

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 04.11.2022

% **Judgment delivered on: 25.11.2022**

+ **W.P.(C) 17309/2006**

YOGENDER KUMAR PATHAK

..... Petitioner

Through: Mr. M.K. Bhardwaj & Ms. Alisha
Saini, Advocates.

versus

UOI & ORS.

..... Respondents

Through: Mr. Bhagvan Swarup Shukla, CGSC
with Mr. Sarvan Kumar, Advocate for
UOI.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. This writ petition stems from the order dated 26.09.2005 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (Hereinafter referred as “the Tribunal”) in O.A. 2115/2003 whereby the Tribunal dismissed the petitioner's challenge to the respondent's letter dated 09/14.07.2003. By way of the said letter, the respondents rejected the petitioner's request for promotion to Fitter Grade-II and subsequently to Fitter Grade-I by referring to the seniority list dated 06.10.1990 whereby the petitioner was placed at a lower place in the seniority list as a consequence

of his transfer on “own request” basis. Before adverting to the reasoning of the Tribunal in the impugned order, we shall set out the facts of the case in brief.

2. The petitioner joined the railways as Khallasi/diesel cleaner on 09.07.1981 and was promoted as Sr. Khallasi/ Khallasi Helper on 01.01.1988 as a result of upgradation of the post. Meanwhile, on 30.04.1986, the respondents initiated a proposal to install a new electric loco shed at Tughlakabad, Kota Division of the Western Railway. The petitioner requested for transfer to the newly installed loco shed on personal grounds i.e. on own request basis. The request was accepted and the petitioner was posted at the new establishment in a lower grade i.e. Khallasi. The petitioner joined the new establishment on 19.01.1989.

3. Subsequently, the respondents invited applications from employees serving in the railways for transfer to the newly installed loco shed on administrative grounds. On 17.10.1989, the applicant also requested for consideration of his “on request” transfer as a transfer on administrative grounds. The said request received the recommendation of Senior DEE on 17.10.1989. However, no decision was taken in this regard. Thereafter, the applicant sought promotion as Senior Khallasi, the grade at which he was serving prior to his transfer. The applicant was subjected to a trade test for the post of Fitter Grade-III, along with other employees. Upon being declared successful in the trade test on 13.02.1990, the applicant was placed at Sr. No. 25 in the list of selected candidates for the post of Fitter Grade-III and was promoted as such on 03.03.1990.

4. Meanwhile, the respondents issued a provisional seniority list on 09.02.1990 wherein the petitioner was placed at Sr. No.25. Various representations were invited against the provisional seniority and time was given to the employees to submit the same. Thereafter, the corrected seniority list was finalized and vide office order dated 13.07.1991, the petitioner's seniority was revised and he was found to be ineligible for promotion to the post of Fitter Grade-III as per the corrected seniority list. Consequently, the petitioner was reverted to the original post of Khallasi by Sr. DEE/TKD vide office order dated 20/23.07.1991. The reversion order was challenged by the petitioner before the Tribunal in O.A. 1723/1991. The respondents decided to cancel the reversion order and passed an order dated 21.08.1991, thereby allowing the petitioner to continue working as Fitter Grade-III. Thereafter, the petitioner took the trade test for promotion as Fitter Grade-II, however, he was not promoted by the respondents. The Tribunal disposed of O.A.1723/1991 on 01.10.1996 directing the respondents to consider the case of the petitioner for promotion to Fitter Grade-II, if eligible as per the extant rules and regulations of the respondents. Upon considering the case of the petitioner, in light of the above direction, the respondents passed two orders dated 23.12.1996 and 04.02.1998 whereby the petitioner's request for promotion to Fitter Grade-II was rejected for the reason that the petitioner was promoted to Fitter Grade-III on the basis of a false declaration and was prevented from being reverted to the post of Khallasi due to the stay of the Tribunal in O.A. No. 1723/1991.

5. The above decisions of the respondents came to be challenged before the Tribunal in O.A. No. 1362/2000. The said O.A. was disposed of by the Tribunal vide order dated 11.11.2002 with a direction to the respondents to consider the case of the petitioner for promotion from the date of promotion of his juniors, in accordance with the applicable rules. The relevant directions read thus:

"Respondents to consider the claim of the applicant for promotions to the posts of ELF- II and ELF- I from the dates his juniors were promoted, taking into account the relevant seniority list issued by them after his transfer to Kota, Tughlakabad Division. This shall be done within two months from the date of receipt of a copy of this order with intimation to the applicant. If he is found fit for promotions in accordance with the relevant rules and instructions, he will be entitled to consequential benefits, including the differences in the higher pay. No order as to costs."

6. Upon considering the case of the petitioner, the respondents finally rejected his request vide order dated 09/14.07.2003. The said order was challenged before the Tribunal in O.A. No. 2115/2003, which was dismissed vide order dated 26.09.2005 (impugned order). The Tribunal, while dismissing the application, took note of Rule 312 of Indian Railways Establishment Manual (Hereinafter referred as "IREM") and observed that in an "on request" transfer, the transferee is to be placed at the bottom of the seniority list. Accordingly, the seniority of the petitioner was corrected and revised from Sr. No. 25 to Sr. No. 157 in accordance with the rules. The Tribunal further noted that upon correction of the seniority list, the petitioner fell outside the zone of consideration and was proposed to be reverted to the post of Khallasi. However, the same was stayed. As regards the petitioner's contention that he has been subjected to unequal treatment and has been

denied the benefit of parity with his colleagues, the Tribunal observed that a wrong action could not confer any vested right in favour of the petitioner and thus, upon correction of the seniority list as per rules, he could not be allowed to get the benefit of promotion.

7. Challenging the impugned order before us, the petitioner contends that the transfer of the petitioner ought to have been considered on administrative grounds without any loss of seniority. To buttress, it is submitted that Sr. DEE had already recommended for the consideration of his transfer on administrative grounds. The petitioner further submits that his reversion order was passed without assigning any cogent reasons and was discriminatory as all other persons who were transferred on administrative grounds were not only allowed to continue at higher posts but received subsequent promotions also.

8. The petitioner further contends that the respondents could not have conducted tests for the higher posts when the inter-se seniority of the employees working at the lower post was not settled. For the purpose of seniority, the petitioner further contends, past services are to be considered as per the settled law in view of the judgment in ***K.A. Balasubramanian v. Union of India***, 1987 (4) ATC 805, and thus, his entire past service ought to be considered for ascertainment of seniority. Lastly, challenging the rationale of the "own request" transfer, the petitioner submits that Rule 312 of IREM only required the petitioner to be placed at the bottom of the existing employees and not to be placed at the bottom of all the employees who joined the establishment at Tughlakabad afterwards.

9. *Per contra*, the respondents submit that the petitioner was assigned seniority in accordance with Rule 312 which mandates the transferee to be placed at the bottom of the seniority list when transfer is on “own request” basis. It is further submitted that the petitioner could not claim parity with other employees who were transferred to the TKD division on administrative grounds and carried forward their seniority as it stood before the transfer. In the case of these employees, there was no downgrading of seniority as the nature of transfer was different. Lastly, the respondents submit that the petitioner did not fall in the list of seniority to be considered for promotion to Fitter Grade-II and that the denial of promotion to the said grade was justified as it was done in accordance with the rules.

10. We have heard the parties at length and carefully perused the record.

11. The case before us does not turn on any vexed question of law. The issue is a straight-forward one, i.e. whether the seniority of the petitioner was determined in accordance with Rule 312 of IREM. If we determine that the seniority was fixed in accordance with the aforesaid rule, we need not indulge in any meticulous examination of the consequences that result therefrom.

12. Interestingly, the parties are not at issue on the material facts involved in the case, thereby enabling us to proceed with a fair amount of clarity. It is not in dispute that the petitioner originally joined the railways as a Khallasi and was promoted as Senior Khallasi upon upgradation of the post. It is also not in dispute that upon establishment of the new electric loco shed at Tughlakabad, Kota Division of the Western Railways, the petitioner applied for a transfer on “own request” basis. It is also not in dispute that Rule 312

of IREM governs the aspect of seniority in cases of transfer on own request. We may now refer to Rule 312 which is reproduced thus:

“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) 1-85 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 provided they fulfil the educational qualifications laid down for direct recruitment. **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.***

(Railway Board's letter NO. E(NG)/I/99/TR/15 dated 08.02.2000)"

(emphasis supplied)

13. The above rule categorically states that the seniority of railways servants transferred on their own request would be allotted below that of the existing (confirmed, temporary or officiating) railways servants in the relevant grade. Note (ii) annexed to Rule 312 further provides that the expression "relevant grade" refers to a grade in which there is an element of direct recruitment. It further provides that no transfer on request would be allowed in intermediate grades i.e. the grades in which all the posts are filled

by promotion/upgradation from lower grade and not by direct recruitment. Thus, the scheme as it emerges from the above rule, conveys that if a railway servant seeks a transfer on his “own request”, the transfer shall be allowed only to a lower grade (which was filled by direct recruitment) and such transferee would be placed at the bottom of the seniority list in the relevant grade. Such transfer on request would not be allowed to an intermediary grade i.e. a grade which is filled by promotion and not direct recruitment.

14. In the present case, the petitioner was serving, as Senior Khallasi when he sought transfer on his own request. The posts of Senior Khallasi are not filled by direct recruitment as it is an intermediary grade post. The petitioner was also working as Senior Khallasi upon upgradation of the post and his direct recruitment was made to the post of Khallasi. Thus, there is no dispute in the proposition that when the petitioner sought a transfer on his own request, he was transferred to the lower post i.e. Khallasi which was a direct recruitment post as per the petitioner’s eligibility; and was placed at the bottom of the seniority list. It was a consequence that the petitioner chose to face having complete knowledge of the rule governing seniority in a case of transfer on request. As stated by the petitioner himself, he chose to seek the above transfer under an expectation of career advancement and promotional benefits. Later, if things did not take a favourable turn for the petitioner, he cannot go back in time and change the course of things, that too through an administrative challenge before a court of law. Be that as it may, the petitioner's transfer was not made against his wishes and a conscious call gone wrong would not give a cause of action to the petitioner.

15. After the petitioner joined the TKD division at the lower post of Khallasi, the respondents transferred certain railway servants to the TKD division on administrative grounds. Notably, the transferees on administrative grounds did not lose their seniority and joined the new division at the same post. The counterparts of the petitioner, therefore, continued as Senior Khallasis in the new division and consequently, they were placed above the petitioner in the new TKD division. The petitioner's contention that the respondents misapplied Rule 312 by placing the subsequent transferees above himself in the seniority list is misconceived. The subsequent transferees were placed above the petitioner because they were transferred at posts of a higher grade i.e. Senior Khallasi and their posts were not downgraded to Khallasi, as their transfer was on administrative grounds and not on their "own request". Thus, the two classes of railway servants were not similarly placed in the eyes of law and thus, no discrimination was meted out to the petitioner.

16. As regards the petitioner's argument that his request for conversion of "own request" transfer to a transfer on administrative grounds was duly recommended, the Tribunal has rightly noted that mere recommendation of such conversion would not effectuate into any benefit for the petitioner as long as the same is not finalized by the respondents and an order is not passed in that regard. We are not inclined to add anything more to address this argument.

17. The petitioner has vehemently urged that since he has been serving at Fitter Grade-III, he must be considered for promotion to Fitter Grade-II akin to the other railways servants who have been promoted to Fitter Grade-II on

the basis of the trade test. This contention must be repelled at the very outset. We say so because the respondents have consistently maintained, without dispute from the petitioner that the petitioner was wrongly promoted to the post of Fitter Grade-III as it was done in the light of a false declaration regarding seniority made by the petitioner. In the original reversion order dated 13.07.1991, the respondents noted that:

"Earlier he was promoted based on a declaration given by him which has been found incorrect later."

As noted already, the above order was stayed later and the petitioner was permitted to continue as Fitter Grade-III. Furthermore, in the respondents' order dated 23.12.1996, the respondents refused to promote the petitioner to Fitter Grade-II and again noted that:

"In reference to the above, it is advised that you were eligible to be assigned seniority in scale of Rs. 750-940 (RP) from the date of joining on the Division as per rule since you came on transfer at your own request on bottom seniority in scale Rs. 750-940 (RP) from Ratlam Division. But on your submitting wrong declaration in 1989 your seniority was incorrectly assigned and based on that wrong seniority you were promoted to the post of ELF/Gr.III after trade test wrongly."

The same stance was reiterated by the respondents in the order dated 04.02.1998 as well.

18. The order impugned before the Tribunal, dated 09/14.07.2003, also reiterates the same reasons for refusal to promote the petitioner as Fitter Grade-II. The order is relevant and the relevant portion of the order is reproduced thus:

"... The seniority list dated 08.02.1990 of Khalasi in the Grade of Rs. 750-940 (RP) was issued provisionally. You have been

placed at Srl. No. 25 on the basis of your appointment dated 24.04.1980 and Shri Hari Prasad and Rakesh were placed at Srl. No. 39 and 40 on the basis of their appointment date 01.01.1984. Whereas, you had joined this Division on 19.01.1989 from Ratlam Division on your own request at lower post and seniority. It was wrong that you were placed at Srl. No. 157 of corrected seniority list no. E/EL/TRS/1030 dated 06.11.90 of Khalasi in the grade of Rs. 750-940 (RP) on the basis of your joining duty on 18.08.89.

It is, therefore, this office has made correction in the seniority list dated 06.10.1990 placing you at Srl. No. 157 at Srl. No. 139 on the basis of date of joining 19.01.1989 on your own request. After correction you have been placed below Shri Mishri Lal who is at present working in Grade II and above Ramesh Chand at Srl. No. 142 at present working in Grade III.

In view of above, you are not eligible for promotion to grade-I and Grade-II as no junior to you has been promoted to Grade-I and Grade-II."

(emphasis supplied)

19. The above order makes it clear that the petitioner's seniority was downgraded as a consequence of him seeking a transfer on his own request, in accordance with the extant rule. Furthermore, the seniority list was corrected and revised accordingly, and no fault can be found with the same. The order further provides that the petitioner cannot be promoted to Fitter Grade-II or Grade I as no railway servant junior to the petitioner, as per the corrected seniority list, has received such promotion. Pertinently, it is not in dispute that the petitioner gave a false declaration which led to his appointment as Fitter Grade-III. It is also not in dispute that the petitioner was allowed to continue as Fitter Grade-III and was never reverted to the original post of Khallasi. The relief sought by the petitioner in this case is

primarily an extension of the wrong declaration made by the petitioner. A court of law cannot be weaponized to seek the benefit of a wrong.

20. As a court sitting in judicial review of an administrative decision, we cannot lose sight of the fact that the orders passed by the respondents, specifically the letter dated 09/14.07.2003 in question, are speaking orders. A speaking order is an important facet of administrative decision making as it supplies reasons for the conclusion. Reasons, we hasten to add, are the life and blood of any decision which impacts those on the receiving end of it. Once a decision has been taken, in accordance with the extant rule and supplied with due reasons, the Court has no business in interfering with such decision until and unless the settled grounds of administrative review by the Courts of law are made out. The case set-up by the petitioner does not reek of any non-application of mind or Wednesbury unreasonableness or violation of the principles of natural justice, and thus, we find ourselves in agreement with the impugned order.

21. The writ petition stands disposed of as dismissed.

22. Interim applications, if any, shall also stand disposed of in the aforesaid terms. No order as to costs.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

NOVEMBER 25, 2022