

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10917 of 2019

1. The Union of India through the General Manager, East Central Railway, Hajipur, Dist.-Vaishali (Bihar).
2. The General Manager (Personnel), East Central Railway, Hajipur, Dist.-Vaishali (Bihar).
3. The Chief Medical Director, East Central Railway, Hajipur, Dist.-Vaishali (Bihar).
4. The Divisional Railway Manager, East Central Railway, Danapur, P.O.-Khagaul, Dist.-Patna-801105 (Bihar).
5. The Senior Divisional Personnel Officer, East Central Railway, Danapur, P.O.-Khagaul, Dist.-Patna-801105 (Bihar).
6. The Medical Director, Central Hospital, East Central Railway, Dist.-Patna (Bihar).

... .. Petitioners/Respondents

Versus

1. Smt. Usha Kumari (F) D/o Late J. Mahto, W/o Shri P.P. Sahu Chief Matron, Central Hospital, East Central Railway, Patna (Bihar).
2. Binita Kujur D/o B. Oraon Chief Matron, Central Hospital, East Central Railway, Patna (Bihar).
3. Sanju Kumari D/o D. Prasad Chief Matron, Central Hospital, East Central Railway, Patna (Bihar).
4. Mridula Kumari D/o A. Singh Chief Matron, Central Hospital, East Central Railway, Patna (Bihar).

....Respondents/Applicants 1st Set

5. Kumari Sunaina Sinha D/o J.K.Prasad Chief Matron, Central Hospital, East Central Railway, Patna (Bihar)
6. Renu Sinha D/o Yamuna Singh Chief Matron, Central Hospital, East Central Railway, Patna (Bihar)

... .. Respondents

Appearance :

For the Petitioner	:	Mr. P.K.Verma, Sr. Advocate. Mr. Dr. Anand Kumar, Advocate. Mr. Bipin Kumar @ Deo, Advocate.
For the Res. Nos. 1 to 4	:	Mr. Munna Pd Dixit (M.P. Dixit)



Mr. S.K. Dixit, Advocate.
Mr. Sanjay Kumar Chaubey, Advocate.
Mrs. Swastika, Advocate.

For the Res. Nos.5 & 6 : Mr. Sanjay Kumar Ghosarvey, Advocate.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE PRAKASH CHANDRA
JAISWAL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)
Date : 29-11-2019

Heard Mr. P. K. Verma, learned senior counsel for the Union of India, Mr. M. P. Dixit, learned counsel for respondent nos. 1 to 4 and Mr. Sanjay Kumar Ghosarvey, learned counsel for respondent nos. 5 and 6.

2. This writ petition has been filed by the petitioners challenging the order dated 14.12.2018 passed in O. A. No. 782 of 2014 by the Central Administrative Tribunal, Patna Bench, Patna (for short 'the Tribunal') whereby the Railway Authorities have been directed to revise the seniority list by placing those candidates, who had joined the Central Super Specialty Hospital, Patna (for short 'the Central Hospital, Patna') on the basis of their own request at the bottom of the seniority list of paramedical staffs.

3. Mr. P. K. Verma, learned senior counsel appearing for the petitioners submitted that the impugned order of the Tribunal is *per se* illegal and bad in the eyes of law. The Tribunal failed to appreciate that the transfer of respondent nos.



5 and 6 could not have been treated as transfer on their own as they had not filled up form D-2, which was mandatory to be filled by the concerned employee in case of transfer on own request. He contended that the respondent nos. 5 and 6 could not have been placed at the bottom of seniority list as they had joined the Central Hospital, Patna prior to cut-off date, i.e. 10.09.2013. According to him, the Tribunal failed to appreciate the law and the facts in correct perspective.

4. On the other hand, Mr. M.P. Dixit, learned counsel appearing for respondent nos. 1 to 4 submitted that there is no illegality in the order passed by the Tribunal. It has taken into consideration the relevant facts and has rightly directed to place respondent nos. 5 and 6, who were transferred on their own request at the bottom of seniority list. He contended that respondent nos. 1 to 4 had exercised option in response to the request made by the East Central Railway. Hence, their case cannot be treated at par with those who were transferred on their own request subsequently.

5. Learned counsel appearing for respondent nos. 5 and 6 submitted that respondent no. 5 was appointed as Staff Nurse at the Divisional Railway Hospital, Danapur on 20.08.1992. She got her first promotion to the post of Nursing



Sister on 08.12.1997 and second promotion to the post of Chief Matron on 01.11.2003 and the benefit of MACP was given to her on 01.11.2013 after ten years of her service as Chief Matron. Similarly, respondent no. 6 was appointed as Staff Nurse on 05.11.1999. She got her first promotion to the post of Nursing Sister on 21.10.2003 and second promotion as Chief Matron on 31.12.2012. In response to the invitation of option, they had also applied on 28.04.2008 and 19.05.2008 respectively along with others through proper channel and their applications were forwarded by the Divisional Hospital, Sonapur in which their names find place at serial no. 1 and serial no. 17 respectively. However, the post of Chief Matron at the Central Hospital, Patna was created and sanctioned on 05.08.2009. Thereafter, again applications were invited from willing staffs of five Divisions of East Central Railway to join at the Central Hospital, Patna on option basis. In this notification, the cut-off date was fixed as 30.08.2010. Responding to second invitation, respondent no. 5 did not submit any option because she had already been transferred to the Central Hospital, Patna vide order dated 11.05.2010 whereas respondent no. 6 again opted herself to work in the Central Hospital, Patna. Thereafter, the Divisional Hospital, Danapur relieved respondent no. 5 on



23.01.2013 and, on the next date, she submitted her joining at the Central Hospital, Patna. The respondent no. 6 was transferred to the Central Hospital, Patna vide office order dated 18.02.2013. However, she was relieved by the Divisional Hospital, Sonapur vide letter dated 16.08.2013 and joined at the Central Hospital, Patna on 17.08.2013. He contended that since respondent nos. 5 and 6 were transferred to the Central Hospital, Patna under option basis and are on the same cadre as they were holding in the parent division till the date of transfer and the cadre at the Central Hospital, Patna was not closed, the Tribunal erred in law in allowing the original application and issuing an erroneous direction to the East Central Railway.

6. We have heard the parties and carefully perused the record.

7. The facts of the case are that the Chief Medical Director, East Central Railway, Hajipur vide letter dated 24.04.2008 invited applications from willing staffs of different Divisional Hospitals to join in the Central Hospital, Patna. In response to the option invitation, altogether 84 applications including option from respondents from various categories of paramedical staffs were received. A total number of 15 optees were ordered for working in the Central Hospital,



Patna vide order dated 28.04.2008. Subsequently, the competent authority considered the case of respondent no. 5 along with other candidates and issued transfer order vide order dated 18.02.2013 to the Central Hospital, Patna mentioning therein that their lien and seniority will be maintained as it was in their parent department till the closure of the cadre in the Central Hospital, Patna. Thereafter, again, on 20.07.2010, applications were invited for second time from willing staffs of five Divisions of East Central Railway to join at the Central Hospital, Patna on option basis. The cut-off date was fixed as 30.08.2010. Against this notification, a total number of 25 options were received out of which only 15 paramedical staffs of various categories accepted to join at Central Hospital, Patna. In the second time of option, the respondent no. 5 did not opt as she had already been transferred to the Central Hospital, Patna. The respondent no. 6 opted against the second advertisement vide her application dated 31.07.2010. Subsequently, in a general meeting held on 10.09.2013 between the Railway Authorities and the recognized union of Railway to decide the closing date of the cadre of the Central Hospital, Patna and also to decide the terms and conditions of seniority of staff joined on option basis or on own request basis, a decision was taken to



close the cadre of the Central Hospital, Patna on 10.09.2013 and it was also decided that seniority of any staff joined in the Central Hospital, Patna after 10.09.2013 will be placed at the bottom of seniority list. Thus, all optees, who joined before the closure date, on option basis, were treated to have been transferred on administrative ground and, consequently, their seniority was fixed provisionally on 26.03.2014 and finally on 27.01.2014 according to their date of promotion/appointment to the relevant grade and cadre, length of service in the previous cadre/ inter se seniority, as the case may be, working in the parent Divisions.

8. The Indian Railways have been divided into Zones and their Headquarter is fixed. Each Railway Zone is further divided for the purpose of administrative functions in different divisions. Each Railway Zone has different branches including Commercial, Engineering, Medical Stores etc.

9. Under rule 123, the Railway Board has been vested with powers to make rules with regard to Railway servants in Group 'C' and Group 'D' of general application.

10. The rules regulating seniority of non-Gazetted Railway servants are contained in Chapter 1 of the IREM. The rules contained in Chapter-1 lays down the general principles



that may be followed for determining the seniority of non-Gazetted Railway servants on Railway administrations.

11. The relevant rules 311 and 312 regulating seniority of non-Gazetted Railway Servants are reproduced hereinbelow:-

“311. Transfer in the Interest of Administration:- Seniority of railway servants on transfer from one cadre to another in the interest of the administration is regulated by the date of promotion/date of appointment to the grade as the case may be.

312. Transfer on Request:- The seniority of railway servants transferred at their own interest from one railway to another should be allotted below that of 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.

(ii) The expression “relevant grade” applies to grade where there is an element of direct recruitment.



Transfer on request from railway employees working in such grades may be accepted provided they fulfill the educational qualifications laid down for direct recruitment to the post. No such transfer should be allowed in the intermediate 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.”

12. Mr. Dixit, learned counsel appearing for respondent nos. 1 to 4 has argued that in view of rule 312 of the Indian Railway Establishment Manual, respondent nos. 5 and 6 were liable to be placed at the bottom of seniority list as they had come on the basis of their own request.

13. We are of the opinion that the reliance of the respondents 1st set upon rule 312 is misplaced. The said rule would be applicable, where transfer in an existing cadre is made on own request. It would not be applicable where a new cadre is created and options are invited and are not closed thereto.

14. In the instant case, the Central Hospital, Patna was constructed and a new cadre was created therein for functioning of the Central Hospital, Patna and for filling of the



post in the newly created cadre of paramedical staffs, options were invited from the staffs of five Divisions of the East Central Railway.

15. Admittedly, the cadre was closed on 10.09.2013. The staff, who were transferred to the Central Hospital, Patna till closing of the cadre were maintaining their seniority as per their seniority in their parent cadre and their lien was maintained till the cadre was closed and new cadre was created.

16. Since the respondent nos. 5 and 6 had applied through proper channel for their posting in the Central Hospital, Patna on option basis in terms of letter dated 24.04.2008, but their postings could not be done in the Central Hospital, Patna at that time and simply because some others had joined earlier, they cannot be put in disadvantageous position.

17. In his argument, Mr. Dixit has put much stress on the fact that the transfer order of respondent nos. 5 and 6 was on their own request. However, said submission cannot be accepted in view of the fact that if any employee is transferred from one place to another on own request then it is mandatory to submit such request in form D-2 prescribed by the Indian



Railway.

18. Mr. Dixit has vehemently contended that the transfer orders of respondent nos. 5 and 6 would show that they were transferred on their own request. In this regard, the petitioners have pleaded that due to clerical mistake occurred in the office orders, some confusion was created. The consistent case of the Railway is that all the respondents were transferred on option basis on the post of Matron from the different Divisional Hospitals under the East Central Railway to the Central Hospital, Patna. Hence, there was no occasion for putting the respondent nos. 5 and 6 at the bottom of seniority list.

19. From the materials on record, we find that respondent nos. 5 and 6 were transferred in the interest of administration to meet with the shortage of paramedical staff in the newly created cadre and as such in terms of rule 311 regulating seniority of non-Gazetted Railway Servants, they would be entitled to weightage of seniority from the date of their original appointment. Their transfer cannot wipe off length of service in the past. We are also of the view that since cadre of the Central Hospital, Patna was not closed on the date of transfer of respondent nos. 5 and 6 and their lien was to be



maintained in the parent division before closure of the cadre of the Central Hospital, Patna, the question of their placement at the bottom of their seniority list did not arise.

20. Keeping in mind the above discussions, the order impugned passed by the Tribunal cannot be sustained.

21. Accordingly, the order dated 14.12.2018 passed in O. A. No. 782 of 2014 by the Tribunal is set aside.

22. The writ application stands allowed.

(Ashwani Kumar Singh, J)

(Prakash Chandra Jaiswal, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.12.2019
Transmission Date	NA

