

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W. P. (S) No. 264 of 2017

Sr. Divisional Personnel Officer, South Eastern
Railway, Ranchi

..... Petitioner

vs.-

1. Asim Gyan Tigga

2. Asim Jaywant Kindo

..... Respondents

**CORAM: HON'BLE MR. JUSTICE APARESH KUMAR SINGH
HON'BLE MR. JUSTICE RATNAKER BHENGRA**

For the Petitioner : Mr. Prabhash Chandra Sinha, Adv.

For the Opp. Parties : Mr. Vishal Kumar Tiwary, Adv.

8/8.3.2018

Heard learned counsel for the petitioner and respondents.

2. Respondents in O.A./051/00189/2014 are the writ petitioners herein being aggrieved by the order dated 24th August, 2016 passed by learned Central Administrative Tribunal, Circuit Bench at Ranchi, whereunder they have been directed to correct the seniority list and assign appropriate seniority to the applicants/respondents herein, which their counterparts would have enjoyed, had there been no mutual transfer.

3. Applicant no. 1/respondent no. 1 herein, Assistant Loco Pilot at Gomo Station under Eastern Central Railway had joined on 24th January, 2001 and got transferred on mutual transfer basis to Hatia Station in exchange with one Md. Suhail Ansari of South Eastern Railway, Ranchi Division, Assistant Loco Pilot working at Hatia Station; his date of appointment being 1st February, 2006. The order of mutual transfer was issued on 15th March, 2011. Applicant no. 2/respondent no.2 herein, Assistant Loco Pilot (Electrical) at Gomo Station under Dhanbad Division appointed on 6th August, 2001 similarly got transferred to Ranch Division in exchange with one Ajay Kumar-I, Assistant Loco Pilot (Electrical), his date of appointment being 14th March, 2006. The order of mutual transfer was issued on 12th July, 2010. Applicants got aggrieved on issuance of provisional seniority list of Senior Assistant Pilot on 24th September, 2013, as they had been shown after the persons,

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who were appointed in 2009, though according to Indian Railway Establishment Rules, 310 they ought to have been allotted seniority of 2006 in place of the persons with whom they had exchanged their position.

4. Learned Tribunal also took note of other incidental facts i.e., that applicant no. 1 was reverted from the post of Senior Assistant Loco Pilot to Assistant Loco Pilot on his own volition and released from Dhanbad Division on 15th March, 2011. Learned Tribunal also took note of the Rule 310 of Indian Railway Establishment Rules relating to mutual exchange as per which railway servants transferred on mutual exchange from one cadre of a division, office or railway to the corresponding cadre in another division, office or railway shall retain their seniority on the basis of the date of promotion to the grade or take the seniority of the railway servants with whom they have exchanged, whichever of the two may be lower. Learned Tribunal coined the issue of seniority to be assigned to the applicants required to be answered in the instant O.A and came to the definite conclusion that both applicants deserve to get the seniority of their counterparts which were of a lower date as per their entry in service as Assistant Loco Pilot of 2006. However, Railways had no justification in placing these applicants with the appointees of 2009. Railways being aggrieved with the impugned direction have approached this Court.

5. Learned counsel for the Railways has made strenuous efforts to question the findings of learned Tribunal on this score relying upon by Indian Railway Establishment Rules, 312, which relates to transfer on request and also clarification contained in circular dated 19th September, 2007 bearing Establishment Serial No. 150 of 2007 both being part of Annexure-9 series. He submits that the case of the applicants would fall under Rule 312 i.e., transfer on request. These applicants are therefore to be placed at the bottom of seniority list on the date on which they were transferred. Position in the provisional seniority list at serial nos. 78 and 79 i.e., at page 46 being part of Annexure-9 is referred to in support.

6. Learned counsel for the applicants/private respondents have

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supported the impugned order. He submits that provisions relating to mutual exchange under Rule 310 is applicable to the case of the applicants and not Rule 312 as it is undisputedly a case of transfer on mutual exchange basis. Both counterparts of these applicants with whom they had exchanged their position belonged to 2006 batch. Therefore, there is no justification for the Railways to allot seniority to these applicants after 2009.

7. Upon consideration of the submission of learned counsel for the parties and on perusal of the relevant materials on record relied upon by them including Indian Railway Establishment Rules 310 and 312 as well as circular dated 19th September, 2007, we are of the firm view that the impugned direction does not suffer from any infirmity both on facts and in law. Applicants' case falls under Rule 310, which relates to mutual exchange between Railway servants and on such transfer, transferee would get the seniority of the railway servant with whom he had exchanged, whichever of the two may be lower. Rule 312, on the other hand, relates to transfer on request.

Rules 310 and 312 are quoted hereunder for better appreciation:

Rule 310: *Mutual Exchange:- Railway servants transferred on mutual exchange from one cadre of a division, office or railway to the corresponding cadre in another division, office or railway shall retain their seniority on the basis of the date of promotion to the grade or take the seniority of the railway servants with whom they have exchanged, whichever of the two may be lower.*

Rule 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.*

8. Since both the counterparts of the applicants belonged to 2006 batch with whom these applicants had exchanged their position in Ranchi Division against their original cadre of Dhanbad division, these

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applicants though of 2001 batch of Assistant Loco Pilot, would get the seniority of their counterparts in Ranchi Division of 2006. The view of learned Tribunal, therefore, does not call for any interference. Accordingly, the writ petition is dismissed.

(Aparesh Kumar Singh,J)

(Ratnaker Bhengra, J)

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