads as under is applicable:

“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- (i) 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) I-85 SR 6/14 of 21-1-1986]

(ii) 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 grades 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) I-69 SR 6/15, dated 24-6-1969) ACS-14].”

The Note (ii) was explained in a Circular dated 08.02.2000 which was circulated by Supplementary Circular No. 9 to Master Circular No. 24. The relevant Circulars read as under:

*“ R.B.E. No. 24/2000
(Supplementary Circular No. 9 to Master Circular No. 24)
Subject: Transfer on request on bottom seniority-
Amendment to Indian Railway Establishment Manual.*

[No.E(NG)-1/99/TR/15, dated 08.02.2000]

In terms of Note (ii) below Para 312 of the Indian Railway Establishment Manual, Volume-1, 1989, transfer on request of railway employees working in grades in which there is an element of direct recruitment can be accepted on bottom seniority in such grades. No such transfer is permissible in the intermediate grades, in which all the posts are filled by promotion of staff from the lower grade(s) and there is no element of direct recruitment. It is not, however, necessary that the employees seeking transfer should possess the educational qualifications prescribed for direct recruitment to the post to which transfer is sought.

2. The Central Administrative Tribunal/Chandigarh in its judgment dated 22.9.98 in OA No. 413/HR/98 filed by Shri Anand Prakash and others in the matter of transfer on request against direct recruitment vacancies quashed the instructions contained in this Ministry's letter No. E(NG) 65/SR6/31 dated 1.4.1966 which stipulates that it is not necessary for the employees seeking transfer to possess the educational qualifications laid down for direct recruitment to the relevant post. The Central Administrative Tribunal also questioned the transfer of employees against direct recruitment quota vacancies in the absence of a provision in the rules for filling up posts in a grade by transfer. The Punjab and Haryana High Court at Chandigarh has upheld the judgment of the CAT Chandigarh. The SLP filed against the said judgment in the Supreme Court has also been dismissed.

3. The matter has been considered by the Ministry of Railways in consultation with the Legal Advisor/Railway Board in the light of the above development and it has

been decided that henceforth for transfer of employees on request on bottom seniority in recruitment grades the employees should possess the qualification prescribed for recruitment to the relevant post.

4. The Indian Railway Establishment Manual, Volume-1, 1989 may also be amended accordingly as in the Advance Correction Slips No. 95 and 96 enclosed.”

A perusal of para 226 shows that ordinarily, a Railway servant shall be employed throughout his service on the Railway or Railway establishment to which he is posted on first appointment and shall have no claim as of right for transfer to another Railway or another establishment. In view of the said para, the petitioner, who was working in the Central Railway, Mumbai has no right to seek transfer to another Railway i.e., Northern East Railway, Gorakhpur. Such request of transfer has to be considered in terms of para 312 of the Railway Establishment Manual as reproduced hereinabove.

The Circular of the Board dated 08.02.2000 makes it clear that transfer on request of a Railway employee working in grades in which there is an element of direct recruitment can be accepted on bottom seniority in such grades. No such transfer is permissible in the intermediate grade in which all posts are filled up by promotion of the staff of the lower grade. It is admitted that Mill Wright Fitter Grade-I is a promotional post so is Mill Wright Fitter Grade-II. It is Mill Wright Fitter Grade-III which is a direct

recruitment post in the pay scale of Rs.3050-4590. Therefore, the transfer of the petitioner was permissible in terms of the Railway Board's Circular only to the direct recruitment post and at the bottom of seniority.

Therefore, the order dated 24.02.2010 passed by the Divisional Railway Manager, Samastipur cannot be said to be suffering from any illegality. The Tribunal has appreciated the entire controversy in correct perspective.

We do not find any error in the order passed by the Tribunal which may warrant any interference in the present writ petition.

Accordingly, the writ petition stands dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

P. Kumar/Anjani
N.A.F.R.

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