

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13946 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. Ranjana Srivastava D/o- D.B. Srivastava, Nursing Sister, Central Hospital, East Central Railway, Patna, (Bihar).
2. Taramani Ekka D/o- P. Ekka, Nursing Sister, Central Hospital, East Central Railway, Patna, (Bihar).
3. Manju Kumari D/o Surendra Kumar, Nursing Sister, Central Hospital, East Central Railway, Patna, (Bihar).
4. Ambika Kumari D/o Motilal, Nursing Sister, Central Hospital, East Central Railway, Patna, (Bihar).
5. Rashmi Srivastava D/o Late J.K. Srivastava, Nursing Sister, Central Hospital, East Central Railway, Patna, (Bihar)..... ..

Respondents (1st Set)/Applicants

6. Madhumati Kumari D/o Babu Lal Prasad, Nursing Sister, Central Hospital, East Central Railway, Patna, (Bihar).
7. Nirmal Kumar Swatantra D/o Paul Chatri, Nursing Sister, Central Hospital, East Central Railway, Patna, (Bihar).
8. Mina Sinha D/o- R.C. Sinha, Nursing Sister, Central Hospital, East Central Railway, Patna, (Bihar).
9. Urmila Kumari D/o Late Sita Ram, Nursing Sister, Central Hospital, East Central Railway, Patna, (Bihar).



10. Sarita Kumari D/o Susheet Kumar, Nursing Sister, Central Hospital, East Central Railway, Patna, (Bihar).
11. Rina Kumari D/o Bangali Ram Nursing Sister, Central Hospital, East Central Railway, Patna, (Bihar).
12. Anu Rana D/o S.N. Sharma, Nursing Sister, Central Hospital, East Central Railway, Patna, (Bihar).
13. Kiran Kumari D/o Dukhi Prasad, Nursing Sister, Central Hospital, East Central Railway, Patna, (Bihar).
14. Muni Kumari D/o Sharvan Pandit, Nursing Sister, Central Hospital, East Central Railway, Patna, (Bihar).

... .. Respondents (2nd set)/Applicants

Appearance :

(In Civil Writ Jurisdiction Case No. 13946 of 2019)

For the Petitioner/s	:	Mr. P.K.Verma, Sr. Advocate. Mr. Dr. Anand Kumar, Advocate. Mr. Bipin Kumar @ Deo, Advocate.
For the Respondent No.1:		Mr. Munna Pd Dixit (M.P. Dixit) Mr. S.K. Dixit, Advocate. Mr. Sanjay Kumar Chaubey, Advocate. Mrs. Swastika, Advocate.

For the Respondents Nos. 6, 8, 9, 10, 12 & 14	Mr. Sanjay Kumar Ghosarvey, Advocate.
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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 advocate
appearing for the Union of India.

2. This writ petition has been filed by the petitioners challenging the order dated 14.12.2018 passed in O.A. No. 783/2014 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 (for short 'the Central Hospital'), Patna on the basis of their own request at the bottom of the seniority list of the paramedical staff.

3. Mr. Verma, learned senior counsel appearing for the petitioners submitted that the impugned order of the Tribunal is *per se* illegal and bad in the eye of law and is fit to be set aside. The Tribunal failed to appreciate that the transfer of Respondent 2nd set could not have been treated as transfer on own request as they had not filled up form D-2, which was mandatory to be filled by the concerned employee. He contended that they could not have been placed at the bottom of seniority list as they had joined the Central Hospital prior to the cut off date i.e. on 10.09.2013.

4. On the other hand, learned counsel appearing for the Respondents 1st set submitted that there is no illegality in the order passed by the Tribunal. The Tribunal has taken into consideration the relevant facts and has rightly directed to place the Respondents 2nd set, who were transferred on their own request at the bottom of the seniority list. He contended that the Respondent 1st set had exercised option in response to the request made by the East Central Railway. Hence, their case can



not be treated at par with those, who were transferred on their own request subsequently.

5. Learned counsel appearing for the Respondents nos. 8, 9, 10, 12 and 14 has supported the case of the petitioners. He contended that the challenge to the seniority list dated 26.03.2014 and 27.10.2014, in the original application by the Respondent 1st set before the Tribunal on the ground of Rule 312 of IREM is wholly misconceived. According to him, all the respondents were transferred on optional basis (administrative ground) from different divisional hospitals to the Central Hospital, Patna. Since they all were transferred under optional basis and are on the same scale and cadre, as they were holding in their parent division till the date of transfer and the cadre at 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, in brief, are that the Respondents 1st set are Nursing Sisters posted and working at Central Hospital, Patna. They filed an original application vide O.A. No.783/2014 before the Tribunal against the seniority list



dated 27.10.2014 stating therein that the Respondents 2nd set had come on their own request. Thus, they should have been posted at the bottom of the seniority list. The Tribunal vide impugned order dated 14th December, 2018 directed the Respondents to revise the seniority list by putting the private Respondents, who came on their own request at the bottom of the seniority list. The case of the Respondents 2nd set in original application was that they were working under different divisions of the East Central Railway and had come on optional basis in the Central Hospital.

8. The records of the case would reflect that the Chief Medical Director, East Central Railway, Hajipur vide letter dated 24.04.2008 invited applications from the willing staffs in five divisions of East Central Railway for joining in the Central Hospital at Patna.

9. In response to the aforestated letter dated 24.04.2008, 84 options were exercised out of which 15 options were accepted.

10. Again, vide letter dated 20.07.2010 issued by the Railway, options were sought from the willing staffs of five divisions for their joining in the Central Hospital at Patna by 30.08.2010.



11. Against the second notification a total number of 25 options were filed, out of which 15 paramedical staff of various categories accepted to join Central Hospital, Patna also.

12. Respondent no.8 had offered his option for appointment at the Central Hospital, Patna pursuant to the option invited vide letter dated 24.04.2008. He had filled up an option form in this regard on 29.05.2008. Respondent no.10 had made an offer by way of an application on 22.05.2008, which was forwarded on 29.05.2008. The Respondent no.12 had opted by way of an application dated 14.09.2009, which was forwarded on 15.09.2009. Similarly, Respondent no.14 had opted by way of an application dated 18.06.2008, which was forwarded on 23.06.2008.

13. The Respondents nos. 8, 9, 10, 12 and 14 were transferred from East Central Railway, Hajipur vide letter nos.63/10 dated 03.02.2010, no.558/09 dated 26.10.2009, no.558/09 dated 26.10.2009, no.488/10 dated 02.09.2010 and letter no.250/10 dated 11.05.2010 respectively to the Central Hospital, Patna against the sanctioned post and their lien was reserved to their parent department till the closure of cadre.

14. The Respondents 2nd set did not apply for the second option for being posted in the Central Hospital because



of the fact that the transfer order had come from Hajipur headquarter to their parent Division and some of them had already joined their duty at the Central Hospital, Patna prior to the date on which option was sought for the second time. It would also be evident from the record that the Respondent no.8 had joined the Central Hospital on 09.04.2010. Similarly, Respondent no.9 had joined on 19.05.2010, Respondent no.10 had joined on 29.01.2010, Respondent no.12 had joined on 16.11.2010 and Respondent no.14 had joined on 29.03.2011. They all had filed common representations to the General Manager (P), East Central Railway, Hajipur and other authorities through proper channel requesting them for treating their transfer from their Divisional Hospitals to Central Hospital, Patna on optional basis as an administrative transfer and not on the basis of their own request as they fulfilled all the criteria of transfer in view of letter issued by the ECR dated 24.04.2008 and their options were duly forwarded by their Divisional Hospitals. After their services were taken into Central Hospital, they are working there continuously.

15. 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.

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

17. 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.

18. The relevant rules 311 and 312 regulating seniority of non-Gazetted Railway Servants are reproduced herein-below:-

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. Transfers 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.

19. Respondent 1st set has argued that in view of Rule 312 of the Indian Railway Establishment Manual, the Respondents 2nd set were liable to be placed at the bottom of the seniority list as they had come on the basis of their own request.

20. 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.

21. In the instant case, the Central Hospital was constructed, at Patna and a new cadre was created therein. For functioning of the Central hospital 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.

22. Admittedly the cadre was closed on 10.09.2013. The staff, who were transferred to the Central Hospital 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.

23. Since the Respondents 2nd set had applied through proper channel for posting in the Central Hospital on optional basis in terms of letter dated 24.04.2008, but their postings could not be done in the hospital at that time and simply because most of them were subsequently posted even before the second option was invited, they cannot be put in disadvantageous position to those, who opted pursuant to the second option invited on 20.07.2010 like the Respondents 1st set.



24. Learned counsel appearing for the Respondents 1st set has put much stress on the fact that the transfer order of the Respondents 2nd set clearly shows that they were transferred on their own request. In this regard, the petitioner has clarified that there was a clerical mistake while issuing the transfer letters. On perusal of those transfer letters, we find that though it is mentioned that the transfer is on own request but, it is also mentioned that postings will be on the same post, same pay band and grade pay. The transfer orders would clearly make it evident that they were made in an administrative interest on optional basis.

25. Furthermore, it has been pointed out by learned counsel for the petitioners that in case of transfer on own request, applications are to be filed compulsorily, in form D-2, but none of the Respondents of the Respondents 2nd set had submitted his application in form D-2. Since the transfer of the Respondents 2nd set was not made on own request, the Tribunal erred in law in allowing the original application and directing the petitioners to revise seniority list by placing those candidates who had come on own request at the bottom of their seniority list.

26. Respondents 1st set has failed to show that



the Respondents 2nd set ever filed application for transfer to Central Hospital in the prescribed form D-2. In prescribed form, if an application is made, the applicant is required to give an undertaking that he is prepared to abide by the conditions of transfer at own request. In absence of any such undertaking, it would be unfair to hold that the respondents 2nd set were transferred on their own request.

27. From the records, it is apparent that the respondents 2nd set were transferred from different divisions of the East Central Railway to the Central Hospital, Patna in the interest of administrations to meet with the shortage of paramedical staff in the newly created cadre there and as such in terms of the above said Rule 311, they would be entitled to the weightage of seniority from the date of their original appointment. Their transfer cannot wipe out the length of service in the past from which they had been transferred.

28. As the cadre of Central Hospital was not closed on the date of transfer of Respondents 2nd set and their lien was to be maintained in the parent division before closure of the cadre of Central Hospital, the question of their placement at the bottom of their seniority list did not arise.

29. Keeping in mind the above discussions, the



order impugned passed by the Tribunal cannot be sustained.

30. Accordingly, the order dated 14th December, 2018 passed in OA No.050/00783/2014 by the Tribunal is set aside.

31. The writ application stands allowed.

(Ashwani Kumar Singh, J)

(Prakash Chandra Jaiswal, J)

amit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09-12-2019
Transmission Date	NA

